

IN-DEPTH

Labour And Employment Disputes

EDITION 8



LEXOLOGY

Labour and Employment Disputes

EDITION 8

In-Depth: Labour and Employment Disputes (formerly The Labour and Employment Disputes Review) provides an incisive examination of the most salient aspects of the regimes governing workplace disputes across myriad jurisdictions worldwide. With a focus on the most consequential recent developments in law and practice, it covers key topics such as procedural considerations, forums, common types of dispute and an outlook for the future.

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Introduction

Employment disputes

In Belgium, labour tribunals are tasked with handling employment disputes. Every labour tribunal consists of chambers in which, in addition to the president (a professional magistrate), lay judges also sit. The latter are appointed on the recommendation of associations of employers, self-employed individuals and employees to assist the professional judge in handling a case.

Decisions made by the labour tribunal can be appealed at the Labour Court of Appeal, which can conduct a full review of the case, reassessing both the factual circumstances and the legal reasoning behind the original decision. A further appeal can be made on legal grounds to the Supreme Court, which does not reassess the facts of the case. It reviews only the correct application of the legal principles underlying the case.

The Constitutional Court has the authority to annul laws, decrees and ordinances that violate constitutional provisions, particularly those relating to the division of powers between the federal and regional governments, as well as fundamental rights and freedoms. In addition, courts have the ability to submit a 'preliminary question' to the Constitutional Court. They do this when they believe or suspect that certain rules concerning the division of powers or fundamental rights have been violated.

In disputes handled by the labour courts, the labour public prosecutor's office may be required to intervene and provide advice, depending on the case. In the event of an alleged or suspected breach of social criminal laws, the labour public prosecutor may take a criminal action against the alleged offender before the criminal court.

Social inspection services also play an important role in the enforcement of employment and social security laws in Belgium. They can investigate potential violations and issue a warning or draw up an official report, depending on the severity of the violation. Official reports must then be transmitted to the labour public prosecutor's office. This may give rise to a criminal or an administrative procedure.

Policy and general tenor

Belgian employment law is generally perceived as being more favourable to employees than to employers, with legislation that is designed to provide a high level of protection to employees.

Statutory framework

Belgian employment law follows a strict hierarchy of sources, listed in order of precedence as follows.

1. Mandatory statutory laws: These laws are at the top of the hierarchy and take precedence over all other sources.
- 2.

Collective bargaining agreements (CBAs) made generally binding by royal decree: These agreements are next in line and have been given legal force through a royal decree.

3. Non-generally binding CBAs to which the employer is a party or is considered to be a party: These are agreements that the employer has signed itself or agreements signed by an organisation the employer is affiliated with.
4. Individual written employment contracts: These contracts are specific to individual employees and come after the above-mentioned CBAs.
5. Non-binding CBAs that are not signed by the employer itself or by an organisation the employer is affiliated with but concluded within a joint committee to which the employer belongs: These agreements are considered but do not have the same binding force as those made binding by royal decree or those to which the employer or its organisation is a party.
6. Work regulations: These are the mandatory work rules set by the employer for the workplace.
7. Non-mandatory legislation: These laws are not mandatory but can still influence employment practices.
8. Individual oral contracts: These are verbal agreements between the employer and the employee.
9. Customs: At the bottom of the hierarchy are customs, which are traditional practices that may influence employment relationships.

This hierarchy ensures that mandatory statutory laws and binding collective agreements take precedence, providing a clear framework for resolving conflicts between different sources of employment law.

Federal laws and royal decrees regulate a wide range of employment-related issues, including, but not limited, to employment contracts, benefits, working hours, pensions, social security, and health and safety regulations. Federal legislation applies at a national level.

However, the regional authorities of Flanders, Wallonia and Brussels-Capital have competencies that allow them to legislate specific employment matters. This includes areas such as, for example, the access to employment of foreign workers, which may vary from one region to another.

In addition, many employment terms and conditions are regulated by CBAs. National CBAs are negotiated at the national level between employers' organisations and trade unions, and they cover a wide range of employment conditions that apply across various sectors, such as the national minimum baseline for wages, pre-pension arrangements and social dialogue. At the industry level, CBAs set out the conditions relating to minimum remuneration (pay scales). In addition, CBAs at the industry level also deal with, for example, working hours, additional premiums and benefits, and time credit arrangements. At the company level, it depends on the specific company as to whether or not CBAs are concluded. Collective bargaining at the company level is sometimes expressly required by the legislator (e.g., in the case of working time or financial participation schemes). Some

specific circumstances may also call for a CBA at the company level (e.g., harmonisation and social plans).

Belgium is also subject to EU directives and regulations that have a direct or an indirect impact on employment law.

Year in review

Since the aim of this section is to spotlight notable decisions from the past year, it does not serve as a comprehensive review of the 2024 to 2025 case law.

Cumulative discrimination in recruitment

A woman applied for an assistant-accountant position at an accounting firm. The firm replied requesting her date of birth, nationality and salary expectations but inadvertently included an internal message between the manager and the tax adviser stating 'pas trop mauvais mais noire et ou âge' ('not so bad, but black and/or old'). She complained to Actiris and to Unia, which joined as co-claimant. The firm denied discrimination, arguing the email was internal and authored by someone not empowered to represent the company, that it had hired people of diverse origins (including a Cameroonian man and later a Moroccan woman) and that it merely sought to complete administrative data.

The Brussels Labour Court on 5 May 2025^[1] held that the internal email established a presumption of discrimination on grounds of race (skin colour) and age within the meaning of the Anti-Racism Act and the Anti-Discrimination Act. Applying the statutory shift of the burden of proof, the firm failed to rebut the presumption: there was no essential and determining occupational requirement excluding a black candidate or a 34-year-old from the role, no positive action measure, and no legal basis for the distinction. The court found the diversity-hiring argument too general, noted both 'diverse' hires were fixed-term and followed the Actiris sanction or Unia's intervention, and confirmed that internal emails can constitute valid evidence and lead to civil or criminal liability. It concluded that the applicant suffered unjustified cumulative direct discrimination based on skin colour and age. For damages, the court awarded compensation equal to two times six months' gross salary, recognising that each form of discrimination – on the basis of skin colour and on the basis of age – constituted a separate violation of the applicant's personal integrity.

In summary, the court ruled in favour of Unia and the applicant, confirming unlawful cumulative direct discrimination during recruitment and awarding compensation equal to two times six months' gross salary. The decision highlights that internal communications, even if not intended for the applicant, can serve as evidence of discrimination. The court recognised that discrimination on multiple grounds, such as skin colour and age, can lead to higher compensation when each ground constitutes a separate violation of personal integrity.

Belgian Supreme Court ruling on language and employment documents

On 3 February 2025,^[2] the Belgian Supreme Court issued a decision regarding the application of the Flemish Dutch Language Decree to employment documents drafted

exclusively in English, focusing on share option and bonus plan conditions. The case involved an employee working in Belgium (with a workplace in Bilzen and the employer's registered office in Ghent) who contested the validity of English-only documents governing his share options and bonuses.

According to the Language Decree, employment documents must be drafted in Dutch, although an additional version in another language is permitted if all parties understand it. Because the relevant documents were not in Dutch, the lower courts declared them null and void under the Decree. However, the Decree also stipulates that this nullity cannot disadvantage the employee and does not affect the rights of third parties, with the employer being liable for any harm caused by the null documents. The lower courts were divided on whether the employee could still derive rights from the null documents or was limited to claiming damages for proven loss. The labour court held that the employee could rely on the beneficial provisions of the null documents, while the employer argued otherwise. The Supreme Court confirmed the labour court's interpretation, holding that the employee may invoke the advantageous terms of the null documents and is not restricted to seeking damages.

In conclusion, employers must ensure that personnel documents are drafted in Dutch; English-only documents are null, but this nullity cannot disadvantage employees, who may still invoke the advantageous terms they contain, including those relating to share options and bonuses.

Belgian Labour Court awards damages for unlawful DPO dismissal

The Brussels Labour Court issued a judgment concerning the dismissal of an employee who served as a 'specialised adviser' combining the roles of chief information security officer (CISO) and data protection officer (DPO).^[3] Following termination with a 13-week indemnity in lieu of notice, the employee invoked the protection afforded by GDPR Article 38(3), seeking three months' salary on that basis, as well as an indemnity for manifestly unreasonable dismissal. The court found a violation of Article 38(3). Drawing on the CJEU's *Leistriz* line of authority, it reaffirmed that a DPO may not be dismissed for reasons linked to the performance of DPO tasks and that Member States may adopt stricter rules. Noting that Belgian law contains neither a specific regime governing DPO dismissals nor a statutory sanction, the court assessed damages *ex aequo et bono* and placed the burden on the employer to demonstrate that the dismissal was unrelated to the DPO function.

The employer cited communication shortcomings, an overly theoretical approach, limited concrete deliverables and organisational misfit. The record, however, showed that the employer conflated the CISO and DPO roles, acknowledged a low level of GDPR maturity and prioritised CISO over DPO work. In the absence of a clear delineation of grounds, the court concluded that the dismissal was at least partly connected to the employee's DPO activities, contravening Article 38(3), and awarded three months' salary.

For completeness, the separate claim for manifestly unreasonable dismissal was rejected. That outcome does not affect the Article 38(3) breach or the award.

This appears to be among the first published Belgian cases awarding compensation following a DPO's dismissal. It underscores the need to clearly distinguish the tasks of employees who hold the DPO role alongside other functions. The onus remains on the

employer to prove that the termination is unconnected to the exercise of DPO duties; if such a link exists, the employer risks liability for damages.

Belgian Data Protection Authority decision on geolocation system in company car

The Belgian Data Protection Authority (DPA) reviewed a complaint regarding the installation and use of a geolocation system in an employee's company car, which was also used for private purposes.^[4] The employee objected to the lack of transparency, absence of consent and the inability to deactivate the system outside working hours.

The DPA examined whether the processing of personal data through the geolocation system complied with the General Data Protection Regulation (GDPR), focusing on lawfulness, purpose limitation, data minimisation and transparency. The DPA found that the employer had a legitimate interest in monitoring work performance and managing professional travel, and that the data processed was necessary for these purposes. However, the DPA concluded that the employer breached the purpose limitation principle by using the data primarily for work time control without clearly stating this as a purpose in advance. The DPA also found violations of the transparency requirements, as the information provided to employees was ambiguous and incomplete regarding the purposes, legal basis, categories of data processed and retention periods. The DPA emphasised that best practice would be to allow employees to deactivate the system outside working hours and to provide clear, detailed information about the processing.

In summary, when implementing or updating a geolocation system, companies must ensure clear and complete communication about all purposes, limit data collection to what is strictly necessary, avoid continuous registration outside working hours and, where possible, allow employees to deactivate the system themselves.

CJEU clarifies employee protection in business transfers during insolvency

The Court of Justice of the European Union (CJEU) addressed the interpretation of Article 5(1) of Directive 2001/23/EC, which concerns the protection of employees' rights in the event of a transfer of undertakings, particularly in the context of insolvency proceedings.^[5] The case arose from a dispute involving former employees of WIBRA BELGIË nv, who claimed that their rights to information and consultation were not respected during a collective dismissal that occurred in the context of a judicial reorganisation and subsequent bankruptcy of the company. The core issue was whether the exception to employee protection under Article 5(1) applies when a transfer is prepared during a judicial reorganisation but executed immediately after bankruptcy, especially when the reorganisation plan was not approved by the court.

The CJEU clarified that the exception in Article 5(1) must be interpreted strictly, as it derogates from the main objective of the Directive, which is to safeguard employees' rights. The Court held that the exception can only apply if three cumulative conditions are met: the transferor must be involved in bankruptcy or similar proceedings, the proceedings must be aimed at liquidating the transferor's assets and the process must be under the supervision of a competent public authority. The Court further explained that a judicial reorganisation procedure, which primarily aims to preserve the business rather than

liquidate assets, does not in itself meet these criteria. However, if the reorganisation and bankruptcy proceedings together effectively constitute a liquidation process under public supervision, the exception may apply, provided there is no abuse of process intended to deprive employees of their rights.

The CJEU also emphasised that national courts must ensure that insolvency procedures are not misused to circumvent employee protections. In this case, the Belgian court must assess whether the sequence of judicial reorganisation followed by bankruptcy and the subsequent transfer of assets was genuinely aimed at liquidation and conducted under adequate legal and regulatory oversight, or whether it was structured to avoid employee rights under the Directive. If the latter, the protections of the Directive would remain applicable.

Importantly, the judgement was rendered in the context of the Belgian regulatory framework as it existed prior to the significant reform introduced by the Law of 7 June 2023. At the time of the events, Belgian law did not yet reflect the evolving CJEU case law in matters such as *Smallsteps*, *Plessers*, and *Heiploeg*, which clarified the strict conditions under which employee protections could be set aside in insolvency-related business transfers. The 2023 reform has since modernised Belgian insolvency law, introducing mechanisms such as the Belgian silent bankruptcy and ensuring that national rules now better reflect the CJEU's standards for employee protection and procedural safeguards in insolvency scenarios.

Procedure

Basic court procedures in employment disputes

In Belgium, an employment court case begins with either service of a writ of summons to the defendant or the introduction of a petition with the court. The choice between these two methods will impact the cost for the parties involved. A petition is typically free of charge, whereas a writ of summons necessitates a fee payable to the bailiff.

At the initial hearing, straightforward cases may be resolved immediately, or a subsequent hearing may be scheduled to facilitate a swift decision. More complex cases, however, will require a formal timetable to allow parties to exchange written submissions.

After the oral pleadings, the court typically takes one month to deliberate and issue its decision. However, it should be noted that, in practice, judges usually make an immediate decision after the pleadings, and the presiding judge then later writes the decision. In employment disputes, it typically takes between one and three years for the adjudication of a case, depending on whether an appeal is also launched after the decision by the labour tribunal.

Alternative dispute resolution

Alternative dispute resolution methods are increasingly being used to resolve employment disputes in Belgium. Alternative dispute resolution concerns procedures (such as

mediation, arbitration or conciliation) through which parties can settle a dispute amicably outside court.

In the realm of employment disputes, labour courts are required to gauge whether the parties can be reconciled. However, conciliation is often regarded as a formality rather than a substantive part of the dispute resolution process before the courts.

Since 2024,^[6] every labour tribunal in Belgium is required to establish a conciliation and mediation service (CMS). The CMS consists of a chairperson, a judge from the labour tribunal (professional magistrate) and two social affairs judges (lay judges) (one appointed as an employer representative and the other as an employee representative). Together with the parties involved, the judges attempt to reach an amicable settlement.

Both employees and employers can initiate the process before the CMS. Even if no case is currently pending before the court, the parties can still approach the CMS for assistance. Additionally, parties can be accompanied by a lawyer or a trade organisation representative when engaging with the CMS.

In arbitration, the parties submit their dispute to one or more arbitrators, who make a binding decision on the matter. An arbitration clause included in an employment agreement is null and void if concluded prior to the dispute that falls within the jurisdiction of the labour court. There is an exception for high-earning employees who are in charge of the daily management of the company. Moreover, once a dispute or conflict has emerged, the parties involved can mutually decide to resolve it through arbitration.

Resolution of collective actions and labour disputes

Collective labour disputes in Belgium, which involve conflicts between employers and groups of employees or unions, are typically resolved through a different set of procedures as follows.

1. Collective bargaining: Parties are encouraged to negotiate collective bargaining agreements to prevent and resolve disputes.
2. Conciliation and mediation: The government provides conciliation services through conciliation offices and via social mediation.
3. Collective action: As a last resort, employees may engage in a strike, or employers may impose a lockout, or they may take other collective action, to exert pressure during negotiations.

A conciliation office is a key player in resolving collective labour disputes. It forms part of a joint committee or subcommittee, which are bodies established at industry level with equal representation from both employer and employee organisations. Decisions within a conciliation office require unanimity for a recommendation to be issued. When a dispute arises or is imminent, it can be brought before the chair of the conciliation office. If a unanimous position is reached, a non-binding recommendation is communicated to the parties, which is typically followed in practice. If no consensus is achieved, the conciliation office issues a report of non-reconciliation, potentially leading to collective action. In some cases, the chair may issue a recommendation independently, representing a consensus decision that no member has expressly opposed.

Social mediation is another mechanism in the resolution of labour disputes. When internal joint committee procedures have been exhausted without the conflict being resolved, the chair of the conciliation office, acting as a social mediator, may attempt to reconcile the parties. This can be initiated by the parties, by the mediator or at the direction of the Minister of Labour. The social mediator's role is to facilitate communication and propose non-binding solutions.

Types of employment disputes

Below is an outline of some of the types of disputes that may typically arise in a Belgian employment context.

Termination of employment

Termination of employment often causes employment disputes in Belgium. They typically revolve around the payment of the quantum of termination compensation owed, whether termination for serious cause was justified, the validity of non-compete clauses, the concept of manifestly unreasonable dismissal, whether the employee was protected against dismissal or whether the termination involved any form of discrimination.

When an employee is dismissed, the employer is generally required to serve the employee with a notice period or pay compensation in lieu of notice. Disputes often arise over the amount of the termination compensation paid.

Another common area of dispute is whether the termination was for serious cause. In Belgium, an employer can terminate an employment contract without respecting a notice period and without paying compensation if the employee has committed a serious fault that results in the continuation of employment becoming immediately and irreversibly impossible. However, what constitutes a serious cause can be open to interpretation and may ultimately need to be decided by a court. Employees may argue that their actions did not warrant such a severe response, or that the strict procedural requirements that apply in the context of termination for serious cause were not observed.

Manifestly unreasonable dismissal is another legal concept that can lead to disputes. Employees may claim that their dismissal was manifestly unreasonable and seek compensation. Employers will argue that the dismissal was justified based on the circumstances, which will lead to the court carrying out a legal examination of the reasons for and manner of the termination.

Certain categories of employees, such as pregnant employees, employees on parental leave or employee representatives, benefit from a special protection against dismissal under Belgian law. If an employee falls into one of the protected categories, their dismissal will be subject to strict legal requirements. Disputes can arise if the employee believes that their protected status was not adequately considered or if the employer argues that the dismissal was justified despite the protections.

Working time

Especially following termination of employment, employees may argue that they were made to work overtime without proper rest or payment of overtime pay. These conflicts often require a detailed examination of the rules regarding working time and the conditions of the worker's workday.

Discrimination

Discrimination disputes arise when an employee believes that they have been treated unfairly or less favourably due to characteristics such as race, gender, age, disability, religion or sexual orientation. Belgian law prohibits discrimination based on protected characteristics in the workplace, and employees who experience discrimination can seek redress through a labour tribunal.

Platform work and nature of employment relationships

Disputes in this area typically revolve around whether platform workers, such as those working for food delivery platform services, should be classified as employees or self-employed workers. This classification has significant implications for their social rights and benefits. In Belgium, courts have been increasingly called upon to determine the nature of these employment relationships. An important role also lies with the Administrative Commission for Employment Relations, which can rule on the nature of the employment relationship, upon request of an interested party. The ruling can be appealed to the labour tribunal.

Harassment and bullying

Employees who experience harassment or bullying can file a complaint with the labour tribunal, which will investigate the allegations. If the tribunal finds in favour of the employee, it may order the employer to pay compensation. However, before going to court, employees may also opt to try to resolve the issue through an internal procedure, which their employer should have in place.

Privacy and data protection

Privacy disputes in the workplace often arise from the handling and protection of personal data. These disputes can involve issues such as unauthorised surveillance or the improper processing of personal information. In Belgium, the DPA oversees the enforcement of data protection laws. The Litigation Chamber, a specialised body within the DPA, has the power to impose various corrective measures as well as administrative fines on employers that fail to comply with data protection regulations.

Outlook and conclusions

Belgium's employment and labour framework is set for significant reform under the 2025–2029 federal coalition agreement, implemented via the 2025 Easter and Summer agreements. The agenda focuses on increasing labour market participation, greater

flexibility and mobility and modernised dismissal rules. The measures below are illustrative, not exhaustive.

On activation and participation, the coalition plans a reform of unemployment schemes and the end of bridging pension regimes, alongside new measures on long-term sickness and reintegration. Degressivity of unemployment benefits would be accelerated, and obligations for jobseekers strengthened to boost transitions into work.

On labour cost and competitiveness, the package targets higher net income for workers through a gradual tax reform from 2026–2029 and introduces a new cap on employer social security contributions for high earners.

On flexibility and mobility at work, proposals include lifting the ban on night work, annualising working time to allow more adaptable scheduling, removing the minimum weekly hours requirement and introducing a mandatory mobility budget to promote sustainable commuting and job mobility.

On dismissal law, notice periods would be capped at 52 weeks for new contracts starting in 2026, with the reintroduction of a seven-day notice period during the first six months of employment.

Most measures require implementing legislation or royal decrees, with the bulk expected to take effect in 2026.

Separately, the EU Pay Transparency Directive, to be transposed by 7 June 2026, will require employers to reassess pay structures, disclosure practices and internal communications.

Endnotes

- 1 Brussels Labour Tribunal, 5 May 2025. [^ Back to section](#)
- 2 Supreme Court. [^ Back to section](#)
- 3 Brussels Labour Tribunal, 17 May 2024. [^ Back to section](#)
- 4 Decision DPA 61/2025 of 25 March 2025. [^ Back to section](#)
- 5 European Court of Justice, 3 April 2025. [^ Back to section](#)
- 6 Act of 19 December 2023 concerning various provisions in civil and judicial cases. [^ Back to section](#)

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Introduction

Brazilian employment law is primarily governed by the Federal Constitution, the Consolidation of Labour Laws (CLT), collective bargaining agreements and supplementary regulations. While labour litigation remains widespread, recent developments at the Superior Labour Court (TST), the Supreme Federal Court (STF) and the National Council of Justice (CNJ) are reshaping both procedural frameworks and substantive legal risks. Between late 2024 and 2025, several key changes have emerged:

1. a binding precedent from the TST mandating the *ex officio* granting of legal aid when the worker's income meets statutory thresholds;
2. CNJ regulations reinforcing the judicial ratification process for out-of-court settlements;
3. STF proceedings addressing the employment status of platform workers and the scope of economic group liability in enforcement actions; and
4. TST jurisprudence strengthening protections for employees with serious illnesses.

These developments signal a trend toward more standardised procedures, heightened compliance scrutiny and ongoing uncertainty regarding liability in cases involving platform workers and discrimination.

The 2017 labour reform marked a turning point by formally recognising alternative dispute resolution mechanisms, such as out-of-court settlements and arbitration, as legitimate means of resolving employment disputes. However, in practice, labour courts continue to reject extrajudicial agreements that include broad waivers, and arbitration clauses are only enforceable in employment contracts where the employee's remuneration exceeds a specific threshold. As a result, most disputes are still resolved through litigation, with extrajudicial agreements becoming increasingly rare and arbitration remaining cost-prohibitive for lower-value claims.

Labour disputes in Brazil typically take between two and five years to navigate through the judicial system, depending on case complexity and the number of appeals. One contributing factor is a December 2023 ruling by the TST clarifying that the amounts stated in the initial complaint do not limit the potential damages awarded. Additionally, in December 2024, the TST issued a binding thesis requiring judges to grant legal aid *ex officio* when the case record demonstrates that the worker's income falls within the statutory threshold. Regional courts have consistently applied this standard throughout 2025, facilitating access to legal aid and potentially increasing the volume of filings. Further, a CNJ resolution issued in October 2024 enhanced the requirements for judicial ratification of out-of-court settlements. While agreements may now include broader release clauses if formal criteria are met, judges must verify their legality and ensure the absence of vices of consent. This has bolstered the enforceability of these settlements while increasing judicial oversight.

The surge in litigation has prompted institutional responses. The Plenary of the Supreme Court recently announced the formation of a CNJ working group to analyse the structural causes of excessive labour litigation and propose systemic solutions.

The most frequent claims involve overtime, health and safety conditions (including hazard pay), moral damages, employment misclassification, work-related accidents and illnesses and profit sharing. There has also been a notable rise in claims involving mental health – particularly burnout and depression – and challenges to dismissals alleged to be discriminatory. In Brazil, the termination of employees with stigmatised illnesses is presumed discriminatory.

Although there is no exhaustive list, case law has recognised conditions such as HIV, cancer, hepatitis, tuberculosis, alcoholism, depression, schizophrenia and epilepsy as stigmatising. These cases often involve higher compensation awards than the average labour disputes.

Year in review

New binding precedents issued by the TST Plenary – September 2025

On September 8, 2025, the Plenary of Brazil's Superior Labour Court (TST) issued a new set of binding precedents, which were publicly announced between 8 and 9 September 2025. These precedents reflect significant developments in labour jurisprudence and are expected to guide future decisions across the country's labour courts. Below is a summary of the most relevant themes.

Theme 305 – plurality of attorneys

If there is an express request that notifications and publications be made exclusively in the name of a particular attorney, communications made in the name of another attorney appointed in the case are null, unless it is demonstrated that no prejudice occurred.

Theme 308 – position of trust and rest day compensation

An employee holding a position of trust according to the concept provided for in Article 62, II of the CLT is entitled to receive double pay for rest days worked and not compensated.

Theme 68 - FGTS deposits – linked account requirement

When an employee files a claim seeking FGTS instalments and the corresponding penalty, the amounts must be deposited into the linked FGTS account and not paid directly to the employee.

Theme 63 - women's rest interval – Article 384 of the CLT

Article 384 of the CLT was preserved by the 1988 Federal Constitution; for the period prior to its revocation by Law No. 13.467/2017, overtime compensation is due for violation of the interval set therein, without the need to show a minimum overtime threshold to characterise the right to the interval.

Theme 231 – hazard conditions and expert examination

The performance of an expert examination is mandatory to verify hazardous working conditions. If such examination is not feasible – such as in cases of company closure – the judge may rely on other forms of evidence.

Theme 239 – overtime based on evidence

A decision granting overtime pay based on oral or documentary evidence is not limited to the period directly covered by evidence, provided the judge is convinced that the challenged practice extended beyond that time frame.

Theme 21 – legal aid and judicial discretion

Regardless of a party's request, labour judges have the duty to grant legal aid to litigants earning up to 40 per cent of the maximum benefit under the General Social Security Regime, as evidenced in the case records.

For those earning above this threshold, legal aid may be requested through a private declaration signed by the claimant, pursuant to Law No. 7.115/83, subject to the penalties of Article 299 of the Penal Code. If the opposing party challenges the request with supporting evidence, the judge must allow the claimant to respond before ruling on the matter under Article 99, §2, Civil Procedure Code.

Theme 52 – indirect termination and penalty

When indirect termination of the employment contract is judicially recognised, the penalty under Article 477, §8 of the CLT is applicable.

Theme 71 – reversal of termination for cause

The penalty under Article 477, §8 of the CLT applies in cases where a termination for cause is reversed by the court.

Theme 62 – moral damages for unfounded allegations

The reversal of a termination for cause based on allegations of dishonesty (CLT, Art. 482, 'a') that are judicially found to be unfounded or unproven gives rise to moral damages, *in re ipsa*.

Theme 88 – employer misconduct post-disability leave

When an employer prevents an employee from returning to work and obstructs salary payment following medical clearance, this conduct is unlawful and constitutes moral damage *in re ipsa*, granting the correspondent compensation.

Theme 126 – three-year limitation for indirect damages

The three-year limitation period under Article 206, §3 of the Civil Code applies to claims for indirect or reflective damages.

Theme 183 – statute of limitation for occupational disease

The statute of limitation for claims seeking compensation for material and non-material damages resulting from workplace accidents or occupational diseases begins upon unequivocal awareness of the full extent of the injury.

Theme 72 – witness impartiality

The existence of a lawsuit against the same employer, even with similar claims, does not render a witness suspect unless the judge is convinced of partiality based on the evidence in the case.

Theme 135 – denial of witness testimony

The denial of witness testimony based on the presumption of truth arising from a fictitious confession – due to the party or representative’s lack of knowledge of disputed facts – does not constitute a violation of the right to defence.

Gender perspective in judicial decision-making

In addition to the binding labour precedents recently issued by the TST, it is important to highlight a broader institutional development that is shaping judicial reasoning in Brazil: the adoption of the Protocol for the Judgment under a Gender Perspective.

This protocol, developed and adopted by the Brazilian judiciary, provides judges with structured guidelines to identify and address gender biases in judicial proceedings and decisions. Its primary objective is to ensure that rulings are not influenced by stereotypes, discriminatory practices, or structural inequalities that may disadvantage women and other vulnerable groups.

The protocol plays a critical role in promoting substantive equality in access to justice. It requires courts to consider the differentiated impacts that legal decisions may have on men and women, recognising that seemingly neutral rules can produce unequal effects. In doing so, it reinforces constitutional principles of non-discrimination and equal treatment, while aligning Brazilian jurisprudence with international human rights standards.

In practice, the application of this protocol contributes to fairer and more equitable judicial outcomes, helping to prevent the perpetuation of systemic inequalities and strengthening public trust in the judiciary. For companies and employers, its relevance is particularly notable in disputes involving workplace discrimination, harassment or unequal treatment, which are increasingly scrutinised under this lens. This underscores the importance of adopting proactive compliance, diversity and inclusion policies to mitigate legal risks and foster a more equitable work environment.

Gig economy – employment status of platform workers: a defining moment in Brazilian case law

One of the most significant developments in recent Brazilian jurisprudence concerns the employment classification of platform workers. Since March 2024, the STF has been examining General Repercussion Theme 1,291, which centres on whether drivers working through digital platforms should be recognised as employees. The STF confirmed that an appeal involving a driver and a ride-hailing platform would serve as a leading case, establishing binding precedent for similar disputes involving the potential existence of an employment relationship between companies and platform workers.

Since then, the Court has held public hearings and plenary sessions to assess whether app-based drivers and delivery workers meet the legal criteria for employment. A binding national standard is expected to resolve thousands of pending claims and significantly impact the business models of platform companies, given the current inconsistency in judicial interpretations of labour regulations applicable to gig workers.

The divergence in case law stems primarily from: (1) the absence of a specific legal framework governing platform-based labour; and (2) the broad interpretative scope of the legal definition of employment, particularly regarding the element of subordination. Key questions include: Do drivers operate independently, or are they subject to algorithmic control? Are there penalties for refusing rides? Can a commercial partnership truly exist if the platform charges an intermediation fee?

In September 2023, the 4th Labour Court of Sao Paulo issued a landmark ruling in a public civil action filed by the Labour Prosecutor's Office. The decision ordered a ride-hailing platform to register all active drivers as employees and imposed 1 billion reais in collective moral damages. However, in February 2025, the Court of Appeals dismissed the case based on the argument that the Labour Prosecutor's Office was not a legitimate party to file the claim on behalf of the drivers.

On 10 October 2023, the Regional Labour Court of the 2nd Region ruled that a food delivery platform must register all current and former delivery workers as employees. The company was also ordered to pay compensation equivalent to 1 per cent of its 2022 revenue for collective violations of workers' rights, but its pending appeal. These rulings reflect a broader trend in which lower labour courts tend to favour worker protections, in contrast to the STF's decision on the matter.

On the other hand, the TST remains divided, with no uniform position on the matter, regardless the fact that in December 2023, the STF's First Panel unanimously overturned a decision that had recognised an employment relationship between a driver and a taxi app. Justice Luiz Fux, at the time, suggested that the National Council of Justice (CNJ) should intervene in labour court decisions that disregard STF precedents.

In light of this legal uncertainty, the STF emphasised the need for a definitive ruling. In its initial deliberation, the Court unanimously recognised the issue as having general repercussion – highlighting its social, legal and economic relevance beyond the interests of the parties involved. The forthcoming decision will be binding and applicable to an estimated 10,000 similar cases.

Based on prior monocratic decisions and public statements by STF justices, the expectation is that the Court will rule against recognising an employment relationship in such cases. The prevailing rationale includes the following considerations:

1. platform workers are free to remain offline;
2. platform workers may decline service requests without consequence;
3. they are not subject to disciplinary measures for these refusals;
4. there is no direct supervision by the platform; and
5. the services provided by the platform are similar to transportation that allows the hiring of third parties to provide the services.

Supreme Court's approach to employment misclassification claims

The STF has consistently reinforced the legitimacy of alternative workforce arrangements, particularly in cases involving the engagement of non-employees. The lawfulness of outsourcing core business activities has long been settled, with the STF confirming that companies may lawfully engage third parties to perform both essential and non-essential services. More recently, the STF has overturned several labour court decisions that had recognised employment relationships in contractor arrangements. In a notable ruling, the Court reversed a decision by the Regional Labour Court of the 15th Region, which had acknowledged an employment relationship between a company and a director engaged through a legal entity (i.e., the director was self-employed via their own company).

Although the classification of these arrangements has been a recurring issue in Brazilian courts, the STF's recent decisions have strengthened the legal foundation for engaging service providers through corporate entities. These rulings affirm that various forms of work relationships may coexist, including the outsourcing of core business functions, provided that the contractual arrangement is genuine and does not meet the legal criteria for an employment relationship – particularly the element of subordination. This jurisprudence aligns with the Court's broader recognition of lawful workforce models beyond traditional employment, including those involving gig economy workers. The STF has repeatedly emphasised that the mere existence of a service contract does not, in itself, establish an employment relationship.

Due to the several claims filed before the STF, its Plenary recognised the general repercussion of the issue. Measures were taken to suspend the nationwide processing of cases that discuss the legality of independent-contractor arrangements while the Court resolves the underlying constitutional questions. A ministerial order following the recognition of repercussion general led to a temporary stay of many pending proceedings on this subject.

The STF will rule whether contracts of services signed with independent contractors may be treated as legitimate civil/commercial contracts or must be recharacterised as employment relationships; who bears the burden of proof when fraud or simulation is alleged; and whether disputes of this nature are within the exclusive competence of the Labour Court. The STF's register for this repercussion-general theme frames these precise questions about jurisdiction and the burden of proof in cases alleging simulated independent contracts.

Although the suspension is broad, some judges and panels have allowed individual cases to proceed where the facts differ substantially (for example, where there is no written contract, no issuance of invoices, or clear indicia that the formal independent contractor

arrangement is merely a façade). The court's interlocutory decisions and local rulings have, at times, diverged – producing a mixed landscape until the STF issues a definitive ruling.

This is an important issue, since a ruling for broad validation of independent contractors' arrangements would reduce the reach of the labour protection regime and could shift the balance toward contractual form over substantive reality. Conversely, an STF decision that emphasises the primacy of reality would reinforce traditional labour law protections and make it easier for workers and labour courts to recharacterise those contracts as employment relationships. The decision will therefore affect thousands of labour claims and have wide regulatory, tax and social consequences.

Collection of union contributions

Another important decision taken by the Supreme Court on a labour matter concerns a change in the Court's position regarding the constitutionality of clauses within collective agreements, such as collective bargaining agreements and agreements between companies and workers' unions on union assistance contributions.

The Supreme Court's decision^[1] (from September 2023) declares that clauses establishing mandatory union assistance contributions, applicable to both employees and companies, including those not affiliated with the union, are considered valid as long as they include provisions allowing individuals to opt out. Previously, the Supreme Court's position was that union assistance contributions specified in collective agreements could only be imposed on affiliated employees. However, a shift in this stance was anticipated for 2023 due to the number of justices who had already voted for re-evaluating the Court's position. This change is expected to encourage union entities to incorporate or reinforce provisions regarding union assistance contributions in their collective agreements, including the procedure for employees to exercise their right to opt out.

It is important to distinguish the union assistance contribution from the compulsory union dues, which were modified by the Labour Reform (Law 13,467/2017). The latter does not allow employees to opt out and, since November 2017, requires written authorisation from employees for deductions by employers.

Validity requirements of collective dismissals

Following the ruling issued on 8 June 2022,^[2] which determined that collective terminations require union involvement, the Supreme Court, in April 2023, published a new decision clarifying that this requirement applies to collective terminations implemented after 14 June 2022.

The Supreme Court's precedent states that 'prior union intervention is an essential procedural requirement for the collective termination of workers, which is not to be confused with prior authorisation by the union or the signing of a collective agreement'.

According to the first merit decision issued in June 2022, there is no requirement for the union to approve the employees' dismissal; accordingly, it is not mandatory to execute a collective bargaining agreement to regulate the terminations. However, according to the Supreme Court, companies are required to establish an open dialogue with the union for the collective terminations (implemented after 14 June 2022) to be valid.

Rests on Sundays for female employees

Another relevant point addressed by the Supreme Court is the requirement to comply with Article 386 of the Labour Code: when work takes place on Sundays, female employees must rest on a Sunday every fortnight rather than every three weeks (this provision is specific to female employees).

This understanding was established in a decision by Justice Carmen Lúcia^[3] based on Article 386 of the Labour Code, which specifically protects women, and the reasoning used in general repercussion topic 528, which was established when the Supreme Court analysed the constitutionality of the women's break provided for in the old Article 384 of the Labour Code, now repealed by the labour reform.

Procedure

Employment litigation in Brazil operates within a distinct legal framework, shaped by federal legislation and guided by principles that reflect the protective nature of labour law. The key procedural aspects are outlined below.

National standardisation

Labour relations in Brazil are governed exclusively by federal law. States and municipalities lack legislative authority in this domain, resulting in a nationally standardised system. Consequently, labour rights, obligations and associated costs are uniform across the country, regardless of the employer's location or place of incorporation. The only exception lies in collective bargaining agreements negotiated by labour unions, which may establish specific conditions applicable to employees within a particular geographic or industry scope.

The Federal Constitution defines the jurisdiction of labour courts, limiting their authority to matters expressly assigned to them. Additionally, the CLT sets forth specific procedural rules for employment disputes. In the absence of applicable labour provisions, the Civil Procedure Code serves as a supplementary legal framework.

Foundational principles in labour litigation

Several core principles that govern employment relationships also apply to litigation before labour courts:

1. primacy of facts: in employment disputes, factual circumstances prevail over formal documentation. witness testimony and depositions often carry significant evidentiary weight;
2. prohibition of detrimental changes: employers are prohibited from unilaterally altering employment terms to the detriment of employees, even with the employee's prior consent; and
3. joint liability in corporate groups: companies under common control, direction, or management may be held jointly liable for employment obligations.

Labour Court structure

Brazil's labour judiciary is composed of three hierarchical levels as follows:

1. Labour Courts (First Instance): these courts adjudicate individual claims related to employment contracts, workplace rights, and labour violations. Proceedings are predominantly oral, and testimonial evidence often supersedes written documentation.
2. Regional Labour Courts (Second Instance): these appellate courts review decisions from first-instance courts and handle broader matters, including collective actions filed by labour unions or the Labour Public Prosecutor's Office.
3. Superior Labour Court (TST): as the highest labour court, the TST is responsible for harmonising labour jurisprudence nationwide. It comprises 27 justices appointed by the President of the Republic and confirmed by the Federal Senate. In exceptional cases, disputes may be filed directly with the TST.

Claims involving constitutional matters may be appealed to the Federal Supreme Court (STF), which has seen a notable increase in employment-related cases in recent years.

Types of labour claims

Types of labour claims are as follows.

1. individual claims: these are filed by employees seeking redress for violations of their personal employment rights;
2. collective claims: these are Brought by unions or other representative bodies on behalf of a group of workers; and
3. public civil actions: public civil actions are typically initiated by the Labour Public Prosecutor's Office. These actions address systemic violations such as unsafe working conditions, harassment, misclassification of workers, forced labour and child labour in supply chains. They often follow administrative investigations.

Access to justice and procedural safeguards

Any worker who believes their labour rights have been violated may file a claim before a labour court. The high volume of annual filings reflects both the complexity of Brazilian labour law and the accessibility of the judicial system.

To ensure fairness and uphold workers' rights, labour litigation is guided by the following principles:

1. equality of arms: both parties must be treated equally throughout the proceedings;
2. procedural simplicity: the process is designed to be straightforward and accessible;

3. social function of labour: courts consider the broader societal implications of employment disputes;
4. *in dubio pro operario*: in cases of legal ambiguity, interpretations favour the employee; and
5. primacy of reality: courts prioritise the actual circumstances of the employment relationship over formal classifications.

Litigation expenses

Since the labour reform, under certain circumstances, the claimant can be held responsible for the payment of court costs even if they receive the benefit of free legal aid. Claimants with free legal aid are exempt from paying a preliminary deposit to file appeals, unlike employer companies (defendants). An exemption from court costs and appeal fees depends on specific conditions, such as the claimant's income and legal aid eligibility.

Penalties and awards

Judges may impose penalties if either party acts in bad faith or engages in irregular procedural measures. Payments in labour disputes are generally limited to the outstanding amounts awarded by the court, with interest applied.

As for the possibility of entering into settlement and release agreements outside court, as a general rule, a private agreement does not prevent the risk of an employee filing a labour claim against the company.

Since employees are legally prevented from waiving their labour rights, even though they might have agreed not to file a claim against the company (in an extrajudicial agreement), their rights are still protected by the Federal Constitution.

Even with such limitations, private agreements are still commonly used in Brazil, particularly for executives and higher-level employees. The reasons include the fact that the monetary amount paid under the release agreement may be offset by the court if they are paid under the same nature and title as the amount awarded by the court.

In this sense, it is extremely important to clearly mention in the settlement and release agreement the reason why each amount is paid to the employee and to which labour right the payment refers. It is also recommended, for evidentiary purposes, that the employee signs the agreement to acknowledge the amounts paid.

In addition, extrajudicial releases may have a 'moral effect' on some employees, discouraging them from filing a claim. It is important to highlight that, according to current labour legislation, the parties can submit a settlement agreement for ratification by a labour court. Although the judge is not obligated to ratify its terms, if they do so, the ratification would have a valid release effect.

Types of employment disputes

Several types of disputes frequently arise in the Brazilian employment context. The most common include:

1. **overtime pay:** disputes often involve the classification of employees as exempt from time tracking, such as those in positions of trust or working externally. Employees may challenge their classification and claim entitlement to overtime. Issues also arise from collective agreements involving compensatory time, time-off in lieu, or rotating shifts;
2. **unhealthy working conditions:** claims typically concern the improper provision of personal protective equipment (PPE) or the absence of technical reports and programmes required by regulatory standards. Non-compliance with health and safety obligations can lead to liability;
3. **moral damages:** these claims may stem from emotional distress, workplace harassment and occupational accidents or illnesses (including burnout). Employees seek compensation for psychological and emotional harm;
4. **employment misclassification:** with the rise of informal work arrangements and new labour models, such as app-based drivers and independent contractors, claims for recognition of employment relationships have increased. Workers may argue that they were misclassified and are entitled to employment protections and benefits;
5. **work-related accidents and illnesses:** these claims often involve high-value compensation – averaging 320,000 reais as of 2021 – and involve ergonomic issues, repetitive strain injuries, exposure to hazardous agents and mental health conditions. In 2025, the TST reaffirmed that dismissals of employees with serious or stigmatising illnesses (e.g., HIV or cancer) may be presumed discriminatory, increasing employers' exposure to damages;
6. **hazard pay:** employees may claim additional compensation for working under hazardous conditions, such as at heights, near flammable or explosive materials, or in contact with high-voltage electrical systems;
7. **profit sharing:** disputes often arise due to the lack of statutory criteria for calculating profit-sharing bonuses. Employees may contest the amounts distributed or the methodology used; and
8. **reversal of termination for cause:** dismissals for cause require clear evidence of serious misconduct and prompt employer action. Courts frequently reverse these terminations, converting them into dismissals without cause, which entitles employees to full severance. Depending on the circumstances, employees may also be awarded moral damages.

Outlook and conclusions

Employment misclassification claims

In 2023, the Supreme Court took a firm stance on cases involving non-employees, outsourcing, engagement of couriers and app drivers, and contractors hired through their own individual legal entity. This was due to the analysis of various constitutional complaints that had been filed, prompting the Supreme Court to analyse multiple concrete cases from the perspective of the judgments previously issued, thus expanding the understanding of the cases covered by those decisions.

On this issue, we can expect the Supreme Court to reaffirm its understanding of the lack of existence of employment relationships for such self-employed and platform workers.

Economic group liability

The constitutionality of labour court decisions imposing joint and several liability on related or successor companies – often by default and without concrete evidence of fraud or the existence of an economic group – is currently under scrutiny.

An initial monocratic decision dismissed a constitutional challenge on procedural grounds, finding that the claimant lacked standing due to insufficient connection between its corporate purpose and the constitutional question at issue. The decision was upheld by 10 of the 11 justices. However, in July 2023, Justice Gilmar Mendes dissented, voting to admit the appeal and proceed to a full merits review.

Following the dissenting opinion by Justice Mendes, which emphasised the constitutional incompatibility of labour court decisions that include non-parties in the enforcement phase without prior participation in the merits or formal disregard of legal personality, Justice Dias Toffoli requested access to the case files for further review. The proceedings have since been suspended, with a decision expected in late 2025 or early 2026.

Importantly, due to the recognition of general repercussion (i.e., *repercussão geral*), the Supreme Court has ordered the suspension of all cases nationwide that involve the inclusion of companies in the enforcement phase of labour proceedings. This measure underscores the significance of the constitutional question at hand and signals that future rulings may reshape procedural standards in labour enforcement actions.

Endnotes

- 1 Interlocutory Appeal in Extraordinary Appeal (ARE) No. 1.018.459. [^ Back to section](#)
- 2 Extraordinary Appeal No. 999.435. [^ Back to section](#)
- 3 Extraordinary Appeal No. 1.403.904. [^ Back to section](#)

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Introduction

The domestic sources of Bulgarian labour law comprise the Constitution, the Labour Code, other statutory instruments (e.g., the Safe and Healthy Labour Conditions Act), numerous acts of secondary legislation and acts of non-state origin, such as the internal regulations of the employer (e.g., internal wage regulations), collective labour agreements and decisions of the employees' general assembly.

The goal of the labour legislation is to protect the employee as a weaker party in the work relationship. This goal is evident in many legal rules (e.g., the constitutional prohibition of forced work, regulation of the length of working time and employee compensation). Nevertheless, there is not a clear trend that courts always adjudicate in favour of employees.

No specialised labour courts exist in Bulgaria, and thus all employment disputes fall within the jurisdiction of the civil courts (except where the law provides for out-of-court settlement of these disputes).^[1] Mediation is not compulsory and quite rarely used in practice. Arbitration proceedings are authorised only in relation to collective labour disputes.

The law does not provide for a separate mandatory conciliation procedure, though the judge will normally direct the parties at different stages of the court proceedings to attempt conciliation, but this is largely a formality and will rarely bring the parties to an agreement.

Employees are exempt from payment of state fees and court expenses (e.g., for an experts' opinion), which is considered an important means to broaden the access of justice. However, employees have to pay the fees of their own attorneys, in addition to reimbursing the employer for any legal costs if they lose the case.

A main problem of the current judicial system is the delay in resolving cases. Though a first instance court decision could be issued in one and a half years, the final settlement of a labour dispute (moving through the three court levels) may take several years. Among the main reasons for the delay is that many of the civil courts are overburdened, there is a large volume and diversity of labour disputes and the legal framework is complicated.

The introduction of specialised labour courts as a means of improving the efficiency of the labour jurisdiction has been discussed for more than 20 years among labour law scholars, trade unions, the government, employers and society as a whole. While specialised labour courts are generally welcomed, budgetary and organisational constraints have prevented the realisation of this idea so far. The establishment of specialised labour departments within the civil courts is deemed to be a more realistic alternative; however, to date, no specific steps have been taken in this regard.

Year in review

Closing part of the business and selection between employees

The courts in Bulgaria are obliged to resolve unlawful dismissal cases by referring to the compulsory interpretations of an interpretative judgement dated 26 October 2021.^[2]

The interpretative judgment clarified the difference between 'closing part of the business', 'internal reorganisation' and 'redundancy', and the meaning of each term, regarding the right or the obligation of the employer (as the case may be) to select between the employees when a certain activity ceases and the same activity continues in the same or in another territorial location.

According to the Labour Code, the employer is entitled to undertake a selection procedure when the dismissal ground is as follows: closing part of the business, redundancy or reducing the work volume, at its own discretion. During the selection process, the employer determines which employees will stay, taking into account criteria such as qualification level and work performance. Case law has further established that, upon redundancy and when reducing the work volume, the employer is obliged (not just entitled) to select between employees with the same or with insignificantly different work duties, determined mainly according to the document that describes their duties, and not just the job position's title.

Closing part of the business requires the presence of two conditions:

1. removing a certain organisationally separate unit from the structure of the enterprise; and
2. terminating the entire activity of the separate unit.

Following these conditions, the employer has the right to perform a selection procedure between employees from the same location (i.e., city or town), but is not obliged to do so.

Internal reorganisation occurs following structural changes to the business where some units are, inter alia, consolidated, merged, separated or divided, but their activity continues. Internal reorganisation is not a ground for lawful dismissal of the employees from the unit that has undergone structural changes.

In 2023 the Supreme Cassation Court (SCC) was approached with an appeal related to an unfair dismissal claim of a chief accountant, who stated that she was dismissed on the grounds of closing the financial–accountancy department in the employer's company, but the financial–accountancy activity of the employer was not terminated entirely and permanently. The Court found that the employer took a resolution to close the financial–accountancy department, which consisted of three positions – one chief accountant and two accountants – and adopted a new organisational chart of all employees' job positions in the company, which did not include the financial–accountancy department or the said three positions. After the chief accountant's dismissal, the employer hired a freelancer to provide accountancy consultation services as an external contractor. The employer's legal representative and the contractor signed the invoices; the VAT declarations were prepared by the contractor and submitted to the authorities by the employer's legal representative; and the contractor operated with the employer's accountancy software. The Court concluded that after the adoption of the new organisational chart, the accountancy activity was performed by an external contractor, who was not an employee, and no newly hired or existing employees took over the chief

accountant's functions. As a result, the chief accountant's unfair dismissal claim was rejected as unreasonable.^[3]

Genuine redundancy and abuse of rights by the employer

In the interpretative judgment dated 26 October 2021, redundancy means removing all, or reducing the number of, employees holding a certain job position. To illustrate this notion under Bulgarian law – an example of redundancy is reducing the total number of accountants in a company from three people to one person or removing the only accountant from the organisational chart of all employees in a company. The SCC in its judgment dated 3 November 2023^[4] further elaborated on the concept of redundancy and when a redundancy is genuine (i.e., it actually occurred) and may lead to a lawful dismissal. Redundancy occurs when a job position is removed for the future from the total number of all job positions. The reason for the decrease in the number of positions is irrelevant; this is a decision at the discretion of the employer, and is not subject to control by the court. The court, however, controls the lawfulness of the dismissal on the grounds of redundancy, including whether the redundancy is genuine. Redundancy is not genuine if the labour function is not eliminated, but only its name is changed. A genuine redundancy requires the actual elimination of the labour functions of a job position. A genuine redundancy also includes a situation where the labour functions of a job position are transferred to a new job position with new and substantially different functions such as management and supervision of other departments or activities.

The SCC found the claimant's dismissal by her employer (a municipality) lawful because there was a genuine redundancy of her job position – chief expert of the accommodation policy in the municipality. The employer removed this position and created a new essentially different managing position – director of the social and accommodation policy of the municipality, to perform the functions of the claimant's position as well as new substantially different functions related to management, organisation and supervision of the budget department for social activities and the club for the retired citizens. Since the claimant's position was unique in the municipality, there was no obligation for the employer to select between the claimant and any other employees.

In addition, the Court found no evidence of abuse of rights by the employer. The employee bears the burden of proof upon the complaint (i.e., that the employer used legal means in contrast to the designation of the law, for example with the sole purpose to terminate the labour contract or to evade any selection requirements or any preliminary protection, if applicable). This is an exception to the general rule regarding unlawful dismissal claims that the employer must prove the dismissal's lawfulness. The Court did not find sufficient evidence in this case to support the allegations that the employer abused its rights with respect to dismissing the claimant.

Redundancy in the event of discrepancy between the collective labour agreement and the Labour Code

The SCC was approached with an appeal related to unfair dismissal of an employee of one of the largest heating companies. The employee claimed that her dismissal on the grounds of redundancy was unlawful, as she was party to a collective labour agreement that provided that the employer was not entitled to dismiss an employee with more than

10 years of service in the company who had less than 24 months remaining until pension eligibility.

The SCC in its judgment dated 4 June 2025^[5] ruled out that a clause of the labour collective agreement prohibiting the dismissal of a certain category of employees on the grounds of redundancy contradicts the mandatory dismissal provisions of the Labour Code and is therefore invalid. The Court stated that the provisions of the Labour Code concerning the dismissal of employees are mandatory and it is not permissible – either under a collective labour agreement or by agreement between the parties to an employment contract – to deviate from the provisions of the Labour Code governing the grounds and procedures for termination of employment. The SCC emphasised that dismissal protections are strictly regulated by the Labour Code and cannot be extended through collective labour agreements, as this would unlawfully restrict the employer's right to terminate employment contracts in redundancy situations. As a result, the employee's unfair dismissal claim was rejected as unreasonable.

Upon dismissal on certain grounds (such as redundancy, closing part of the business, reducing the work volume, lack of qualities for effective work performance and change in the requirements for performing the job or disciplinary dismissal) the Labour Code provides protection to specific categories of employees. These employees may be dismissed only with the prior permission of the labour inspectorate in each individual case. Protected employees include: mothers of children under the age of three; employees with reduced working capacity; employees suffering from certain specified diseases; employees who have commenced their permitted leave; and employees elected as representatives of the other employees in the company.

Change in the required qualification or education

In a judgment dated 30 June 2023,^[6] the SCC held that a change in the requirements for an educational or professional qualification necessary for the performance of work duties that occurred after entering into the employment relationship (i.e., after signing the employment agreement), entitles the employer the right to unilaterally terminate the employment relationship and dismiss the employee on that ground, if the employee does not have the newly required education or qualification. The employer is not obliged to deliver to the employee a new job description regarding this change. The employer is obliged to comply with the qualification or education requirements for job positions that are provided in the statutory law, but in view of its specific needs the employer may implement higher requirements after the employment relationship arises. The court does not have the authority to decide exactly what education (e.g., a master's degree in economics or law) is necessary and whether the change is actually and objectively necessary as long as no obligatory statutory law is violated, including the forbidden abuse of rights by the employer. In addition, in an interpretative judgment from 2021,^[7] the dismissal is fair and lawful if the employee does not comply with the education or qualification requirements introduced by the employer at the time of the conclusion of the employment agreement and the employer is aware of this noncompliance, unless these are obligatory requirements arising from the statutory law.

In a case from 2023, the claimant was the chief secretary of a news agency and as of the date of signing the employment agreement the statutory law required a master's degree for this position regardless of the education speciality. The same requirement was included

in the employer's internal regulations and in the job description for the claimant's position. The claimant had a master's degree in journalism, which observed the said requirement. Sixteen years after the commencement of the employment relationship the claimant was dismissed due to the lack of a master's degree in law or economics, which was a new subsequent requirement, adopted by the employer after signing the employment agreement. In view of the above considerations the court found that this dismissal was lawful and rejected all claims for unfair dismissal, reinstatement of work and monetary compensation.

Lack of qualities for effective work performance

In a judgment dated 12 October 2023,^[8] the SCC held that the employer is obliged to provide reasons in a dismissal order on the grounds of lack of qualities of the employee to perform their job effectively. The employer is obliged to enumerate the missing knowledge, skills or habits of the employee or to specify the manner of the permanent ineffective performance of the work with respect to its duration, quantity and quality. The lack of qualities means the factual lack of knowledge, skills and habits, even though the employee has the necessary education, qualifications and professional experience. The inclusion of insulting expressions or the description of a disciplinary violation in the dismissal order does not equal enumeration of lacking qualities. The non-performance of the work in the event of disciplinary violations results from the employee's fault, unlike in the event of lack of qualities. The court found that the claimant's dismissal was unlawful since it was grounded on lack of qualities, while the dismissal order contained reasons supporting a different ground of dismissal (i.e., a disciplinary violation concerning breach of trust and disloyalty because of 43 tons of grain were missing (taken out without proper recording and documentation) from the warehouse managed by the dismissed employee).

Under Bulgarian law the employees must receive a document with a description of the job position's main responsibilities and duties upon signing the employment agreement. The SCC held in a judgment dated 24 October 2023^[9] that even if the job description has not been delivered to the employee or if it does not contain any specific qualities necessary for the effective performance of the work, this does not mean that the employee may work without the necessary qualities. The court must analyse the whole collected evidence, establish and assess the required qualities and determine whether the employee has those qualities in order to decide if the employer terminated the employment agreement lawfully on the ground of lack of qualities.

Suspension of work for more than 15 working days

According to the Labour Code, the employer is entitled to terminate an employment contract due to suspension of the work in the company for more than 15 working days. Suspension of work means temporary suspension of activities of the whole company (enterprise) or its individual department (unit) for organisational, technical or economic reasons, regardless of their specific form. The decisive factor in these cases is the employer's inability to generate production and, consequently, income with which to pay employee wages.

The SCC was approached with an appeal concerning unfair dismissal of an employee who was dismissed on the grounds of suspension of work for more than 15 working days. The

employee challenged the lawfulness of her dismissal, arguing that no actual 'suspension of work' had occurred in the department where she was employed and that the employer had violated provisions of labour law.

In its judgment dated 4 July 2025,^[10] the SCC examined the meaning of suspension of work and whether the 15 working days specified in the Labour Code should be calculated only for the period during which employees reported to work but were unable to perform their duties due to the suspension, or whether it also includes periods in which the employer applied other lawful measures, such as a unilateral change in the place or nature of work or the granting of paid annual leave.

SCC ruled out that the 15 working days period also applies to the period during which the employer has exercised other lawful measures in response to a suspension of work, other than termination of employment, such as a unilateral change in the place or nature of work, granting of paid or unpaid leave or the payment of compensation for suspension. The Court emphasised that the duration of the relevant period is the objective criterion for assessing whether the work has been suspended and that it is irrelevant for the suspension if the employee was obliged to use paid or unpaid leave or temporarily assigned to perform other work. Pursuant to the Court ruling, in the event of dismissal on this ground the employer is not obliged to perform a selection procedure and the dismissal protection for specific categories of employees is not applicable.

As a result, the Court found that the employer had proved the work was suspended for more than 15 working days and rejected the employee's claim of unfair dismissal as unreasonable.

Reduction of employer liability in work accident cases

The employer is liable to pay compensation for the material damage (e.g., medical expenses, treatment and lost profits) and immaterial damage (e.g., pain and suffering) incurred by an employee due to a work accident causing disability or death, or the employee being temporarily unable to work. As per the Labour Code, the employer may reduce the compensation with the amounts received by the employee from the state social security system and insurance coverage.

The SCC's decisions are inconsistent as to whether the employer's compensation is to be decreased with the amount of social security compensation received for incurred and claimed material damage only, and also for immaterial damage. As a result, in 2023 the chairperson of the SCC initiated an interpretative case No. 1/2023 aiming to resolve and unify the contradictions established in the case law. The General Meeting of the SCC's Civil Chamber shall resolve the question of whether the court is obliged to decrease the compensation for immaterial damage (pain and suffering) due by the employer for work-related accidents and professional illnesses with the amount of the state social security compensation received by the employee (such as compensation for temporary or permanent disability). The expected interpretative judgment will create a unified approach and will be obligatory for all levels of court .

Procedure

Employment disputes

Employment disputes between an employee and an employer are reviewed in accordance with the Civil Procedural Code (CPC) to the extent that the Labour Code does not provide for specifics.

Regional courts are competent to hear all labour disputes at first instance. The first instance court panel consists of one judge. First instance proceedings commence by bringing the claim before the court in writing. The plaintiff is expected to present all the facts and to submit all written evidence in their possession. If the claim is admissible, the judge sends a copy of it to the defendant, who normally submits a response to the claim. After examination of the statement of claim by the court concerning its conformity with the formal requirements of the CPC, the admissibility of the actions brought and of the other requests and oppositions of the parties, the court renders a ruling on all preliminary issues and on admission of the evidence. The court may also order mediation or other means of voluntary dispute resolution. These preparatory actions may be effected during an open hearing by subpoenaing the parties or in a closed court session. Then, the trial stage takes place and is aimed at collecting evidence and conducting oral pleadings (it could consist of one or more open hearings depending on the objections raised and evidence to be gathered). Typical evidence includes written documents, expert witness statements and witness interrogation (written evidence from witnesses is not permitted). The oral pleadings commence only if all the evidence sought by the parties and admitted by the court is collected and the trial has been concluded. The court announces its decision with its reasons within one month following the hearing in which the consideration of the case was terminated.

Decisions of the first instance courts may be appealed before the district courts. The appellate court (the panel of which consists of three judges) *ex officio* reviews the validity of the first instance decision in its entirety and its admissibility with regard to the part appealed. To take into account the correctness of the decision (i.e., correct establishment of relevant facts and correct application of substantive and procedural law), the court of appeal is limited to the complaints raised in the appeal. Within these limits, the court of appeal considers the facts and law. In general, the evidential record is limited to the one before the trial court. As an exception, parties may indicate newly discovered facts and new evidence before the court of appeal, subject to conditions set out in the CPC. Parties may also require the gathering of new evidence by the court of appeal that was not admitted by the trial court because of incorrect interpretation of procedural law. As an exception, the court of appeal may *ex officio* apply mandatory substantive legal rules.^[11]

Parties dissatisfied with the outcome may further appeal the appellate decision before the SCC only if the labour dispute relates to the legitimacy of a dismissal or to a salary claim or an indemnity claim resulting from an employment relationship that amounts to more than 5,000 Bulgarian lev. However, cassation appeal, even if admissible, is discretionary. The SCC is entitled to select the cassation appeals that it will hear and resolve, applying criteria provided under the CPC, including where the second instance decision deviates from compulsory precedents or interpretative decisions of the SCC, or contradicts acts of the Bulgarian Constitutional Court or of the European Court of Justice. Regarding cassation appeals submitted after 31 October 2017, the SCC is to admit cassation appeals if it finds that the second instance decision is probably invalid or inadmissible or is apparently

incorrect. The SCC is typically a court that deals with the correct application of law. It is also competent to establish, based on the evidence already gathered, a factual background different from the one described in the appellate decision.

Revocation of a final and binding court decision may be sought only on limited grounds and within compulsory statutorily determined time frames.

To try to overcome the problem of delays in the court process, salary claims and unlawful dismissal claims (regarded as disputes of higher social importance) are reviewed by the first and second level courts under the accelerated (summary) procedure set out in the CPC. All other labour disputes, including employees' liability claims against the employer and vice versa, remain subject to the general procedure of the CPC outlined above.

Under the accelerated procedure, the court is required to check the validity and admissibility of the statement of claim on the same day as it is filed with the court. The defendant should respond to the statement of claim within one month. The hearing must be scheduled by the judge within three weeks^[12] of the day the defendant's response is received. During this hearing, the court collects the evidence that is brought in and presented and hears the oral pleadings. The intention of the lawmakers is for the case to be reviewed in one hearing; however, case law permits more than one hearing when this is needed for the collection of evidence (e.g., when the expert report is challenged and a new expert is fixed). The court is required to announce its reasoned decision within two weeks following the hearing in which the consideration of the case was concluded. In practice, however, a substantial part of the labour disputes that are reviewed under the accelerated procedure cannot be resolved within the shortened terms (mostly because of the overload of the courts or the factual and legal complexity of the disputes).

The Labour Code sets out a limitation period for bringing labour claims that is shorter than the general civil law limitation terms. For all labour disputes, unless otherwise provided, a three-year term of limitation applies (the general civil term of limitation is five years); however, one month is the deadline for bringing a lawsuit for limited property liability of the employee and for revoking a disciplinary reprimand, and two months is the deadline for bringing a lawsuit for revoking a warning notice of dismissal, certain changes in the employment relationship and termination of the labour relationship.

Collective labour disputes

Collective labour disputes are settled in accordance with the procedure set out in the Settlement of Collective Labour Disputes Act: through voluntary out-of-court means such as direct negotiations, mediation, arbitration or forcefully through the right to strike. The court resolves disputes related to the validity of collective labour agreements and their implementation, and the declaration of a strike as illegal.

Direct negotiations are the first attempt to settle the collective labour dispute by mutual agreement. If negotiations fail, parties may ask the National Institute for Settlement and Arbitration (NISA) (or other mediators) to assist them in settling the dispute through mediation. If mediation fails, the parties may agree on arbitration before an arbitrator registered by NISA. Arbitration awards are final and cannot be appealed.

Types of employment disputes

Employment litigation comprises all disputes between an employee and their employer that may arise mainly (without limitation) from the establishment, existence or termination of an employment relationship and failure to implement a collective labour agreement, where it entails the individual rights of the employee. The vast majority of labour disputes in Bulgaria that come before the courts first arise from unlawful dismissal, and then from breach of contract (including salary claims, property (civil) liability of employees towards employers and vice versa).

Unlawful dismissal claims include claims to challenge the legitimacy of a dismissal and its revocation, restoration of the employee at their previous work, compensation for the time that the employee has been unemployed after the dismissal and change of the ground for dismissal recorded in the employment documents. A notable feature of these cases is the reversed burden of proof: the defendant employer, not the plaintiff employee, has to prove the legitimacy of the dismissal.

A considerable part of the liability of employers towards employees' disputes is work-related accidents. This liability covers all damage suffered (e.g., cost of medicines and medical checks) and loss of profit, such as the lack of salary during the time out of work due to the incident. The compensation should also cover aggravated damage (e.g., pain and agony suffered by the plaintiff; these cannot be calculated in monetary terms), which are quantified by the court applying a standard of fairness.

Outlook and conclusions

An amendment of the CPC (in effect as of 12 July 2025) provides that the court is empowered to obligate the parties to salary and indemnity labour disputes – and to most of the unlawful dismissal disputes – to participate in an information meeting for a mediation procedure. The purpose of this information meeting is to inform the parties involved about the nature and principles of mediation, the mediation procedure, the role of mediator and the consequences of mediation. A party who fails to appear or refuses to participate in the information meeting for mediation procedure shall pay the costs of conducting a one-hour information meeting. It remains to be seen what the practical effect will be of this new requirement on labour disputes.

A bill on whistleblower protection, aimed at transposing the EU Whistleblowing Directive, was adopted and became law in February 2023. We have encountered only a couple of cases^[13] from 2024, where employees claimed that their dismissal was a retaliation resulting from whistleblowing reports against their employer. In one case the court did not find a connection between the dismissal and the whistleblowing reports and in another case the court found the dismissal unfair on different grounds without any consideration regarding the retaliation complaints. We can expect to see more cases in these areas, mainly related to unjustified dismissals, as there will likely be a need for the courts to clarify some of the new provisions.

A few highly debated and criticised amendments in the legislation related to remote work (i.e., work from a home office) were adopted and became effective on 2 April 2024. The new rules aimed to create better flexibility and certainty with respect to health and

safety conditions and labour accidents during remote work as well as to reporting of the performed work and control of working hours. The amendments include inter alia:

1. the option to specify more than one place of work (i.e., city) in the employment agreement of remote workers;
2. defining the remote workplace strictly as a place in a room in the employee's home or in another room at their choice outside the employer's enterprise;
3. the obligation of the employer to provide information to the employee about the minimum health and safety requirements applicable to the premises of remote work and to undertake measures to ensure a minimum level of health and safety at the remote workplace;
4. the obligation of the employees to provide written information to the employer about the characteristics of their remote workplace;
5. the obligation of the employees to immediately notify the employer about labour accidents in the remote workplace according to a previously agreed procedure; and
6. the option for reducing the employer's liability in labour accidents upon failure of the remote worker to observe the prescribed health and safety instructions applicable to the remote workplace.

The implementation of the new obligations concerning health and safety of remote workers will be challenging in practice and, so far, it seems to have created more administrative and burdensome obligations for both the employer and the remote worker rather than effective protection for either of them. It seems that, in order to ensure health and safety conditions, the remote workers must be glued to a certain space in a certain room. Otherwise, an accident occurring in a place different from the specified remote workplace would most likely disqualify as a work-related accident. We wait to see how labour accident cases of remote workers will be handled by the court in view of the said amendments.

Another change in the legislation effective as of 2 April 2024 is the adoption of joint liability between the employer as direct subcontractor under a contract for the provision of services and its contractor with respect to payment of the labour remunerations due to the subcontractor's employees. The contractor will not be liable if it has duly performed its obligations under the contract with the subcontractor-employer. Nevertheless, many matters are not specifically regulated and remain uncertain. The case law will have to resolve these implications detailed below.

1. What are the criteria and the scope for determining the specific employees that are entitled to a direct claim against the contractor – all employees of the subcontractor or only those employees who have executed tasks reassigned by the contractor?
2. For what period shall the specific amount of the remunerations due by the contractor be calculated – for the duration of the contract between the contractor and the subcontractor or according to the time during which the specific employee has been occupied with tasks reassigned by the contractor?
3. Under what conditions and in what amount may the contractor claim a refund from the subcontractor of the remunerations paid to the subcontractor's employees –

the full amount of the paid remunerations or only half of that amount that is the principal statutory rule upon lack of explicit arrangement in a contract for another distribution of the joint liability in the internal relations between the joint debtors (Article 127, Paragraph 1 of the Obligations and Contracts Act)?

In the coming year, no significant changes that have an impact on labour disputes are anticipated to be made to existing Bulgarian employment legislation. Furthermore, no major upheavals in litigation are expected, and changes are planned to improve the efficiency of the court system.

Endnotes

- 1 Bulgarian law does not differentiate between labour and employment disputes, and therefore these words are used interchangeably in this chapter. [^ Back to section](#)
- 2 Interpretative Judgment No. 5/2019 dated 26 October 2021 under Case No. 5/2019 of the General Meeting of the SCC's Civil Chamber. The interpretative judgments are obligatory for courts of all instances in Bulgaria. [^ Back to section](#)
- 3 Judgment No. 50095 dated 10 July 2023 under Case No. 3340/2022 of the SCC, fourth civil department. [^ Back to section](#)
- 4 Judgment No. 158 dated 3 November 2023 under Case No. 4138/2022 of the SCC, third civil department. [^ Back to section](#)
- 5 Judgment No. 296 dated 4 June 2025 under Case No 1315/2024 of the SCC, fourth civil department. [^ Back to section](#)
- 6 Judgment No. 65 dated 30 June 2023 under Case No. 3701/2022 of the SCC, fourth civil department. [^ Back to section](#)
- 7 Interpretative Judgment No. 4 dated 1 February 2021 under Case No. 4/2017 of the General Meeting of the SCC's Civil Chamber. [^ Back to section](#)
- 8 Judgment No. 107 dated 12 October 2023 under Case No. 4351/2022 of the SCC, third civil department. [^ Back to section](#)
- 9 Judgment No. 117 dated 24 October 2023 under Case No. 4209/2022 of the SCC, third civil department. [^ Back to section](#)
- 10 Judgment No. 446 dated 14 July 2025 under Case No. 4711/2024 of the SCC, fourth civil department. [^ Back to section](#)
- 11 Interpretative Decision No. 1/2013 dated 9 December 2013, issued by the SCC on Interpretative Case No. 1/2013. [^ Back to section](#)



12 As of 1 July 2024, this term will be extended to six weeks. [^ Back to section](#)

13 Ruling No. 230 dated 2 April 2024 under Case No. 117/2024 of the Gabrovo District Court and Judgment No. 310 dated 26 March 2024 under Case No. 415/2024 of the Varna District Court. [^ Back to section](#)

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Introduction

Generally speaking, there are various types of employment engagement available to employers in China, including the typical standard employment relationship, labour dispatch, service outsourcing and independent contractor arrangements. Among these, only the standard employment relationship and labour dispatch are governed by labour laws and regulations, while the other forms are primarily regulated by civil laws and related legal norms.

China's labour law framework is built primarily on two basic regulations issued by the National People's Congress Standing Committee: the Labour Law, effective since 1995 and most recently amended in 2018, and the Employment Contract Law (ECL) effective since 2008 and most recently updated in 2012. The two laws provide principles and rules for employment, covering areas such as the formation and termination of contracts, working hours, pay and benefits and the procedures for resolving disputes.

Labour laws and regulations in China have undergone significant development over the past two decades. After the implementation of the ECL in 2008, the employment law system is becoming more and more mature and institutionalised.

Overall, labour laws are generally more protective of employees than employers in China, reflecting the government's policy objectives of safeguarding workers' rights and maintaining social stability. As a result, employers are subject to stringent procedural and substantive obligations, particularly when dealing with issues such as dismissal, redundancy, pay arrangements and working conditions.

In recent years, labour and employment disputes in China have exhibited several notable trends: (1) a substantial and sustained increase in the total number of disputes; (2) a rapid rise in the number of collective disputes, often linked to restructuring, layoffs or wage arrears; (3) greater difficulty in achieving settlements through mediation, with more disputes proceeding to arbitration and litigation; and (4) a high proportion of disputes being initiated by employees, and a consistently high employee success rate in these cases.

In the following sections, our analysis of labour disputes in China focuses on three important perspectives: labour dispute procedural mechanisms, prevalent dispute types and significant trends observed in 2025.

Year in review

On 1 August, 2025, the Supreme People's Court (SPC) released the Interpretation (II) on Issues Concerning the Application of Law in Trial of Labour Dispute Cases (the Interpretation II), which took effect on 1 September 2025. Considered the most significant jurisprudence of Chinese employment law recent years, the Interpretation II clarifies the judicial standards for several key complex issues, such as liabilities of employers in case of intra-group cross-employment, identification of the second fixed-term contract, legal consequences of social insurance contributions exemption agreements and restrictions on non-compete clauses.

In addition, a series of regulations and judicial interpretations regarding termination of employment, retirement and protection of the rights of employees in new work forms have been released in the past year, all of which are hot topics in the field of labour and employment disputes.

Unlawful termination of employment and relevant legal risks

Termination at the end of second term contract

Under Article 14(2)(iii) of the ECL, employees may demand an open-term contract upon expiration of the second fixed-term contract signed with an employer. Historically, interpretation of this national rule diverged regionally. Shanghai's courts previously maintained that only with the employer's agreement to renew employment upon expiry of the second fixed-term contract would the employee acquire the right to demand an open-ended contract, thereby preserving the employer's right to terminate the employment at the end of the second fixed-term without mandatory renewal obligations. This was in contrast to the position taken in most other cities (such as Beijing and Shenzhen), where the employees could unilaterally demand renewal on an open-term ended basis irrespective of employer's renewal intent a.

However, the SPC released an opinion regarding this matter on its website on 13 June, 2024, specifying that an employer's refusal to renew an open-term contract at the end of the second fixed-term constitutes unlawful termination (which is in line with the majority view). In addition, per the Compilation of Judicial Opinions on Complex Issues in Labour Dispute Adjudication (effective 1 January 2025) issued by the Shanghai High People's Court, Shanghai's judicial authorities now recognise an employee's unilateral right to demand an open-ended contract upon expiration of the second fixed-term contract, and employers cannot refuse these demands or terminate the employment. This marks a significant shift by the Shanghai High People's Court Toward the predominant judicial stance nationwide, with recent rulings in Shanghai already enforcing this new interpretation.

Article 10 of Interpretation II further clarifies certain circumstances where two fixed-term labour contracts shall be deemed to have been concluded, including: (1) an employer and employee agree to extend the original contract for a cumulative period of at least one year; and (2) the employee continues to work in the same workplace and position and the nominal employer signing the employment contract changes while the same employer continues to manage the employee's daily work. This provision draws on and incorporates existing local regulations and judicial practice in various regions to prevent employers from avoiding statutory obligation to offer open-ended contracts after two fixed-term contracts through various disguised arrangements, thereby safeguarding employee rights in these special cases.

These latest rules and judicial opinions have increased the complexity of employee separations following a second fixed-term contract. Accordingly, it is advisable for employers to exercise heightened caution when considering retention beyond the first fixed-term contract, and, if an employee demands an open-ended contract at the end of the second fixed-term contract, the employer must either comply with the renewal requirement or pursue mutual termination to mitigate the risks of unlawful termination.

Legal risk of reinstatement in the event of unlawful termination

Under labour laws in China, unlawful termination risks incurring an order of reinstatement or compensation at double the statutory minimum severance amount where the original employment is unable to be reinstated or the employee claims compensation rather than reinstatement. In practice, reinstatement claims typically impose greater burdens on employers than monetary claims, potentially disrupting internal management and necessitating back payments for the unlawful termination period.

Interpretation II specifies the circumstances deemed to render reinstatement impracticable, including: (1) the original contract's expiration (without statutory renewal circumstances); (2) the employer's being declared bankrupt or being dissolved; and (3) the employee's concurrent employment elsewhere (where this employment substantially impedes performance of the original role or persists despite a cessation demand). It also reserves 'any other objective circumstance' as the catch-all clause preserving judicial discretion for local courts. Additionally, interpretation II also clarifies back pay calculations upon reinstatement orders and introduces a comparative fault principle, whereby liability will be allocated fairly based on fault where both parties contribute to termination.

Non-compete obligations

Throughout recent years, employers' overly broad application of non-compete agreements to restrict employees' right to employment has drawn heightened scrutiny. Some employers require non-compete agreements from nearly all employees upon their entry, which significantly deviates from the original intention of the non-compete policy. In view of this, Interpretation II reiterates the scope of application of non-compete obligations, clarifying that employees without access to the employer's trade secrets and intellectual property-related confidential matters shall not be subject to non-compete obligations. It also specifies that the scope, geographical area and duration of non-compete obligations shall be limited to what is necessary and commensurate with the confidential material accessible to the employee. This reasonableness review reflects the legislative intent of the ECL, balancing employer trade secret protection against unfair competition, while safeguarding employees' employment rights.

Furthermore, Interpretation II also clarifies that: (1) for employees bound by confidentiality obligations, parties may agree to non-compete restriction during their employment period without mandatory compensation; and (2) if an employee breaches a non-compete agreement, the employer may seek return of paid compensation and contractual liquidated damages. These provisions are generally in line with the prevailing judicial practice.

New regulations on retirement

Under labour laws in China, 'retirement' is a legal concept referring to the withdrawal of an employee from work due to incapacity as a result of old age (or disability caused by work- or non-work-related illness). Retirement triggers termination of employment relationship, requires employers to complete the retirement procedures, ends social security contributions and commences pension disbursement from the social security fund.

On 13 September, 2024, the Standing Committee of the National People's Congress approved the Decision on Gradual Delay of Statutory Retirement Age, and authorised the Measures for Gradual Delay of Statutory Retirement Age issued by the State Council. The new regulation gradually raises the statutory retirement age for male employees from 60 to 63 years old and for female employees from 50 or 55 years old to 55 or 58 years old (depending on their roles), respectively. It further mandates that employers protect basic rights and interests of employees working beyond statutory retirement age, including remuneration, rest and vacation, occupational safety and health and work injury protection. On 1 January 2025, the Ministry of Human Resources and Social Security and two other departments issued the Interim Measures for the Implementation of Flexible Retirement System, further operationalising the gradual delayed retirement framework. Concurrently, Interpretation II abolished the previous rule classifying employment relationships with pension-receiving individuals as service contracts. These reforms significantly bolster human resources utilisation and protect post-retirement-age individuals, though specific implementation details await further policy refinement and judicial interpretation.

Safeguard of rights and interests of new work form employees

New work form employees are those engaging in platform-based work, such as couriers, ride-hailing drivers and online streamers, and their employment relationships are flexible, algorithm-matched and usually fall outside traditional labour law protections. With rapid development of the platform economy, safeguarding these employees' rights and interests has become a focal point in Chinese labour and employment law in recent years, prompting the SPC to issue multiple opinions and guiding cases addressing this issue.

On 23 December, 2024, the SPC released the first batch of guiding cases on new work forms, focusing on the confirmation of employment relationship in the new work form, emphasising that the court should conduct substantive review of the employment relationship and that the employer should not circumvent the main employer's responsibilities. In Guiding Case No. 237, the court affirmed that there was subordination between the employee and the employer based on the employee's attendance compliance, methods of remuneration receipt and the completion of tasks according to system-assigned orders. The employer cannot evade the establishment of employment relationship by citing the signing of contracting or cooperation agreements.^[1] In Guiding Case No. 238, a takeaway delivery rider registered as individual businesses according to platform requirements and then signed contracting or cooperation agreements. In view of actual performance of the agreements, rules of order acceptance, payment of remuneration and daily work management, the court determined that the employment relationship had been established between the parties.^[2] However, in Guiding Case No.239, as the talent agency did not have a strong control over the working hours, working contents and working process of a live streamer, the court determined that the employment relationship did not exist between the parties, and clarified the boundary between the performance requirement arising from economic cooperation and dominant labour management.^[3] In Guiding Case No. 240, the court also determined that the employees and the company does not have strong subordination and there is no employment relationship between the parties.^[4]

On 30 April, 2025, the SPC released another batch of typical cases safeguarding the rights and interests of workers in the new work forms, addressing key social concerns regarding:

(1) recognition of labour relationship based on employment facts and dominant labour management; (2) the settlement standard of liability insurance in the new work forms; and (3) the liability allocation for damages incurred by or to others during execution of work tasks.

Procedure

Typical employment dispute resolution mechanism

In China, the labour and employment dispute resolution mechanism usually include three proceedings, which is labour arbitration, first-instance trial by court and second-instance trial by appeal court. Unlike general civil or commercial disputes (in which, in most cases, the parties may choose the arbitration or litigation as the dispute resolution procedure), either party to an employment dispute has to file the case to the labour arbitration first instead of going to the court directly. Based on relevant regulations and judicial practice, the scope of employment disputes covers core employment-related issues, such as existence and termination of employment relationship; signing, modification and performance of labour contracts; wages, overtime, bonuses and social insurance contributions; and work-related injury compensation; working hours, rest time and leave entitlements. This mechanism also applies to labour disputes and collective disputes involving the above issues.

Generally, either party may file the claims with the local labour arbitration committee located at the employee's place of work or employer's place of registration, within one year from the date the claimant knew or should have known their rights were infringed. This limitation period may be interrupted and recalculated if the party asserts the claim against the other party through alternative means. The filing fees for employment disputes are nominal and often waived for employees pursuing basic rights. If either party is dissatisfied with the award made by the labour arbitration committee, it may initiate litigation in the competent local court within 15 days of receiving the award. An exception applies when the employee's claimed amount is limited (does not exceed the local annual minimum wage standard), rendering the arbitration award final and binding upon the employer, precluding employer appeals to the court in these cases. The first instance and second instance trials follow standard civil procedures, including evidence exchange and hearings, and the second-instance judgment is generally final and binding, with further recourse through retrial applications being difficult.

In practice, the whole process of labour arbitration, first-instance trial and second-instance trial may take around two to two and a half years, which may vary between cities. During any of the three proceedings, if both parties accept the outcome (i.e., neither party appeals), the decision becomes enforceable and the entire proceeding may conclude. In addition, the parties may also conclude the proceeding by reaching a mutual settlement at any stage.

Civil dispute resolution mechanism

It is worth noting that certain matters arising from an employment -related contract or service relationship may fall outside the scope of an employment dispute and be treated

as general civil or commercial matters. For example, disputes between an entity and the independent contractor it engages usually constitute general contract disputes, disputes regarding incentive equity ownership or stock options (especially when the equity is not part of remuneration of employment) may be deemed general contract disputes in some cities and intellectual property rights and trade secrets disputes may be classified as general commercial disputes in specific cases. These general civil or commercial matters will be rejected by labour arbitration committees, and the party may directly file the case with the court.

Labour inspection complaint

Alongside the typical employment dispute resolution mechanism, employees who believe their core labour rights have been infringed (such as unpaid wages, lack of social insurance and illegal overtime) may also file a complaint with the local labour inspection brigade, which is an administrative body under the Human Resources and Social Security Bureau. This administrative enforcement mechanism (distinct from dispute resolution), can compel employers to rectify clear violations in a short period. However, complex disputes or claims requiring substantial factual determination generally cannot be settled in this process. It is not a mandatory or conflicting procedural prerequisite to file a complaint before bringing the case to the labour arbitration committee.

Types of employment disputes

In practice, certain categories of employment disputes occur more frequently. These disputes often reflect the tensions between employers' operational needs and employees' statutory rights.

One of the most prevalent categories involves disputes arising from the termination of employment, whether due to redundancy, underperformance or misconduct. Closely related are disputes over compensation and benefits. Bonus-related claims are particularly common when the terms of payment are unclear or linked to performance evaluations.

Other typical types of disputes include those concerning post-employment non-compete obligations. Disputes involving workplace misconduct, such as harassment or discrimination, have also gained increasing attention in recent years. In addition, cases involving foreign employees also present unique challenges.

In this context, the following sections will examine these key categories of disputes in more detail.

Termination of employment

Categories for termination

Termination, particularly when initiated unilaterally by the employer, often has a significant impact on employees' rights and interests, and is therefore more likely to give rise to disputes.

In general, unilateral termination by the employer without cause (i.e., at will termination by the employer) is not permitted under the ECL. Each termination has to be based on one of the causes stipulated in law or by reaching an agreement with the employee. Generally speaking, the circumstances for termination of employment can be classified into four categories: (1) termination based on mutual agreement; (2) unilateral termination by the employee; (3) unilateral termination by the employer; and (4) other circumstances provided by law. In some instances, such as the unilateral termination by the employer, prior written notice must be served; in other instances, such as termination for mass redundancy, certain procedures required by law must be followed. In many cases, employers are also required to pay statutory severance to the employees. The statutory minimum severance is the minimum standard of severance provided by law and is 'one-month pay for each year of service'.

Substantive requirements for typical termination grounds

Termination due to expiration of a fixed-term contract

Generally, employment contracts are divided into fixed-term contracts and open-term contracts according to the term of the contract. If an employee is under a fixed-term contract, employers can terminate the contract when the fixed term expires with the statutory minimum severance provided, while the employer no longer has the option of letting the contract expire for an open-term contract. Under the Article 14(3) of the ECL, employees may demand an open-term contract at the end of the second fixed-term contract signed with an employer.

Unilateral termination due to employee's gross misconduct

Under Article 39(2) of the ECL, where the employee has seriously violated the employer's policies and disciplines, the employer is entitled to terminate the employment with immediate effect and without any severance payment. The following conditions are required for termination:

1. the employee has committed gross misconduct;
2. the misconduct seriously violates a company policy (e.g., as stated in the employee handbook); and
3. the company policy should be 'valid', which means that it has been adopted by a statutory democratic consultation and notification procedure as described in the ECL.

Unilateral termination due to employee's incompetency

Article 40(2) of the ECL provides that, if an employee is not competent to perform the work, and after training is given or after the employee is assigned to another job position, the employee is still not competent for the work, then the employee can terminate the

employment by sending a 30-day prior written notice to the employee (or pay one-month salary in lieu of notice).

Based on the above, the substantive requirements/conditions for this legal ground are:

1. the employee is incompetent to perform work;
2. the employer has provided training or assigned the employee to another position;
and
3. the employee remains incompetent.

Employer's burden of proof

Generally speaking, in current judicial practice in China, the employer is under a heavy burden to prove the conditions for unilateral termination in law. Therefore, the risk of being deemed an unlawful termination cannot be ruled out in most circumstances.

For example, termination on the ground of employee's incompetence is based on the subjective judgment of the employer (i.e., whether an employee is incompetent). Therefore, in judicial practice, the arbitrator or court would be strongly inclined to limit the discretion of the employer in order to protect the employee's benefit (by strictly reviewing the employer's pre-established performance review policies or agreements, the substantive facts of the employee's incompetence, the procedure of training or job adjustment and the reasonableness of the result of the performance review and the termination decision).

Legal risk of an unlawful unilateral termination

If a unilateral termination is held unlawful, the employee can ask the arbitration committee or court to:

1. order reinstatement by setting aside the employer's termination decision and putting the employee back to their original position. If the court makes such an order, the employer must make back pay of the employee's lost wages for the period of unlawful termination (i.e., the period starting from the termination date until the date when the employee is reinstated), and cover the employee's social insurance and housing fund during this period; or
2. where the original employment cannot be reinstated or the employee claims compensation rather than reinstatement, order the employer to pay compensation to the employee at double the statutory minimum severance (if statutory minimum severance has already been paid at termination, the employer will only need to pay for the difference).

Compensation, bonuses and benefits disputes

As the right to receive remuneration is a fundamental right of employees under labour laws in China, remuneration-related disputes account for a significant proportion of employment disputes. These disputes may include, but are not limited to:

1. claims alleging the employer's failure pay basic salary or benefits, or unlawful reductions of basic salary or benefits due to job reassignment, salary adjustments or remuneration structure changes;
2. claims contesting the non-payment of bonuses, or disputes over awarded bonuses amount; and
3. disputes seeking unpaid overtime compensation for performed overtime work.

Among these, disputes concerning bonuses and discretionary benefits tend to be particularly complex have unpredictable outcomes. This complexity stems from the discretionary nature of these payments, the absence of uniform entitlement standards and adjudicators' case-specific consideration of contractual provisions, company policies and operational practices. In general, employers bear a greater burden of proof in these disputes.

In July 2022, the Supreme People's Court (SPC) released a group of guiding cases. Among the listed cases, case No. 182 and No. 183 concern labour disputes over bonus payments. In case No. 182, the court held that the employee's eligibility for the bonus should depend on whether the conditions and criteria for paying the bonus had been satisfied, and the review procedure should not be decisive.^[5] In case No. 183, where the employee had departed from the employer before the year-end bonus distribution, the court held that having completed a full year's work, and contributed substantially to the employer, the employee satisfied the substantial conditions for bonus entitlement.^[6] These two cases demonstrate that the arbitral tribunals and courts tend to focus on whether the substantial conditions for a bonus payment have been fulfilled. For employees departing before annual bonus payment, a comprehensive assessment should be made taking into account various factors such as the reason and timing of the employee's departure, their work performance, and their contributions to the employer.

It should be noted that, in certain industries, such as finance, bonuses are subject to specific regulatory requirements. In recent years, regulatory authorities have introduced rules allowing financial institutions, in certain circumstances, to defer payment of bonuses, withhold them or even claw them back after payment. As a result, remuneration disputes in the financial industry occur more frequently and prove more contentious, particularly when regulatory rules or policy provisions are not clear.

Post-employment non-compete obligations

Under labour laws in China, the employer and the employee are allowed to agree on a post-termination non-compete restriction on the employee following the below rules.

1. Scope of employees that an employer is allowed to sign the non-compete clause with: the employees that can be subject to a non-compete obligation shall be senior managers, senior technicians and other persons who are under confidentiality obligations to the employer.
2. Scope of non-compete obligation: the scope of non-compete obligation should be restricted to the competitors of the employer that produces or sells the same type of products or is engaged in the same type of business as the employer.

The geographic area could be reasonably agreed upon by the employer and the employee.

3. Non-compete period: the maximum duration of the non-compete is two years since the termination date of the employment. There is no minimum duration for the non-compete period.
4. Non-compete compensation: compensation shall be paid to employees for their performance of the non-compete obligation after the termination of the employment contract, otherwise the non-compete clause would not be enforceable.

Types of labour disputes concerning non-compete obligations include disputes over the validity of the non-compete agreement, disputes concerning the payment of compensation and disputes regarding the release from non-compete obligations. The most prevalent category involves alleged breaches of the non-compete agreement, wherein employers claim former employees violated the agreement and seek payment of contractually liquidated damages. Courts in China generally uphold legally valid liquidated damages provisions that are reasonably set. However, where the agreed liquidated damages amount appears unreasonably high (as compared to the non-compete compensation paid and the actual loss incurred by the breach), it may be adjusted by the court.

Recent judicial practice demonstrates heightened scrutiny by the courts. It is aimed at ensuring that non-compete agreements are proportionately applied – protecting the employer’s legitimate business interests without unduly restricting employees lacking access to confidential or commercially sensitive information.

Discrimination and harassment

In recent years, China has witnessed increased legal and public attention toward workplace discrimination and harassment. The Labour Law prohibits unequal treatment based on factors such as ethnicity, race, and gender, while the amended Law on the Protection of Women’s Rights and Interests (2022) strengthens protections against gender discrimination and sexual harassment.

These laws prohibit any unwelcome sexual conduct – whether verbal, written, visual or physical – and obligate employers to establish preventive mechanisms, address complaints promptly and support victims in pursuing remedies (including through police reports or civil litigation).

Judicial practice also demonstrates heightened enforcement. For example, SPC Guiding Case No. 181, affirmed that managers must act on sexual harassment complaints, and failure to take reasonable measures may justify dismissal for serious misconduct.^[7]

These developments are anticipated to increase disputes involving gender discrimination and harassment, as greater awareness encourages victims to speak out. Courts and regulators are likely to adopt more assertive approaches, including stringent enforcement and precedent-setting rulings.

Dispute involving foreign employees

Employment disputes involving foreign nationals working in China entail special considerations. Under labour laws in China, an employment relationship between a Chinese employer and a foreign national may be established provided that the foreigner has obtained a valid work permit. However, whether the ECL applies comprehensively to foreign employees remains controversial.

For foreigners holding a foreign permanent residence permit, judicial practice across China is largely consistent in applying the ECL in full. In contrast, for those with only work and residence permit, Article 22 of the Provisions on the Administration of Employment of Foreigners in China specifies that working hours, rest and leave entitlements, work safety and social insurance shall be governed by the relevant national regulations. Regional arbitration committees and courts, however, diverge in interpreting of this provision, leading to uncertainty in practice.

For instance, Shanghai courts have held that the ECL applies only to the basic aspects expressly mentioned in Article 22, while other rights and obligations, such as termination procedures and severance pay, are governed by the terms of the written employment contract or by the parties' actual performance. As a result, if the contract lacks explicit severance provisions, a foreign employee's claim for compensation may lack both a statutory and contractual basis. Conversely, certain other regions, such as Guangdong, maintain the ECL applies comprehensively to all aspects of foreign nationals' employment relationships, including termination and severance entitlements.

Outlook and conclusions

As a national-level judicial interpretation, Interpretation II marks a significant milestone in China's ongoing labour law reform, and is expected to play a profound and significant guiding role in labour and employment disputes in China across all industries and regions.

While further observation of the application of certain new rules and the resolution of potential conflicts with existing policies and judicial practice in various regions may be required, it is foreseeable that the following trends will be marked in labour disputes over the following year.

1. The types of labour disputes will grow increasingly diversified and complex. With rapid economic development and continuous innovation in employment management models, beyond typical traditional labour disputes, there will be more complex disputes involving multiple factors such as equity and other innovative forms of incentives, non-competition restrictions and special agreements. It will be challenging and meaningful to properly resolve these disputes through the interpretation and application of rules under the existing labour law framework.
2. The judicial practices on certain issues of different regions are expected to become unified. With the issuance of Interpretation II and other new rules, ambiguities and discrepancies in previous judicial practice on certain issues (including termination at the end of second term, rules on employment contract management and renewal and restrictions on non-compete obligations) have become clarified and resolved. Further alignment on similar divergent issues is anticipated.
- 3.

In the meantime, some highly publicised emerging matters and concerns (such as workplace discrimination and harassment, exploration and innovation in judicial practice) will continue to develop through forms such as guiding cases.

4. In addition, with the development of the silver economy and platform economy, disputes involving older employees and employees in new work forms are expected to increase further, which safeguards the protection of the rights of these special groups of employees in an innovative and comprehensive manner as an important topic.

Looking ahead, these trends will further shape China's labour and employment dispute landscape, where balancing employee–employer interests and ensuring sufficient protection for employees will remain central to reform and development.

Endnotes

- 1 *Langxi XX Service Outsourcing Co. v. Xu XX*, Guiding Case No. 237 (SPC, 20 December 2024). [^ Back to section](#)
- 2 *Sheng XX v. Jiangsu XX Network Tech Co*, Guiding Case No. 238 (SPC, 20 December 2024). [^ Back to section](#)
- 3 *Wang XX v. Beijing XX Culture & Media Co*, Guiding Case No. 239 (SPC, 20 December 2024). [^ Back to section](#)
- 4 *Zhang XX v. Shanghai XX Technology Co*, Guiding Case No. 240 (SPC, 20 December 2024). [^ Back to section](#)
- 5 *Peng XX v. Nanjing XX (Group) Co*, Guiding Case No. 182 (SPC, 4 July 2022). [^ Back to section](#)
- 6 *Fang XX v. XX Co*, Guiding Case No. 183 (SPC, 4 July 2022). [^ Back to section](#)
- 7 *Zheng XX v. XX (China) Co Ltd*, Guiding Case No. 181 (SPC, 4 July 2022). [^ Back to section](#)

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Introduction

French employment law originates from a construction derived from multiple sources, but its uniqueness lies in the fact that it is composed of both state origin sources and professional origin sources.

Regarding state origin sources, French employment law has constitutional foundations that affirm the right to work, the right to unionise, the right to strike and the right of employees to participate in the collective determination of working conditions and the management of companies. The law also determines the fundamental principles of employment law (the 'L' Articles in the Labour Code).^[1] It is supplemented by regulatory provisions, provided by government decrees ('R' and 'D' Articles in the Labour Code). Over the years, the scope of the legislator's action in employment matters has only expanded, so, although employment law is codified, it remains characterised by constant legislative inflation, contributing to making this law increasingly complex.

Professional sources are also important. They are either negotiated (i.e., resulting from collective bargaining agreement with the trade unions) or non-negotiated as they fall within the powers of the employer (i.e., resulting from company practices and unilateral undertakings).

Collective bargaining agreements apply to all companies that are included within their geographical and professional scope of application. These norms, entered into at different levels (site, company, group and national business sector), constitute a major source of employment law and, in principle, allow – but not always – improving the protection and guarantees of the employee.

The favour given to employees in French employment law is manifested by a cardinal principle in employment law known as the 'principle of favour'. While sources are articulated in respect of the 'hierarchy of norms' according to which no lower-level text can contradict a higher-level text, the principle of favour dictates that in the case of conflicting norms, the one most favourable to the employee must be applied. Thus, for example, collective bargaining agreements, although lower in the hierarchy of norms, can take precedence over laws (except those of public order) if they are more favourable to the employee. However, the principle of favour can be derived since the Macron Ordinances of 2017, which provide that, in certain cases, company-wide agreements can prevail over industry-wide agreements even if they are less favourable.

As with other areas of law, employment law is subject, in its application, to judicial control, which has significant sanctioning power. Different courts have jurisdiction depending on the disputes. Collective labour disputes mainly fall under the jurisdiction of a judicial tribunal, while individual disputes generally fall under the jurisdiction of an employment tribunal.

The favour given to employees is also manifested in employment law litigation. While, in principle, under ordinary law, the burden of proof lies with the plaintiff, it can be adjusted in favour of the employee, particularly in cases of discrimination, harassment and proof of overtime.^[2] In addition, the Labour Code provides that 'doubt benefits the employee'.^[3] The rules of geographical jurisdiction of employment tribunals are also adjusted in favour of the employee in order to minimise obstacles. While the competent employment tribunal is

the one in whose jurisdiction either (1) the place of work is located or (2) the employee's residence is located (when the work is performed at home or outside any company or site), employees benefit from a third option, which allows them to bring the case before the employment tribunal of the place where the employment contract was signed or the place where the employer is established. Always with the aim of facilitating employees' access to employment tribunals, the procedure itself is free, although lawyers' fees are charged (but low-income employees may qualify for legal aid). At the end of the procedure, the losing party may, pursuant to the well-known Article 700 of the French Civil Procedure Code, be ordered to pay a specified amount covering all or part of the winning party's lawyers' fees. In practice, however, this provision favours employees, who are rarely sentenced to pay their employer's legal fees even when their claims are dismissed.

Finally, employment law also entrusts a significant supervisory power to a dedicated administrative authority: the labour inspector, which generally intervenes prior to judicial proceedings and is responsible for ensuring compliance with employment law provisions. Furthermore, in certain situations provided for by the Labour Code, the employer must obtain authorisation from the labour inspector before taking action (e.g., implementation of certain measures relating to working hours, dismissal of staff representatives and employment of young people).

Year in review

The French Supreme Court is the highest court in the French judicial system. It ensures that the decisions of the courts of appeal and certain employment tribunal rulings comply with the rules of law, without retrying the case. It is the last resort in the judicial order. Some of the most significant decisions made by the social chamber of the French Supreme Court over the past year are detailed below.

Litigation

The French Supreme Court allows the submission in court of anonymised witness statements prepared by a bailiff, provided this is essential for the employer's right to evidence and the infringement of the principle of equality of arms is strictly proportionate to the aim pursued. While a judge cannot base a decision solely or decisively on anonymous testimony, anonymised statements (where the producing party knows the identity) may be considered if corroborated by other evidence. If this corroboration is lacking, the judge must weigh the fairness of the procedure, balancing the right to evidence against equality of arms, ensuring any infringement is strictly necessary and proportionate.^[4]

Harassment

From 2006, France Telecom's top management implemented a drastic workforce reduction policy affecting over 20,000 employees. Following a report by the labour inspectorate and a union complaint after a series of employee suicides, the Supreme Court found that a company policy knowingly leading to the deterioration of working conditions can constitute institutional moral harassment. The Court held that deliberate, repeated actions

by top management, fully aware of their negative impact on employees' health and working conditions, satisfied both the material and intentional elements of the offence.^[5]

In another important ruling, the French Supreme Court considered that sexual or sexist remarks or acts directed at or witnessed by several people can constitute sexual harassment if they are degrading, humiliating or create an intimidating, hostile or offensive environment, especially if repeated. The Supreme Court recognised this as a new form of 'environmental' or 'ambient' harassment.^[6]

Protected employees

When seeking to dismiss a protected employee for professional incompetence, the labour inspector must verify whether the incompetence justifies dismissal, considering both the employee's mandate and employment contract. The employer must have fulfilled their obligation to adapt the employee to their position and considered alternative roles better suited to the employee's abilities. The French Administrative Supreme Court clarified that the inspector's review is limited to ensuring these adaptation and reassignment obligations have been met, therefore confirming that the employer is not required to actually redeploy the employee to another position.^[7]

Paid holidays

Under the DDADUE 2 Law, and continuing its harmonisation with EU law, the French Supreme Court clarified the consequences of sick leave during paid leaves, and the calculation of overtime when paid holidays are partially taken during the week.^[8] In its first ruling, the Court held that an employee put on sick leave while on paid leave is entitled to have their days of paid leave postponed, on the condition that the employer be notified of said period of sick leave.^[9] This deferral is therefore limited to 15 months and the employer must inform the employee of the number of days of leave they have available and the date by which these days of leave can be taken.

In its second ruling, the French Supreme Court also made a significant reversal on paid leave and overtime calculations. Until now, the Supreme Court had considered that the calculation of the threshold for triggering overtime excluded paid leave, which was not considered to be actual working time. The Court has ruled that from now on, an employee whose working hours are calculated on a weekly basis is entitled to overtime pay for the week during which the employee was partially on paid leave, even though the employee did not complete 35 hours of effective work time.^[10]

Presumption of resignation for job abandonment

The 2022 Labour Market law introduced a presumption of resignation when an employee voluntarily abandons their post. The French Administrative Supreme Court upheld this system, provided the employee is informed in writing of the consequences of not returning to work unless a legitimate reason is given.^[11] For protected employees, the French Labour Code does not provide for any obligation to seek the labour inspector's approval when the presumption of resignation is implemented. However, the Paris Court of Appeal has recently ruled that the employer must seek labour inspector approval before ending the contract, as the presumption involves employer action.^[12]

GDPR and access to emails

In a heavily debated ruling, the Supreme Court confirmed that emails sent or received via an employee's professional email account are personal data under the GDPR. Employees and former employees therefore have the right to access both the content and metadata of these emails, unless disclosure would infringe the rights and freedoms of others.^[13]

Artificial intelligence

A first level tribunal ordered the suspension of AI application deployment in a company until the works council (the social and economic committee (CSE)) had been consulted. The tribunal found that the pilot phase involved actual use by employees, constituting implementation rather than mere experimentation, thus triggering the obligation to consult the CSE prior to such implementation.^[14]

Procedure

Division of employment litigation among several jurisdictions

In France, employment litigation is divided among various jurisdictions depending on the litigious nature of the conflicts.

The vast majority of employment disputes fall under an employment tribunal, a specialised civil court that has exclusive and public order jurisdiction to resolve individual disputes arising from private law employment contracts.^[15] The public order nature of employment tribunals prohibits parties to an employment contract from bypassing its jurisdiction in favour of another court or tribunal.

The specificity of an employment tribunal lies in the fact that it is 'parity-based': its judges are not professional judges but individuals designated by a government decree, and it is composed, in each formation, of an equal number of judges (two judges representing employees and two judges representing employers).

Employment tribunals are divided into five autonomous sections corresponding to different sectors of activity: agriculture, industry, commerce, management (executives and similar employees, regardless of their sector of activity) and various activities.

Each section has two offices: the conciliation and orientation office, whose mission is to propose an amicable solution to the dispute, and the judgment office, whose mission is to resolve the dispute in cases of failure of the conciliation attempt. In cases of a tie, the case is referred to the same judgment office, which is presided over by a professional tie-breaking judge from the judicial court, to reach a majority decision.

Furthermore, several disputes relating to collective labour relations are heard by virtue of a special competence by a judicial court, which is the civil court of first instance. It handles disputes concerning professional elections and the appointment of delegates and

union representatives. Since 2020, social security disputes (except disputes regarding the pricing of work accidents) also fall under the jurisdiction of the judicial court.^[16]

A residual part of disputes falls under the jurisdiction of the police tribunal (for employment law infractions), the criminal court (for offences such as concealed work) or the administrative court (individual labour relations with a public law employer, protected employees and large-scale collective redundancies).

Procedure before the employment tribunal

The procedure before the employment tribunal was profoundly overhauled in 2015.^[17] Even though recent reforms have significantly aligned the employment tribunal procedure with the classic civil procedure, various characteristic elements remain.

Employment tribunal proceedings are initiated by means of a petition by a request delivered or sent to the employment tribunal registry.^[18] Under penalty of nullity, it must include certain mandatory information and a summary statement of the grounds for the claim, with supporting documents that the claimant wishes to invoke in support of their claims. The claims are prepared in as many copies as there are defendants, in addition to the copy intended for the tribunal.^[19]

One of the special features of employment tribunal litigation is that the parties can defend themselves. They may, however, be assisted or represented by employees or employers from the same industry, union representatives, their spouse, a lawyer or a delegate of the employers' or employees' organisations.^[20] The claimant's assistance by a lawyer becomes the norm (90 per cent in classic proceedings; 10 per cent in summary proceedings).^[21] Thus, employment tribunal disputes become a matter for specialised lawyers, which is an additional indicator of the value and technicality of the disputes.^[22]

Apart from a few exceptions, the employment tribunal procedure includes two stages: a conciliation phase and, in cases of failure, a judgment phase.

The conciliation phase is mandatory before the conciliation and orientation office of the employment tribunal (except for certain matters such as requalification of a fixed-term contract or an employee taking action to terminate their contract).^[23] Conciliation (which is rare in practice) will result in legally enforceable conciliation minutes. After hearing the parties, if the conciliation fails, the conciliation and orientation office must refer the case to the judgment office.

The judgment hearing gives rise to adversarial debates – in principle, public – during which the plaintiff and then the defendant are heard. As employment tribunal proceedings are not necessarily written (but almost always are), oral debates are particularly important. Immediate deliberations are rare and, most often, cases are reserved for deliberation for a period that can vary from a few weeks to several months, depending on the workload of the employment tribunal. The employment tribunal's decisions are made by an absolute majority of votes. If there is a tie, a tie-breaking hearing must be held within a month (rarely respected).

On average, proceedings before the employment tribunal take 15 months, though such duration varies from one tribunal to another (an average of 17 months in Paris and at least 24 months in Nanterre). The procedure extends to an average of 32 months in the event of a tie.

It should be noted that two special procedures exist before an employment tribunal: summary proceedings and accelerated proceedings on the merits. The summary procedure is an emergency procedure allowing for a decision to be obtained in a shortened period, which is immediately enforceable (2.6 months, on average).^[24] This procedure is used when measures must be taken that do not face any serious challenge or that are justified in the existence of a dispute (e.g., an employee has not been paid after a month of work) or when it is necessary to take protective or restorative measures to prevent imminent damage or to stop a manifestly unlawful disturbance (e.g., a pregnant woman who is dismissed during her maternity leave). Second, for a certain number of situations, the employment tribunal rules are according to the 'accelerated procedure on the merits'. The parties are sent directly before the judgment office, without going through the conciliation preliminary phase.

The two most common means of appeal are appeal and cassation. For all claims above a level set by decree (currently €5,000), the judgments of employment tribunals may be appealed^[25] before the social chamber of the Court of Appeal within one month of notification of the judgment, or within 15 days if the decision was rendered in summary proceedings. Cassation can be exercised before the French Supreme Court against the decisions of the court of appeal. It is filed, instructed and judged following the procedure with representation by a lawyer at the French Civil Supreme Court.^[26] The deadline for the cassation is two months from the service of the court of appeal's ruling to the person or at their domicile.

Main procedures before a judicial tribunal

A judicial tribunal has jurisdiction in matters of collective labour relations. In the context of electoral litigation, the request is brought before the judicial tribunal by way of a petition submitted or sent to the registry within three days of the publication of the electoral list in cases of a dispute over the electorate, 15 days from the notification of the contested pre-electoral administrative decision, or after the election in cases of a dispute over its regularity.^[27] The judicial tribunal rules within 10 days of its referral. Its decision cannot be appealed,^[28] but it can be referred to the French Supreme Court within 10 days of notification of the judgment.^[29] For disputes over the designation of union delegates, the procedural rules are the same, with the clarification that the 15-day contestation period starts from the day of the notification of the designation for the employer, and the day of the posting of the designation for the employees or other unions.^[30]

Alternative dispute resolution

To avoid going to an employment tribunal, the parties may decide to resolve the dispute amicably through conventional mediation, a participatory procedure or a settlement.

A settlement can be entered into before or during a judicial procedure. It is an agreement between an employee and their employer that ends a dispute without waiting for a judgment. The main benefit is that once the settlement is signed, the parties can no longer challenge the conditions of performance of the contract or the conditions under which it is terminated. It is conditioned on reciprocal concessions from the parties (most often the employee waives their right to take legal action in exchange for the employer's

commitment to pay a settlement indemnity). It is established in the form of a contract, often called a settlement agreement, written and signed by the parties. The assistance of the parties by a lawyer during the negotiation is optional but preferable to ensure the validity of the signed settlement.

Conventional mediation consists of calling on a third party to reach an amicable resolution of the dispute before referring it to an employment tribunal. In addition, the conciliation and orientation office or the judgment office may, at any stage of the procedure, with the agreement of the parties, appoint a mediator to find a solution to the dispute. The agreement is approved by the conciliation and orientation office or the judgment office, as appropriate.^[31]

A participatory procedure, which is rarely used in practice, enables the parties to agree for a fixed period to seek an amicable solution to their dispute and not to refer the matter to the courts during the term of the agreement. If this procedure fails and the dispute is referred to an employment tribunal, the parties will not be exempted from the mandatory conciliation procedure.^[32]

Types of employment disputes

Dismissals

In 2023, 107,500 claims were filed with employment tribunals. Most cases (96 per cent) covered 'ordinary' employees (neither protected employees nor apprentices).^[33]

In 88 per cent of cases involving ordinary employees, the claim related to the termination of the employment contract – mostly dismissals.^[34] Dismissal can be based on personal grounds (disciplinary or non-disciplinary) or economic grounds (in cases of economic difficulties, technological changes, company reorganisation or cessation of the company's activity). Disputes most often result from a challenge to a personal reason for the termination of an employment contract.

Dismissal for personal reasons is a dismissal based on the employee's conduct – for example, misconduct, poor performance, repeated or prolonged absence disrupting the company's operations or unfitness declared by the occupational physician. Dismissal is considered unfair (or without real and serious cause) when the reason for the dismissal is not recognised as valid by the judge. This allows the employee to receive compensation from the employer. Since 2017, the compensation that judges can award must be set within a minimum and maximum set by two legal scales (commonly called the 'Macron scale'), which vary depending on the company's workforce.

Furthermore, when the dismissal procedure has not been followed (e.g., failure to organise an interview), the judge can decide that the dismissal is irregular. The compensation can differ. If the dismissal is without real and serious cause, only the compensation for unfair dismissal is paid, whereas if the dismissal has a real and serious cause, additional compensation up to a maximum of one month's salary will be paid by the employer to the employee.

Employees can also bring their case before an employment tribunal to obtain nullity of their dismissal. When a dismissal is null and void, the employee can request reinstatement and the payment of unpaid salary between their dismissal and their reinstatement. Failing that, they are entitled to notice, and severance pay, as well as compensation of at least six months' salary. Dismissals pronounced in violation of a fundamental freedom (e.g., freedom of expression, union freedom or religious freedom), discriminatory dismissals, dismissals in the context of moral or sexual harassment, or dismissals against a protected employee or a whistleblower are notably null and void.^[35]

Reclassifications

In addition to dismissals, requests for service contracts to be reclassified as employment contracts are still regularly referred to employment tribunals. This type of claim often arises at the end of a contractual relationship. It is in the claimant's interest to have the judges recognise that an employment contract existed between them and the company, so that the end of the employment relationship can be analysed as an unfair dismissal, with all the corresponding consequences in terms of compensation. The employment tribunal will therefore consider whether the nature of the relationship that existed between the company and the service provider can be analysed as a contract of employment (judges use the 'bundle of evidence' method to establish the existence of a subordinate relationship) before, if appropriate, examining the service provider's claims for compensation.

Employment tribunals also often receive requests for reclassification of a fixed-term employment contract to a permanent employment contract. The interest for the employee lies in the fact that the reclassification has a retroactive and immediate effect. The fixed-term contract is annulled, and the employee benefits from the permanent contract from their hiring date, which has consequences on seniority and allows the employee either to be reinstated in the company or to receive a reclassification compensation equal to or greater than one month's salary. A fixed-term contract can be reclassified into a permanent contract, notably, for example, if the fixed-term contract covers a permanent position and not a specific and temporary task, if it aims to replace a person who was suspended following a collective labour dispute, if it concerns particularly dangerous work, if it is not established in writing, or if it does not specify the justification for using this type of employment contract.

Working hours

Disputes also frequently contain salary arrears claims for unpaid overtime over the previous three years. Any hour of work performed, at the employer's request, beyond the legal working week duration (35 hours per week) is overtime that entitles the employee to more favourable remuneration (increased hourly rate) or compensatory rest equivalent to the increase. The burden of proof is shared between the employee, who must initially provide sufficiently precise elements relating to the unpaid overtime they claim to have performed, and the employer, which must then respond to the elements produced by the employee. The judges will rule based on all the elements provided by the parties.^[36]

Regarding disputes over working hours, executive employees often take legal action to challenge the validity of the daily flat-rate agreement that applies to them. This system

allows certain employees to be remunerated based on the number of days worked annually, without monitoring working hours. They are not subject to the legal weekly working duration (35 hours per week) and, consequently, do not benefit from overtime pay. Annulment of the daily flat-rate agreement (for lack of effective and regular monitoring of working hours, for example) allows the employee to claim payment for unpaid overtime over the previous three years.

Variable remuneration

Variable remuneration now occupies a prominent place in companies' remuneration policies. It is also the source of abundant and diverse litigation (e.g., inclusion in the calculation of severance pay, inclusion in the calculation of the minimum wage, prohibition of unilateral variation clauses, failure to set targets, unilateral modification of remuneration and clawback clauses).

Collective relations

In 2024, collective relations litigation was mainly focused on the use of experts that the CSE can call on within the scope of its attributions (necessity of expertise, cost, scope, duration or choice of the expert designated by the CSE). Electoral litigation also holds an important place.

Outlook and conclusions

Regarding employment disputes, there are several trends. First, there has been a decrease in labour disputes, with a total of 124,800 new cases in 2024, which represents a drop of 31 per cent compared with 2015.^[37] While this is partly explained by the decrease in the number of dismissals, a series of reforms also play a role – for example, the introduction of mutual termination agreements in 2008, the implementation in 2017 of the regulation of compensation for unfair dismissals, the revaluation of statutory severance pay, and the establishment in 2022 of a presumption of resignation for employees who voluntarily abandon their position.

Mutual termination, which is a method of terminating an employment contract by mutual agreement between the employer and the employee, has been very successful since its creation. In 2024, 514,766 mutual termination agreements were signed – the highest number recorded in a year since the system was created. These statistics are notably the result of case law that provides a favourable environment for the development of mutual termination (it is possible in situations where the termination of the employment contract is usually strictly regulated, such as maternity leave, work accident or occupational disease). The draft Finance Bill for 2026 currently plans to increase the company-borne contribution from 30 per cent to 40 per cent, to be paid on the mutual termination indemnity up to €94,200.

Despite the sharp decrease in the number of cases, processing times continue to increase. In 2025, it took at least three years, on average, to obtain a final employment tribunal decision.

At the same time, there is an increase in the specialisation and technicality of disputes, partly because employees seeking to escape the cap on compensation for unfair dismissals set by the Macron scale tend to focus on exceptions to this cap (e.g., discrimination, harassment, violation of fundamental rights or whistleblower status).

Additionally, disputes tend to become more gentrified. While all sections of employment tribunals are experiencing a downward trend in a number of cases, the management section is the one with the least pronounced decrease, indicating an increased ability of executive plaintiffs to overcome procedural obstacles.^[38] This trend is likely to be contributing to the increased specialisation of disputes around issues such as variable remuneration.

Finally, when the Pay Transparency Directive is transposed in French law, an increase in litigation over pay transparency and pay equality is to be expected. Transposition of the Pay Transparency Directive should take place on 7 June 2026 at the latest.

Endnotes

- 1 Articles 34 and 37 of the 1958 Constitution. ^ [Back to section](#)
- 2 Article 1353 of the French Civil Code. ^ [Back to section](#)
- 3 Article L1235-1 of the French Labour Code. ^ [Back to section](#)
- 4 French Supreme Court, Social Chamber, 19 March 2025, No. 23-19154. ^ [Back to section](#)
- 5 French Supreme Court, Criminal Chamber, 21 January 2025, No. 22-87.145. ^ [Back to section](#)
- 6 French Supreme Court, Criminal Chamber, 12 March 2025, No. 24-81.644. ^ [Back to section](#)
- 7 French Administrative Supreme Court, 2 December 2024, No. 487954. ^ [Back to section](#)
- 8 French Supreme Court, Plenary Session, 13 September 2023, No. 22-17.340. ^ [Back to section](#)
- 9 French Supreme Court, Social Chamber, 10 September 2025, No. 23-22.732. ^ [Back to section](#)
- 10 French Supreme Court, Social Chamber, 10 September 2025, No. 23-14.455. ^ [Back to section](#)
- 11 French Supreme Court, Social Chamber, 13 March 2024, No. 22-10.551, French Administrative Supreme Court, 18 December 2024, No. 473640. ^ [Back to section](#)
- 12 Paris Court of Appeal, 6 March 2025, No. 24/02319. ^ [Back to section](#)

- 13 French Supreme Court, Social Chamber, 23 October 2024, No. 23-19.629; French Supreme Court, Social Chamber, 18 June 2025, No. 23-19022. [^ Back to section](#)
- 14 Judicial Tribunal of Nanterre, 14 February 2025, No. 24/1457. [^ Back to section](#)
- 15 Article L1411-1 to L1411-5 of the French Labour Code. [^ Back to section](#)
- 16 Article L211-16 of the French Judicial Organisation Code. [^ Back to section](#)
- 17 Law No. 2015-990 of 6 August 2015 and its implementing Decree No. 2016-660 of 20 May 2016. [^ Back to section](#)
- 18 The request is presented in the form of a Cerfa form (No. 15586*09), available on the public service website. [^ Back to section](#)
- 19 Article R1452-2 of the French Labour Code. [^ Back to section](#)
- 20 Article R1453-1 and R1453-2 of the French Labour Code. [^ Back to section](#)
- 21 Study by the Department of Civil Affairs and Seals (DACs) on industrial tribunal cases in the judicial chain from 2012 to 2022, published on 4 July 2024. [^ Back to section](#)
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- 23 Article R1454-10 of the French Labour Code. [^ Back to section](#)
- 24 Justice 2024 Statistical References, published on 19 December 2024, updated on 14 January 2025. [^ Back to section](#)
- 25 Article 527 and Article 542 et seq. of the French Civil Procedure Code. [^ Back to section](#)
- 26 Article 974 et seq. of the French Civil Procedure Code. [^ Back to section](#)
- 27 Articles R2314-3, R2314-4, R2314-24 of the French Labour Code; Article 54 of the French Civil Procedure Code. [^ Back to section](#)
- 28 French Supreme Court, 14 January 2014, No. 12-29.253. [^ Back to section](#)
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- 30 Article L2143-8 of the French Labour Code. [^ Back to section](#)
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- 32 Articles 2062–2068 of the French Civil Procedure Code. [^ Back to section](#)

- 33 Justice 2024 Statistical References, published on 19 December 2024, updated on 14 January 2025. [^ Back to section](#)

- 34 Justice 2024 Statistical References, published on 19 December 2024, updated on 14 January 2025. [^ Back to section](#)

- 35 Article L1235-3-1 of the French Labour Code. [^ Back to section](#)

- 36 Article L3171-4 of the French Labour Code. [^ Back to section](#)

- 37 Justice 2024 Statistical References, published on 19 December 2024, updated on 14 January 2025. [^ Back to section](#)

- 38 Study by DACS on industrial tribunal cases in the judicial chain from 2012 to 2022, published on 4 July 2024, p. 32. [^ Back to section](#)

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Introduction

The Constitution of India confers powers to state governments and the central (federal) government to enact laws on the subject of employment and labour, except for certain matters that are reserved for the central government.

A large number of labour laws exist on different aspects of labour, namely fixation and payment of wages, social security, occupational health and safety, women and child labour, industrial relations, resolution and adjudication of industrial disputes, and equal opportunities, including opportunities for disabled and transgender individuals.

Currently, over 50 separate laws concerning employment and labour law are in effect in the country. The existing labour and employment laws can be categorised into the following categories:

1. laws enacted and enforced solely by the central government;
2. laws enacted by the central government and enforced both by the central and state governments;
3. laws enacted by the central government and enforced by the state governments; and
4. laws enacted and enforced by the various state governments which apply to respective states.

Given the plethora of laws that exist on the subject of labour and employment, we have discussed the following key employment disputes and procedures that apply thereto:

1. termination of employees;
2. disputes concerning sexual harassment; and
3. other employment matters.

Classification of employees

Employees in India are broadly categorised into workmen and non-workmen. The Industrial Disputes Act 1948 (the ID Act) deals with settlement of industrial disputes, and provides statutory protection to workmen in certain matters, such as termination, transfers and closure of establishments. The ID Act, among other things, also deals with the transfer of business undertakings in relation to workmen.

Workmen

The ID Act defines a 'workman' as any person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, regardless of whether the terms of employment are express or implied. The following categories of employees are excluded from the definition of workmen:

1. persons employed in an administrative or managerial capacity; and
2. persons employed in supervisory work and earning more than 10,000 Indian rupees per month.

The definition of a workman is broad enough to cover all employees, except those performing managerial functions or those performing supervisory functions and earning more than the above-mentioned threshold.

It is common for an employee to be performing multiple roles, such as managerial or supervisory work as well as work that may be technical, skilled, unskilled or operational in nature. Several courts have ruled that where an employee performs multiple roles, the dominant nature of work performed by such employee in the usual course of their role should be considered while deciding whether the employee is a workman or a non-workman.

Generally, software employees and other white-collar workers performing technical work will fall under the category of workmen. That being said, classification of white-collar employees as workmen is a hotly debated (and frequently litigated) topic and courts in India are yet to conclusively prescribe clear parameters for such determination.

Non-workmen

All employees other than workmen, namely employees performing managerial and supervisory functions, will fall under the category of non-workmen.

Non-workmen are not covered under the ID Act and their employment is regulated by the employment contract and the state-specific Shops and Establishment (S&E) Acts.

Industrial disputes

Pursuant to the ID Act, industrial dispute means any dispute or difference among employers, employers and workmen, or among workmen that is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

Generally, disputes between an employer and an individual workman will not be deemed as an industrial dispute under the ID Act, unless such dispute is espoused by the trade union in writing at the commencement of the dispute. However, as an exception, disputes between an individual workman and their employer relating to termination, discharge or dismissal of employment will be considered as industrial disputes.

Labour courts and tribunals

Labour courts

Under the ID Act, the appropriate government has the power to constitute labour courts for resolving certain industrial disputes concerning dismissal or termination of employment, withdrawal of any privilege to workmen, and disputes concerning the service rules.

Industrial tribunal

The appropriate government can set up one or more industrial tribunals with wider jurisdiction than the labour court. The nature of disputes handled by the industrial tribunal concerns the following:

1. wages of employees;
2. bonus and provident funds that are provided;
3. working hours;
4. rationalisation;
5. leave and holidays;
6. service rules concerning maintenance of discipline among the employees; and
7. any other matter that may be considered to be heard and discussed.

National tribunal

A national tribunal is formed by the central government for adjudication of industrial disputes that are considered to be of national importance. If a dispute between two parties of an industry reaches the national tribunal, then both the labour court and the industrial tribunal lose their jurisdiction over the matter.

Year in review

The past year saw the adjudication of quite a few labour disputes in the courts, leading to significant legal developments. A summary of some of the major judgments passed by Indian courts in this field can be seen below.

The Management of Worth Trust v. The Secretary, Worth Trust Workers Union (Supreme Court of India)

This case^[1] concerned the issue of whether a charitable trust that runs factories is required to pay statutory bonuses under the Payment of Bonus Act 1965 (the PB Act). The trust in question (which was initially established by the Swedish Red Cross Society) had been running a manufacturing unit for automobile parts and industrial machines since 1985 – activities that were profit-generating and commercial in nature. In 1998, the workmen employed at the trust raised an industrial dispute, demanding payment of statutory bonus under the PB Act, which was awarded by the labour tribunal at the rate of 8.33 per cent of their annual wages. This ruling was challenged at a High Court, where the tribunal's decision was upheld. As a result of the High Court ruling, the trust approached the Supreme Court under appeal.

The question at issue in this case was whether the trust was exempt from the PB Act, which exempts its applicability to employees employed by the 'Indian Red Cross Society or any institution of the like nature', and to non-profit institutions.

The Supreme Court held that in this case, the PB Act would be applicable as the units in question are 'factories' and the workers are 'employees' within the scope of the PB Act. The trust's commercial manufacturing activities and profits bring it within the statutory scheme. The Supreme Court rejected the aforementioned exemptions provided under the PB Act as the trust had severed links with the Red Cross and had been running profit-making factories for a substantial period of time. As such, the trust's appeal was dismissed, and the Supreme Court directed the trust to pay statutory bonus as applicable under the PB Act to the employees.

M/s Stesalit Limited v. Union of India and ors (Calcutta High Court)

This case^[2] considered the question of payment of gratuity to employees while the company was undergoing an insolvency process. The company in question, Stesalit Limited, challenged an order of the Labour Commissioner directing the company to pay gratuity with interest to a former employee under the Payment of Gratuity Act 1972 (the Gratuity Act). The company claimed that the employee's gratuity claim was already considered in the company's insolvency resolution process under the Insolvency and Bankruptcy Code 2016 (IBC), and a payment had been made to the employee under the approved resolution plan.

The Court considered the question of whether the employee is entitled to gratuity payment from the company even after it has been liquidated and the insolvency resolution plan has been approved. The company argued that the IBC would overrule the Gratuity Act and the employee's claim had already been settled by way of the payment made under the insolvency plan. The employee's claim was that gratuity is a statutory right and protected from insolvency proceedings, and that the IBC specifically provides that gratuity and similar funds are not part of the company's assets to be shared with other creditors.

The Court examined previous judgements on the topic and held that gratuity falls outside the scope of the 'liquidation estate' (the assets of the company undergoing insolvency that are then paid out to the creditors as per the provisions of the IBC), and must be paid in full to the employee. The Court held that the Gratuity Act applies fully and overrides any other conflicting laws.

The Court dismissed the company's challenge and held that employees must receive their full gratuity, even in insolvency or takeover scenarios, and that these dues have priority over other creditors.

Rakesh Kumar Varma v. HDFC Bank Limited with HDFC Bank Limited v. Deepti Bhatia

In this case,^[3] the Supreme Court considered whether exclusive jurisdiction clauses in employment contracts are valid under the Indian Contract Act 1872 (the IC Act). Two former employees of HDFC Bank (a leading Indian private sector bank), whose contracts contained clauses restricting disputes to Mumbai courts, had filed suits in two different cities (Patna and Delhi) challenging their termination. HDFC Bank sought dismissal of

those suits based on the jurisdiction clauses. Appeals against the orders of the Patna High Court (which ruled in favour of the bank) and the Delhi High Court (which ruled in favour of the employee) were brought to the Supreme Court and heard concurrently as they were connected matters.

The main question was whether Section 28 of the IC Act, which bars agreements in restraint of legal proceedings, prohibits exclusive jurisdiction clauses, especially in employment contracts where there may be unequal bargaining power between the employer and employee. The former employees argued these clauses unfairly restrict access to justice in their local courts.

The Court rejected this argument and held that exclusive jurisdiction clauses are valid so long as they do not completely bar access to legal remedies but only provide a reasonable forum for dispute resolution. The Court emphasised that contracts must be honoured regardless of relative bargaining strength.

It was also held that the Mumbai courts did have jurisdiction given the contracts were administered, executed and decisions for hiring and termination were taken in Mumbai. The Supreme Court upheld the dismissal of the suit in Patna and overruled the Delhi High Court's contrary decision, affirming the enforceability of exclusive jurisdiction clauses in employment contracts when reasonable and lawful.

Procedure

'At will' employment

Indian laws do not recognise the concept of 'at will' employment. Services of an employee can be terminated for a valid cause after an inquiry during which due opportunity is provided to the alleged employee to present their case having regard to the principles of natural justice.

The law permits employers to terminate employment in cases of redundancies after compliance with the applicable law. An employer is required to provide a prior advance notice and payment of severance compensation as per the applicable law.

Termination for workmen employees

Pursuant to the ID Act, termination of employment of workmen can be carried out for any reason, provided that all workmen who have completed one year of continuous service^[4] under an employer are given:

1. notice of one month or payment of wages in lieu of notice; and
2. compensation equivalent to 15 days' average pay for every completed year of continuous service, or any part thereof over six months.

Furthermore, the employer will also be required to serve notice to the relevant labour authority about the retrenchment. The above conditions are not applicable in case of termination of employment as a punishment inflicted by way of disciplinary action.

Factories and mines employing more than 100^[5] workmen will have to obtain prior approval of the relevant government authority, and also provide three months' prior written notice or payment in lieu of notice instead of one month's notice.

Prior permission of the relevant government authority will also be required for closure of establishments where 50^[6] or more workmen are employed.

Procedures for settlement of termination under the ID Act

The ID Act provides for the appointment of conciliation officers, boards of conciliation, courts and tribunals for settlement of industrial disputes.

At the first instance, the dispute is referred to conciliation officers who work in the Department of Labour. Their role is to work with the parties to help them settle the dispute. The outcome of the conciliation proceedings is not binding on the parties.

The state government may also set up a board of conciliation to help settle a specific case or dispute. The board of conciliation is not a permanent body and is set up on an ad hoc basis for specific matters.

If the parties are unable to resolve their disputes through conciliation, the conciliation officer or the board of conciliation will submit to the appropriate government a full report setting forth the facts and circumstances leading to the dispute and steps taken for bringing about a settlement thereof, and its findings thereon, the reasons on account of which a settlement could not be arrived at, and its recommendations for the determination of the dispute. The conciliation officer or the board, as the case may be, is required to submit its report to the government within the prescribed time, which can be extended by the government.

The appropriate government may thereafter decide to refer the matter to the labour courts for judicial trial. The ID Act requires the labour courts to pronounce its judgments within a period of six months. However, practically, there is a significant delay in disposal of the cases.

Pursuant to the ID Act, a workman can make an application directly to the Labour Court for adjudication of termination-related disputes after the expiry of 45 days from the date when the workman made the application to the appropriate government for conciliation of the dispute.

A party aggrieved by the decision of a labour court may prefer appeal before the jurisdictional High Court followed by the Supreme Court of India.

Termination of non-workmen employees

Termination of non-workmen employees will be governed by the applicable S&E Act.

S&E legislation in many states, such as Karnataka, Andhra Pradesh, Delhi and Haryana, require that employees who have been in continuous employment for a certain specified

period should not be terminated except for reasonable cause and after providing prior notice of a specified period (generally of one month) or payment in lieu of notice.

Several courts have ruled that closure of the business due to contraction in the business, reduction of work, loss in business, financial constraints, action in the interest of efficiency and economy, and winding up of a business will be considered as reasonable causes for termination of employees. However, employers are required to provide proper reasons for termination of employment, and merely stating that an employee's services are no longer required will not suffice.

S&E legislation affords the impacted employee with a right to appeal to the concerned authority in cases where no reasonable cause has been cited by the employer.

Alternative remedies

Some employees (workmen and non-workmen) may also have the right to make a claim in the jurisdictional civil courts for termination-related disputes under the pretext of breach of the employment contract. However, an employee can either seek relief under the special legislation, namely the ID Act (for workmen) or S&E legislation (in the case of non-workmen), or from the civil court for breach of contract. An employee cannot make a claim in both the civil court as well as before the authority under the ID Act or S&E legislation, as the case may be.

Disputes relating to sexual harassment at the workplace

The POSH Act aims to protect female employees as well as female visitors to the workplace and contract workers.

The POSH Act requires employers to:

1. frame a policy on the prevention of sexual harassment of female employees;
2. set up an internal complaints committee (ICC) to deal with complaints relating to sexual harassment of female employees in cases where an employer is employing 10 or more employees;
3. organise periodic workshops to sensitise employees to prevent sexual harassment at the workplace; and
4. submit an annual report with the jurisdictional labour officer on the number of complaints received and the action taken by the relevant employer.

The ICC is responsible for the following:

1. receiving complaints of sexual harassment in the workplace;
2. initiating and conducting inquiries pursuant to this policy;
3. submitting findings and recommendations of inquiries;
4. coordinating with the employer in implementing the appropriate action;
5. maintaining strict confidentiality throughout the process pursuant to the POSH Act; and

6. submitting annual reports to the employer and district officer as outlined by the policy.

The complainant may file a written complaint of sexual harassment in the workplace to the ICC within three months of the incident or latest incident (in the event of multiple incidents). The complaint must be in writing and signed by the complainant. The ICC may extend the timeline by another three months if it is satisfied that genuine reasons prevented the lodging of the complaint within the prescribed period.

In cases where the aggrieved employee is unable to file a complaint on account of death, physical incapacity or mental conditions, the complaint may be filed by the aggrieved employee's relative, friend, co-worker, an officer of the National Commission for Women or State Women's Commission, or any person who has knowledge of the incident with the written consent of the aggrieved individual or the aggrieved individual's legal heir, as may be prescribed.

Within seven days of receiving the complaint, the ICC must forward the same to the accused for their response. The accused must submit their response along with supporting documents within 10 working days of the date of receipt of complaint. The ICC should conclude the hearing within 90 days of the date of receipt of complaint. The ICC is required to follow the principles of natural justice and hear both the complainant and the respondent. Legal representatives of the parties are not allowed to participate in the proceedings before the ICC.

If requested in writing by the complainant, the ICC may recommend that the employer provide certain interim relief, namely:

1. transfer the aggrieved employee or the accused to any other workplace;
2. grant leave of up to three months to the complainant; or
3. grant such other relief to the complainant as allowed by the POSH Act or the Rules, including restraining the accused from reporting on the work performance of the complainant.

The ICC will, after completion of the inquiry, submit its finding to the employer along with appropriate action to be taken against the accused as per the employer's policy, which could include the termination of the accused's employment.

Types of employment disputes

From a general employment perspective, the most common types of disputes that arise between employers and employees relate to:

1. unfair dismissal;
2. breach of contract pertaining to non-payment of non-statutory incentives;
3. harassment and bullying; and
4. non-payment of severance compensation.

Additionally, India also has several specific laws on other aspects of employment, such as payment of wages, bonuses, gratuity benefits, maternity benefits, social security, leave and holidays, and equal opportunities. Each of the specific laws provides for a specific authority that has jurisdiction to entertain disputes covered under the legislation.

For example, the Payment of Wages Act 1936 regulates the payment of wages of certain classes of employed persons. The authority appointed under the Act has jurisdiction to entertain applications relating to the following:

1. deductions and fines not authorised to be deducted from wages; and
2. delay in payment of wages beyond the wage periods.

The MB Act is applicable in respect of an establishment where 10 or more persons are employed, or were employed, on any day of the preceding 12 months. The Act requires employers to provide paid maternity leave of a specified duration to female employees expecting a child. A female employee is entitled to maternity leave only if she has worked for the employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery.

Under the Act, a claim can be made before the jurisdictional labour inspector or authority appointed by the Act for:

1. non-payment of maternity benefits; and
2. termination of a female employee during or on account of her absence from work due to maternity leave.

The Payment of Gratuity Act 1972 is a social security legislation that requires employers to pay gratuity to employees on:

1. superannuation;
2. death or disablement due to accident or disease; and
3. retirement or resignation, provided the person has completed five years of continuous service with the employer.

For every completed year of service or part thereof in excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days' wages that was last drawn by the employee concerned. However, the maximum gratuity payable under the Payment of Gratuity Act 1972 is 2 million Indian rupees or more, as agreed in the employment agreement.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person so entitled, they can submit an application to the controlling authority appointed under the Act, who will hear the parties and issue a certificate for that amount to the collector, who shall then recover the same, together with compound interest thereon.

It is important to understand that more than one authority may seem to have overlapping jurisdiction over a particular matter, and it is important to ascertain the most appropriate authority before which a given claim can be made. For example, in respect of a workman who is covered under the Payment of Wages Act 1936, the claims relating to non-payment of wages during the wage period or unauthorised deductions can be made before the authority under the Payment of Wages Act. However, the issues relating to determination of actual wages can be the subject matter of industrial disputes under the ID Act over which appropriate industrial tribunals may have the jurisdiction.

Outlook and conclusions

In 2019, the Indian government introduced four Labour Codes (the Code on Wages; the Industrial Relations Code; the Code on Social Security; and the Occupational Safety, Health and Working Conditions Code) with a view to consolidating and amending the 29 major labour laws currently enacted in the country. The Codes are meant to facilitate a more streamlined procedure for compliance by employers and employees, and resolve conflicting definitions and provisions that currently exist due to the large number of laws covering overlapping topics. The Codes have been passed by both Houses of the Parliament and have also received the assent of the President.

These Codes have recently been notified. The central government and state governments are in the process of framing relevant rules under these Codes for their implementation. Most states and union territories have framed draft rules under these codes; however, these are yet to come into force.

The Indian government also passed its data privacy legislation – the Digital Personal Data Protection Act 2023 (the DPDP Act) in August 2023. However, the DPDP Act is currently not in force, and will come in force upon notification of the same by the government. Many of the procedural aspects of the DPDP Act are covered in delegated legislation, referred to as 'rules'. On 3 January 2025, the draft Digital Personal Data Protection Rules 2025 (the Draft DPDP Rules) were published by the government for a public consultation exercise, and feedback was invited before 5 March 2025. Reports suggest that the Draft DPDP Rules are close to finalisation and are expected to be notified in late 2025. It is expected that the DPDP Act will be enforced soon thereafter, and a compliance timeline may be provided to ensure that stakeholders have systems in place to ensure compliance.

The DPDP Act will have implications for employers in the processing of employee personal data, such as processing data for the purposes of employment as a 'legitimate purpose' under the DPDP Act as opposed to consent as the legal basis for processing (which is the status quo under the currently applicable law), ensuring that data subjects are provided with the rights they are entitled to, and putting in place adequate protections in contracts with data processors who are processing employee personal data on the employer's behalf.

Endnotes

- 1 *The Management of Worth Trust v. The Secretary, Worth Trust Workers Union* (Supreme Court of India), Civil Appeal 4717 of 2025. [^ Back to section](#)
- 2 *M/s Stesalit Limited v. Union of India and others* (Calcutta High Court, WPA 532 of 2025). [^ Back to section](#)
- 3 *Rakesh Kumar Varma v. HDFC Bank Limited with HDFC Bank Limited v. Deepti Bhatia* (Supreme Court of India), Civil Appeal 2282/2025 with Civil Appeal 2286/2025. [^ Back to section](#)
- 4 A workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine, and 240 days in any other case. [^ Back to section](#)
- 5 The threshold for the number of workmen could vary from state to state. [^ Back to section](#)
- 6 The threshold for the number of workmen could vary from state to state. [^ Back to section](#)

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Introduction

In Japan, labour and employment disputes are framed by the categories of individual employment law and collective labour relations.

Individual employment law focuses on the relationships between individual employees and their employers, and is primarily regulated by the Labour Standards Act and the Labour Contract Act. These laws modify the civil law principle of free contracting between equals, in consideration of the inherent power imbalance between employees and employers. The Labour Standards Law sets the minimum standards for working conditions, either directly setting or delegating to specific regulations. Examples of regulated working conditions include maximum working hours, minimum wage requirements, safety and health protections and mandates for holidays and leave. To ensure compliance, it also includes provisions for criminal penalties or additional payments for violations. The Labour Contract Law, on the other hand, provides the framework for the formation, content and termination of employment contracts, ensuring that these contracts are fair and transparent.

On the collective side, labour relations between unions and employers are governed mainly by the Labour Union Law. This law seeks to balance the power and interests of employees and employers by supporting collective bargaining, facilitating the formation and operation of labour unions and protecting the right to collective action.

This framework of Japan's employment and labour laws developed around longstanding practices including lifetime employment, seniority-driven wage systems and the mass induction of fresh graduates. While these practices are gradually transforming, legal and normative precedents set in former eras still have a certain influence on the legal system and its implementation today. As a result, the general tone of Japanese labour and employment law tends to be very protective of workers. In particular, dismissals and other unfavourable treatments towards employees are strictly regulated.

However, the system does allow employers relatively wide discretion over employees' working conditions. This discretion can appear extreme from the perspective of other jurisdictions, even permitting employers in Japan nearly unilateral control over employees' roles and geographical work locations. However, employers must still be cautious not to cross the societally determined thresholds that would, if overstepped, constitute an abuse of the employer's discretionary power.

Year in review

Amendments to employment contract requirements

On 1 April 2024, Japan enacted a notable amendment to employment contract regulations, affecting all employers. The amendment requires that all employment agreements or notifications of employment conditions explicitly state the scope of the workplace and the extent of changes to job responsibilities. This legal update requires every employer to revise their existing employment agreement templates to align with the new requirements.

This requirement applies to all employment contracts that are executed or renewed from 1 April 2024 onwards. This initiative aims to enhance clarity in employment agreements, to foster a better understanding between employers and employees and reduce the potential for disputes.

Additionally, from 1 April 2024, the legislation requires that fixed-term labour contracts clearly state limits on renewals in terms of the total duration of consecutive contracts or the number of renewals permitted. Furthermore, the amendment also requires that an employee entitled to convert to indefinite-term employment contracts must be explicitly informed of this option by their employer.

Legal developments addressing long working hours

Addressing long working hours remains a critical issue in Japan, and recognition of the need to eliminate its entrenched culture has become widespread. Measures in both the public and private sector have accelerated, with three notable changes in recent years targeting overtime reduction.

First, from April 2023, the overtime premium for work exceeding 60 hours per month applies to all companies, regardless of size. Under the 2010 amendment to the Labour Standards Act, overtime beyond 60 hours must be paid at a rate of at least 50 per cent (up from the standard 25 per cent). This requirement had been deferred for small and medium-sized enterprises, but the grace period has now ended. While labour management agreements may still allow employees to take paid leave (time off in lieu) instead of receiving the additional premium, employers must in all cases pay the base 25 per cent overtime premium.

Second, revisions effective 1 April 2024 tighten the discretionary labour system, which exempts certain professional roles from traditional overtime rules and often results in excessive working hours. The amendment requires individual employee consent before applying the system and obliges the employer to establish procedures allowing employees to withdraw consent at any time. Employers are expressly prohibited from retaliating against employees who refuse or later withdraw consent. Labour-management agreements must now set out clear withdrawal procedures, requiring both new agreements and amendments to existing ones to ensure compliance.

Third, from 1 April 2024, stricter overtime caps were extended to industries that had previously been exempt, such as construction, transportation and frontline medical workers. Overtime is now limited to 45 hours per month and 360 hours per year. In exceptional cases, such as temporary peak workloads, overtime may exceed these limits, but even then it cannot surpass 720 hours annually. For truck drivers – a longstanding focus of public concern – both monthly and annual limits have been reduced, mandatory rest intervals extended and stricter rules introduced, such as a daily average maximum of nine hours (over two days) and no more than four hours of continuous driving. While these reforms aim to improve working conditions, they also place additional strain on a sector already struggling with labour shortages, requiring coordinated adjustments by drivers, carriers, shippers and consumers.

Enhancements in workplace harassment prevention

In recent years, awareness of workplace harassment prevention has grown significantly in Japan. One emerging concern is customer harassment – abusive conduct by customers or other third parties toward workers that goes beyond legitimate complaints (e.g., unreasonable demands, baseless accusations, intimidation and abusive language).

Reflecting this concern, an amendment to labour legislation promulgated in June 2025 defines customer harassment as 'conduct occurring in the workplace by customers, business counterparties, facility users, or other persons connected with the employer's business that, in light of the nature of the employee's duties and other circumstances, exceeds the bounds of what is socially acceptable and disrupts the employee's workplace environment'. The amendment requires employers to take preventive and responsive measures against such harassment and will take effect on a date set by cabinet order, expected in 2026.

The Minister of Health, Labour and Welfare (MHLW) is mandated to issue detailed guidelines specifying the measures employers must adopt to ensure effective operation. These measures are expected to include: (1) establishing and disseminating a clear policy on customer harassment; (2) creating and publicising consultation and reporting channels; (3) ensuring prompt and appropriate responses after incidents; and (4) adopting additional deterrent measures.

Aligned with the same policy direction, the amendment expands employers' obligations to prevent sexual harassment beyond current employees, extending coverage to job applicants and prospective workers (e.g., students and interns). Employers are now expected to ensure harassment-free recruiting and internships practices. The MHLW guidelines are anticipated to require: (1) clear written policies, communicated to employees (e.g., rules set in advance for interviews and interactions); (2) accessible consultation and reporting channels available to applicants; and (3) prompt and appropriate post-incident responses (e.g., responding to consultations and apologising to affected individuals).

As a result of the amendment, customer harassment and applicant-related sexual harassment are now recognised statutory categories of harassment under labour legislation, requiring employers to take preventive and responsive measures. The full list now includes: sexual harassment, harassment related to pregnancy and childbirth, harassment related to childcare or parental leave, power harassment (abuse of authority in the workplace), customer harassment and sexual harassment during recruitment (see the 'Harassment' section below for more details on power harassment).

Protection for independent contractors (freelancers)

As Japan's labour market shifts toward greater flexibility, the number of independent contractors (freelancers) has steadily increased. The government has encouraged diverse work styles, including freelance work, as part of its response to persistent labour shortages. However, freelancers often face weaker bargaining positions in their contractual dealings with businesses – such as setting scope of work, fees, delivery and payment terms – and, as non-employees, fall outside the scope of the Labour Standards Act and other labour-related statutes – leaving them with limited statutory protections.

To address these concerns, the government enacted the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (commonly referred to as

the Freelance Protection Act), which took effect on 1 November 2024 and aims to create a safer and more predictable environment for freelancers.

The Freelance Protection Act applies to business operators engaged as freelancers – commissioned to perform services without employees of their own – and establishes clear rules for how businesses must contract with them. These businesses are required to provide key terms in writing or electronically immediately after commissioning, including: the scope of work, the date and place for delivery of the services or deliverables, remuneration, the payment due date and, if applicable, the timing of inspection or acceptance of the services or deliverables. The Freelance Protection Act also introduces a timely payment rule: businesses must set payment due dates that are as short as practicable, and, in any case, no later than 60 days after receipt or acceptance of the service or deliverables, and with payment to be made by that date.

Additionally, the Freelance Protection Act prohibits various forms of unfair conduct, including: refusing to accept deliverables or unilaterally reducing fees without just cause; returning deliverables without just cause; pressuring freelancers to accept unreasonably low fees; coercing freelancers to purchase or use certain products without just cause; demanding unjust economic benefits (e.g., uncompensated rights transfers, kickbacks and free add-on work outside the agreed scope); and requiring rework without compensation (e.g., obliging freelancers to redo or modify completed work due to changes in specifications rather than defects).

Beyond transactional safeguards, the Freelance Protection Act also addresses freelancers' working conditions. Businesses must make reasonable accommodations to help freelancers balance pregnancy, childbirth, childcare and caregiving with their commissioned work (taking into account the nature and duration of the engagement, and upon request). Businesses are also required to establish consultation and response systems, and to take other necessary measures, to ensure freelancers are protected from harassment in the course of their work.

Procedure

Individual employment dispute resolution

To effectively resolve employment disputes, employers and employees are expected to first attempt to resolve issues internally within the company. However, there are inherent limitations to resolving disputes solely at the company level. Thus, both administrative and judicial mechanisms are also in place.

Administrative mechanisms provide support for resolving conflicts through discussions and act as an intermediate step before escalating to a definitive judicial resolution. This layered approach ensures that all parties have an opportunity to amicably resolve their differences, moving to the courts only if necessary.

Administrative dispute guidance and compliance

Prefectural Labour Bureau

Prefectural Labour Bureaus play an advisory role in the resolution of employment disputes. When approached for assistance, the director of a Prefectural Labour Bureau clarifies the facts, identifies issues and suggests directions for resolution in accordance with laws and precedents, advising and guiding the parties involved towards resolving their disputes. In providing this advice and guidance, the director may consult with experts who are well versed in labour issues and the realities of the industry.

In cases where it becomes necessary to facilitate dispute resolution further, and if either or both parties agree, the director may refer the case to a Dispute Coordination Committee for mediation. This mediation process involves a committee composed of experienced individuals, such as academics in labour studies, lawyers and certified social insurance labour consultants, who encourage voluntary discussions aimed at settling disputes. Mediators, after gathering necessary opinions, present mediation proposals to resolve the case. The success rate for reaching agreements through this process is around 30 per cent.

While the advice from the director of the Prefectural Labour Bureau and mediation by the Dispute Coordination Committee do not have the coercive power of a court, they offer the advantages of being free, accessible and capable of providing quick and simple resolutions.

Labour Standard Inspection Office

The Labour Standard Inspection Office is an organisation under the Prefectural Labour Bureau and serves as a front line agency within the labour inspection administration. Workers can report to labour inspectors if they believe there has been a violation of the Labour Standards Law. Inspectors from the Labour Standards Inspection Office have the authority to demand the submission of books and documents, conduct interrogations and issue orders for reports and appearances if necessary.

If the Labour Standards Inspection Office finds factual violations of the Labour Standards Law, it issues a correction recommendation to the employer. Although these correction recommendations are administrative guidance without legal coercive power, they are based on violations of the Labour Standards Law. Therefore, if an employer fails to comply with these recommendations, criminal penalties can be imposed.

Quasi-judicial dispute resolution

Labour tribunals

Employees seeking resolution of employment disputes often choose to file their complaint with a labour tribunal as the first step, rather than go directly to the courts.

A labour tribunal is a procedure operated by the courts, but aimed at a swift resolution of the dispute between employer and employee. The labour tribunal panel consists of one judge and two labour tribunal commissioners from the private sector who are familiar with labour practices. Unlike regular court proceedings, labour tribunal sessions are conducted privately, ensuring confidentiality. The tribunal generally aims to conclude cases within

three sessions, requiring that all necessary arguments and evidence be presented at the first session.

On average, the duration of a labour tribunal case is about 90.3 days, with over half of the cases (56.9 per cent) being resolved within three months of filing. The tribunal first attempts to mediate the dispute, successfully resolving 69.4 per cent of cases through this approach. If the parties do not agree with the settlement proposed during mediation, the panel issues its proposal as a ruling, which occurs in 16.6 per cent of cases. If one party objects to the tribunal's decision, the ruling can lose its binding effect and may be transferred to civil litigation.^[1]

Judicial dispute resolution

Civil litigation

An employee can file litigation in an employment dispute either directly or following a labour tribunal procedure.

In Japan, courts of general jurisdiction usually handle employment disputes along with other private civil cases, with exceptions in Tokyo and Osaka where courts of first instance have divisions that specialise in labour matters.

Unlike the labour tribunal process, which is conducted privately, civil litigation proceedings are public. This openness allows for a transparent process but can also add to the duration and complexity of resolving employment disputes in Japan.

Employment litigation in Japan tends to be complex, specialised and time-consuming. One reason is, as mentioned above, employment disputes are handled in general civil litigation proceedings. As a result, they have no limitation on the number of hearings, allowing parties to extensively submit documents and evidence to support their claims. Furthermore, labour litigation often involves a more in-depth examination of evidence. This is partially indicated by the higher incidence of witness examinations, which occurred in 32.7 per cent of labour cases in 2022, compared with only 14.2 per cent in all civil cases. As a result, while the average duration for first-instance civil litigation is about 10.5 months, labour-related cases average 17.2 months. This complexity also often necessitates legal representation for employment litigation, with 87.0 per cent of labour cases in 2022 involving legal representatives for both parties, compared to 47.9 per cent in all civil cases.

Employment litigation most often concludes in a settlement. Settlements accounted for 52.8 per cent of cases in 2022, compared to the 27.2 per cent that ended in a judicial decision. In contrast, for civil litigation in general, 32.8 per cent of cases in 2022 ended in settlements and 45.8 per cent in judgments. That settlements are more commonly pursued in employment disputes suggests that parties should be aware that they may find themselves ultimately settling after the complex nature of their case has been laid bare before a judge.^[2]

Civil provisional remedies are expedited judicial procedures by which the courts can order temporary measures to ensure the enforcement of rights. In the course of employment disputes, provisional remedies are sometimes used to request employers to pay wages in

dismissal cases. Employers should be aware that they could be required to pay about a year's worth of wages soon after the case is filed if a provisional wage payment is granted.

For a provisional remedy order to be issued, there must be a right that should be preserved, such as a claim for wage payment. Also, the applicant must prove to the court that there is a significant risk of severe damage or urgent danger without such temporary measures.

If a party objects to the preservation measure, they have the right to protest it. This allows for further judicial scrutiny and ensures that the measures are not unjustly imposed, balancing the interests of both employers and employees.

Other measures

In addition to the above judicial procedures, two other systems that involve the courts are available: small claims action and civil mediation.

Small claims action provides a simplified process for monetary claims in which the amount in dispute is ¥600,000 or less.

Civil mediation involves a process where a judge and a civil mediation committee work to resolve disputes based on the agreement of the parties involved.

Collective labour dispute resolution

In Japan, the proportion of employees who are union members has been steadily declining. A survey in 2023 showed that only 16.3 per cent of workers were unionised.

However, it is not uncommon for workers who are not members of any union to turn to regional or industrial labour unions when labour disputes arise. Although it is difficult to definitely say whether labour unions have a strong presence in Japanese society, it is indisputable that they frequently become important when disputes occur between workers and employers. In such circumstances, an employer must take appropriate and careful action to respect the union's position.

Unfair labour practices

Conflicts between employers and labour unions fall into three primary categories: disadvantageous treatment, refusal to bargain and interference.

Disadvantageous treatment involves harmful actions against employees for their union affiliation. This includes dismissals, salary cuts and making union non-membership a condition of employment.

Refusal to bargain occurs when an employer unjustifiably declines to engage in collective bargaining with the union representing its employees. This includes not only outright refusal to negotiate but also insincere participation in bargaining sessions.

Interference is an employer action that disrupts union formation and operations. It can include criticising union establishment, discouraging union membership, obstructing union activities and intimidating surveillance. It may also involve employers financially supporting union operations, potentially impacting their independence and effectiveness.

Labour Commission

The Labour Commission is an administrative committee established under the Labour Union Law. It is composed of an equal number of employer commissioners, worker commissioners and public interest commissioners, making it a tripartite committee. Employer and worker commissioners listen to the arguments of both parties and play a crucial role in facilitating early dispute resolution through conciliation. The public interest commissioners have the authority to determine the validity of unfair labour practices and issue remedial orders.

The procedure for remedying unfair labour practices by the Labour Commission begins only upon a party's petition and does not initiate on its own authority. After a case is filed, the Labour Commission takes the lead in directing the proceedings.

At the conclusion of the process, the Labour Commission has the authority to determine whether an unfair labour practice has occurred and to issue orders. The Commission's orders have broader scope than judicial-based remedies. For example, the Commission can issue remedial orders with monetary effects, such as ordering pay rises to address wage discrimination against union members.

Judicial remedies

Three categories of remedies are commonly sought by labour unions alleging unfair labour practices.

The first common remedy is the invalidation of an employer's actions against employees. Actions that would otherwise have legal effect but are based on union membership or legitimate union activities are considered violations of the Labour Union Law and may be rendered invalid. These acts include dismissals, disciplinary action, transfers or secondments based on union membership or legitimate union activities.

The second common remedy is monetary damages. Court-awarded damages can compensate for past employment-related legal harms, such as unpaid wages, and employees can also seek compensation for financial and emotional damages from unfair labour practices under tort law.

The final common remedy is confirmation of the employees' right to engage in collective bargaining. This is used to address employers' refusals to bargain. Due to the often urgent need to resolve refusals to bargain, such matters can be expedited through provisional court injunctions.

Types of employment disputes

The most common employment disputes involve the claim that a unilateral dismissal is invalid (or that an employer improperly encouraged an employee's voluntary resignation during negotiations). Less common but also alleged are claims that employers improperly refused to renew an employment agreement, disputes alleging improper disciplinary actions against employees and claims of employer harassment.

Dismissal

In Japan, unilateral dismissals are only legally valid under these stringent and vague conditions: dismissals must be based on 'objective and reasonable grounds' and be 'socially appropriate' considering the 'circumstances, motives and procedural fairness'.

As mentioned, Japan's employment laws are based on longstanding practices, including lifetime employment, seniority-driven wage systems and the mass induction of fresh graduates. As a result, Japanese courts are reluctant to acknowledge that dismissal of a worker inducted into a culture of lifetime employment is ever based on objective and reasonable grounds, or that it is ever socially appropriate. Courts frequently give significant weight to circumstances that favour the employee and often demand that employers explore alternative solutions to dismissal. As these practices are gradually transforming, employers may encounter anecdotal counterexamples. However, these precedents within the legal system still have a dominant influence on the legal outcomes in dismissal disputes today.

Dismissing an employee for inadequate performance will involve investigations into the employer's own diligence at the initial evaluation of the employee when hiring, the sincerity of the employer's attempts at training, the availability of alternative work within the company, the significance of the gap in required capabilities, the significance of a dismissal on the employee's livelihood and the employee's expectation of the employment relationship.

To sustain a valid dismissal on disciplinary grounds, such as frequent tardiness, absences or misconduct, extreme circumstances are generally required. Examples are rare but might include an employee with patterns of physical violence, consistently using threats and abusive language towards clients or defiantly refusing a suspension or other substantial orders.

Dismissals for economic necessity face even stricter scrutiny because they are due to reasons unrelated to the conduct of particular employees. They must be based on authentic business downturns, and all possible alternatives to layoffs – such as reducing overtime, halting hires, redeploying staff, ending temporary contracts, encouraging voluntary resignations and cutting executive salaries – must have been genuinely attempted. Also, the selection of employees for layoffs must follow rational criteria. The process also involves explaining to the affected employees the need for layoffs, alternative measures to avoid dismissals and details about the timing, scale and selection process of the layoffs, ensuring that the process is conducted fairly and in good faith.

Refusal to renew employment

Dismissal protections for employees may extend to temporary workers whose contracts are not renewed. Rather than merely focusing on the contractual terms, considerations similar to those for dismissals are often applied based on the actual conditions of work, to ensure substantive protection of workers. For example, the repeated renewal of a fixed-term contract may cause the worker to expect the contract to continue indefinitely, from the perspective of societal norms and expectations, and so an unexpected notification of non-renewal may be deemed to act as an invalid declaration of dismissal.

This can apply even in cases where it cannot be said that the contract is substantially equivalent to an indefinite contract. If the nature of the work is enduring or the actions and perceptions of the parties suggest that the worker has a reasonable expectation of continuous renewal of the contract, similar legal conclusions may apply. This assessment may remain valid despite significant efforts of the employer to signal that the contract is a temporary one.

Non-renewal may be found invalid even if the employer has set a limit on the renewal of the contract or included a non-renewal clause in the last renewal. The content of the work, the subjective attitudes of the parties and the renewal procedures are all investigated to determine whether there was a reasonable basis for the worker to expect the contract's renewal.

Another layer of protection is added for fixed-term contracts with the same employer for a total duration exceeding five years. If an employee has been renewing a temporary contract for a period of five years or more, that employee may request to convert the fixed-term contract into an indefinite-term employment agreement.

Disciplinary actions

In Japan, employers must specify in the employment rules (or employment agreement) their right to discipline employees who violate service discipline (i.e., the rules, regulations and standards of behaviour that are expected in the workplace). Disciplinary actions can include admonitions, certain forms of salary reduction, suspension, demotion and up to dismissal. However, due to the adverse nature of such measures, the validity of disciplinary action often becomes a matter of dispute.

For a disciplinary action to be deemed valid, the employment rules must explicitly mention the reasons for discipline and, as with unilateral dismissal, the employer's disciplinary action must have an 'objectively reasonable' basis and be considered 'socially appropriate'. Disciplinary action is more often deemed valid than unilateral dismissal. The validity of a disciplinary action is primarily assessed by weighing the nature and severity of the employee's conduct against the severity of the punishment imposed.

If a disciplinary action is judged to be abusive, not only can the action be invalidated, but the employee may also be entitled to (relatively small amounts of) compensation based on tort law.

Harassment

Harassment issues have risen to the forefront of societal conversation, causing harassment complaints to administrative agencies to surpass complaints about dismissals, resignations and labour conditions. As a result, there have been recent legal reforms, and the Minister of Health, Labour and Welfare has since published new guidelines for the prevention of harassment using this definition: 'power harassment is any behaviour in the workplace that exploits hierarchical relationships and exceeds necessary and appropriate boundaries, thereby harming an employee's work environment'. This has led to increased awareness of power harassment as a legal issue, prompting more employees and employers to seek power harassment advice.

Employers are legally required to take measures to prevent power harassment. While employers can be held responsible for acts of harassment in their workplaces, the laws and other measures implemented by authorities are designed to make employers implement prevention measures to avoid such incidents.

Retrospective consequences for individual acts of power harassment are typically found only in conjunction with other labour-related claims by employees, such as invalid termination. While non-compliance with broader policy requirements is a significant matter, the actual legal consequences of individual claims of harassment are relatively minor in their effect on employers.

Outlook and conclusions

As Japan navigates the evolving landscape of labour and employment disputes, several key issues have come to the forefront that require ongoing attention and resolution. Among these, the regulation of long working hours remains a significant challenge. Despite previous reforms aimed at reducing notoriously long hours, excessive working conditions persist, particularly in industries where overtime is common.

The diversification of work styles accelerated by the covid-19 pandemic has also introduced new dimensions to labour and employment disputes. The increase in remote work, gig economy jobs and flexible work arrangements has expanded the landscape of potential conflicts between employers and employees, reflecting a shift that current labour laws may not fully accommodate. As a result, there has been a noticeable increase in disputes concerning these modern working conditions, highlighting the gaps in existing legal protections.

In response to these evolving challenges, frequent amendments to labour laws have been necessary. The legal system works to keep pace with rapid workplace changes. Recent reforms not only continue efforts to curb long working hours but also reflect a broader shift toward upgrading overall workplace conditions. Alongside working hours regulations, policymakers and employers are prioritising harassment-free environments and extending protections to groups traditionally outside the scope of core labour statutes, such as job applicants and freelancers. Nonetheless, significant gaps remain, underscoring the need for ongoing legislative attention and adaptation.

As these new labour issues unfold, the accumulation of case law becomes increasingly important. Judicial precedents will play a crucial role in shaping the interpretation and application of labour laws, providing clarity and guidance for resolving future disputes. This underscores the importance of a responsive and adaptive legal system capable of addressing the nuances of evolving labour issues.

As Japan looks to the future, its legal system will either continue to remain agile and responsive (and somewhat unpredictable for employers) or the nation may fail to maintain its reputation for labour harmony and balanced economic and social health.

Endnotes

- 1 All figures in this section are taken from: July 2023
Report on Expediting Trials, Supreme Court General Secretariat,
https://www.courts.go.jp/vc-files/courts/2023/10_houkoku_zentai.pdf. ^ [Back to section](#)
- 2 All figures in this section are taken from: July 2023
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Introduction

Under Dutch labour and employment law, various types of procedures can be conducted. Dismissal procedures are common. A characteristic feature of the Dutch dismissal system is the 'preventive dismissal' test. This means that an employer can unilaterally terminate an employment contract only with the approval of a court or, depending on the reasons for the dismissal, the Employee Insurance Agency (UWV). Individual employment law procedures can also be conducted in response to a wide range of other employment-related disputes, including wage claims, enforcement of non-competition clauses, inappropriate behaviour in the workplace, discrimination, illness and reintegration. Furthermore, procedures regarding collective matters can be conducted by trade unions and works councils.

The Netherlands judicial system is divided into 11 districts, each with its own court. Each district court is made up of sectors, which always include civil law, administrative law, criminal law and a subdistrict court. Unlike some other jurisdictions, there is no specialised labour court. The districts are divided into four areas of Court of Appeal jurisdiction: The Hague and Amsterdam in the west, Arnhem-Leeuwarden in the east and the north, and 's-Hertogenbosch in the south of the Netherlands. The highest court in the field of civil law is the Supreme Court.

Labour and employment procedures can take place before various judicial and quasi-judicial bodies as follows.

1. Most employment law disputes, including dismissal requests, must be submitted to the subdistrict court. Only cases involving statutory directors are handled by the civil sector of this court.
2. The UWV handles dismissal applications on economic grounds (redundancies) and dismissals due to long-term incapacity for work. It also provides expert opinions in cases of illness and when there is a question of whether parties have fulfilled their reintegration obligations.
3. In a collective labour agreement, a committee can be appointed, instead of the UWV, to handle dismissal applications on economic grounds.
4. Procedures for compliance with the Dutch Works Councils Act and, more specifically, regarding the works councils right of consent must be submitted to the subdistrict court. Procedures concerning the advisory right of the works council must be conducted at the Enterprise Chamber of the Amsterdam Court of Appeal.
5. Urgent matters can be submitted by way of summary proceedings to the preliminary relief judge.
6. If an arbitration clause is agreed upon, only the arbitrators have the authority to rule on a dispute.
7. Mediation is a common form of alternative dispute resolution for parties to resolve disputes outside of court. Mediation is not regulated by Dutch civil procedural law.
8. Appeals from judgments of the district court (subdistrict court and civil sector) are submitted to the Court of Appeal and entail a full review of the case. Cassation from

judgments of the Court of Appeal is possible at the Supreme Court. The Supreme Court assesses only the lawfulness of a decision and does not assess the facts.

9. There are various authorities where employees can file complaints or reports. For instance, the Dutch Whistleblowers Authority provides advice and support to individuals who wish to report possible wrongdoings in the context of their work-related activities, and also conducts investigations into such wrongdoings within organisations. For violations of privacy laws, employees can turn to the Dutch Data Protection Authority. Last, for discrimination matters, employees can file complaints with the Netherlands Institute for Human Rights.

Year in review

Simplification and Modernisation of Evidence Act

Effective 1 January 2025, the Simplification and Modernisation of Evidence Act entered into force. This Act aims to streamline the process of gathering evidence before initiating legal proceedings and establishes a more active role for judges. The main changes are as follows.

1. Simplification of evidence collection methods: The various methods to obtain information and evidence through the court before initiating proceedings have been consolidated. Now, a single application can request various evidence-gathering actions, such as combining a witness hearing with an expert investigation.
2. Clarification of the right to access documents: The rules regarding the right to access documents held by another party have been clarified. Additionally, this right now extends to obtaining documents relevant to the dispute from third parties not involved in the case.
3. Active role for the judge in discussing the basis of the claim: The act clarifies that judges have the discretion to actively engage with the parties about the facts they present. This allows judges to ensure that certain facts are not unintentionally overlooked or misinterpreted during the hearing.
4. Evidence seizure and official reports of findings: The possibility of securing evidence by having it seized by a bailiff is now legally established. Additionally, it is legally possible to request a bailiff to objectively describe a factual situation in an official report of findings, which provides conclusive evidence of the bailiff's observations.

The section below highlights the most interesting decisions from the Supreme Court regarding employment litigation and dispute resolution. This is not an exhaustive review of the case law in 2024 and 2025.

Is the duty to complain applicable in employment law?

The duty to complain, as prescribed by the Dutch Civil Code, requires a creditor to promptly notify the debtor of any defects in performance. This notification must occur within a reasonable time after the defect is discovered or should have been discovered. Failure to comply with this duty can result in the loss of the creditor's right of action. The rationale is to ensure timely resolution of issues and to protect the debtor against difficult-to-verify complaints.

In 2024, the Supreme Court issued two rulings regarding the duty to complain in employment law. The first case involved a wage claim where a former employee sought payment for unpaid overtime after their employment ended.^[1] The key question was whether the duty to complain applies to wage claims. The Supreme Court clarified that the duty to complain generally applies to all obligations, including those arising from employment contracts and involving monetary payments. However, the nature and content of the legal relationship, as well as the performance involved, are relevant circumstances in assessing whether the creditor has met this duty. The Supreme Court emphasised that the duty to complain pertains specifically to cases of defective performance, as indicated by the statutory provision referring to 'a defect in the performance'. This duty does not apply to situations where no performance has been rendered at all. The failure to fully pay wages or an overtime allowance is not, by its nature, a case of no performance at all. Whether, in a specific case, there has been partial performance or no performance at all depends on the circumstances of the case.

The second case concerned a dispute over a non-competition clause.^[2] The Supreme Court ruled that the obligation of a former employee under a non-competition clause is an obligation to refrain from certain actions (e.g., refrain from entering into the employment of a competitor). In the event of a breach of such a clause, it is not a matter of defective performance but one of non-performance. Therefore, the duty to complain does not apply.

For employment law practice, these rulings are significant because they clarify that, with some exceptions, the duty to complain generally applies to all obligations arising from the employment contract, including wage claims. The nature of the relationship between employer and employee implies that employees are often inclined to complain only after the termination of the employment relationship. It remains to be seen whether lower courts will take this into account when applying the duty to complain.

Are employers obligated to negotiate collective labour agreements with trade unions?

Employers and trade unions have contractual freedom when it comes to collective labour agreements. This means that employers and employer organisations are, in principle, free to decide whether, and if so with whom, they wish to negotiate labour conditions. However, on 26 April 2024, the Supreme Court ruled that an employer's refusal to negotiate with a trade union can be deemed unlawful.^[3] Whether a refusal is unlawful depends on a court's assessment, which considers all relevant circumstances. These include:

1. the representativeness and expertise of the trade union;
2. the importance of having independent negotiators for labour conditions;
3. employee support for the current negotiation method; and
4. the employer's reasons for refusing to negotiate.

Thus, while employers are generally free to choose their negotiation partners, a refusal to negotiate with a trade union may be unlawful, depending on the specific context and interests involved.

Dynamic incorporation clauses and transfer of undertaking

In cases of a transfer of undertaking, employees automatically transfer to the acquirer, retaining all rights and obligations from their employment contracts. This applies to employment conditions in individual employment contracts as well as employment conditions in collective labour agreements. In this context, the 'incorporation clause' is relevant. Such a clause declares a collective labour agreement applicable to the employment relationship. An incorporation clause can be formulated statically, referring to a specific version of a collective labour agreement. A dynamic incorporation clause, however, incorporates not only the current collective labour agreement but also subsequent versions. For example, it might state: 'This employment contract is subject to Collective Labour Agreement X as applicable from time to time.' The question then arises whether such a dynamic incorporation clause remains dynamic after a transfer of undertaking. If so, the acquirer would also be bound by new versions of that collective labour agreement.

In 2017, the European Court of Justice (ECJ) addressed this issue in the *Asklepios* ruling.^[4] The ECJ considered that a dynamic incorporation clause transfers with the business, as long as the acquirer has sufficient possibilities under national law to amend the employees' terms and conditions of employment after the transfer of undertaking. It was, however, uncertain whether Dutch employment law provides sufficient amendment possibilities.

On 12 July 2024, the Supreme Court issued a significant ruling on this matter.^[5] The Supreme Court concluded that Dutch employment law does provide sufficient possibilities for the acquirer to make amendments to the employment conditions, both by mutual consent and unilaterally. The Supreme Court based this on the possibility for an employer to include a unilateral amendment clause in the employment contract and the ability to change employment conditions based on the standards of good employer and good employee conduct. This means that Dutch employment law meets the condition for the transfer of a dynamic incorporation clause retaining its dynamic nature after the transfer of undertaking. Mergers and acquisitions (M&A) practitioners must therefore take this ruling into account.

Compensation for overtime in holiday pay

Employees are entitled to their salary during holidays. There is often debate over which salary components should be included in holiday pay. On 27 September 2024, the Supreme Court ruled on whether overtime compensation should be included.^[6] The Supreme Court referred to established case law from the ECJ that states that holiday pay should place the employee in a similar financial situation as during working periods. This ensures that employees can actually take their entitled vacation. In the *Hein/Holzmann* judgment, the ECJ differentiated between incidental and unpredictable overtime and regular overtime that forms a significant part of the employee's total pay.^[7] Only the latter should be included in holiday pay. The Supreme Court clarified that European case law does not require

overtime compensation to be included in holiday pay if the employer was authorised based on the employment contracts to demand overtime work. The determining factor is that the overtime is performed regularly and its compensation is a significant part of the employee's pay.

Significance of 'entrepreneurship' in determining the nature of the employment relationship

This case concerns whether Uber drivers are self-employed workers or employees. The Court of Appeals has referred preliminary questions to the Supreme Court. The key question is how much weight to give to whether the worker acts as an entrepreneur.

On 21 February 2025, the Supreme Court held the following.^[8] In the *Deliveroo* judgment,^[9] the Supreme Court provided a non-exhaustive list of factors for determining if an employment contract exists, without ranking them. Entrepreneurship is therefore as important as the other factors and can even be decisive, even if other factors point toward an employment contract. As a result, two workers doing the same work for the same company can be classified differently: a worker who genuinely operates as an entrepreneur may qualify as self-employed worker, while one who does not may have an employment contract. In this context entrepreneurship refers to the worker's general (entrepreneurial) situation and can include circumstances outside the specific relationship with the company. The Court of Appeals will now continue the proceedings taking into account the judgment of the Supreme Court.

This case is significant because it is now clear that: (1) entrepreneurship carries as much weight as other factors when determining the nature of an employment relationship; and (2) entrepreneurship can also refer to circumstances outside the specific working relationship (i.e., 'external entrepreneurship').

Cleaners working via the Helpling platform were temporary agency workers

This case concerns cleaners who, through the Helpling platform (which went bankrupt on 10 January 2023), performed cleaning work in private households. The key question was whether the cleaners had a regular employment contract or a temporary agency contract with Helpling, or whether they were employed directly by the households. The Court of Appeals ruled that there was a temporary agency contract between Helpling and the cleaners, with the households acting as the hirers.

On 11 April 2025, the Supreme Court held that, based on legislative history and the structure of the law, there is no requirement that agency work can only be provided to professional or business hirers.^[10] Therefore, the Court of Appeals was correct in ruling that private households can act as hirers and that, in this case, there was a temporary agency contract between Helpling and the cleaners. As a result, the decision of the Court of Appeals stands. This judgment means that organisations that match supply and demand for labour – even outside the usual commercial arrangements – and provide workers to private individuals, can sometimes be considered temporary employment agencies.

Procedure

Application procedure

All proceedings at the subdistrict court about the statutory rules on the termination of employment contracts must be initiated by application. Other claims that concern a termination may also be brought by application; however, a summons is permitted. Examples of these claims include a request for the release from a non-competition clause, for the payment of overdue salary and for the remaining balance of holiday days. Because most employment law procedures at the subdistrict court involve dismissal cases or related claims, the application procedure is the most common procedure.

The application procedure starts with a request to the subdistrict court. This request is known as the application letter, which should contain the contact details of the parties, the request and the reasons for the request. Supporting documents for the case, such as the employment contract, payslips, emails and performance reviews, can be attached to the application. Both the employer and the employee will receive an invitation to a court hearing. The employee may file a statement of defence at least 10 calendar days before the court hearing. During the court hearing, the applicant will be the first to explain and clarify the application. Then, the defendant will give its response. The judge will also ask questions.

Often, the judge will give a preliminary opinion during the court hearing on how the subdistrict court views the case, and will give the parties the opportunity to reach a settlement outside the courtroom. If the parties reach an agreement, the settlement is recorded in writing, which will be the binding arrangement that the parties must comply with. If the parties fail to reach a solution, the judge will give a ruling to the case. This is usually within four weeks of the court hearing.

Appeals from judgments of the subdistrict can be submitted to the Court of Appeal. Cassation from judgments of the Court of Appeal is possible at the Supreme Court.

Summons procedure

Other employment law disputes, not concerning the statutory rules on the termination of employment contracts, must be initiated by summons. This is a more formal and closely regulated procedure. One difference is that in a petition procedure, the court is responsible for summoning the opposing party, whereas in a summons procedure, the claimant summons the opposing party. This is done through a bailiff.

Appeals from judgments of the subdistrict can be submitted to the Court of Appeal. Cassation from judgments of the Court of Appeal is possible at the Supreme Court.

Summary proceedings

When parties urgently need a swift resolution to a dispute, they can request a provisional measure from the competent court. In these summary proceedings, no definitive determination of the legal relationship between the parties can take place, nor can a final judgment be made. The court's decision is valid until there is a court ruling in the main proceedings. In general, anything that can be claimed in the main proceedings can also

be claimed in summary proceedings. In employment matters, this includes, among other things, payment of wages, admission to work, compliance with reintegration obligations and suspension of or compliance with a non-competition or relationship clause.

The plaintiff starts summary proceedings by requesting a hearing date from the court. After obtaining the date, the plaintiff must serve a summons to the defendant as soon as possible. Both parties can submit exhibits before the hearing. The court will announce the judgment date after the hearing. In urgent cases, an oral judgment may be given immediately during the hearing or after a short recess, with key considerations put in writing later. The duration of summary proceedings depends on the urgency of the case.

The court has significant discretion in granting provisional measures. In summary proceedings, the court considers whether it is likely that the court in the main proceedings would grant the claim. Likelihood is sufficient and no proof of the relevant facts is required. The rules of evidence do not apply. If a case is too complex for summary proceedings, the claim can be dismissed on that basis. An appeal is possible against a provisional measure.

UWV proceedings

An employer that wishes to terminate one or more employment contracts on business economic grounds or due to long-term illness must obtain permission from the UWV, commonly referred to as a dismissal permit. The necessary forms for this application are available on the UWV website. If the application is incomplete, the UWV will request the missing information.

Once the employer submits the dismissal request, the employee has two weeks to respond. The UWV can make a decision based on this response immediately, which is usually the case. In rare instances, the UWV may hold a second round for the parties to submit information or a hearing. The UWV then issues a written decision, which is valid for a maximum of four weeks. During this period, the dismissal permit must be used to terminate the employment contract by giving notice while taking into account the applicable notice period. The duration of the procedure can be deducted from the notice period, provided that a minimum notice period of one month remains.

The UWV procedure is an administrative law process. Normally, parties that disagree with an administrative body's decision can file an objection and appeal. However, this is not possible in the UWV procedure. If the UWV rejects the dismissal permit, the employer can ask the subdistrict court to dissolve the employment contract. Conversely, if the UWV grants the dismissal permit and the employer terminates the employment contract, the employee can request the subdistrict court to reinstate the employment contract. The court procedure effectively serves as an appeal option.

Collective actions

Works council

The Dutch Works Councils Act has specific procedures for disputes with the works council. These include:

1. procedures regarding the right of advice at the Enterprise Chamber of the Amsterdam Court of Appeal;
2. procedures regarding the right of consent at the subdistrict court; and
3. a general dispute resolution procedure also at the subdistrict court.

Below is an explanation of these procedures.

Procedures regarding the right of advice

Under the Dutch Works Councils Act, a company must allow the works council to provide advice on proposed decisions concerning economic and organisational matters. This relates to one or more of the 'important' decisions listed in the Dutch Works Councils Act, such as transfer of control in the company (M&A), significant organisational changes and major investments. If the company takes a decision that is not in accordance with the advice given by the works council, the works council can appeal against that decision at the Enterprise Chamber of the Amsterdam Court of Appeal.

The appeal must be filed within one month of the works council being informed of the contested decision. In the appeal, the works council must argue that the company could not reasonably have made the decision when considering all involved interests. Disputes at the Enterprise Chamber are handled by three judges and two experts who are not members of the judiciary. The statutory rules for application procedures apply to the process. Typically, the court hearing occurs within six to eight weeks of the application being submitted, and the decision follows within six to eight weeks of the hearing. The company usually has up to two weeks before the hearing to submit a statement of defence.

If the Enterprise Chamber grants the appeal, it declares that the company could not reasonably have made the decision when weighing the involved interests. It can require the company to wholly or partially withdraw the decision or undo its consequences. It can also prohibit the company from implementing the decision. There is no appeal against decisions of the Enterprise Chamber; only cassation at the Supreme Court is possible.

Procedures regarding the right of consent

Under the Dutch Works Councils Act, a company must seek the works council's consent for certain decisions relating to social policy, such as establishing, amending or withdrawing a pension scheme; implementing a scheme for working and rest times; and setting up a remuneration and job evaluation system. If the company does not obtain the works council's consent, it has three options: abandon the proposed decision, modify the decision according to the works council's feedback, or request permission from the subdistrict court to proceed with the decision. The subdistrict court will evaluate whether the works council's refusal to give consent is unreasonable. If it is deemed unreasonable, the court will grant the company permission to proceed. If the refusal is considered reasonable, the company must prove that the decision is necessary due to compelling organisational, economic or social reasons. The court will then balance the interests of both parties and grant permission only if the company's interests outweigh those of the works council. If the subdistrict court denies permission, the company can abandon the proposed decision, modify it to get the works council's consent, or appeal the subdistrict court's decision to

the Court of Appeal. The statutory rules for application procedures apply throughout this process.

General dispute procedure

Any interested party can request the subdistrict court to ensure that the company or the works council complies with the Dutch Works Councils Act regarding the establishment of a works council, the adoption of by-laws for the works council, the nomination and election of works council members, and the publication of agendas and minutes of meetings. Additionally, the works council and the company can request the subdistrict court to ensure compliance with any other requirements under the Dutch Works Councils Act. The statutory rules for application procedures apply to the process. The subdistrict court can, in its ruling, impose an obligation on the company or the works council to perform or refrain from certain actions.

Appeals from judgments of the subdistrict can be submitted to the Court of Appeal. Cassation from judgments of the Court of Appeal is possible at the Supreme Court.

Trade unions

Trade unions are, among other things, responsible for the enforcement of collective labour agreements. To this end, they have their own set of tools laid down in the Collective Labour Agreement Act and the General Binding Declaration Act. For instance, any individual agreement between an employer and an employee that conflicts with the collective labour agreement can be null and void. Trade unions can invoke this nullity if necessary. Additionally, trade unions can, in their own name, demand compliance with the collective labour agreement, as well as claim damages for themselves or their affiliated members. Such claims can be initiated through a summons procedure.

Trade unions can also initiate collective actions aimed at protecting interests of others. This can involve the similar interests of a group of employees or idealistic interests. For trade unions, a collective action is a way to achieve results not only for their members but also for other employees. As of 1 January 2020, with the introduction of the Resolution of Mass Damage in Collective Action Act, the regulations regarding collective actions have been significantly amended. Since then, it is possible for trade unions to claim financial compensation for employees. Collective actions can be initiated through a summons procedure.

Alternative dispute resolution

In the Netherlands, particularly in collective labour disputes, arbitration and binding advice are frequently used. Reasons for including an arbitration clause in a collective labour agreement could be the confidentiality of the arbitration procedure, the specialised expertise of the arbitrators or the ability to structure the procedure to meet the parties' specific needs. Both arbitral rulings and binding advice can be challenged only to a limited extent. Arbitral appeals are possible only if the parties have agreed to this.

Another alternative method for dispute resolution is the '96 Rv procedure'. This is a procedure where both parties agree to submit their dispute to the subdistrict court.

It applies only to issues that are within the parties' discretion, which includes most employment law disputes. This procedure is suitable for clear disputes where a legal decision is needed. By jointly submitting the dispute, the relationship between the parties can remain amicable. Other benefits include the speed and cost-effectiveness of the procedure compared with those for regular litigation or arbitration.

In individual disputes, especially in dismissal cases, mediation is common. This means that parties, under the guidance of a mediator, come to a resolution of a dispute themselves. It is on a voluntary basis. An important principle of mediation is confidentiality. No statements about the mediation process may be made to third parties. This confidentiality ensures that parties feel free to take a step towards each other without the risk that, if no agreement is reached, the information can be used against them. Mediation can take place before a court procedure. It is also possible for the judge during a court procedure to propose mediation if they believe that it is the best way to resolve a conflict.

Types of employment disputes

A significant portion of employment law litigation are dismissal cases. In those cases, the employer requests the subdistrict court to dissolve the employment contract. Such dismissal is possible only on one of the grounds mentioned in the Dutch Civil Code, such as underperformance, culpable conduct or a disrupted employment relationship. The employee can contest the dismissal ground with the aim of continuing the employment contract. However, the procedure often (also) revolves around severance payments. In the case of termination initiated by the employer, the employee is, in principle, entitled to a statutory severance: the 'transition payment'. The amount of this payment is generally one-third of a month's salary per year of service and is capped at €98,000 gross (2025) or, if the annual salary is higher, a maximum of one gross annual salary. If the employee has acted in a serious culpable way, this transition payment is not due. Additionally, the employee may claim fair compensation. The court can award fair compensation in a number of situations – for example, in the event of seriously culpable acts or omissions by the employer or as an alternative to reinstatement of the employment contract. The amount of fair compensation is determined by the court; there is no fixed formula. The Supreme Court has formulated several considerations in various rulings to determine the amount of fair compensation. Factors include, among other things, the degree to which the employer can be blamed. The court may also consider the lost wages and the expected duration of the employment contract. The highest fair compensation awarded in published case law to date amounts to €800,000 gross.^[11]

Other typical individual employment disputes concern, among other things:

1. transfers of undertakings;
2. employment conditions (e.g., wage claims, payment for overtime and bonuses);
3. equal treatment and discrimination;
4. inappropriate behaviour in the workplace (e.g., sexual harassment and violence);
and
5. non-competition and relationship clauses.

In collective actions, litigation often involves the employment status of workers (employees over self-employed workers). For instance, the trade union FNV has initiated collective actions regarding the employment status of Deliveroo couriers, Uber drivers, Helping cleaners and workers from Temper. Additionally, litigation by and against trade unions also takes place about compliance with collective labour agreements and strikes. For example, in December 2024, the subdistrict court prohibited a strike by pharmacists during the holiday season in order to protect public health and vulnerable people in society.^[12]

Outlook and conclusions

In 2016, the Employment Relationships Deregulation Act was introduced. This law, which was intended to combat false self-employment, caused unrest and debate from the start. Therefore, the government decided to offer companies and self-employed workers a transition period by suspending enforcement. This led to an enforcement moratorium for the tax authorities. As a result, the tax authorities could not retroactively correct the classification of the employment relationship for payroll taxes, except in cases of malicious intent or failure to follow instructions adequately.

As of 1 January 2025, the enforcement moratorium ended. This means that the tax authorities apply the normal rules for imposing correction obligations and additional tax assessments when enforcing the classification of the employment relationship for payroll taxes. As a transitional measure, the tax authorities will not impose fines for the classification of employment relationships in 2025. From 2026, the normal rules for imposing fines will apply.

The government aims to clarify the distinction between employees and self-employed workers through the Bill for Clarification of Employment Relationship Assessment and Legal Presumption. This Bill will codify relevant case law into a clearer framework for assessing employment relationships. It also introduces a presumption of employment based on an hourly rate. The Bill was submitted to Parliament on 4 July 2025 and is expected to come into effect as early as 1 July 2026. These developments are expected to increase litigation regarding the classification of employment relationships at subdistrict courts.

Several notable Supreme Court cases are pending, including ones concerning:

1. transfer of undertaking: The Supreme Court must rule in a case concerning the scope of the prohibition on termination due to a transfer of undertaking. More specifically, the issue is when there are economic, technical or organisational reasons entailing changes in employment, which may set aside the prohibition on termination;^[13] and
2. abuse of long-term temporary agency work: The Supreme Court must rule on an employee who worked for 13 years as a temporary agency worker on the basis of successive temporary contracts. The question is whether there has been an abuse of the temporary agency work contracts. The Court of Appeals was of the opinion that in this case there was no abuse.^[14]

These decisions are expected to be delivered at the end of 2025 or in early 2026.

Endnotes

- 1 The Supreme Court ruled about the duty to complain in two cases with different employees of the same employer: Supreme Court, 20 September 2024, ECLI:NL:HR:2024:1278, and Supreme Court, 20 September 2024, ECLI:NL:HR:2024:1281. [^ Back to section](#)
- 2 Supreme Court, 8 March 2024, ECLI:NL:HR:2024:336. [^ Back to section](#)
- 3 Supreme Court, 26 April 2024, ECLI:NL:HR:2024:673. [^ Back to section](#)
- 4 ECJ, 27 April 2017, ECLI:EU:C:2017:317. [^ Back to section](#)
- 5 Supreme Court, 12 July 2024, ECLI:NLHR:2024:1068. [^ Back to section](#)
- 6 Supreme Court, 27 September 2024, ECLI:NL:HR:2024:1322. [^ Back to section](#)
- 7 ECJ, 13 December 2018, ECLI:EU:C:2018:1018. [^ Back to section](#)
- 8 Supreme Court, 21 February 2025, ECLI:NL:HR:2025:319. [^ Back to section](#)
- 9 Supreme Court, 24 March 2023, ECLI:NL:HR:2023:443. [^ Back to section](#)
- 10 Supreme Court 11 April 2024, ECLI:NL:HR:2025:543. [^ Back to section](#)
- 11 District Court Oost Brabant, 30 September 2024, JAR 2025/63. [^ Back to section](#)
- 12 District Court, 20 December 2024, ECLI:NL:RBMNE:2024:7003. [^ Back to section](#)
- 13 Opinion A-G Drijber, 20 June 2025, ECLI:NL:PHR:2025:699. [^ Back to section](#)
- 14 Opinion A-G De Bock, 21 March 2025, ECLI:NL:PHR:2025:356. [^ Back to section](#)

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Introduction

Labour and employment disputes in Nigeria are guided by tenets of fairness and legality. The primary legislation regulating employment matters in Nigeria is the Labour Act;^[1] however, the Labour Act is somewhat limited as it primarily applies to 'workers' engaged in manual labour or clerical work in both the private and public sectors. In cases where the Labour Act does not apply or fails to 'cover the field', the National Industrial Court of Nigeria (NICN)^[2] resorts to the employment contract, international regulations and best practices to resolve disputes. The NICN is legally empowered to apply international laws ratified by the Nigerian government and to use them as guiding principles in its decisions.

A common trend found in the decisions of the NICN is that it frowns on 'unfair labour practice'. The scope of what constitutes an unfair labour practice varies with each case; however, what has remained constant is that it does not tolerate actions of employers that tend towards servitude. This position creates a notion that the NICN is employee-favourable.

Year in review

Nigeria has witnessed a steady rise in employment law cases, particularly with respect to unfair labour practices, terminations and various other employment-related matters. This chapter outlines key cases and decisions that have shaped Nigerian labour and employment law in recent times, covering subjects such as restrictive covenants, termination of employment, fundamental human rights in the workplace, unfair labour practices and employee compensation. An analysis of the trends and developments are provided in each case summary.

Restrictive covenants

Trust fund Pensions Ltd v. Sunday Idemhi

In this case,^[3] the employee was employed as a customer service officer by the employer. One of the terms of the employment contract was that the employee was prevented from disclosing any confidential information to any other person at any time during his employment and thereafter. Four years after leaving the company, it came to Trust Fund Pensions Ltd's attention that the former employee was purportedly engaging its customers and encouraging them to transfer their accounts with Trust Fund Pensions Ltd to a rival pension fund administrator (PFA) where he was currently employed. Trust Fund Pensions Ltd filed a lawsuit against the employee, alleging that he had used confidential customer data obtained during his employment, resulting in a loss of customers to the rival PFA.

The court held that a confidential agreement between an employer and employee is valid. However, the application must not become unreasonable after the employee's employment is terminated. The court ruled that confidentiality agreements should not last indefinitely but should have a reasonable duration, typically not exceeding three years. As evident in

the court's decision, the court departed from the contract terms to protect the interests of the employee after the employment termination.

Analysis

The court adopts a pro-active approach in protecting employees. The court seems prepared to always deviate from any contract terms that it finds onerous to the employee's interest as seen in the above case summary. Therefore, an employer cannot seek solace under the contract terms in enforcing onerous, prejudicial terms (e.g., a perpetual confidentiality term) against the employee.

Termination of employment and fundamental human rights

Mrs Linda Jokanola v. Nigeria LNG Limited

Mrs Jokanola^[4] contested her suspension and termination, claiming that these actions were due to her refusal to undergo a DNA test to confirm the maternity of her children. The court held in favour of the claimant and ruled that the defendant's demand of the claimant to undergo a DNA test was an infraction of the claimant's right to dignity and privacy. By this decision, the court extended the tentacles of employee protection to the right to dignity and privacy. Although the defendant did not admit having suspended the claimant for the above reason, the court, upon evaluation of the available evidence, upheld the claimant's contention.

One of the implications of this ruling is that although an employer may terminate an employment using a valid reason to conceal the true motive behind the termination, the court would always be prepared to rule in favour of the employee if, upon evaluation of the evidence before it, the termination is laced with any infraction of fundamental rights infringement. This case further emphasises that, an employer who gives a reason for a termination must give a plausible and reasonable reason, and the court will always evaluate the evidence before it in determining the reasonability of the evidence.

Nkechi Catherine Ogbonah v. Mikano International Limited

The defendant terminated the claimant's employment without giving notice or payment in lieu.^[5] The court held that the termination is bereft of due process and the claimant is entitled to general damages. A focal point of the court's decision is that, in assessing the damages an employee is entitled to, in cases of unlawful employment termination, the court will not only consider the salary missed by the employee but also the physical, psychological and emotional trauma, and the destabilisation of career trajectory suffered by the employee. Overall, this decision seeks to discourage unjustifiable termination of employment shortly after resumption of employment without any reasonable reason. The court noted that 'the loss of employment without reason and so suddenly will naturally destabilise the trajectory of not only personal lifestyle but also one's career, hence the reason the International Labour Organization stipulates that an employee's service can no longer be terminated as it was before, for no reason at all.

Omolola Olajide v. The Nigerian Police Force & 2 others

The claimant was dismissed from service based on Regulation 127 of the Police Act, which forbids an unmarried female police officer from getting pregnant.^[6] The claimant challenged her dismissal and contended that the said regulation only applies to female police officers and does not apply to male police officers. Therefore, the regulation is discriminatory.

The court held that the Police Act violates Section 42 of the Constitution and Article 2 of the African Charter on Human and Peoples Rights Ratification and Enforcement Act, which abolished discrimination based on gender. Therefore, the court annulled Section 127 of the Police Act, Chapter P19, Laws of the Federation of Nigeria 2004 and Regulation 127 of the Nigeria Police Regulations, as discriminatory against unmarried policewomen, as this regulation only applies to women and, on the contrary, cannot be applied to unmarried policemen who impregnate women.

Analysis

As the trends of human dynamics evolve, the court seems prepared to always advance the tenets of fundamental rights towards an employee's protection. Evidently, any employment term or even legislation that is discriminatory or seemingly so, could potentially be struck off by the court.

Unfair labour practice

Mrs El-uemuno Olumagin v. Total E & P Nigeria Limited

The defendant resigned from the claimant's employment after being demoted and suspended without pay for six months by the claimant.^[7] The claimant terminated the defendant employee without issuing a formal query to the claimant nor adhering to its disciplinary rules, procedures and rules of fair hearing. The court held that this constituted unfair labour practice and a constructive employment termination by the claimant. This case reiterated the principle that, when an employer unjustifiably creates a harsh employment condition for the employee who subsequently resigns, the employer would be deemed to have constructively terminated the employee's termination. Also, while an employer may reserve the right to terminate the employee's employment, there is an obligation to adhere to the terms of the employment contract during termination.

Analysis

When an employer compels an employee to resign from employment by subjecting the employee to unfair employment terms and conditions, such resignation would be treated as the employer terminating the employee's employment unfairly as seen in the above case. The courts will ensure the employee is adequately compensated if an employment is deemed unfairly or unlawfully terminated.

Employee benefits and compensation

Pius Ohimai Ovbioise v. Mr Aderibigbe Adedeji SAN [Trading under the name and style of Adedeji, Owotomo & Associates]

The claimant was an employee of the defendant.^[8] However, contrary to the employment contract, the defendant had refused to pay a 13th-month salary to the claimant for the period of his employment. The court held that if an employment contract explicitly includes a 13th-month salary, the employer is contractually bound by this provision, and failing to do so constitutes a breach of contract. It must be noted that this judicial decision does not seek to compel employers to pay their employees a 13th-month salary. It only seeks to reiterate that employers are so bound to pay 13th-month salary when the employment contract provides for the same.

Nigeria Social Insurance Trust Fund Management Board v. Bedrock SchoolInt'l

The court held that, by virtue of Sections 33, 39, 40 and 73 of the Employees' Compensation Act 2010, all employers of labour must mandatorily comply with the Employees Compensation Scheme under Employees Compensation Act 2010.^[9] Compliance is mandatory, not optional, for every employer in both the public and private sectors, excluding only members of the armed forces. The court further held that the defendant employer was under an obligation to cause to be furnished to the claimant, complete and accurate particulars of the defendant's monthly payroll.

The court ordered the defendant to calculate and make a monthly minimum contribution of 1 per cent of the total monthly payroll for the employment duration and thereafter pay same into the Employees' Compensation Fund managed by the claimant.

Zainab Abdulmumini v. Hwa Chong Household Utilities Ltd & Anor

The deceased (who was an employee of the defendant) was temporarily retained by the defendant to solder and weld a tank, which unknown to the deceased contained flammable substances, at the defendant's factory.^[10] There was an explosion of fire from the tank, and the deceased suffered serious injury leading to his death. The claimants, as dependants of the deceased, sued for damages.

The court held that when an employee loses their life due to the negligence of the employer, the dependants of the employee are entitled to compensation for their loss. Evidently, the court applied the principles of tort law to the employment relationship and was eager to so hold the defendant liable. Although the defendant contended that the deceased could not be regarded as its employee, this however did not absolve it of its liability.

Analysis

When the employment contract mandates the employer to accord certain benefits to the employee, the employer is under obligation to so comply and cannot, under whatever guise, depart from that. Likewise, employers must comply with the Employees Compensation Scheme under the Employees Compensation Act 2010. Furthermore, the dependants of a deceased employee whose death is traceable to the employer's breach of duty of care are entitled to damages and compensation as evidently proven in the above cases.

Nature of employment relationship

Alphacyn Nigeria Limited v. Registered Trustees of Prince and Princess Estate Residents Association & Anor

In this case, the defendant terminated its Facility Management Agreement with the claimant without complying with the said agreement.^[11] The court looked beyond technicalities, phraseology and formal designation in determining its jurisdiction. The court dispensed with the distinction between 'contracts of service' and 'contracts for service' and held that both are within the expansive employment and labour matters, and therefore the court is seized of jurisdiction in both cases. The NICN noted that it is called upon to give due priority to the primacy of facts and look to the substance, not the form of the relationship or what the parties chose to call it. The approach of the court is appreciated as the courts are now more inclined to prioritise substance over form or technicalities.

Ibikari Morgan Fubara v. Niger Delta Development Commission (NDDC)

By an employment letter dated 7 August 2019, the employer was employed as an Assistant Manager on Salary Grade Level 10/1.^[12] The appointment was for a probationary period of 24 months and to be accepted within one week from the date of the letter. However, the employee accepted the letter on 17 August 2021, which was clearly beyond the one-week deadline. The employer denied employing the employee.

The court held that the employee had been validly employed and that the employee's failure to accept the employment within the prescribed time did not invalidate the fact that the employee was terminated because of his alleged ineligibility for appointment. The court gave judgment in favour of the employee.

Notably, the court admitted in evidence a photocopied and uncertified public document from the employer, stating that the employer already has the original and so there is no need for certification of the document. Apparently, the court considerably relaxed the rules of evidence in a bid to protect the employee's interest. This further reflects the tendency of the court to dispense with technicalities in employment disputes.

Analysis

The decision in the above cases seems to suggest that when a simple contract has the colouration of an employer–employee relationship, the court is inclined to hold the same as an employment contract. The court, in determining whether there is an employment contract, examines the substance and not form. Also, the court tends to be inclined to dispense with strict legal rules and principles in employment disputes.

Procedure

The NICN is the primary specialised court exclusively empowered to preside over and entertain civil and criminal causes. The NICN oversees matters relating to labour; industrial

trade union and relations; environment and conditions of work; health, safety and welfare of labour; and other incidental matters.

The NICN's power is fundamentally derived from the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Third Alteration) Amendment Act 2010.^[13] The NICN adopts various methods to resolve employment disputes. Two major methods adopted include litigation and alternative dispute resolution (ADR).

The NICN established an ADR centre which utilises the techniques of mediation and/or conciliation in the resolution of a dispute between parties to arrive at a mutually accepted agreement. Specific disputes resolved by the NICN using ADR include disputes between employers and employees; disputes arising from health at the workplace; disputes arising from safety at the workplace; and disputes arising from the welfare of workers. Parties who adopt this means of dispute resolution are required to comply with the procedure enumerated in the centre rules.^[14]

The Centre is required to conclude the mediation or conciliation process within 21 working days from the date the process commences, with the possibility of an extension of no more than 10 working days. Where parties are unable to settle their disputes through the mediation or conciliation process, the NICN will hear the matter in accordance with the NICN Rules.

Parties choosing to resolve their dispute through litigation, along with their legal representatives, must adhere to the procedures outlined in the Civil Procedure Rules established by the NICN for instituting actions. The NICN Rules aim to facilitate the swift administration of justice and expedite proceedings. Despite these provisions, cases are typically concluded within eight to 24 months from the filing date at the NICN.

The judgment of the NICN can be appealed at the Court of Appeal. Where the subject of the dispute is in relation to the fundamental human rights as contained in Chapter IV of the Constitution, parties have a right of appeal.

However, appeals on other labour-related matters can be brought only with leave of the Court of Appeal. More so, the judgment from the Court of Appeal on civil matters is final and may not be appealed to the Supreme Court in Nigeria.^[15]

Types of employment disputes

The Constitution^[16] enumerates the different issues which fall within the ambit of the authority of the NICN. This provision helps to identify the types of disputes that may arise in the employment context. These include:

1. matters arising from and incidental to labour, employment, trade unions, industrial relations, workplace and the conditions of service including health, safety and welfare of labour for employees and workers;
2. matters arising from any act or law relating to labour, employment, industrial relations or the workplace;
- 3.

- matters relating to the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action;
4. disputes arising from the application of the fundamental human rights to any employment, labour, industrial relations, trade unionism or employer's association;
 5. connected with any dispute arising from the national minimum wage;
 6. matters concerning unfair labour practice or international best practices in labour, employment and industrial relations matters;
 7. disputes and matters involving the application or interpretation of international labour standards;
 8. disputes arising from child labour; and
 9. disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker or any civil or public servant.

In addition, the NICN ADR centre only entertains four types of disputes:

1. those between employers and employees;
2. disputes arising from health at the workplace;
3. disputes arising from safety at the workplace; and
4. disputes arising from the welfare of workers.

Special considerations

It is noteworthy to mention that where parties opt for ADR, the agreement is reduced into writing as 'Terms of Settlement' and parties are personally required to sign the terms, which are subsequently adopted before the NICN and entered as the Consent Judgment of the Court. Note that the Terms of Settlement must be tendered by the claimant or his counsel in court, and the defendant cannot tender the same. Also, the Consent Judgment can be appealed to the Court of Appeal.^[17] However, a party that willingly agrees to a Terms of Settlement cannot appeal without the leave of the court.

Outlook and conclusions

Recent developments in Nigeria's employment sector reflect ongoing efforts to balance local workforce development with the integration of foreign workers. Despite numerous innovative measures introduced by the government, many are yet to be fully implemented, and some have been met with resistance, necessitating ongoing discussions to achieve effective change.

One notable initiative is the introduction of the Electronic Combined Expatriate Residence Permit and Aliens Card (E-CERPAC), now required for employing expatriate employees. The new process replaced the previous manual process to further reiterate the authorities' desire to digitalise expatriate work and employment processes in Nigeria. The new process further introduces a new insurance fee of US\$1,000. The fee was introduced as part of the government's strategy for personal insurance liability. It is to be paid by the employer on behalf of the employee, before the E-CERPAC is finalised and issued, replacing the previous manual process for hiring expatriates in Nigeria.

Additionally, the federal government announced a new minimum wage of 70,000 naira, which was implemented from 1 May 2024 and has since been in effect.

Several legislative efforts are also underway to reshape the employment landscape in Nigeria. These include:

1. a bill to establish a National Internship and Unemployment Benefit Scheme, which has passed its second reading in the Senate;
2. the Employees Remuneration Protection Bill 2023, which proposes jail terms for employers who fail to pay salaries. This bill has passed its first reading but has yet to progress further; and
3. the Labour Act (Amendment) Bill 2019 (HB 222), which has also passed its first reading.

In terms of judicial efforts, the Supreme Court has criticised the constitutionality of Section 243(4) of the Constitution (as amended) – which provides that appeals from the National Industrial Court shall lie with the Court of Appeal and its decision will be final – as it tends to tinker with the Supreme Court's appellate jurisdiction granted by the Constitution.

As such, we foresee the Supreme Court allowing appeals from the Court of Appeal on employment disputes.

Conclusion

Nigeria remains committed to effectively resolving labour and employment disputes. The establishment of the NICN has significantly contributed to this effort. By empowering the NICN to apply international laws, the country mitigates the limitations of the existing Labour Act, fostering the development of progressive employment laws and ensuring that the judicial system remains responsive and effective in addressing employment-related issues.

Endnotes

- 1 Laws of the federation of Nigeria (LFN) 2004. [^ Back to section](#)

- 2 The National Industrial Court of Nigeria (NICN) is a specialised court with exclusive jurisdiction over labour and employment disputes. It handles issues related to labour relations, trade unions, employment conditions and workplace safety, etc. ^ [Back to section](#)
- 3 NICN/L/576/2019 – Unreported. ^ [Back to section](#)
- 4 NICN/LA/261/2013 – Unreported. ^ [Back to section](#)
- 5 NICN/LA/178/2019 – Unreported. ^ [Back to section](#)
- 6 NICN/AK/14/2021 – Unreported. ^ [Back to section](#)
- 7 NICN/LA/580/2018 – Unreported. ^ [Back to section](#)
- 8 NICN/LA/484/2020 – Unreported. ^ [Back to section](#)
- 9 NICN/YEN/34/2022 – Unreported. ^ [Back to section](#)
- 10 NICN/28/2020 – Unreported. ^ [Back to section](#)
- 11 NICN/EN/13/2018 – Unreported. ^ [Back to section](#)
- 12 NICN/PHC/143/2021. ^ [Back to section](#)
- 13 Section 254C(1) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Amendment Act 2010. ^ [Back to section](#)
- 14 National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules 2015, [https://nicn.gov.ng/publication/NICN%20\(ADR\)%20%20Centre%20Rules%20PRI%20NT.pdf](https://nicn.gov.ng/publication/NICN%20(ADR)%20%20Centre%20Rules%20PRI%20NT.pdf). ^ [Back to section](#)
- 15 Section 243(4) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Amendment Act 2010. ^ [Back to section](#)
- 16 Section 254C(1) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Amendment Act 2010. ^ [Back to section](#)
- 17 Section 241(2)(c) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Amendment Act 2010. ^ [Back to section](#)



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Introduction

Over the past year, Korea's labour law landscape has undergone significant transformation through both judicial reinterpretation and statutory reform. The Supreme Court has revisited long-standing doctrines on ordinary wage, the five-employee threshold under the Labour Standards Act and deemed direct employment under the Act on the Protection of Dispatched Workers, realigning judicial standards toward broader employee protection and statutory uniformity.

In parallel, the National Assembly enacted the 'Yellow Envelope Act', amending the Trade Union and Labour Relations Adjustment Act to expand the definitions of 'employer' and 'worker,' extend the permissible scope of collective action, and limit employer claims for strike-related damages.

Together, these decisions and reforms signal a marked shift toward substantive equality and reinforced accountability in employment relationships. The following highlights the principal judicial and legislative developments shaping Korea's labour law in 2023–2025.

Year in review

Calculation of ordinary wage and rejection of 'fixedness' requirement

In two companion *en banc* rulings,^[1] the Supreme Court fundamentally redefined ordinary wage under the Labour Standards Act (LSA), abandoning the 'fixedness'^[2] element that had governed Korean wage jurisprudence for more than a decade. Both cases concerned regular bonuses payable only when employees satisfied minimum attendance or employment-status (tenure) conditions.

Lower courts had been split where certain court rulings denied ordinary-wage status, applying the 2013 *en banc* decision that treated payment certainty as essential,^[3] while other court rulings opposed the 2013 *en banc* decision by stating that the 'fixedness' element must be eliminated when determining the ordinary-wage status.

The Supreme Court held that ordinary wage must align with Article 6(1) of the LSA Enforcement Decree, which defines it as remuneration 'regularly and uniformly paid in consideration of prescribed work'. Remuneration paid for prescribed work constitutes ordinary wage even if payment depends on conditions, such as being employed on the payment date or working a minimum number of days, so long as those conditions fall within the prescribed working hours. In other words, such contingencies, whether unilaterally imposed by an employer, or based on mutual agreement between an employer and a labour union do not negate the payment's character as compensation for work performed.

The Supreme Court also clarified that the fixedness doctrine was lacking statutory basis and as inconsistent with the mandatory and protective nature of the LSA. By allowing employers to exclude payments simply by attaching minimum attendance or tenure conditions, the prior rule distorted the statutory standard for calculating overtime,

night-time and holiday premiums. The Supreme Court emphasised that ordinary wage, as a mandatory legal concept, represents the value of prescribed work itself.

Accordingly, the Supreme Court overruled its 2013 precedent and announced that the new interpretation applies prospectively, except for the instant and concurrently pending cases. The employers' various regular bonuses (ranging up to 750 per cent of base wage) were deemed ordinary wage, and the cases were remanded.

This pair of rulings abolishes the fixedness test and establishes a statutory, uniform standard for ordinary wage from 19 December 2024. Therefore employers in Korea should review attendance- or tenure-linked regular bonus structures for potential violation of the new Supreme Court ruling, and reframe their overtime, night time and holiday premium pay calculations system accordingly.

Application of labour standards act to small workplaces and integrated or cross-border employers

In two coordinated rulings,^[4] the Supreme Court clarified how to determine whether a business constitutes a 'workplace employing five or more employees' under Article 11(1) of the LSA (i.e., the statutory threshold for the LSA's full application).

In 2023Du46074, the Supreme Court considered an international employment relationship in which a Delaware corporation employed a single employee in Korea. The Supreme Court held that, in cross-border situations, only employees physically employed in Korea may be counted when determining whether a 'workplace employing five or more employees' exists. Foreign employees working abroad under the parent company's jurisdiction cannot be aggregated with Korean employees, as the LSA governs only domestic workplaces. The lower court's contrary approach of counting overseas employees was reversed and remanded.

By contrast, 2023Du57876, the Supreme Court held that separate legal entities may nonetheless constitute a single business or workplace when they operate as an integrated economic and organisational unit. The case involved a Korean affiliate that shared an office, workforce, and management control with another affiliate of the same multinational group. The Supreme Court affirmed that the two entities formed one business unit given their unified operations, common supervision and interrelated personnel management. Because the combined workforce exceeded five employees, the LSA applied in full, and the dismissal at issue was subject to statutory restrictions, which require justifiable cause.

There have been continuous discussions and conflicting lower court rulings on how to determine 'workplace employing five or more employees' when a foreign company directly employs Korean employees or there is a small Korean legal entity with fewer than five employees. For the first time, the Supreme Court clarified the limits on the extraterritorial reach. Unless foreign companies are found to have established multiple legal entities in order to bypass application of the Korean labour law, in which case they will be deemed to form one business unit, only the number of Korean employees will be counted when determining whether a 'workplace employing five or more employees' exists. That said, it is also important to note that there is a legislative movement to expand the full application of Korean labour law to those workplaces with fewer than five employees.

Employers operating in Korea should assess group-level structures and cross-border staffing models to determine coverage and compliance obligations under the LSA, and also keep an eye on the legislative changes when administering Korean staff in the short or long term.

Interpretation of the weekly overtime cap and mandatory rest under the Labour Standards Act

In this criminal case,^[5] the Supreme Court clarified the calculation of weekly overtime limits and the employer's duty to provide rest periods under the LSA. The defendant, a company representative, had been convicted for allowing an employee to work overtime exceeding the statutory limit of twelve hours per week under Article 53(1) and for failing to provide appropriate rest time under Article 54(1). The lower court had computed weekly overtime by aggregating daily hours exceeding eight, thereby finding numerous violations.

The Supreme Court overturned the conviction, holding that the 12-hour limit on overtime must be measured solely against the forty-hour statutory weekly baseline, not by counting each day's excess above eight hours. Because Article 53(1) sets the overtime cap 'on a weekly basis,' overtime is defined as hours exceeding forty per week, irrespective of daily limits. The Supreme Court distinguished between the purpose of the overtime-premium provision in Article 56, which deters overwork through added pay, and Article 53(1), which prohibits work beyond the twelve-hour weekly ceiling regardless of pay.

The Supreme Court further held that an employer must provide at least thirty minutes of rest during four hours of overtime work beyond the ordinary eight-hour day, pursuant to Article 54(1) and regular daily rest periods do not substitute for this additional rest. The Supreme Court emphasised that the purpose of mandatory rest is to ensure workers' recovery and safety during extended hours.

On remand, the lower court was instructed to recalculate actual working hours based on weekly totals exceeding 40, to exclude any 30-minute rest periods from overtime hours and to reassess liability.

The decision clarifies the standard for calculating the weekly twelve-hour overtime cap and confirms employers' obligation to grant separate rest periods during extended work. Employers must now monitor weekly, not daily, overtime totals and adjust scheduling practices to comply with the LSA, which will be less burdensome for employers.

Determination of working conditions and wage entitlements for deemed or obligatory direct employment under the Dispatch Workers Protection Act

In these companion cases,^[6] the Supreme Court addressed how to determine the working conditions and wage entitlements of dispatched workers deemed or required to be directly employed by a user company under the Act on the Protection of Dispatched Workers (the Dispatch Workers Protection Act). The cases arose from long-running disputes involving Korea Expressway Corporation and toll collectors or situation room assistants engaged through subcontractors.

The Supreme Court held that when a user company is deemed to have directly employed dispatched workers, or is legally obliged to do so, but has no employees performing

the same or similar work, courts may impute 'reasonably expected' working conditions that the parties would have agreed upon had they negotiated autonomously. In making that determination, courts must consider: (1) the content and value of the work; (2) the employer's wage and employment structure; (3) the legislative purpose of the Dispatch Workers Protection Act; (4) equitable considerations; and (5) working conditions applied to other directly hired dispatched workers.

Applying this new rule, the Supreme Court upheld lower court ruling that used the employer's internal wage regulation for field employees as the appropriate reference for toll collectors, reasoning that their work was of comparable value and that no autonomous negotiation had been possible because the employer denied any dispatch relationship. However, for situation room assistants, the Supreme Court reversed the lower court ruling, finding that differences in duties, work schedules and pay composition made the field employee standard inapplicable.

The Court also clarified the burden of proof when workers claim wages for periods during which direct employment was not effected lies with the employees, and the employees must prove either that work was actually performed for the user company that non-performance resulted from the company's fault.

This decision establishes for the first time a general standard for setting working conditions of dispatched workers who are deemed to have directly applied by the user company in the absence of 'same or similar' employees under the Dispatch Workers Protection Act and delineates the respective evidentiary burdens in wage claims for deemed or delayed direct employment in discrimination cases. The rulings significantly expand judicial tools for addressing reclassification and shape the landscape of indirect employment litigation in Korea.

Procedure

There are three main procedures for resolving disputes in an employment context.

Labour office

The Ministry of Employment and Labour operates regional labour offices, which include six regional offices, 40 local branches and two satellite offices nationwide. In principle, the labour office that has jurisdiction over the location of the workplace handles the case.

If an individual believes their rights and interests have been infringed upon due to violations of labour laws and regulations, either the individual concerned or a third party can file a petition, complaint, appeal, accusation or report to the labour office via written documents, phone calls and other methods.

Once a report is filed with the labour office, a labour inspector^[7] responsible for the relevant legal matter is assigned. Under Korean law, certain violations of labour laws are subject to criminal penalties (for example, non-payment of wages, exceeding maximum weekly working hours, failure to pay overtime wages, allowance for overtime work and exceeding the maximum weekly working hours).

The assigned labour inspector may summon the complainant and the respondent for investigation or request the submission of documents. Where no violation of the law is found, the case is closed. If a violation is confirmed, depending on the specific legal provision breached, the inspector may issue a corrective order or immediately recognise the violation as a criminal offence, in which case the case will be referred to the prosecutor. An administrative penalty can be imposed for general complaints.

In principle, criminal complaints must be processed within two months, and general complaints within 25 days. However, depending on the nature and complexity of the case, the process can often take significantly longer – sometimes several months or more.

Labour Relations Commission

The Labour Relations Commission (LRC) consists of one National Labour Relations Commission and 13 regional labour relations commissions. There are also special labour relations commissions, temporary bodies established only under special circumstances based on separate laws, which are not utilised frequently. The LRC is a quasi-judicial body, similar in function to a court for certain category of labour cases.

Cases handled by the LRC are divided into three categories: adjudication cases, discrimination correction cases and labour dispute mediation cases. Since adjudication cases form the majority, the procedures are explained below with references to this type of case. However, the procedures for the other types are identical, with only subtle differences in timelines or the composition of the hearing panel.

An adjudication case refers to a case where an employee or labour union files for relief in response to disciplinary action, personnel orders, dismissal or unfair labour practices by an employer. The petition for relief must be submitted in writing within three months of the date the incident occurred to the regional LRC. Once the petition is filed, the regional LRC may require the employer to submit a written statement regarding their position on the matter and relevant materials. Although not common, the regional LRC's investigator may visit the workplace for an on-site inspection during this process.

The regional LRC typically holds a single hearing within 60 days of the date of case filing. The hearing panel consists of five members: three voting members, one non-voting employee-side member and one non-voting employer-side member.

The regional LRC may either uphold or dismiss the petition. The regional LRC panel's decision is typically issued shortly after the hearing, often on the same day; however, this initial notice only includes the outcome, not the reasoning behind the decision. The full written judgement, including the reasons, is provided at a later date, usually within 30 days of the hearing.

If any party wishes to challenge the regional LRC's decision, they must file an appeal within 10 days of the date they receive the full written judgement. The case is then transferred to the National Labour Relations Commission (NLRC). The NLRC handles the case through procedures similar to those of the regional LRC, but in principle, the hearing must be held within 60 days. A party who wishes to contest the NLRC's decision must file an appeal within 15 days of receiving the full written judgement. The case is transferred to the Administrative Court, which is the court of first instance. The case may proceed further

to the High Court (second instance) and ultimately to the Supreme Court (third instance), if appealed by either party.

In summary, an adjudication case may go through up to five stages: (1) regional LRC; (2) national LRC; (3) administrative court (1st instance court); (4) High Court (2nd instance court); and (5) Supreme Court (3rd instance court).

Courts

Labour disputes can also be resolved through civil litigation. For these cases, the employer, employee or labour union may file a civil lawsuit with the district court. Since the district court is the court of first instance, the case may proceed to the High Court (second instance), and ultimately to the Supreme Court (third instance).

This civil litigation process can be pursued in parallel with the LRC procedure. For example, if an employee is dismissed, they may choose to file for relief from unfair dismissal with the regional LRC and then proceed with the same through the NLRC, the administrative court, the High Court, and the Supreme Court. Simultaneously, they may file a civil lawsuit directly with the district court seeking confirmation of the invalidity of the dismissal and follow the route through the district court to the High Court and to the Supreme Court.

In most cases, if a claim is eligible to be filed with the LRC, employees prefer the LRC over the civil court, as the LRC is cost-effective, employee friendly and generally faster than the court proceedings.

Types of employment disputes

Discrimination

A person who has suffered discrimination on the grounds of gender, fixed-term or part-time employee status or dispatched worker status may file a request for corrective action with the regional LRC. The regional LRC may render a corrective order, which may include:

1. the cessation of discriminatory acts;
2. the improvement of working conditions such as wages (including orders to amend work rules or collective agreements; and
3. the provision of damages.

If the employer does not contest the corrective order issued by the regional LRC, the order is deemed final and binding. If the employer wishes to contest the order by the regional LRC, it may file an appeal with the NLRC, and subsequently pursue an administrative lawsuit, followed by appeals to the High Court and ultimately the Supreme Court. If an employer fails to comply with a final and conclusive corrective order without reasonable grounds, an administrative fine of up to 100 million won may be imposed. Filing a civil case at court to have the discriminatory act ruled void or to claim damages (including the amount underpaid due to the discrimination) is also possible.

With regard to age and disability discrimination, the victim may file a complaint with National Human Rights Committee (NHRC) within one year of the date the discrimination occurred. The NHRC may issue a recommendation to correct the discrimination. If the employer fails to comply with the recommendation, the Minister of Employment and Labour (age discrimination) or the Minister of Justice (disability discrimination) may issue an order for correction. If an employer fails to comply with a corrective order without just cause, an administrative fine of up to 30 million won may be imposed.

Unfair disciplinary actions, unfair personnel orders and unfair labour practices

If an employer takes disciplinary action (including dismissal), or issues a personnel order to an employee, and the employee believes the action is unfair, the employee may file a petition for relief seeking confirmation that the action is unjust and therefore invalid, along with a request for reinstatement to the original position. For example, a dismissed employee may seek reinstatement and back pay.

Likewise, if an employer commits an unfair labour practice, an employee or labour union may file a petition for relief seeking confirmation that the employer's conduct constitutes an unfair labour practice and request appropriate remedies such as restoration to the original state. For example, if the employer's removal of a union banner is deemed an unfair labour practice, the relief may include reinstalling the banner.

Here, 'unfair labour practices' refer to the acts defined under Article 81 of the Trade Union and Labour Relations Adjustment Act: (1) dismissing or otherwise treating an employee disadvantageously on grounds of the employee being a labour union member, having tried to join or organise a union or having carried out justified activities for the labour union; (2) making it a condition of employment that an employee must join, not join, or withdraw from a labour union, or to require membership in a specific labour union as a condition of employment; (3) refusing or neglecting, without justifiable reason, to engage in collective bargaining or to conclude collective agreements with the labour union or those authorised by the labour union; (4) controlling or interfering with employees in organising or operating a labour union, paying wages beyond the permitted time-off limits or financially supporting the labour union's operations; and (5) taking adverse actions against an employee, such as dismissal or other disadvantages, because the employee participated in a legitimate collective action, or reported the employer's violation of this article to the LRC, testified regarding the matter or submitted evidence to other administrative authorities about unfair labour practice committed by an employer.

Labour dispute mediation cases

When a labour dispute arises between an employer and a labour union, either party may file an application for mediation of the dispute with the LRC. Here, a labour dispute refers to a state of conflict resulting from a disagreement between a labour union and an employer (or an employers' association) over the determination of working conditions, such as wages, working hours, welfare, dismissal or other forms of treatment.^[8]

When an application for mediation is filed, the LRC must, within 10 days (which can be extended for another 10 days by mutual agreement of the parties), either provide

administrative guidance (if it determines that no labour dispute has occurred), facilitate a settlement, or declare the mediation unsuccessful. If the mediation fails, the labour union obtains the right to industrial action.

Special considerations

Proposed amendment to Trade Union and Labour Relations Adjustment Act: expansion of employer/worker scope and limits on damages

On 24 August 2025, the National Assembly passed significant amendments to Articles 2 and 3 of the Trade Union and Labour Relations Adjustment Act, commonly referred to as the 'Yellow Envelope Act', intended to expand collective labour protections and reassign responsibilities in subcontracted or networked employment settings. Although the amendments will become effective later on 10 March 2026, these reforms mark a major rebalancing of labour–management relations in Korea.

Under the new law, the definition of 'employer' is broadened to include entities that exercise substantial control over working conditions, even if they lack direct or implied contractual relationships. This enables subcontractor labour unions to request collective bargaining against principal companies when those principals dictate wages, shifts, evaluations, or dismissals.^[9]

The amendments also widen the permissible scope of industrial action to include disputes over managerial decisions (e.g., restructurings, relocations, mergers and asset or business transfer), not just traditional terms and conditions of employment.

Lastly, the statute places limits on employer claims for damages arising from lawful strikes. The revisions provide for factors such as justifiable defence, prohibition of abuse and liability reduction, along with guarantor exemptions to shield labour unions and their individual members from disproportionate exposures. In effect, the law restricts the historical practice of threatening full compensation for damages against labour unions to weaken their presence after court-deemed illegal strikes.

The Yellow Envelope Act will significantly increase principal companies' labour exposure, particularly in sectors using subcontracting, dispatch labour and complex supply chains. Hence, employers should begin mapping control structures, auditing contractual relationships and harmonising internal policies with the expanded definitions of employer. Collective bargaining negotiation and strike-risk mitigation strategies will need to be revisited in order to achieve successful collective bargaining with labour unions (including subcontractor labour unions), and defend the company against the reduced recoverability of damages.

Outlook and conclusions

As discussed above, major court judgements and recent legislation signalled a marked shift toward substantive equality and reinforced accountability in employment

relationships. In short, we believe these trends are likely to accelerate after a more employee-friendly government was established in May 2025.

Although policies and legislative changes are beginning to be shaped by the government and the ruling party of Korean Assembly, based on the presidential election pledge and remarks from the MOEL the followings appear to be the main issues.

1. The prescribed working hours are 40 hours (i.e., eight hours per day, for five days), but it may be gradually reduced to 36 hours (i.e., eight hours per day for four days, four hours for one day). As the permitted overtime work is 12 hours per week, the weekly maximum working will be 48 hours per week; this working hour restraint is a hard law and cannot be nullified by a mutual agreement between an employer and an employee.
2. All forms of comprehensive wage system may be explicitly prohibited by the law. This means that an agreement where an employer pays pre-calculated allowances for overtime, night-time and holiday work will be deemed null and void, and the employer must compensate the allowances pursuant to actual overtime, night-time, holiday work. For these purposes, the employer may be obliged to record actual working hours of their employees.
3. The mandatory retirement age is expected to increase from 60 to 65.
4. The government is focusing heavily on reducing industrial accidents, especially those resulting in the death of employees. Therefore, the laws concerning industrial safety and health are likely to be strengthened, and the government as well as the court is likely to impose heavier criminal, civil and administrative sanctions.
5. While the Yellow Envelope Act was already enacted, more legislative protections are likely to be provided to irregular workers, covering fixed-term employees, part-time employees, subcontractors, dispatched workers and platform workers (gig workers).

There is an important case pending before the Supreme Court that has the potential to upend other common compensation schemes. The Supreme Court is currently reviewing cases in which it is soon expected to decide whether certain kinds of performance bonuses must be included in an employees' average wage. Many employers that pay variable compensation based on business performance metrics have excluded that compensation from employees' average wages, essentially on the basis that it is profit-sharing rather than compensation for work and therefore are also excluded from average wages. If the Supreme Court again issues an employee-friendly decision in those cases, it may significantly increase the statutory severance benefits (or retirement pension) that employers must provide to employees with one year or more of service as they are calculated based on average wages.

Taken together, the recent judicial reinterpretations and legislative reforms represent a decisive realignment of Korean labour law towards substantive employee protection. For multinational and domestic employers alike, this evolving framework demands not only compliance but also strategic foresight, or the capacity to anticipate how judicial reasoning and regulatory trends may reshape established employment models. Proactive engagement with these developments, through internal audits, policy harmonisation and

thoughtful restructuring of contractual relationships, will be essential to maintaining resilience and legal defensibility in the years ahead.

Endnotes

- 1 Supreme Court (*en banc*), 19 December 2024, 2023Da302838. [^ Back to section](#)
- 2 Ordinary wages are a tool used to calculate the overtime, night-time and holiday premiums as well as compensation for unused annual paid leave. [^ Back to section](#)
- 3 See, e.g., S Kor Sup Ct (*en banc*), 18 December 2013, 2012Da89399 (S Kor). [^ Back to section](#)
- 4 Supreme Court, 25 October 2024, 2023Du57876 and 2023Du46074. [^ Back to section](#)
- 5 Supreme Court, 7 December 2023, 2020Do15393. [^ Back to section](#)
- 6 Supreme Court, 12 March 2024, 2019Da223303 and 2019Da222829. [^ Back to section](#)
- 7 Since this will become a criminal case, they are referred as special judicial police officer. They have investigative authority limited to a specific area of expertise, such as labour, taxation or environmental issues. [^ Back to section](#)
- 8 This definition will change due to the amendment of the Trade Union and Labour Relations Adjustment Act as follows: '[a] state of conflict resulting from a disagreement between a trade union and an employer (or an employers' association) over the determination of working conditions, such as wages, working hours, welfare, dismissal, or other forms of treatment, disputes arising from business decisions that affect working conditions, as well as the employer's clear violations of certain provisions of the collective agreements.' [^ Back to section](#)
- 9 The class of workers eligible to join trade unions is expanded beyond traditional employees to include those who perform labour for another business, even if not formally in a contract under the amended TULRAA. The impact of this amendment appears to be low as the amended provision has already been applied in practice. [^ Back to section](#)



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Introduction

This chapter was first published in February 2025. Be advised that some of the below content may no longer apply.

In Spain, labour jurisdiction is distinct from civil jurisdiction and is governed by specific regulations that constitute the labour legal system. However, for all aspects not covered by labour regulations, civil jurisdiction will generally apply subsidiarily. The main matters within the scope of labour jurisdiction are:

1. disputes arising between employees and employers as a consequence of the employment contract (e.g., termination of the contract);
2. conflicts in the field of collective labour relations (i.e., collective dispute procedures such as collective dismissals);
3. social security issues;
4. the protection of fundamental rights;
5. matters relating to occupational risk prevention; and
6. appeals against decisions issued by administrative bodies in labour, union and social security matters.

The Spanish procedural law stipulates that judges and courts within the labour jurisdictional order will interpret and apply the rules governing the labour process according to the following principles:

1. **Orality:** Procedural acts are primarily conducted orally, though not exclusively. In the labour process, the principle of orality is evident during the trial. Although the process begins with a written claim, the trial itself is conducted orally: the response to the claim is oral, and questions to witnesses and other parties are asked verbally. In certain procedures, it is even possible to issue the judgment orally. Conversely, appeals are regulated in writing.
2. **Immediacy:** This principle requires that the judge who must issue the judgment is the same one who presided over the trial and witnessed the evidence presented during the trial.
3. **Concentration:** This principle implies (1) that most of the acts that constitute the procedure are carried out in a single hearing and (2) that all preliminary, incidental and prejudicial issues are discussed during the trial and resolved in the judgment.
4. **Expedition:** Based on this principle, judicial bodies must reject requests made by the parties to the procedure that have a dilatory purpose or that entail an abuse of rights.

At the first instance level, the general rule is that legal representation and defence by a lawyer are not mandatory for either claimants or defendants. The party choosing to engage a lawyer will bear the associated fees. Despite this, it is common practice to entrust the defence of the matter to a lawyer to ensure adequate legal representation. When filing an

appeal before higher jurisdictional bodies, legal representation and defence by a lawyer become mandatory.

Year in review

As the purpose of this section is to highlight interesting judicial decisions from the past year, it is not an exhaustive review of the entire case law in 2024.

Hearing prior to dismissal for disciplinary cause

On 18 November 2024, the Supreme Court ruled that Article 7 of the C158 - Termination of Employment Convention, 1982 (ILO Convention 158) imposes an obligation on an employer intending to dismiss an employee for disciplinary reasons to hear the employee before the dismissal.^[1] The ruling emphasises that, although the Spanish Workers' Statute does not expressly establish the right to a prior hearing in all cases, Article 7 of ILO Convention 158 clearly requires it. This Article stipulates that no employee may be dismissed for reasons relating to their conduct or performance without first having had the opportunity to present their defence, except in exceptional circumstances that justify otherwise.

The ruling corrects the previous doctrine that considered the formalisation of the dismissal by written letter to be sufficient, establishing that the prior hearing is an unavoidable requirement to guarantee the employee's right of defence. This criterion represents a substantial change in Spanish case law, aligning it with international standards.

The application of the right to a prior hearing in all disciplinary dismissals has significant practical implications for companies. These include the need to develop internal protocols with procedures that guarantee the employee the possibility of being heard before dismissal, training human resources staff in the new legal requirements to avoid procedural errors, and the need to review collective agreements to include the prior hearing as a mandatory clause in disciplinary procedures.

This ruling represents a significant advance in the protection of labour rights in Spain, aligning internal regulations with international standards.

Additional compensation in the context of an unfair disciplinary dismissal

In a judgment dated 19 December 2024,^[2] the Supreme Court ruled that the legal compensation assessed for unfair dismissal provided for in Article 56 of the Workers' Statute cannot be increased in court with other amounts that consider the specific circumstances of the case, without implying a violation of Article 10 of ILO Convention 158. This Article indicates only that the compensation must be adequate, with the national legislator having determined it in the aforementioned Article 56 of the Spanish Workers' Statute.

This provision indicates that the Supreme Court uses two parameters as compensation (reinstatement or financial compensation) and also uses a generic expression: 'adequate compensation'. Therefore, it is conditioned by what the internal legislation develops for this

purpose, warning that it can configure a legal model based on different and varied factors. For all these reasons, the assessed compensation offers legal security and uniformity for all employees, who, in the event of losing the same job, are compensated on the same terms, without having to prove the specific damage and losses suffered.

It is worth mentioning that, prior to this ruling, the doctrine of the High Court of Justice of Catalonia defended the claim of additional compensation, conditioning the perception of this additional compensation to the insufficiency of the legal compensation. On the other hand, the existence of an illegality, fraud of law or abuse of right in the business decision to terminate a contract should be compensated with a higher amount sufficient to cover the total damage and losses caused by the unfair dismissal. However, after this ruling of the Supreme Court, this argument from the High Court of Justice of Catalonia can no longer be used to try to obtain additional compensation beyond the legal amount.

Nevertheless, the debate on additional compensation has not been fully resolved yet, and this trend may change in the following year. We must await the Supreme Court interpretation of the European Social Charter, which was approved after this dismissal occurred. The content of Article 24 of the European Social Charter states that all employees have the right to be fully protected in the event of dismissal, and the legal value that should be attributed to the interpretations of its content is set forth in the decisions of the European Economic and Social Committee.

Equality plan

In a judgment dated 11 April 2024,^[3] the Supreme Court examined the importance of negotiating equality plans through committees and the exceptionality of negotiating them unilaterally.

In this case, a company requested the registration of its equality plan, but the administration required the constitution of a negotiating committee, which could not be carried out due to the lack of legal representation of the employees in their workplaces. Despite multiple attempts by the company to reach an agreement on this matter, it did not respond adequately, which led to the denial of the registration of the plan. As a response to the administration's refusal, the company filed an appeal, arguing that it had made reasonable efforts to establish the negotiating committee and that the lack of response from the unions justified the need to register the equality plan.

The High Court of Justice of Madrid upheld the claim, annulling the contested resolution and ordering the registration of the plan. The Supreme Court decision is fully in line with that of the High Court of Justice of Madrid, which upheld the claim and ordered the registration of the plan.

The Supreme Court concluded that, in this case, the equality plan must be negotiated and agreed upon, and negotiation by an ad hoc committee is not possible. Also, the unilateral adoption of an equality plan requires very exceptional circumstances, such as a negotiating blockage attributable exclusively to the counterparty, the latter's refusal to negotiate or the absence of any type of representation. This unilateral adoption of an equality plan by the company is only provisional. Finally, in the event of a negotiating blockage, the company can access the register, without the Labour Authority being obliged to uncritically register and publish the plan.

Permanent work incapacity

In a judgment dated 18 January 2024,^[4] the Court of Justice of the European Union considered the Spanish legislation contrary to Article 5 of EU Directive 2000/78. It declared that, in cases of permanent incapacity, it is not possible for a company to terminate a work contract without making reasonable adjustments.

Prior to this ruling, an employer had the capacity to automatically terminate an employment contract because of the recognition of a total permanent incapacity by the competent authority. In other words, an employee's disability was considered to be an automatic objective ground for dismissal, as it was completely beyond the employer's control.

The questions that the national superior court referred to the European Court of Human Rights (ECHR) were whether the automatic termination without making any prior adjustment in cases of permanent incapacity was contrary to EU law and whether it is necessary to prove that reasonable adjustments have been made prior to the termination of the employee.

When assessing the answers to the above questions, the ECHR assessed the ordinary labour law meaning of 'disability' as a limitation that results from a particular impairment that hinders the full and effective participation of the employee in professional life on an equal basis with other employees. Nevertheless, permanent disability refers to the impossibility of working in the previous usual work, not preventing employees from performing other duties or functions.

The ECHR judgment declared the impossibility of an employer terminating an employment contract based on the ground of a permanent disability without first being required to make or maintain any reasonable accommodation. Here, it does not mean that the employer is obliged to take measures that could entail a disproportionate burden on it. The employer has the possibility to justify the mentioned excessive and disproportionate burden or the impossibility to relocate employees into different functions and capacities that meet or do not contradict the declaration of permanent disability made by the competent social security body. Based on this provision, the employer may send a written communication to the employee stating the objective reasons that pose the excessive burden or the lack of vacancies that meet the determined functional limitations.

Since the ruling was issued, lower courts have ruled that the mentioned adjustments may include relocations within the company, changes in duties within the same position, or even reductions in the employee's hours. In addition, national legislation has been adapted to the change introduced by the mentioned judgment.

Procedure

Jurisdictional bodies

The labour jurisdictional order in Spain is organised as follows:

- 1.

Labour courts: These courts hear, in the first instance, the processes attributed by law to the labour order, except for those processes expressly assigned to the competence of other labour jurisdictional bodies.

2. Superior courts of justice: Each region of Spain (autonomous community) has a superior court of justice. This body is composed of a minimum of three judges. Depending on the procedural phase, these courts are assigned the competence to hear different matters:
 - instance bodies hear disputes affecting a territorial scope greater than that of a labour court, without exceeding that of the autonomous community, in the matters expressly provided by law; and
 - second degree bodies primarily hear appeals that may be filed against the judgments of the labour courts.
3. National Court: This court has competence throughout the Spanish territory and is based in Madrid. It hears, in the first instance, the same matters that the superior courts of justice hear in the first instance but when the disputes extend their effects to a territorial scope greater than that of an autonomous community (several autonomous communities or at the national level). It also hears, in the first instance, collective dispute processes whose resolution must have effect in a territorial scope greater than that of an autonomous community.
4. Supreme Court: As the highest court, it has competence throughout the Spanish territory and is based in Madrid. Among the competencies granted by law, the most important are:
 - hearing of cassation appeals established by law; and
 - reviewing final judgments issued by the jurisdictional bodies of the social order and reviewing final arbitration awards on matters subject to the social order.

Phases of the procedure

In general terms, judicial procedures consist of a series of phases, which are detailed below:

1. Preliminary conciliation phase: This phase aims to avoid judicial proceedings through a potential agreement between the parties. Generally, it is mandatory and must occur before filing the claim. However, for certain special procedures, it is not obligatory. Conciliation is conducted before the relevant conciliation service, depending on the region.
2. Filing the claim: If no agreement is reached during the conciliation phase, a claim can be filed with the appropriate jurisdictional body. The law sets minimum requirements for the claim, including (1) the jurisdictional body to which it is addressed; (2) the identification of the defendant or defendants; (3) a detailed description of the facts; and (4) the claimant's demands. Depending on the type

of procedure, the claim must be filed within a legally specified period (e.g., for dismissals, it is 20 working days from the effective date).

3. Admission of the claim: Once the claim is filed, the court conducts a preliminary analysis. If the claim meets the established legal formalities, it will be admitted, and the defendant or defendants will be notified. If any formal error is detected in the claim, the court will grant the claimant a period to correct the observed defects.
4. Judicial conciliation: Within the judicial context, and prior to the trial, there is an opportunity for the parties involved in the litigation to reach a conciliatory agreement. This conciliation act takes place on the same day scheduled for the trial and precedes the oral hearing. If no agreement is reached, the trial proceeds as established.
5. Trial: During the trial, both parties present their arguments and evidence before the judge. Key aspects include the following:
 - Attendance of the parties: The Spanish labour judicial procedure stipulates that if the claimant fails to appear at the trial without a justified cause, they will be deemed to have withdrawn the claim. The absence of the defendant does not prevent the trial from continuing, which will proceed without declaring their default.
 - Phases: Regarding the trial phases, during the allegations stage, the claimant will ratify or expand their claim, although substantial variations cannot be introduced. The defendant will respond by specifically affirming or denying the facts alleged in the claim. Once the claim is ratified and responded to by the defendant, the evidence presentation and examination phase follows, aiming to prove the veracity of the previous allegations. After the evidence is presented, the parties will orally formulate their conclusions, allowing each party to summarise and argue based on the presented evidence.
6. Issuance of the judgment: After the trial, the judge issues a judgment resolving the conflict. The judgment can be appealed to the appropriate jurisdictional body, except in cases where the law states otherwise.

Notwithstanding the above, it is important to note that, depending on the specific procedural modality, these phases may vary, as there are special procedural modalities for which the legislation establishes particular phases and requirements.

Appeals in the Spanish labour jurisdictional order

In the context of the Spanish labour procedure, the most relevant appeals are as follows:

1. Appeal: This is an extraordinary appeal that generally allows parties to challenge the judgments issued by the labour courts. Typically, this appeal is presented before the superior courts of justice and aims to review judicial decisions in labour matters to correct possible errors of fact (incorrect assessment of evidence presented at trial) or law (incorrect application or interpretation of legal norms). Not all judgments are subject to an appeal; there are limitations based on the amount in dispute and the nature of the matter.

2. Cassation appeal: The cassation appeal is a procedural mechanism that allows parties to challenge the judgments issued, primarily, by the superior courts of justice in labour matters before the Supreme Court. The main objectives of this appeal are:
 - the correction of legal errors in judicial decisions, when there is an incorrect application or interpretation of legal norms; and
 - the unification of doctrine, ensuring uniformity in the interpretation of Spanish labour norms when there are contradictory judgments on the same issue.

Types of employment disputes

Types of judicial procedures

In the Spanish labour context, there are several types of judicial procedures. The most relevant are as follows:

1. Ordinary procedure: This applies to all actions that do not have a specific judicial process assigned by law. Additionally, its rules govern subsidiarily for the different procedural modalities.
2. Dismissal procedure: This is a legal procedure to resolve disputes between employees and employers regarding the termination of the employment contract. The types of dismissal that can be carried out in Spain are:
 - disciplinary dismissal, which occurs when the employer decides to terminate an employment contract due to a serious and culpable breach by the employee; and
 - dismissal for objective causes, which is based on economic, technical, organisational or production reasons.
3. Procedure for the protection of fundamental rights: This procedural modality is used when alleging the violation of fundamental rights and public freedoms in the labour context. This procedure has priority and is processed urgently. A key feature is the reversal of the burden of proof. In labour procedures, the general rule is that the party alleging something in court must provide evidence to prove its veracity. However, in fundamental rights procedures, the burden of proof is reversed. The claimant must present a reasonable indication that the employer's act violates their right (e.g., facts indicating unjustified differential treatment). The defendant, in turn, must demonstrate that the reasons for their actions are unrelated to the alleged violation of fundamental rights.
4. Social security procedure: This procedure is used to resolve conflicts relating to social security benefits, such as pensions, disabilities and subsidies.
- 5.

Collective dispute procedure: This procedure is focused on resolving conflicts that affect a group of employees or all the employees of a company. It can be initiated by workers' representatives, trade unions or even by the company itself.

Special considerations

In the Spanish legal system, there are alternative dispute resolution measures aimed at resolving labour conflicts without the need to resort to the courts. The most relevant procedures are as follows.

Mediation

Mediation is a voluntary process in which a neutral third party, the mediator, facilitates communication between the conflicting parties to help them reach a mutually acceptable agreement. The main objective is to resolve the conflict quickly, efficiently and amicably, thus avoiding the need to go to court. Mediation is governed by the principles of gratuity, speed, procedural equality, hearing of the parties, contradiction and impartiality. These principles ensure that the process is fair and equitable for all parties involved.

The mediation procedure generally consists of the following phases:

1. Initiation: Mediation can be requested by either of the conflicting parties or jointly by both.
2. Appointment of the mediator: A neutral mediator is appointed, who can be an individual or a team of mediators, depending on the complexity of the conflict.
3. Mediation sessions: Sessions are held in which the mediator facilitates dialogue between the parties, helping them to identify their interests and explore possible solutions.
4. Agreement: If the parties reach an agreement, it is formalised in writing and is binding. If no agreement is reached, the parties may opt for other conflict resolution mechanisms, such as arbitration or judicial proceedings.

Interconfederal Mediation and Arbitration Service

Although not a specific conflict resolution procedure, the Interconfederal Mediation and Arbitration Service (SIMA-FSP) is an example of an entity that applies alternative conflict resolution methodologies to the judicial route. The SIMA-FSP is a joint foundation constituted by the most representative employers' and trade union organisations at the Spanish state level. The purpose of this body is the extrajudicial resolution of collective labour conflicts arising between employers and employees or their representatives, through mediation and arbitration procedures.

Outlook and conclusions

The Spanish social jurisdiction is undergoing a process of change. On one hand, more formal requirements are increasingly being imposed on employers when implementing restructuring measures concerning employees. For instance, there is a growing necessity for a prior hearing to be given to employees before proceeding with their dismissal, allowing them the opportunity to counterargue the company's allegations, as described in the commentary to the Supreme Court ruling of 18 November 2024. Additionally, new means of protecting employees' interests are being developed through case law, especially in cases of termination. This includes the possibility of severance compensation additional to the unfair dismissal one foreseen by law, which has been considered by some employment tribunals, as described in the commentary to the Supreme Court ruling of 19 December 2024, even though it is not explicitly provided for by law. Looking ahead in 2025, the trend is expected to continue developing, increasingly favouring the protection of employees' interests. It is possible that the Spanish government may approve a modification of the current legal severance system in Spain (currently based on two parameters for calculation: salary and seniority), to make severance pay more personalised.

On the other hand, the labour judicial procedure itself is also undergoing a process of change, leaning towards a slightly more agile and swift procedure, aiming to restore the principle of celerity that initially characterised it, thus resolving disputes between employees and employers more quickly without having to wait several months for a resolution, as is currently the case. In this regard, the recently published Organic Law 1/2025, of 2 January, on measures for the efficiency of the public justice service, implements certain measures aimed at promoting the agility and modernisation of the Spanish labour judicial process. Among these measures, the following stand out:

1. Early submission and exchange of evidence: Evidence must be submitted and exchanged between the parties 10 days before the trial, as opposed to the current practice whereby evidence is exchanged during the trial itself. This submission must be done electronically.
2. Early conciliation hearing: There is the possibility for the conciliation hearing to be held in advance of the trial itself, as opposed to the current practice where it occurs just minutes before the trial.
3. Oral judgments: There is the possibility of delivering oral judgments (instead of written ones), which was previously limited to certain types of procedures that could not be appealed.

In summary, there is a trend towards increasing the protections for employees against dismissals (providing them with greater opportunities to defend themselves or, if applicable, greater compensation), as well as a trend towards simplifying the labour judicial process to make it faster and more efficient. It is expected that this trend will continue and will intensify throughout the year, potentially with new laws or judicial pronouncements further modifying the labour jurisdictional order in Spain.

Endnotes

- 1 Labour Supreme Court, 18 November 2024, No. 1250/2024. [^ Back to section](#)
- 2 Labour Supreme Court, 11 April 2024, No. 545/2024. [^ Back to section](#)
- 3 Labour Supreme Court, 21 April 2024, No. 545/2014. [^ Back to section](#)
- 4 EU Court of Justice, 18 January 2024, No. C-631/2022. [^ Back to section](#)

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Introduction

Switzerland has a well-developed system of employment and labour law that aims to protect the rights of employees and ensure that employers abide by their legal obligations. For the private sector, the statutory framework for employment and labour law in Switzerland is governed by the Swiss Code of Obligations (CO), which sets out the basic legal principles for employment relationships, including the obligations of employers and employees and the rights and duties of both parties. For employees in the public sector, employment relationships are governed by federal, cantonal and sometimes even communal rules. Special regimes can also apply to employees of diplomatic missions, under certain conditions.

One of the fundamental principles of Swiss employment law is the freedom of contract, which means that the parties to an employment contract have considerable flexibility to negotiate the terms of their agreement. The CO sets out the general principles of employment contracts, stating minimum standards such as termination conditions, paid holidays, statutory leave and protection against unfair dismissal, which apply if the parties have not stipulated specific conditions for their contractual relations. Some provisions can only be modified to the advantage of the weaker party, namely the employee.

There is no minimum wage at the federal level, but several cantons have recently introduced a minimum salary. Minimum wages can also result from collective bargaining agreements negotiated between employers' associations and trade unions for certain branches of the economy. These agreements often go beyond the minimum standards set by law and cover various aspects of the work relationship. If applicable, the minimum standards set by these agreements have the force of law and must be respected.

Further laws and regulations apply, such as the Federal Labour Act, which includes mandatory provisions for working hours and occupational safety and health, the Federal Act on the Leasing of Services and the Federal Act on Gender Equality.

The general tenor of Swiss employment and labour law is one of balance between the interests of employers and employees. The law not only provides a range of protections for employees, but it also recognises the importance of allowing employers to operate their businesses in a competitive environment. As a result, Swiss employment and labour law is generally viewed as fair and balanced.

In terms of dispute resolution, Switzerland has a well-established system of labour courts, which are responsible for hearing and adjudicating disputes between employers and employees. These courts are usually organised as parity jurisdictions, with both employer and employee representatives. Employers and employees are encouraged to resolve conflicts amicably, and the law provides for several mechanisms to facilitate this. In the event of a dispute, conciliation proceedings take place before the actual court proceedings with the aim of settling the dispute amicably.

Year in review

Abusive termination – protection of personality rights

Federal Court Decision of 10 December 2024 (4A_51/2024)

A trade union employed an individual in 2014 as union secretary under conditions emphasising respect in all professional interactions, extending also to off-duty conduct if it affected work. The rules banned discrimination and required zero tolerance of sexual harassment and mobbing, with a commitment to support victims and sanction offenders.

In 2015, following a colleague's complaint, an external investigation found the conduct amounted to advances but not harassment, while recommending vigilance. In December 2019 a newspaper, without naming the employee, reported accounts from several women describing persistent invitations, unwanted physical contact and repeated follow-ups; the employee was subsequently identified on social media. The employer suspended him with pay, mandated a fresh external investigation and issued a press release announcing the inquiry and inviting potential witnesses to be heard. The investigation report observed that, notwithstanding the 2015 episode, the employee had continued behaviour likely to be perceived as inappropriate toward women in professional settings. It considered one allegation of sexual harassment credible although a decade old and outside the employer's then workforce, and recommended a written warning with clear conduct directives and a threat of dismissal. On 9 April 2020, the employer terminated the employment with release from duty, invoking its zero-tolerance policy; a press release communicated the end of the investigation and the taking of necessary measures, without naming the employee.

The employee sued for abusive termination, moral damages and compensation for impairment of future economic prospects, and sought that the employer send a letter to all local trade unions clarifying the reasons for dismissal and the absence of sexual harassment. The first instance labour court dismissed all claims; the Geneva Court of Justice confirmed.

Assessing the employer's conduct, the Federal Court held that the suspension, the commissioning of an external investigation and the measured press communication were proportionate responses to serious public allegations that the employer could not ignore without jeopardising its credibility and duty to protect potential victims. As the employer did not divulge the employee's identity nor communicate the reasons for dismissal internally or externally, it could not be considered as the source of the reputational harm, which stemmed from media publications and third-party posts. In the absence of a serious personality rights violation by the employer, neither moral damages nor compensation for economic loss were warranted, and there was no basis to compel a corrective letter. The appeal was dismissed; court costs were charged to the employee and he was ordered to pay party costs.

This decision emphasises that clear codes of conduct covering off-duty behaviour allow employers to act decisively in reputational crises, provided the response is proportionate and avoids stigmatising the employee.

Abusive termination – internal investigation into harassment allegations

Federal Court Decision of 19 January 2024 (4A_368/2023)

A senior bank employee (director level) was accused in August 2018 of sexual harassment via the employer's ethics ombudsperson. The bank initiated an internal investigation, interviewing several employees, reviewing parts of the employee's electronic correspondence, and inviting him to an interview. He was not told in advance that the meeting concerned harassment allegations, was not informed of his right under the bank's internal regulations to be accompanied by a trusted person and was confronted only in general terms with the accusations. He was later given the interview transcript for comment and allowed to submit a written statement. The bank concluded that the allegations were likely to be true and dismissed him with ordinary notice.

The Zurich Labour Court rejected the employee's claim for abusive termination. On appeal, the Zurich High Court awarded 70,000 Swiss francs, reasoning that the process was unfair because the employee was not informed of the interview's purpose beforehand, was not accompanied by a trusted person and did not receive sufficiently detailed particulars (who/when/where) to defend himself.

The Federal Court overturned this decision. It held that an employer's internal inquiry is not a criminal proceeding and criminal procedure guarantees do not apply between private parties. While employees must have the opportunity to be heard, the employer may balance this against the need to protect complainants. Confidentiality and a degree of vagueness in the allegations are permissible, provided the inquiry is reasonably thorough.

Ordinary dismissal remains subject to the general prohibition of abuse, but it is not abusive merely because allegations are not proved. 'Suspicion dismissals' are permissible provided the employer is not acting frivolously and without reasonable grounds. On the established facts, the bank undertook substantial inquiries through a designated team, confronted the employee with the substance of the allegations and allowed him to make post-interview submissions. The lack of prior notice of the interview's topic and the absence of a companion at that meeting did not elevate the process to abuse, nor was the bank obliged to disclose complainants' identities or full particulars given the need to protect reporting employees.

The award for abusive termination was therefore set aside; the employee was ordered to pay court costs and party costs.

This decision confirms that when an employer conducts a documented, good faith inquiry and has reasonable grounds to suspect misconduct, an ordinary dismissal based on that suspicion is not abusive. Internal investigations do not need to replicate criminal proceedings, but they should still incorporate appropriate safeguards to ensure fairness. The adequacy of those safeguards should be assessed case by case, taking into account both the employee's right to be heard and the employer's duty to protect complainants.

Abusive termination and sign-on bonus

Federal Court Decision of 19 February 2025 (4A_506/2023)

A senior manager was hired in September 2019 on 448,800 Swiss francs plus bonus and a contractual compensation of 700,000 Swiss francs for lost restricted stock units due to leaving the previous employment. The compensation was payable in three equal instalments at hire, after 12 months, and after 24 months. He worked day-to-day for the

group's trading arm under a staff leasing arrangement. In February 2020, US sanctions hit the trading arm's Venezuelan oil business, funding dried up and the company prepared to wind down. Management notified the Geneva labour office, opened a 15-day employee consultation, answered written questions and circulated a social plan. The employee declined to sign because the second and third compensation instalments would not be paid in full, then went on sick leave. In May 2020, the hiring entity gave ordinary notice to end on 31 August 2020. Around the same period, the group moved its viable activities and some staff to a successor company.

At first instance most claims failed. On appeal the Geneva court awarded only a small vacation balance. The employee brought a further appeal to the Federal Court, renewing claims for abusive termination on three grounds (business transfer, collective redundancy procedure and personality rights) and for additional pay, including the unpaid compensation tranche and discretionary bonuses.

The Federal Court confirmed that a transfer of undertaking had occurred: the successor company took over the viable activities of the sanctioned trading arm, adopted the same business purpose and hired part of its staff. The transfer was effective while the claimant's contract was still running. The key issue was whether his dismissal was a device to avoid transfer protection. The Court stressed that not every termination around a transfer is abusive: dismissals for legitimate economic reasons remain permissible, whereas circumvention of the law exists only if notice is given solely to prevent contracts from passing or to allow selective re-hiring. Here, the sanctions cut off financing and eliminated about 70 per cent of the business. The successor could only take over limited activities and some staff. On those findings, the dismissal was economically justified and therefore did not breach Article 333 CO.

As to the collective redundancy procedure, the Court found the employer had announced the project, informed the labour office, opened consultation and answered questions. Any omission to flag the later transfer option did not vitiate consultation because transfers in fact occurred and further information would not have enabled better alternatives. The timing and involvement were not shown to be arbitrary. The abuse claim based on consultation therefore failed.

On personality rights, the Court upheld the cantonal assessment. Workplace tensions stemmed largely from the claimant's position and his own conduct, and the company took protective steps to limit the tensions resulting from his managing activities. No abusive termination was established.

On remuneration, the 700,000 Swiss francs 'make-whole' compensation was a fixed, contractually promised amount with fixed payment dates. It was therefore salary rather than a discretionary gratification. A clause requiring continued employment on the payment date is invalid when it conditions salary. The employee was entitled pro rata to the second tranche for the period actually worked.

By contrast, claimed bonuses for 2019 and 2020 were discretionary gratifications. The Court recalled the principle of accessoriness: when total pay is modest or average, repeated discretionary bonuses can, by practice, become enforceable as part of salary; but when remuneration reaches a 'very high income' threshold (five times the Swiss median salary), accessoriness does not apply. Given the claimant's overall pay, his bonus entitlement remained purely discretionary, and no binding promise was proven.

The appeal was partially allowed to award the pro rata compensation amount. All other claims were rejected. Costs were apportioned.

This decision underscores two points. First, a fixed make-whole or sign-on amount framed as instalments may be treated as salary, so employers cannot lawfully hinge payment on the employee still being on payroll at the due date. Second, employers may rely on genuine economic grounds to justify terminations during a business transfer process.

Abusive termination and bonus calculation

Federal Court Decision of 20 August 2024 (4A_587/2023)

A portfolio manager had been employed since 2013 with a fixed salary of 140,000 Swiss francs and a variable 'return on assets' bonus. In 2019, she lost a significant client and raised repeated questions about the calculation of her bonus. After formally requesting payment of alleged outstanding amounts for 2015–2018, her employment was terminated in December 2019 with immediate release from duties. The employer justified the termination by a drop in performance and failure to follow procedures.

The portfolio manager then filed a claim, including for additional remuneration and damages for abusive termination. The Geneva courts rejected most of her claims, awarding only a small balance for remuneration and a new work certificate. She brought the matter before the Federal Court.

On the interpretation of the bonus clause (Article 18 CO), the Court confirmed that the judge must first seek the parties' real and common intent, only subsidiarily applying an objective interpretation under the principle of trust. The cantonal court had correctly found a subjective consensus: throughout the contractual relationship, the employer deducted the employer's social security contributions when calculating the bonus, and the employee, a finance professional, could not ignore this practice, especially since she regularly checked the statements and requested corrections on other items without ever contesting this deduction until her bonus fell. The Federal Court dismissed her argument that the principle *in dubio contra stipulatorem* should apply, noting that it only operates subsidiarily and was not relevant here.

On abusive termination (Article 336 CO), the Court recalled that dismissal is unlawful if it is triggered by the employee asserting contractual claims in good faith. However, the employee bears the burden of proof, and a temporal link alone is insufficient. The cantonal court had found credible the employer's explanations – loss of an important client, reduced profitability, tensions over performance and expense reporting and loss of confidence. These amounted to legitimate business reasons. The employee had not shown that her claims for bonus payment were the determining cause of the dismissal. The Federal Court therefore confirmed that the dismissal was not abusive.

The appeal was rejected. The employee was ordered to bear most costs and to pay compensation for legal expenses.

The decision illustrates the priority of the parties' real and common intent in interpreting contractual bonus clauses and the strict evidentiary burden on employees alleging abusive dismissal when contractual claims are raised before termination.

Abusive termination – long-serving employee close to retirement

Federal Court Decision of 18 March 2025 (4A_109/2024)

A 63-year-old employee had worked almost 29 years for the same employer and was a member of the personnel commission. In August 2020, during the covid-19 downturn, he was dismissed for organisational reasons. The company had placed employees on short-time work and benefited from state allowances, which were intended to avoid redundancies.

The first-instance court rejected his claim for abusive termination. On appeal, the Ticino Court of Appeal held the dismissal abusive and awarded four months' salary as compensation. It stressed the worker's age, long service, spotless performance record and past flexibility in accepting various assignments. The employer had not explored alternatives such as redeployment, reduced workload or early retirement, nor had it informed him in advance or meaningfully consulted the personnel commission. It also noted that the company itself had reassured employees about liquidity and stability, and had not shown pressing financial difficulties.

The Federal Court upheld this assessment. It recalled that Swiss law guarantees broad freedom of termination, but that dismissal may be abusive in light of the overall circumstances. Employees nearing retirement after many years of loyal service require heightened consideration. There is no general right to be heard before dismissal and no duty of proportionality in private law, but a lack of consideration for long-serving older staff can render a termination abusive, especially absent serious economic reasons. Here, the employer had not demonstrated urgent need, since it received state support and declared itself financially sound. In these circumstances, the failure to consider more social measures or to warn the worker beforehand tipped the balance.

The appeal was dismissed. The company was ordered to pay an indemnity to the employee as well as costs and compensation for the proceedings.

This decision shows that while Swiss law preserves wide termination freedom, employers must show particular regard for employees of advanced age and long service, especially when relying on organisational grounds. Where the company has benefited from state support and given reassurances of stability, dismissals without exploring alternatives risk being deemed abusive.

Immediate termination and compensation

Federal Court Decision of 30 October 2024 (4A_90/2024)

A professional sports coach was hired under a fixed-term contract from 1 July 2018 to 30 June 2019. In September 2018, the employer terminated the contract with immediate effect and released a press statement. The coach enrolled with the unemployment office in May 2019 and found new employment as of August 2019.

The employee claimed salary for the remaining contractual term until 30 June 2019 and an indemnity for unjustified immediate dismissal. The lower courts agreed that the immediate termination was unjustified, entitling him in principle to salary compensation under Article 337c Paragraph 1 CO until the expiry of the fixed-term contract as well as an indemnity. The dispute concerned the extent of the salary compensation. Under Article 337c Paragraph 2 CO, the employee must deduct income earned elsewhere or that he intentionally failed to earn. The Valais Cantonal Court found that the employee had made no job applications between October 2018 and January 2019, despite his experience and an active job market for coaches at his level. Once he began applying regularly, he secured a professional coaching role within about five months. The court therefore held that he had voluntarily foregone income for four months and eleven days, reducing the compensation accordingly. Because he refused to disclose his later salary, the court presumed it was equivalent to his previous earnings.

The Federal Court upheld this approach. It confirmed that an employee dismissed immediately without cause is owed full salary until the end of the contractual term, but the employer may prove that part of the loss should be reduced if the employee deliberately failed to seek reasonable alternative work. The finding that the coach could have found new employment earlier if he had applied continuously was not arbitrary. His explanations – fearing rejections or reputational harm – were unsubstantiated, and the cantonal court was entitled to infer bad faith from his refusal to reveal his later pay.

The appeal was dismissed. The employee was ordered to pay court costs and party costs.

This decision confirms that while an employee unjustifiably dismissed with immediate effect is, in principle, entitled to salary until the end of the contract, this compensation may be reduced if the employer is able to prove that the employee failed, without valid justification, to make diligent efforts to find suitable work.

Dismissal upon return from maternity leave

Federal Court Decision of 27March 2024 (4A_461/2023)

An employee was hired in 2007 by a financial services company and advanced to account manager with significant commissions. After maternity leave in 2016, she returned at 80 per cent with reduced salary, adjusted working hours and removal of clients in the Ticino region to accommodate her family situation. She was assigned a new portfolio of more than 120 accounts, which she considered less valuable than her previous one. In December 2017, she stopped working due to health issues. In June 2018, the employer terminated her contract with effect at the end of September, citing the need to redistribute clients permanently to maintain operational stability.

The employee sued, claiming salary balances, commissions, damages for abusive termination, loss of severance related to restructuring and moral damages. The Geneva Labour Court partly upheld her claim, finding the dismissal abusive because the employer had not adequately adapted her workload to her circumstances, and awarded compensation of four months' salary. On appeal, however, the Geneva Court of Justice overturned this finding, rejecting her claims entirely.

The Federal Court confirmed. It held that the employee's appeal failed to meet the procedural requirements of substantiated motivation regarding her financial claims. As to the dismissal, the Court accepted the finding that the employer had accommodated her situation by approving part-time work, removing travel obligations, adjusting her schedule and supporting her in client matters. The new portfolio, though less attractive, still corresponded to her function and contained development opportunities. There was no indication of harassment or that the employer should have known of a deterioration in her health before December 2017. The Federal Court therefore upheld the view that the termination was based on organisational needs and not abusive.

The appeal was dismissed and costs were charged to the employee. This decision illustrates that where an employer adapts working conditions in good faith and supports the employee's reintegration, the subsequent termination for operational reasons will not be considered abusive even if the new workload is less advantageous.

Staff leasing – platform logistics model

Federal Court Decision of 5 February 2025 (2C_46/2024)

A Geneva courier company employing roughly 400 bicycle riders fulfilled meal-delivery orders generated by a major food delivery platform under a services licence that gave it access to the app. When the canton ordered the company to obtain a labour leasing licence – treating the arrangement as a temporary-staffing model in which the company was effectively supplying workers to the platform – the company appealed. The question before the Federal Court was whether, in substance, the platform exercised the essential power of direction over the couriers; if so, the model qualified as staff leasing and required prior authorisation.

On the facts as established, couriers could only work by logging into the platform. The platform assigned each job and communicated the restaurant and customer details, access codes and estimated times; time estimates were shown to restaurants and customers, and the app prompted riders if pickup lagged. The platform could narrow delivery zones in real time depending on rider supply, and customers could issue instructions to riders through in-app chat. The platform tracked location, could require selfie checks for safety compliance and could deactivate accounts. In practice riders were instructed not to reject tasks. The Court held that these features showed the platform controlled the object of the work (what to deliver to whom), its timing and geography and maintained real-time oversight – amounting to the essential power of direction, even if the courier employer retained scheduling or HR formalities.

Additional indicators also pointed to staff leasing: riders were integrated into the platform's workflow; the platform app was the indispensable tool for performing deliveries; and the commercial risk of poor performance partly fell on the platform because service quality affected ongoing use by restaurants and customers. Pricing was not a fixed, pre-agreed fee but varied by delivery type and monthly conditions, consistent with a leasing model rather than a pure service contract.

The Court therefore confirmed that the courier employer was a lender of services and the platform was the user undertaking, so the activity requires a staffing licence under Swiss staff leasing rules. The appeal was dismissed.

This decision signals that where a platform dictates task allocation, timing, territory and on-the-job conduct through its app, regulators and courts will characterise the arrangement as staff leasing regardless of contractual labels, and the intermediary employer must be licensed.

Procedure

As in any civil dispute in Switzerland, with a few exceptions, in the event of a dispute between an employee and an employer subject to private law, the claimant must first refer to the conciliation authority. According to the Swiss Code of Civil Procedure (CPC), the cantons are responsible for the organisation of the courts and the conciliation authorities, which explains why the organisation of the latter varies greatly from one canton to another.

In the case of private labour disputes, the CPC provides for two alternative forums: the court of the defendant's domicile or registered office, or the court of the place where the employee works. Notably, according to the case law of the Swiss Federal Court, most labour law disputes cannot be submitted to arbitration. Therefore, even if an arbitration agreement is concluded, the ordinary courts in general cannot decline jurisdiction if a dispute is referred to them.

The conciliation authority, which is sometimes a joint body, hears the parties and tries to promote an amicable settlement. If no solution to the dispute is found on this occasion – bearing in mind that the conciliation authority may also reconvene the case to give the parties time to negotiate further – an authorisation to proceed is issued to the claimant, allowing them to proceed before the court with jurisdiction on the merits within three months.

Litigation with a value in dispute of up to 30,000 Swiss francs is subject to a simplified procedure, the aim of which is to achieve a rapid investigation and decision of the case. In this case, the formal requirements for the application to the court are reduced. In particular, it does not have to contain any legal arguments, which facilitates access to the court for individuals who are not assisted by a lawyer. The simplified procedure also applies regardless of the amount in dispute to claims based on the Federal Act on Gender Equality. In the other cases, the ordinary procedure applies.

The defendant has the opportunity to raise counterclaims against the plaintiff in the proceedings, provided the same procedural rules apply to both claim and counterclaim.

The Swiss courts charge court fees for these proceedings. However, the CPC provides for a fee exemption for employment disputes with a value in dispute of up to 30,000 Swiss francs or based on the Federal Act on Gender Equality. If these exceptions are not met, costs are generally charged in proportion to the value in dispute, according to a tariff fixed at the cantonal level. Costs may also be awarded to the successful party to compensate for its legal fees, although this will often not cover the full amount of those fees. Many cantons provide for more extensive fee exemptions, which can potentially determine the choice of forum for the action.

The language of the proceedings is determined by the canton, and can be German, French, Italian or Romansh. This means that if evidence documents are written in English, they will generally have to be translated to be used in the proceedings, unless the court accepts them just in English. From 1 January 2025, cantonal law can foresee that upon mutual request of both parties, international commercial law disputes can be litigated in English. Respective initiatives are pending in several cantons (e.g., Zurich and Berne).

In practice, despite the application of the simplified procedure, proceedings in front of the labour courts often last at least one year from the filing of the request for conciliation, and often much longer until a decision is rendered by the first instance authority. This is mainly due to the fact that labour law disputes often involve the hearing of numerous witnesses (e.g., superiors and colleagues), which slows down the investigation of the case. Given the large number of proceedings in the court's docket, it is often difficult to quickly reconvene a hearing when the witnesses are excused.

Notably, specific provisions apply if the dispute concerns claims based on the Unfair Competition Act. Similarly, disputes between a public official and a state authority (whose legal relationship is governed by public law) are subject to separate procedural rules. Collective bargaining agreements may also contain special provisions for dispute resolution, for example containing negotiation and mediation clauses or referring disputes to bodies other than the ordinary courts.

Decisions rendered by the first instance courts can be challenged at second instance before an appellate court located in the same canton that is empowered to review both the fact and the law. Decisions of the appellate court may be appealed to the Federal Court under certain conditions. The latter, however, has a power limited to deciding on matters of the law or the arbitrary finding of facts in the case.

Types of employment disputes

In Switzerland, there is a distinction between the types of employment disputes that arise according to the type of claimant. Claims brought forward by employees usually revolve around the following:

1. termination: claims regarding abusive dismissal or the violation of a consensual termination agreement; and disputes regarding the issuing of documents by the employer at the end of the employment relationship (such as reference letters), among other issues;
2. bonus and compensation (including payment of vacation and overtime); and
3. employee personality protection (e.g., discrimination, mobbing and other types of harassment in the workplace) and data protection.

Conversely, claims brought forward by employers mainly concern the breach of contractual duties by the employee (e.g., duty of loyalty and duty of care) or the breach of a non-competition or confidentiality clause.

The CO contains a chapter on protection against termination, which sets out a list of circumstances under which a termination is deemed to be abusive. The list is not exhaustive, however, and these provisions have thus given rise to an abundance of case law. Except for cases of gender discrimination, in the private sector, the law does not provide for a right to reinstatement, which means that even if the dismissal is found to be wrongful, the claimant will only be entitled to monetary compensation. According to the law, such compensation is capped to a maximum of six months' salary. There is also a large body of case law relating to the determination of the amount of these compensation payments.

In cases of dispute, the courts will examine whether the contractual stipulations between the parties or, in the absence of specific agreements, whether the legal provisions providing for the minimum framework have been complied with. As the burden of proof usually rests with the claimant, it is in the claimant's interest to provide as much evidence as possible in written form. However, if the employer is the defendant, depending on the subject matter of dispute, it has a duty to collaborate and to provide information that the employee would otherwise not have in their possession (e.g., record of hours worked and annual turnover allowing the calculation of a possible bonus).

As a general rule, all claims that arise from the employment relationship fall due when such relationship ends. Note also that Swiss substantive law provides for certain time limits for claimants to proceed, failing which their claims will lapse. A claim for compensation for abusive termination must be initiated within 180 days of the end of the employment relationship; other claims become time-barred after five or 10 years, depending on the nature of the claim. The CO further provides that the employee may not waive the protection afforded by mandatory provisions of the law or that has arisen from a collective labour agreement during the term of the employment relationship and during the month following the end of the contract.

Unsurprisingly, in practice most disputes materialise at the time of termination of the contract, which is why there is an extensive amount of case law on this subject. In some cases, only a part of the claim remains in dispute at the stage of the proceedings before the courts. The nature of the contractual relationship should always be analysed first, as the legal protections apply only to parties to an employment contract and not if their relationship falls under another type of contract.

Outlook and conclusions

To date, there is no federal law on minimum wage. However, several Swiss cantons (i.e., Geneva, Basel-Stadt, Ticino, Neuchâtel and Jura) have implemented minimum wages applicable on their territories. Respective laws have also been passed in the cities of Zurich, Winterthur and Luzern. However, it is politically and legally disputed and yet unclear to what extent such minimal wage rules shall be applicable. This will continue to be a hot topic over the coming months and years.

The increasing flexibility of work arrangements – particularly those that cross borders – leads to complex legal questions. These include determining who has entered into an employment relationship, whether a given cooperation qualifies as an employment relationship under Swiss law, which legal norms apply and which courts have jurisdiction

to adjudicate disputes. Switzerland's geographical location, attractive working conditions and high cost of living have made it a hub for cross-border employment. More than 400,000 individuals regularly commute to Switzerland under the cross-border regime, which allows them to work for Swiss-based employers while residing in neighbouring countries (more than half of the cross-border commuters live in France, roughly 25 per cent in Italy and close to 20 per cent in Germany). At the same time, numerous foreign employers engage individuals performing work on Swiss territory. The challenges for employers are not limited to employment law; they further include social security, tax, immigration, data protection and regulatory law questions. This complexity is further amplified by arrangements involving gig work, cloud-based tasks and assignments via third parties such as employers of record, where the traditional boundaries of employment are blurred. In light of these developments, employers must carefully review their cross-border or flexible collaboration arrangements to ensure compliance with both existing and forthcoming legal obligations. The evolving legal landscape underscores the need for a proactive and risk-aware approach to managing flexible and cross-border work setups.

We anticipate that employment litigation will continue to centre around termination issues over the next months and years, particularly in cases involving alleged unfair dismissal or termination without notice. Compared to previous years, employers appear more willing to terminate employment with immediate effect when there is a suspicion that internal policies have been breached. This trend results in an increase in claims for compensation based on unjustified immediate termination. At the same time, Swiss case law imposes certain procedural obligations on employers, such as attempting to resolve internal conflicts or giving senior employees a final opportunity to improve before proceeding with termination. If these steps are not taken, the dismissed employee may have stronger grounds to claim that the termination was abusive and seek compensation accordingly.

From a procedural aspect, as per 1 January 2025, new provisions have been introduced to the CPC related to the use of electronic equipment for audio or video transmission. These rules newly allow the courts to conduct procedural acts orally on request or *ex officio* by using electronic audio or video equipment, in particular by videoconference, or authorise the persons participating in the proceedings to do so by using such equipment, unless the law provides otherwise and all parties agree. It remains to be seen how often the parties and courts make use of these new options, considering not only their upsides (such as, e.g., the increased flexibility for all parties involved in the proceedings – parties, lawyers, experts and witnesses can participate regardless of their location, which saves time and money, or the possible questioning of individuals who are otherwise not able to appear in court for health or logistical reasons), but also the risks involved (e.g., the limited ability to directly assess the credibility of statements, as the judges have only limited ability to evaluate nonverbal cues such as eye contact or body language, which can make it difficult to evaluate evidence).

The new rules also expressly allow parties to submit private expert reports as evidence. In the context of internal investigations, this development may prove significant: investigative reports prepared by external experts engaged by an employer could now be filed as supporting evidence, reducing the need for courts to replicate the investigation or re-hear the investigators as witnesses. This change may strengthen the evidentiary value of well-documented internal investigations, provided they are conducted impartially, with procedural safeguards ensuring reliability and fairness.



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Introduction

Statutory framework

As Taiwan is a civil law country, the Labour Standards Act (LSA) is the main employment legislation and stipulates the minimum statutory standards and requirements for all employment relationships, including employees' statutory entitlements (e.g., minimum wage, maximum working hours and statutory leave), statutory causes for termination of an employment contract, statutory requirements for implementing non-competition obligations and fixed-term employees. In addition to the LSA, other labour-related laws, such as the Labour Insurance Act, the Labour Pension Act, the Labour Occupational Accident Insurance and Protection Act, the Employment Service Act, the Act of Gender Equality in Employment, the Occupational Safety and Health Act, and the Act for Worker Protection of Mass Redundancy, provide the rights and obligations between employers and employees. The statutory framework is further supported by the rulings rendered by the Taiwan Ministry of Labour (MOL), and Taiwan court precedents also play an important role in supplementing labour and employment laws. Generally speaking, the labour laws and regulations in Taiwan are more protective of, and favourable to, employees.^[1]

Collective relations

To improve employees' living and working conditions, a labour union may be formed in Taiwan, which must consist of at least 30 employees (members), to collectively represent and defend the interests of their members. Under the Labour Union Act (LUA), labour unions may negotiate and sign collective agreements with employers and may proceed to strike over labour disputes regarding rights. Conversely, every business entity in Taiwan, regardless of the number of its employees, should establish a labour management conference (LMC) to coordinate worker–employer relationships and relevant matters. However, for a company with a labour union, such tasks will alternatively be handled by the labour union. For example, the implementation of any overtime work mechanism and flexible working hour arrangement is subject to the prior approval of the labour union or, in the absence thereof, the LMC. If no approval is obtained, an administrative fine will be triggered.

Labour disputes

Labour disputes in Taiwan are mainly over employment terms and conditions, termination of employment, payment and calculation of severance pay, wages and overtime payment. According to the data published by the MOL and the Judicial Yuan, in 2024, there were 27,419 labour disputes accepted by local labour authorities, 50 labour disputes regarding unfair labour practices submitted to MOL and 10,151 cases of labour disputes heard by district courts.^[2]

Year in review

The main changes and developments in Taiwan employment law over the past 12 to 18 months are as described in more detail below.

Recent judicial views regarding provisional injunctions to order the employer to continue employing and paying wages to the employee under the Labour Incident Act

For a wrongful termination dispute, as mentioned in the section on 'Provisional injunctions', Article 49 of the Labour Incident Act (LIA) stipulates that if the court finds that the employee has a reasonable chance of winning the lawsuit and the employer may continue to employ the employee without significant difficulty, the court may, upon the employee's request, issue a provisional injunction for the continuation of employment and payment of wages (Continued Employment Provisional Injunction). The Act for Settlement of Labour Management Disputes (ASLMD) also requires the employee to explain the reasonable chance of winning the lawsuit and the absence of significant difficulty for the employer to continue employment, and provides that the court should give the counterparty (i.e., the employer) an opportunity to express its opinions before issuing a ruling. Therefore, since the LIA took effect in 2019, it has been a common practice for employees to apply for a Continued Employment Provisional Injunction before filing the main wrongful termination lawsuits.

Notably, there seems to be a trend of lenient review of this Continued Employment Provisional Injunction by the labour courts in recent times. For example, in a ruling rendered by the Taiwan High Court, Taichung Branch Court, the employee in the case withdrew his resignation, but the employer considered the resignation to be in effect.^[3] The employee then filed a wrongful termination lawsuit to confirm the existence of the employment relationship and sought a Continued Employment Provisional Injunction under Article 49 of the LIA. The District Court, without providing the employer with an opportunity to express its opinion, granted this provisional injunction and ruled that the employer should continue to employ the employee and pay him a monthly salary of about NT\$150,000 until the end of the main wrongful termination lawsuit.

Subsequently, after an appeal by the employer, the Taiwan High Court found that the employee had fulfilled the obligation to explain and met the requirements for the Continued Employment Provisional Injunction under Article 49 of the LIA. According to the Taiwan High Court, the employee's obligation to 'explain' means that the court only needs reasonable evidence to believe the existence of a certain fact, rather than requiring evidence that would make the court absolutely certain of the truth of the employee's claim. Additionally, the 'significant difficulty for the employer to continue employment' refers to situations where continuing to employ the employee may cause unexpected economic burdens for the employer, pose a threat to the survival of the business, or similar circumstances. For these reasons, the Taiwan High Court held that (1) the information provided by the employee had demonstrated the prospect of winning the lawsuit, and the court reviewing the provisional injunction was not required to review the underlying dispute in substance, and (2) the employer was a company of a considerable size, and the employee also had the ability and skills to continue to provide services without any adverse impact on the employer's operations. The court also explained that even though the employer was not given an opportunity to express its opinion in the district court,

the employer had already expressed its opinion in the Taiwan High Court. Therefore, the original ruling was upheld.

Regarding the execution of the Continued Employment Provisional Injunction, a Supreme Court ruling held that the purpose of 'continued employment' is not only to temporarily satisfy the urgent needs of employees' lives, but also to enable employees to continue working to maintain their professional skills and competitiveness, and to protect their rights to work and personal dignity.^[4] At a seminar held by the Taiwan High Court on civil execution cases, it was concluded that 'continued employment' means that the employer should accept the employees' services according to the original job contents or the agreed content of continued employment.^[5] When reviewing a petition for Continued Employment Provisional Injunction, the court should consider the specific circumstances and clearly state the specific content of the work and the scope of employment in the ruling. If the ruling only states 'continued employment' without excluding other conditions, it should be interpreted as including all original work conditions. Therefore, if the employer intends to instruct the employee to be on standby and not enter the employer's premises to provide services, as long as this instruction is not clearly stated in the ruling granting Continued Employment Provisional Injunction and not agreed upon by the employee, it may still be considered a violation of the Continued Employment Provisional Injunction and be subject to penalties. Although this conclusion is not a binding judgment or ruling, it remains a criterion for the execution court to execute the Continued Employment Provisional Injunction.

It is also noteworthy that in 2025, the Taiwan High Court, Taichung Branch Court, rendered a ruling to overrule the request by the employer for revocation of the Continued Employment Provisional Injunction. The Taiwan High Court held that, since the LIA does not provide for the revocation of the Continued Employment Provisional Injunction, the provisions of the Code of Civil Procedure concerning the revocation of provisional attachments should be applied *mutatis mutandis*. That is, the revocation shall be based on: (1) extinguishment of the grounds for a Continued Employment Provisional Injunction; (2) a final and binding judgment against the applicant in the main case; or (3) other changes in the circumstances surrounding the order of Continued Employment Provisional Injunction. The court further held that, since the employee had already filed an appeal against the High Court's judgment in the main case and the case had been transferred to the Supreme Court for review, this does not constitute a change in circumstances, as the employee retains the right to apply for the Continued Employment Provisional Injunction until the Supreme Court issues a final judgment. Therefore, the employer's request to revoke the Continued Employment Provisional Injunction was rejected. In summary, current judicial practice adopts a relatively protective stance toward employees in this regard.

The above highlights the following:

1. when applying for a Continued Employment Provisional Injunction, the court will not make a decision on the merits of the case and tends to consider that the employee has a reasonable chance of winning if the employee can reasonably explain the doubt over the legality of the employer's termination, which substantially reduces the employee's burden of proof;
2. the court may grant the Continued Employment Provisional Injunction without notifying the employer and may not give the employer an opportunity to express its opinion;

3. the Continued Employment Provisional Injunction requires the employer to allow the employee to continue their original work and receive their original pay unless otherwise instructed by the court or agreed upon by the employee; and
4. a Continued Employment Provisional Injunction may only be revoked after a final and binding judgment has been rendered in the main case.

Draft amendments to the Occupational Safety and Health Act regarding workplace bullying

Given the importance of a safe and healthy work environment, the Ministry of Labour (MOL) proposed draft amendments to the Occupational Safety and Health Act to further reduce occupational accidents and promote a friendly workplace. The Executive Yuan passed the draft amendment, forwarding it to the Legislative Yuan for review. It is worth noting that the amendments include a specific section on the prevention and control of workplace bullying, as summarised below:

1. specifying the definition of workplace bullying and providing that employers are required to establish prevention and control measures based on the number of employees;
2. strengthening employers' obligations regarding the investigation and handling of internal complaints concerning workplace bullying, and providing mechanisms to assist and protect complainants, and requiring employers to register complaint cases and their handling results on the website designated by the central competent authority; and
3. establishing mechanisms for external complaints, investigations and handling when the person accused of workplace bullying is the highest responsible individual, as well as the relevant procedures and deadlines for employees to file these complaints with the local competent authority

Extending working years and promoting workforce re-entry for retirees

In response to Taiwan's aging population, the Legislative Yuan passed amendments to the LSA and Middle-aged and Elderly Employment Promotion Act in July 2024. A summary of the amendments is as follows:

1. the amendment to the LSA, taking effect on 31 July 2024, provides that employers and employees may negotiate and agree on a mandatory retirement age higher than 65; and
2. the amendment to the Middle-aged and Elderly Employment Promotion Act, taking effect on 4 December 2024, mainly strengthens efforts to delay workers' exit from the employment market and encourages retired workers to rejoin the workforce. It includes stipulating the required contents of plans for the employment of senior and middle-aged persons, and requires employers to provide support measures for workers preparing for retirement, adjustment, or re-employment within two years prior to voluntary retirement or reaching the mandatory retirement age.

Increase in minimum wage in Taiwan

On 1 January 2025, the minimum monthly wage was increased from NT\$27,470 to NT\$28,590, and the minimum hourly wage was increased from NT\$183 to NT\$190. In response to these increases, the Classification Table for Labour Insurance Enrolment and the Insured Salary Category Chart for Labour Occupational Accident Insurance, which serve as the basis for calculating relevant insurance premiums, were revised accordingly.

Procedure

Labour dispute resolutions in Taiwan are stipulated under the ASLMD and the LIA and their sublaws.

Under the ASLMD, labour disputes are classifiable into those disputes over rights and those over interest. Disputes over rights are adjudicable, whereas those over interest are not and may be resolved only by mediation or arbitration in accordance with the ASLMD. Disputes over rights refer to those over the rights and obligations prescribed under the laws, regulations, collective agreements or employment contracts between employers and employees, whereas disputes over interest refer to those between employers and employees over maintaining or changing the terms and conditions of employment.^[6]

Alternative dispute resolution

There are three types of alternative dispute resolution mechanisms under the ASLMD:

1. mediation;
2. arbitration; and
3. the MOL's decision on unfair labour practices.

According to the ASLMD, when a labour dispute arises, either the employer or employee may apply to the local labour authorities in the location where the employee has been providing their services, for mediation by:

1. a mediator appointed by the local labour authorities; or
2. the labour dispute mediation committee of the local labour authorities.^[7]

If an agreement is reached through mediation, a mediation agreement should be executed by both parties and is legally binding.^[8] If no consensus is reached through mediation, the parties may submit the dispute for arbitration or either party may file a lawsuit.^[9]

If the parties petition for arbitration by the local labour authorities, the arbitral award will be binding on the parties and has the same effect as a final court judgment on a dispute over rights. However, for a dispute over interest, the arbitral award will be deemed an agreement between the parties, whereby neither party is permitted to take any industrial action again

for the same dispute.^[10] Notably, an arbitration under the Taiwan Arbitration Law may also apply to labour disputes over rights.

For unfair labour practices, the LUA and the Collective Agreement Act provide the mechanism under which the MOL organises the Tribunal for Unfair Labour Practices, recruiting seven to 15 experts and scholars to serve as committee members.^[11] The committee reviews cases and makes decisions on unfair labour practices, which include unfair treatment against employees for participating in a labour union or collective bargaining. If employees apply to the MOL for a decision on unfair labour practices, the decision will be binding and have the same effect as a final civil judgment in terms of enforcement upon being ratified by the court.^[12]

Judicial proceedings

The LIA, which came into effect on 1 January 2020, stipulates the procedural requirements in litigation concerning employment-related disputes. The LIA was enacted for the purposes of facilitating effective resolutions of labour disputes, protecting employees' rights in all dispute resolution proceedings, ensuring information asymmetry and equal footing for both employees and employers. Under the LIA, each level of the courts is required to establish labour courts and to elect judges who are equipped with the experience and knowledge of labour law required to exclusively resolve labour disputes.^[13]

In addition to the incorporation of existing regulations on labour disputes (e.g., the Code of Civil Procedure and the ASLMD) into the LIA for easier application of the law, the LIA also contains provisions on labour dispute and resolution, which are summarised as follows.

Resolving labour disputes more effectively through the court-appointed mediation

Except for certain cases, labour disputes should be mediated by the court before filing any lawsuit. The filing of a complaint is deemed a motion for mediation when the plaintiff fails to request mediation in advance.^[14] The LIA stipulates that if the parties have not petitioned for the labour mediation held by the labour authorities, one judge and two court-appointed mediators will form a mediation committee that presides over the mediation process before the judge formally entertains the case.^[15] The mediation committee should hold the first mediation session within 30 days after receiving an application for mediation, and conclude the mediation by the third mediation session, if applicable.^[16] In principle, parties should submit relevant evidence by the second mediation session, which would serve as the basis for the mediation committee to propose any settlement plan or to conclude the mediation without a resolution.^[17] If the mediation yields no resolution and a lawsuit is subsequently initiated, the judge participating in the mediation process would continue presiding over the subsequent court proceedings.^[18]

Court proceedings for labour disputes

If a lawsuit is filed after a failed mediation, the court proceedings, in general, would be concluded after only one session of oral debate hearing, given that the judge presiding over the lawsuit would have participated in the mediation process and is familiar with the facts and evidence of the dispute.^[19] The first instance (district court) proceedings should be concluded within six months. However, if the judge believes that the complexity of the

dispute warrants any further investigation, one or more preparation hearings may be held before the oral arguments commence.

Adjustment of burden of proof

Regarding the issue of whether certain compensation payments received by an employee should be treated as part of the employee's wages (particularly when calculating pension or severance pay), if the employee can prove that the compensation payments were made by the employer to the employee based on their employment relationship, such payments should be treated as wages for the employee's performance of work. If the employer argues otherwise (e.g., year-end bonus or discretionary performance bonus should not be treated as part of the wages), the employer would bear the burden of proof.^[20] For an employee's work hours, the work hours documented by the employee's attendance records should be deemed as the hours that such employee has worked (including regular working hours and overtime hours) under the approval of the employer, and thus should serve as the basis for calculating overtime pay.^[21] If the employer argues that such attendance records do not reflect the employee's actual hours of work (i.e., no overtime work has been performed), the employer would have to prove otherwise.

Provisional injunctions

Under the ASLMD, the LIA and the Taiwan civil court procedure, a dismissed employee may initiate a suit to confirm the existence of an employment relationship and to claim unlawful dismissal. Additionally, if the court deems that the employee can receive a favourable judgment and that there is no material difficulty for the employer to continue employing the employee, the court may render a provisional injunction to order the employer to continue employing and paying wages to the employee.^[22] In this way, the employee would be reinstated and continue to work and receive wages before a final court judgment is rendered.

Reduction in employee's financial burden

An employee's financial burden can be reduced in the following ways:

1. deferral of two-thirds of the court fee: applicable to complaints and appeals raised by employees or labour unions for disputes relating to the existence of the employment relationship, wage payments, pensions or severance pay;^[23]
2. deferral of the execution fee: when seeking an order of compulsory execution on a monetary claim, the execution fees for any portion of the execution value exceeding NT\$200,000 will be temporarily exempted and be covered by the amount received from the follow-up foreclosure or execution;^[24]
3. for suits instituted by labour unions for multiple employees with common interests under the Code of Civil Procedure (class action) and joinder requests filed by non-union members under the LIA, the court fees may be exempted for the value or amount of the claim exceeding NT\$1 million;
4. for suits against employers' inaction under the LIA: court fees are waived,^[25] and

5. imposing a cap on the amount of security bond: when employees apply for provisional attachments, provisional injunctions or preliminary injunctions relating to payment of salary, compensation or indemnification for occupational injuries, pension, severance pay, compensation for failure to enrol the employees in the statutory labour insurance or the existence of an employment relationship, the amount of security set by the court may not exceed 10 per cent of the value of the claim.^[26]

Types of employment disputes

Disputes that arise between employers and employees mainly fall into the following categories:

1. ones between service providers and service recipients (e.g., whether the relationship should be deemed as a mandate, an independent contractor, dispatch arrangement or an employment relationship; for example, the increasing number of disputes with Uber Eats and Food Panda have drawn the attention of the labour competent authorities);
2. disputes over labour contracts, including breach of labour conditions;
3. disputes over wages, such as calculation of allowances, bonuses or pensions, or failure to provide statutory social welfare benefits and overtime payments;
4. disputes over workplace rights, such as working conditions, working environment, harassment and discrimination;
5. disputes over occupational safety and health matters, such as compensation for damages caused by occupational accidents;
6. disputes over unfair labour practices, including unfair treatment, employer domination and bad faith bargaining; and
7. disputes over employees' misconduct that may involve criminal lawsuits.

Notably, disputes over post-employment obligations are common when former employees are in breach of surviving and continuing confidentiality, non-solicitation and non-competition obligations. In addition, violation of confidentiality by disclosing trade secrets of former or current employers and data protection laws by using employees' personal data unlawfully may also give rise to employment disputes.

Outlook and conclusions

This year, the MOL announced a draft amendment to the Occupational Safety and Health Act, which included a dedicated Chapter specifically addressing workplace bullying prevention, which is expected to take effect in 2026. The amendment legally defines 'workplace bullying' and mandates that employers bear with specific obligations

on preventing workplace bullying. Employers should closely monitor these legislative developments to ensure compliance and minimise legal risks and disputes.

Furthermore, since the LIA took effect, under which employees are entitled to more effective judicial relief and more advantages in court proceedings, an increasing number of labour disputes will likely be brought to court. In response to this trend, and considering the employers' burden of proof in disputes over salary or overtime pay, and calculations under the LIA, it is crucial for employers to review their work rules and internal policies to enhance their HR compliance and management.

The courts' decisions on labour disputes over employment termination should also be closely monitored. While the Supreme Court and the High Court do render decisions in favour of employers from time to time, the Taiwan courts tend to be protective of employees and are generally conservative when entertaining a wrongful termination case (i.e., determining whether a statutory termination cause exists). Practically, it is also advisable for employers to handle any employment termination with sensitivity and to properly plan ahead.

The labour authorities take a more active role in occasionally conducting labour inspections to ensure the employers' compliance with labour law. Basically, the authorities conduct labour inspections based on the risk level; for example, prioritising labour inspection on enterprises with high rates of violations, risks and occupational accidents. The authorities also conduct labour inspections after receiving complaints filed by employees or any third party, or reports by the mass media regarding the violation of labour laws and regulations.

In 2025, the labour inspection policy is being amended to specifically focus on the following in response to the sustainable development policies and recent accidents in Taiwan:

1. expanding inspections to factories with high risk of fire and explosion;
2. strengthening safety management in public construction projects;
3. implementing robust controls to mitigate risks from improper machinery operation;
and
4. conducting compliance reviews on minimum wage and gender equality in the workplace.

Endnotes

- 1 The MOL is responsible for implementing and enforcing labour and employment laws and policies in Taiwan. [^ Back to section](#)
- 2 Data published by the MOL, available at https://statfy.mol.gov.tw/statistic_DB.aspx; data published by the MOL, available at <https://ufib.mol.gov.tw/UFLBWeb/wfStatistics.aspx>; data published by the Judicial Yuan, available at <https://www.judicial.gov.tw/tw/lp-2185-1.html>. [^ Back to section](#)

- 3** Taiwan High Court, Taichung Branch Court Judgment No. 113-Lao-Kang-5 (2024). ^ [Back to section](#)
- 4** Supreme Court Judgment No. 111-Tai-Kang-500 (2022). ^ [Back to section](#)
- 5** Taiwan High Court Conclusion of 2022 Seminar No. 2 on civil execution cases. ^ [Back to section](#)
- 6** ASLMD, Article 5. ^ [Back to section](#)
- 7** ASLMD, Articles 9 and 11. ^ [Back to section](#)
- 8** ASLMD, Article 19. ^ [Back to section](#)
- 9** ASLMD, Article 25. ^ [Back to section](#)
- 10** ASLMD, Article 37. ^ [Back to section](#)
- 11** ASLMD, Article 43. ^ [Back to section](#)
- 12** ASLMD, Article 49. ^ [Back to section](#)
- 13** LIA, Article 4. ^ [Back to section](#)
- 14** LIA, Article 16. ^ [Back to section](#)
- 15** LIA, Article 21. ^ [Back to section](#)
- 16** LIA, Articles 23 and 24. ^ [Back to section](#)
- 17** LIA, Article 24. ^ [Back to section](#)
- 18** LIA, Article 29. ^ [Back to section](#)
- 19** LIA, Article 32. ^ [Back to section](#)
- 20** LIA, Article 37. ^ [Back to section](#)
- 21** LIA, Article 38. ^ [Back to section](#)
- 22** LIA, Article 49. ^ [Back to section](#)
- 23** LIA, Article 12. ^ [Back to section](#)
- 24** LIA, Article 12. ^ [Back to section](#)

25 LIA, Article 13. ^ [Back to section](#)

26 LIA, Article 47. ^ [Back to section](#)



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Introduction

Most employment disputes between a worker or an employee and their employer are decided in employment tribunals. These tribunals were set up originally in 1964, initially to deal with a limited number of industrial issues, but within a few years expanded to also deal with other workplace disputes. The intention was to deal with employment disputes quickly and cheaply with a minimum degree of formality – with employees and employers representing themselves, without lawyers. However, since their introduction, employment tribunals have become increasingly complex and formal. Although parties to employment litigation can – and do – still represent themselves, the technicalities involved in modern employment law and the procedural rules of tribunals mean that it is now far more common for specialist employment lawyers to represent the parties involved. This shift has made the process more daunting and costly for individuals and employers, particularly as there is no state funding to bring a claim.

The general tenor of employment law in England and Wales tends to be more favourable to employees, particularly in terms of statutory protections and rights. It is often described as an employee-friendly jurisdiction when viewing the global landscape, although other jurisdictions in Europe provide greater protections for employees.

The current Labour government is undertaking a comprehensive review of numerous UK employment laws through the Employment Rights Bill, which is in the final stages of its legislative journey. The Bill's extensive reforms aim to overhaul numerous aspects of employment dispute regulation. Although the government claims to be both pro-worker and pro-business, the true impact of these changes will become clear only when they take effect in 2026 and beyond.

Year in review

The overview below provides a summary of some of the key themes in employment disputes being considered in courts and tribunals in the United Kingdom, at both first instance and appellate levels, in the past 12 months.

Philosophical belief discrimination

In recent years, there has been extensive judicial consideration of religious or philosophical belief discrimination claims in the workplace, examining the question of whether beliefs are protected under the Equality Act 2010 and whether employer action in response to the expression or manifestation of those beliefs amounts to discriminatory conduct. Most notably, there have been several cases examining gender-critical beliefs.

In determining whether a belief is capable of protection, employment tribunals are required to apply the following five criteria (known as *Grainger* criteria,^[1] from the case in which they were established):

1. the belief must be genuinely held;
- 2.

- it must be a belief and not (simply) a viewpoint based on the present state of information available;
3. it must be a belief as to a weighty and substantial aspect of human life and behaviour;
 4. it must attain a certain level of cogency, seriousness, cohesion and importance; and
 5. it must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

It is the fifth criterion that is the subject of most focus in the context of beliefs that have the potential to conflict with the protected rights of others.

An individual's rights under the European Convention on Human Rights (ECHR) to freedom of thought, conscience and religion (Article 9) and freedom of expression (Article 10) are central to the holding and assertion of beliefs. However, they are not unfettered rights. Article 17 operates to preclude a state, group or person from any right to engage in activities or perform acts that are aimed at destroying rights and freedoms under the ECHR.

In the case of *Forstater v. CGD Europe EAT & Others*,^[2] the Employment Appeal Tribunal (EAT) held that Ms Forstater's gender-critical beliefs fell within the scope for protection as a philosophical belief under the Equality Act 2010, finding that it was not a belief that sought to destroy the rights of trans persons. Applying *Grainger* criterion five, the EAT noted that it was only those beliefs that would be 'an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms that should not be capable of respect in a democratic society' (paragraph 79). The EAT acknowledged the rights of people to hold conflicting beliefs, and concluded that 'both beliefs may well be profoundly offensive and even distressing to many others, but they are beliefs that are and must be tolerated in a pluralist society' (paragraph 116). However, the EAT was keen to clarify in the same case that it did not mean that those with gender-critical beliefs could 'misgender' trans persons with impunity' (paragraph 118). The threshold for a belief to be protected under the ECHR and under the Equality Act 2010 is therefore a low one.

However, a recent EAT decision provides an example of that threshold not being met and instead engaging Article 17 ECHR. In *Thomas v. Surrey and Borders Partnership NHS Foundation Trust*,^[3] the EAT held that the claimant's beliefs of 'an English nationalism which believes there is no place in British society for Muslims or Islam itself' (paragraph 105) shared features with the ideology of Nazism and were not therefore capable of protection. The claimant had been engaged by the respondent via an employment agency, but the engagement was terminated after an undeclared, unspent conviction came to light. The claimant argued that the real reason for the termination was in fact his belief in 'English nationalism'. The claimant described his belief as one that asserts that the English are a nation and that promotes cultural unity of English people. It was described by the claimant, in its full expression, as welcoming 'the inclusion of those who chose to live in England to adopt English identity and with it, allegiance to England' (paragraph 10). At the original hearing before the employment tribunal, the employment judge noted that, if that had been the full extent of the claimant's beliefs, it was likely that they would have been protected by the Equality Act. However, there were anti-Islamic beliefs, discovered from other sources, including the claimant's social media, and his responses in cross-examination, which were

held to be part of his belief in English nationalism. The employment tribunal concluded that 'the claimant's disdainful and prejudiced focus on Islam, to the exclusion of all other religions or belief systems, and the language in which this was consistently cloaked meant that the belief did not meet the fifth criterion' (paragraph 22).

If a belief is protected, the way in which an individual manifests that belief must not amount to unlawful discrimination or harassment of another. That balancing exercise requires the application of a proportionality test, considering the right of an individual to hold their views against the legitimate interests of others.

This issue was considered by the EAT in 2023, in the case of *Higgs v. Farmor's School (Higgs)*,^[4] involving the dismissal of a Christian school assistant after she posted her views about how schools were teaching same-sex relationships and sex education. While acknowledging that the assessment of whether the manifestation of a belief is objectionable will be fact-specific, and there is no 'one size fits all' approach, the EAT did set out some basic principles, by way of guidance, to assist parties where these matters arise in the employment context. This includes considering:

1. the content, tone and extent of the manifestation;
2. the intended audience and the extent and nature of the intrusion on others;
3. the nature of the employer's business and the impact of the manifestation;
4. whether the views expressed are personal or could be seen as representing those of the employer;
5. whether there is a potential power imbalance taking account of the role of the employee expressing the views and those whose rights are being intruded upon; and
6. whether the sanction issued is the least intrusive measure open to the employer.

The EAT found that the original employment tribunal had failed to properly apply the proportionality test and remitted the case to the employment tribunal for further determination. However, the claimant appealed the EAT's remittal decision to the Court of Appeal.

The Court of Appeal^[5] allowed the appeal and found that the claimant's dismissal amounted to unlawful discrimination on the grounds of religion or belief. It clarified that an employee's dismissal merely because they have expressed a religious or other protected belief to which the employer (or a third party with whom it wishes to protect its reputation) objects is unlawful direct discrimination under the Equality Act 2010.

However, if the dismissal is motivated not just by the expression of the belief (or a third party's reaction to that belief) but by something objectionable in its expression, then such a dismissal may be lawful, provided that the employer can objectively justify its decision.

The respondent's application for permission to appeal the Court of Appeal's decision to the Supreme Court was refused in June 2025.^[6]

As well as the *Higgs* case, several other recently reported employment tribunal decisions have dealt with religion or belief claims arising from conflicting rights issues in the workplace.

In a preliminary hearing in *Misti Kilburn v. Sensient Flavors LLC and others*,^[7] Watford Employment Tribunal held the claimant's beliefs that 'white middle-aged men have unseen, unconscious advantage or privilege in many public and private areas of their life by consequence of their gender, age and race' and 'women remain disadvantaged in many public and private areas of their life' are protected philosophical beliefs under Section 10 of the Equality Act 2010.

The employment tribunal noted that while the claimant's beliefs represented widely-held opinions based on information available, political debate often refers to 'glass ceilings' for women in the workplace and this is illustrated by women's underrepresentation on boards of directors of the UK's 100 largest publicly listed companies. In this case, the employment tribunal was satisfied that the beliefs constitute matters of principle and fundamental beliefs, thereby satisfying the second *Grainger* criterion.

The employment tribunal was also satisfied that the fourth *Grainger* criterion was met in that the issue of the promotion of women's rights is 'serious and important' and that the claimant lived these beliefs in and outside work.

In reaching this decision, the employment tribunal referred to an occasion when a colleague gave the claimant a sign that stated 'The future is female'. The employment tribunal concluded that this would only have been given to the claimant as a gift due to an awareness that she conducted herself at work in support of the promotion of equality and women's rights.

This is a first instance decision and is not legally binding on other employment tribunals or courts, but it serves as a good example of judicial interpretation of what constitutes philosophical beliefs capable of protection under the Equality Act 2010.

Phoenix v. The Open University^[8] involved a university professor employed by the Open University who was labelled on social media as transphobic. She became the subject of an open letter, signed by several of her colleagues, protesting about the work of her research network, which had been set up to promote research into sex, gender and sexualities from a gender-critical perspective. Upholding the claimant's claims for constructive unfair dismissal and unlawful philosophical belief discrimination, the employment tribunal held that her beliefs were protected 'philosophical beliefs' and that she had been entitled to exercise them in the way she had. It found that the Open University had failed to protect her from harm when she received significant backlash from colleagues, and had failed to conclude her grievance due to fear of 'reputational damage' to the University (paragraph 470).

In *Miller v. University of Bristol*,^[9] an employment tribunal held that a university professor's belief that Zionism is inherently racist, imperialist and colonial was a protected 'philosophical belief'. The tribunal went on to conclude that the professor had been unfairly dismissed and directly discriminated against because of the manifestation of those beliefs. The employment tribunal concluded that anti-Zionist comments that had been made by the claimant 'had a material impact' (paragraph 257) on the decision-maker, and that the decision to dismiss was 'tainted by discrimination' and 'outside of the range of responses open to a reasonable employer' (paragraph 318). The claimant's compensation was, however, reduced on account of a finding that his actions had caused or contributed to the dismissal and based on a 30 per cent chance that he would have been fairly dismissed at a later point on account of some post-dismissal statements he had made.

Gender-critical views were also debated in *Orwin v. East Riding of Yorkshire Council*.^[10] However, in that case, the claimant's claims of direct discrimination and unfair dismissal were not upheld. The tribunal found that, while the claimant's gender-critical views were a protected belief under the Equality Act 2010, his actions in adding the pronouns 'XYchromosomeGuy/AdultHumanMale' to the footer of his work email and refusing to remove it were not done out of a need to adhere to those beliefs. The nexus between those actions and the claimant's gender-critical beliefs was not sufficiently close. Instead, the tribunal concluded that it was a 'deliberately provocative act' and that the claimant was 'mocking the idea of gender self-identification'. The respondent's actions in dismissing the claimant were therefore not because of his protected belief but because of the objectionable manifestation of those beliefs. On balance, the employment tribunal concluded, having regard to the principles set out in *Higgs*, that the respondent could 'legitimately interfere with the claimant's article 9 and 10 rights (insofar as it was an interference with the claimant's article 9 rights)' (paragraph 268).

In *Adams v. Edinburgh Rape Crisis Centre*,^[11] an employment tribunal upheld claims of constructive unfair dismissal and discrimination on grounds of religion or belief on the basis that disciplinary action taken by the respondent, an organisation providing support for survivors of sexual violence, had been because of the claimant's manifestation of her gender-critical beliefs. The claimant believed that, in most circumstances, biological sex and gender identity did not matter, but in the provision of services dealing with sexual violence, she believed that it was important that users of the service understood the male and female identity of others and had the option of choosing between male and female support workers. This was at odds with the views of others employed by the respondent, including its CEO, who was a trans woman without a gender recognition certificate. After a colleague changed their name to one that was male sounding, a service user sent an email to the respondent asking whether the employee was a man or a woman. The claimant sent an email to the respondent seeking guidance on how she should respond. In her email, she suggested telling the service user that the employee in question was born female but now identified as non-binary. The claimant was advised that her suggested form of words was humiliating, and it was implied by the CEO that her actions were transphobic. A disciplinary process was initiated. The claimant raised a grievance regarding her treatment, but it was not upheld. She subsequently resigned. The employment tribunal held that the claimant had provided 'a suggested common sense response' in her email (paragraph 210) and that the real reason for the respondent acting against her was her gender-critical views. The categorisation of the claimant's emails as humiliating and transphobic was described by the tribunal as 'a nonsense' (paragraph 211).

In *Meade v. (1) Westminster City Council and (2) Social Work England (Meade)*,^[12] the claimant was employed as a social worker by Westminster City Council (WCC). She became the subject of an investigation after a complaint was raised by a colleague about several posts, comments and petitions that the claimant had shared on her private Facebook page that the colleague alleged were transphobic. She was suspended and subsequently given a final written warning (which was revoked by WCC several months later). Upholding harassment claims brought against WCC and the social work regulator, Social Work England (SWE), the tribunal found that all of the claimant's posts and communications 'fell within her protected rights for freedom of thought and freedom to manifest her beliefs as protected under Articles 9 and 10' (paragraph 193) and held that the decisions taken by WCC to continue with the claimant's suspension and a disciplinary

process related to, or were because of, those protected beliefs. In addition to financial compensation, the tribunal made recommendations that WCC and SWE facilitate and provide evidence of employee training on freedom of expression and philosophical belief.

In the current climate of polarised politics and misinformation, where views are often divisive and rights-based debate is becoming increasingly commonplace in the workplace and on social media platforms, employment disputes arising from conflicting religious and philosophical beliefs are likely to persist. The past decade has seen the categories of philosophical beliefs that are protected expand beyond recognition. The extensive judicial consideration of philosophical belief discrimination claims under the Equality Act 2010 in recent years highlights the complexity of balancing individual rights with the rights of others.

Meade was not the only case in the past year where the employment tribunal made recommendations in relation to the employer's existing training provision. In *Pitt v. Cambridgeshire County Council*,^[13] an employer was told that it should refresh its existing mandatory training to include a section on freedom of speech in the workplace, which was to be drafted by the barrister who represented Maya Forstater (see above). These cases evidence the need for standardised workplace training on expected standards of conduct and dignity at work to evolve in order to address effectively the expression of beliefs in the workplace.

Discrimination: sex-based definitions in the Equality Act 2010

In April 2025, the Supreme Court handed down its decision in the *For Women Scotland Ltd v. Scottish Ministers* case,^[14] ruling that 'woman', 'man' and 'sex' definitions in the Equality Act 2010 refer to biological sex, not their acquired gender in a gender recognition certificate (GRC).

The case involved the rights of trans women (biological males at birth now certified as females) and whether they benefit from the protections afforded to 'women' under the Equality Act 2010.

For Women Scotland brought a legal challenge against the Scottish Ministers over the definition of woman in legislation aimed at ensuring female representation on public authority boards and whether a trans woman should be included in the 50 per cent quota for female representation.

The Outer House and the Second Division of the Inner House in the Scottish Court of session considered the challenge. Both courts ruled in favour of the Scottish Ministers, determining that a GRC changed a person's sex 'for all purposes' and therefore a trans woman should be included in the female representation quota.

On appeal, the Supreme Court held that the terms 'woman', 'man' and 'sex' in the Equality Act 2010 refer to biological sex at birth, not an acquired gender recognised in a GRC.

Following the Supreme Court decision in April, the Equality and Human Rights Commission (EHRC) issued an interim update^[15] outlining the practical consequences of the ruling with further clarification on the interim update published in June 2025.^[16]

In September 2025, the EHRC submitted a revised Code of Practice for services, public functions and associations to the Minister for Women and Equalities for approval. Once

ministerial approval is granted, the draft code will be brought before the UK government for parliamentary approval.

Protected disclosures (whistleblower protection)

Under the Employment Rights Act 1996, whistleblowers are afforded the following legal protections:

1. a worker has the right not to be subjected to any detriment on the ground that the worker has made a protected disclosure (Section 47B). Co-workers and agents can also be liable for claims brought under this limb; and
2. a dismissal will be automatically unfair where the sole or principal reason for it was that the employee made a protected disclosure (Section 103A).

A number of appeal decisions in recent years have sought to provide clarity on the issue of causation in both detriment and dismissal claims, showing the nuanced approach that employment tribunals take to causation – particularly in looking at whether one person's knowledge or motivation of a protected disclosure can be imputed onto an alleged wrongdoer or decision-maker.

In *Royal Mail Group v. Jhuti (Jhuti)*,^[17] following conflicting decisions by the EAT and Court of Appeal, the Supreme Court held that an employer could be liable for unfair dismissal where a person superior to the claimant in the hierarchy of the organisation determined that they should be dismissed because they had made a protected disclosure but hid it behind an invented reason, which an unknowing decision-maker then adopted. In such a case, a tribunal should look behind the invented reason and find that the hidden decision is the real one.

Conversely, in the case of *William v. Lewisham and Greenwich NHS Trust*,^[18] the EAT considered the question of causation in a whistleblowing detriment claim and concluded that a person carrying out detrimental treatment cannot be materially influenced by protected disclosures they did not know about, even if their actions were influenced by a knowing party who was motivated by the disclosures. The claimant was a consultant paediatrician employed by Lewisham and Greenwich NHS Trust. She was suspended and subsequently issued with a written warning following an investigation into a confrontation she had with another senior doctor in her department. The claimant alleged that she had been subjected to detriment on the grounds that she had made a number of protected disclosures. The employment tribunal accepted that the claimant had made a single protected disclosure concerning the way a handover was conducted. Although the tribunal found that decisions made by the respondent to suspend, investigate and discipline the claimant were incorrect, it concluded that there was no causal link between the protected disclosures and those actions – despite the claimant arguing that the actions of other doctors who knew about her protected disclosure had influenced the relevant decision-makers. In reaching its conclusions, the tribunal applied the decision of the EAT in *Malik v. Cenkos Securities plc*^[19] (*Malik*), a detriment claim in which the EAT held that a decision-maker who was unaware of protected disclosures could not have been materially influenced by them, and that the knowledge and motivations of another who may have influenced the decision-maker cannot be attributed to them. The claimant appealed to

the EAT, arguing that the tribunal had not properly considered the test of causation for detriments and should have applied the decision of the Supreme Court in *Jhuti* when determining whether her disclosures had materially influenced the detrimental actions taken against her. Dismissing the claimant's appeal, the EAT distinguished *Jhuti* on the basis that it was an automatic unfair dismissal claim, not a detriment claim. Further, it noted that, even if it were wrong to say that *Jhuti* could not apply to detriment claims, the claimant's appeal would not have succeeded based on *Jhuti*'s narrow application: the claimant had not shown that a more senior employee had determined that she should be suspended, investigated and sanctioned because she had made a protected disclosure.

The application of *Jhuti* was also considered and clarified in another EAT decision in 2024 that considered whether it was sufficient that a decision-maker knew of a disclosure being made but was not aware of the substance of it. In *Nicol v. World Travel and Tourism Council*,^[20] the EAT dismissed an appeal by the claimant against a decision of the employment tribunal not to uphold his claims of whistleblowing detriment and automatic unfair dismissal. The claimant argued that it did not matter that the decision-maker was unaware of the contents of a protected disclosure; it was enough that the decision-maker knew of the fact that a disclosure had been made. The EAT disagreed. Applying UK legal principles on what amounts to a protected disclosure, the EAT concluded that, to be fixed with liability, employers ought to know something of substance about what the worker has complained about, and a finding of automatic unfair dismissal requires the protected disclosure to be the reason (or principal reason) for the dismissal. The EAT rejected the claimant's arguments that requiring the onward transmission of a protected disclosure to be sufficiently detailed would risk loss of statutory protection for whistleblowers. The EAT noted that, in most cases where a decision-maker is aware of the fact of a protected disclosure, the substance of a protected disclosure will be known to the decision-maker. Referring to *Jhuti*, the EAT confirmed that, 'where a decision-maker is deliberately kept in ignorance of the substance or content of the disclosure and a bogus reason for dismissal is invented, then the employment tribunal is permitted to penetrate through the invention' (paragraph 84).

Trade unions

In *Secretary of State for Business and Trade v. Mercer*,^[21] the Supreme Court issued a declaration that Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which protects workers from being subjected to a detriment for the purpose of preventing or deterring their membership of a trade union or participation in union-organised activities, is incompatible with Article 11 of the ECHR. The case concerned a UNISON member (the member) who was employed as a support worker by Alternative Futures Group (AFG). In her capacity as a workplace union representative, she was involved in organising, and took part in, lawful strike action, and had interacted with the media about the strikes. She was subsequently suspended and disciplined by her employer, who said that she had abandoned shifts and conveyed confidential information to the media that may have brought the business of the employer into disrepute. The member claimed that she had been subjected to a detriment (by being suspended and disciplined) contrary to Section 146 of TULRCA, and argued that taking part in industrial action fell within the remit of Section 146 as an activity of a trade union. The argument was rejected by AFG and a preliminary issue arose on the interpretation of Section 146 and, specifically, whether taking part in lawful strike action was included.

TULRCA is a chunky piece of legislation, split into several parts. Section 146 sits within Part III, 'Rights in relation to union membership and activities'. Under Section 152 of the same Part, an employee is protected from dismissal on grounds relating to union membership and activities. Part V, 'Industrial Action', affords protection to employees who are unfairly dismissed for taking part in protected industrial action, but contains no equivalent provisions that afford protection against detriment because of taking part in industrial action. The language in Sections 146 and 152 refers to the worker or employee having taken or proposed to have taken part in the activities of an independent trade union 'at an appropriate time', which is defined as a time outside of working hours, or during working hours where it is with the consent of, or in accordance with agreed arrangements with, the employer. However, the act of taking part in industrial action for the purposes of Part V will commonly involve the withdrawal of labour during working hours.

The employment tribunal concluded that, on a proper interpretation of Section 146, it was not intended to apply to participation in strike action, and that to conclude otherwise would go against the grain of the legislation. The definition of 'an appropriate time' evidenced that the intention of legislative drafters was clearly to limit protection under Section 146 to those activities that are consistent with workers continuing to perform their obligations to employers. Participating in strike action would fall outside of this. However, because the legislation lacked any provision that provided protection from detriment in circumstances involving strike action, the tribunal questioned whether the statutory provisions were compatible with Article 11 of the ECHR. That question became the subject of a number of appeals, with the Secretary of State for Business and Trade intervening in support of the employment tribunal's decision.

On appeal to the Supreme Court, it was held that the lack of protection from detriment for taking part in industrial action was unjustified and 'nullifies' the employee's right to take part in strike action, since by doing so it would expose employees to potential detrimental treatment for which there is an absence of any legislative protection in TULRCA or any other legislation. The Supreme Court stated that Section 146, as drafted, 'both encourages and legitimises unfair and unreasonable conduct by employers' (paragraph 89).

The decision of the Supreme Court does not bring about an automatic change in the law. However, the Employment Rights Bill introduces worker protection against suffering detriment short of dismissal for taking part in official industrial action. This is expected to come into force in October 2026.^[22]

The Bill also strengthens the current legal protections for workers against dismissal for taking part in official industrial action. Those changes are expected to take effect soon after Royal Assent.^[23]

There will also be enhanced protections against blacklisting that are set to take effect in 2027.^[24]

Dismissal and re-engagement

In *Tesco Stores Ltd v. Union of Shop, Distributive and Allied Workers and others*,^[25] the Supreme Court reinstated an injunction that had been initially granted by the High Court (but later discharged by the Court of Appeal) that prevented Tesco from using

dismissal and re-engagement (commonly known as 'fire and rehire') to remove employees' contractual entitlement to an additional 'retention payment'.

In 2007, during a restructuring exercise, Tesco agreed with USDAW, its recognised trade union, to provide an additional payment (named as 'retained pay') to certain staff as an incentive to relocate. This was accepted by the staff as an alternative to taking redundancy with enhanced payment terms. The collective agreement described retained pay as 'a permanent feature of an individual's contractual eligibility', which could be changed only by mutual consent or upon promotion to a new role. This term was incorporated into staff contracts. Earlier communications had also assured staff that retained pay could not be 'negotiated away' and was 'guaranteed for life'.

In 2021, Tesco announced its intention to remove the entitlement to retained pay, offering a lump sum to those who agreed. For those who did not agree, Tesco proposed terminating their contracts and re-engaging them on new terms without the retained pay entitlement.

The Supreme Court held that describing retained pay as 'permanent' meant that the entitlement was not time-limited and would continue as long as the employee remained in the same role. Applying standard contract law principles, the Court concluded that it was necessary to imply a term into affected employees' contracts that would prevent Tesco from dismissing them in order to deprive them of 'permanent' retained pay. The Court observed that it was inconceivable that the parties intended for Tesco to be able to dismiss staff specifically to remove it – otherwise, it could have dismissed them immediately after the restructuring, having secured their relocations, and avoided redundancy scenarios. However, this implied term did not prevent Tesco from terminating contracts for other reasons, such as lack of capability, misconduct or redundancy, even if this practically ended their entitlements.

The decision is a rare exception to the principle that specific performance of an employment contract will not generally be ordered in the United Kingdom. Here, since there was no breakdown of trust and confidence between Tesco and the affected staff, and damages would be an inadequate remedy, the Court concluded that it was appropriate to grant an exceptional injunction requiring Tesco to continue employing them with their retained pay terms.

This judgment currently serves as a warning to employers against dismissing employees to remove contractual entitlements promised indefinitely. The case also highlights the impact of pre-contractual communications; promises made in these communications may be taken into account when determining the employer's intention.

The Employment Rights Bill introduces further restrictions on fire and rehire practices, making it automatically unfair to dismiss an employee who refuses to agree to a 'restricted variation' in their contract and to re-engage someone on the varied terms for the same duties. Exceptions will be limited to situations where the business faces significant financial difficulties and the contractual change is unavoidable.

A 'restricted variation' means a change to key terms concerning pay, pensions, working hours, shift patterns and length, time off rights, variation clauses that seek to permit future 'restricted variations' and other changes to be defined in regulations in due course.

These proposed changes will further narrow the circumstances in which fire and rehire can be deployed as a means of making contractual changes, beyond the decision in the *Tesco* case.

Equal pay

In a recent Final Equal Value hearing in the case of *S Brierley & Others v. Asda Stores Limited*,^[26] the Employment Tribunal held that most of the lead claimants' Asda store-based roles are of equal value to at least one comparator Asda distribution centre role.

In reaching this conclusion, the employment tribunal adopted a point-scoring scheme to assess the value of each claimant's role, having regard to factors such as knowledge, problem-solving and decision making, responsibility for others, communication skills, emotional and physical demands.

It then compared that score to the score given to each lead comparator's role, using the same matrix.

This litigation is ongoing, and Asda will have the opportunity to justify any pay differences using the 'material factor' defence. But this latest decision is a reminder for employers to look at the 'bigger picture' of their overall workplace distribution and keep in mind that roles may be of similar value to the business, even if job descriptions and job locations differ.

In the case of *Thandi and others v. (1) Next Retail Limited (2) Next Distribution Limited*,^[27] around 3,500 current and former staff at the retail business Next succeeded in pursuing equal pay claims. This is the first private sector equal pay class action based on 'equal value' work, and comes as thousands of other retail staff prepare similar cases against major supermarkets.

Employees in Next's retail stores, where 77.5 per cent of sales consultants were female, argued that their work was of equal value to their higher-paid counterparts in Next's warehouses, where 52.78 per cent of operatives were male. An independent report assessed the tasks and responsibilities of selected claimants and comparators, and in 2023, an employment tribunal ruled that the claimants' work was of equal value to that of their comparators.

In a May 2024 hearing, the tribunal heard Next's 'material factor defence' for the pay disparity, citing market forces and business viability. Next argued that these factors were not tainted by sex and did not involve direct discrimination. It also argued that any indirect discrimination was objectively justified. Next claimed that it was proportionate to pay different rates to sales consultants and warehouse operatives due to differing market forces and competitive pressures, making it necessary to recruit and retain sufficient labour.

The tribunal concluded that the reasons for the pay disparity were not tainted by sex. It accepted Next's evidence that market forces, recruitment, retention and business viability explained the pay difference, noting the distinct pressures and challenges in the retail and warehouse markets. The tribunal found no gender influence on basic pay rates driven by cost reduction and profit increase.

However, the tribunal determined that the material factors presented by Next to address differences in several contractual terms (including basic pay, paid rest breaks and overtime) were indirectly discriminatory. The tribunal noted that while the gender breakdown of warehouse operatives showed a slight male majority (52.78 per cent), Next benchmarked remuneration against a predominantly male labour market, thereby disadvantaging women.

Next sought to justify the factors by relying on legitimate aims of viability, resilience and business performance; maintaining 24/7 warehouse work; and incentivising productivity and attendance. While accepting these aims, the tribunal ruled that a market forces justification based solely on costs was not proportionate without 'something more'. They found that Next could have afforded higher basic pay for retail workers but prioritised minimising labour costs.

Next's objective justification defence succeeded for several other contractual terms, including attendance and productivity bonuses, peak premium bonuses and holiday premiums.

This first instance decision is not binding on other tribunals, but cases on equal pay are anticipated to rise, particularly within the retail sector, as claimant solicitors increasingly pursue group claims against various retailers. These trends underscore the dynamic nature of UK employment law and the ongoing need for employers to stay informed and compliant with emerging legal standards. While outcomes will depend on specific facts, the decision highlights the risks to employers in relying on benchmarking to set pay where market rates may be tainted by historical sex discrimination. It also clarifies the risks of relying solely on cost-based justifications for unequal pay practices for equal work. Without something more, it is unlikely that an employer will establish that such justifications were a proportionate means of achieving a legitimate aim.

The draft Equality (Race and Disability) Bill is expected to introduce mandatory reporting on ethnicity and disability pay gaps. The framework would share similarities to current gender pay gap reporting, but reporting would be dependent on workers self-reporting ethnicity and disability status. Consultation on the Bill has taken place but no implementation date has been set.

The Employment Rights Bill will also introduce a requirement for employers with 250+ employees to develop and publish equality action plans which outline steps the employer is taking to address its gender pay gap, gender equality and supporting employees going through menopause. The measures are not expected to come into force until 2027, however equality action plans may be introduced on a voluntary basis from April 2026.^[28]

We expect a similar obligation to publish equality action plans addressing any ethnicity or disability gaps will be included in the Equality (Race and Disability) Bill in due course.

Procedure

Employment tribunals

In England and Wales, the employment tribunal system is geographically split across 10 regions, each led by a regional employment judge. Overall responsibility for the entire network of employment tribunals sits with the president. The region that deals with an individual's employment tribunal claim will usually be the one that is closest to where they work or worked.

The Scottish and Northern Irish employment tribunals are separate jurisdictions, each with its own president and network of employment judges and differences in procedural rules and processes. For the purposes of this chapter, the focus will be on the conduct of employment litigation in England and Wales.

A statutory set of procedural rules, the Employment Tribunal Rules of Procedure 2024 (the ET Rules),^[29] governs the conduct of a claim, supplemented by various practice directions, guidance and orders issued by the president. The ET Rules are underpinned by an overriding objective, which is to enable the tribunal to deal with cases fairly and justly. The tribunal must seek to give effect to the overriding objective when exercising its powers under the ET Rules, and the parties to litigation are required to assist the tribunal in the furtherance of the overriding objective and to cooperate generally with one another and the tribunal.

Depending on the nature of the claim, cases will generally be decided either (1) by a legally qualified employment judge, sitting alone, or (2) by a panel of three members, comprising a legally qualified employment judge and two lay members: one from an employer-type background (e.g., someone who has worked in human resources within an employer organisation) and the other from an employee background (e.g., a trade union representative).^[30]

Stages of an employment tribunal claim

Despite being much more formal now than was intended at their inception, employment tribunals remain less formal and more accessible to employers and employees than the civil courts, with the aim of facilitating swift resolution of employment disputes.

Parties to tribunal proceedings can submit documents online using the MyHMCTS portal. This includes submitting claim forms (ET1s), response forms (ET3s) and other documents and applications concerning a particular case.

Starting a claim

A claimant initiates a claim in the employment tribunal by issuing a form ET1 (referred to as the 'claim form'). The claimant is required, in the form, to identify the name of the respondent or respondents, the type of claim being raised and details of the circumstances giving rise to the claim (which they can do by a supplemental document, often called a 'grounds of claim'). There is currently no fee payable to issue a claim; a previous fees regime was scrapped in 2017 following a successful legal challenge by the trade union UNISON in the Supreme Court of the United Kingdom, and, despite the previous Conservative government commencing a consultation on the reintroduction of fees in 2024, the Labour government has now confirmed that tribunal fees will not be reintroduced.

Responding to a claim

Once a claim form has been issued and accepted by the employment tribunal, a copy of it will be served on each of the named respondents to the claim. A response to a claim must be submitted using the prescribed form, an ET3, within 28 days. Crucially, in the ET3 form, a respondent must confirm whether they intend to defend the claim and set out the basis of their defence (although, again, the detailed grounds for resisting a claim can be attached in a supplemental document).

Case management

Most cases will be listed for a preliminary hearing for case management early in the proceedings. A case management hearing will generally take place before an employment judge, in private (meaning that only the parties and their representatives can attend), and the employment judge will exercise their wide-ranging powers to manage the proceedings. This will include:

1. identifying and agreeing the issues that are in dispute between the parties and that the tribunal is required to determine at a final hearing;
2. issuing case management directions on the steps required to prepare for the final hearing. This will include directions on the disclosure of relevant documents (see below), the creation of a hearing bundle and the exchange of witness statements;
3. listing the case for final hearing (the duration being determined by the issues in dispute and the number of witnesses the parties will call to give evidence); and
4. exploring the possibility of a resolution between the parties. This will include asking the parties whether they are interested in judicial mediation or judicial assessment.

Where a preliminary issue is raised by a party in the proceedings, the case management preliminary hearing can also be used to list an additional preliminary hearing on those more substantive issues, or sometimes a case management preliminary hearing is converted into a substantive preliminary hearing in order to address those issues before deciding what case management directions are appropriate. These sorts of preliminary hearings cover, for example, arguments concerning jurisdiction, time limits and prospects, and they are generally held in public.

As part of its case management directions, the employment tribunal will order that each party must provide to the other or others all documents that are relevant to the matters in issue that are in their possession, custody or control, whether those documents help or harm their case. In the United Kingdom, this is known as 'disclosure'. Unlike in the civil courts, there is no prescribed form in which disclosure must be provided. The parties are expected to conduct a reasonable search for documents – and often quite an extensive one – but they are not required to leave no stone unturned or to carry out searches that would be disproportionate in the context of the claim. Where disputes arise over disclosure, the tribunal will have regard to the disclosure rules applicable in the civil courts, known as the Civil Procedure Rules, and the overriding objective. Disclosure-related disputes and applications for specific disclosure are increasingly commonplace in employment tribunal claims, particularly in more complex claims involving allegations of discrimination or whistleblowing. Tribunals may be required to address issues about the extent of searches

(including sources, date ranges and custodians), the application of redactions or the assertion of legal professional privilege as a basis for withholding documents.

Witness evidence in the employment tribunal will typically be a combination of written testimony, in a witness statement, prepared and exchanged between the parties in advance of the hearing, and oral testimony at the final hearing. Each witness statement is usually read by the employment tribunal in advance and will be adopted as the witness's evidence in chief. Oral testimony is given under oath or affirmation and provides the other party with an opportunity to cross-examine the witness and for re-examination to the extent necessary. The employment tribunal has powers to compel a witness to attend a hearing where it is satisfied that the witness has relevant evidence to give.

Final hearings

The duration of final hearings can vary significantly depending on various factors, such as the nature and complexity of the issues, the number of witnesses and any reasonable adjustments that may have been agreed for the claimant, a representative or a witness at the hearing, on account of a disability (e.g., building in additional breaks). While straightforward claims may be heard within a day or two, a more complex case may be listed for several weeks.

The final hearing will be listed to address either liability only or both liability and remedy. In the latter case, it is imperative to hearing preparation that evidence addresses financial loss and any other remedies sought, including attempts to mitigate financial losses; any relevant medical reports, records or testimony for the purposes of determining the level of damages for injury to feelings or personal injury; and any evidence on the practicability or reasonableness of orders for reinstatement or re-engagement of an individual claimant by a respondent employer.

Increasingly, a greater number of hearings, both preliminary and final, are proceeding remotely, via telephone or video, where it is appropriate to do so.

Judgment on a claim may be given orally or at the end of the hearing or, dependent on time and resources available, it may be reserved and subsequently given in writing. Where judgment is reserved, parties may wait several months to receive the outcome.

Appeals

If a party is dissatisfied with a decision of the employment tribunal, they can raise an appeal with the EAT, but only on either a point of law or a perversity challenge. In other words, the appellant must be able to show either some misapplication or misunderstanding of the law by the tribunal or that no reasonable tribunal could have come to the conclusions it did on the facts (i.e., it was a perverse decision). The EAT will not rehear the dispute, and generally will not re-examine the factual disputes. Once an appeal has been properly lodged (which must be within 42 days of receipt of written reasons), an appeal judge will review the appeal and decide whether there are reasonable grounds for it (known as the 'sift'). This is done on paper, without a hearing. Following the sift, a judge may decide that:

1. reasonable grounds for appeal exist, and the case will be listed for a full hearing;
- 2.

there are no reasonable grounds for appeal. That decision may be challenged in writing by the appellant and, in those circumstances, a hearing will be listed where the appellant will have the opportunity to go before a judge, who will make a final decision on whether the appeal can proceed. This is known as a Rule 3(10) hearing. There is usually no requirement for a respondent to attend or make any submissions at a Rule 3(10) hearing, but they will be informed of the date of the hearing and the outcome (and they generally can attend to observe, if they wish to do so); or

3. there may be reasonable grounds for appeal. In that case, the judge will list a preliminary hearing to consider the basis for the appeal in more detail. The respondent will be invited to make written submissions regarding the grounds of appeal and may be permitted to make oral submissions at the hearing.

If a party considers that the EAT has erred in law, it can seek permission to appeal to the Court of Appeal. Beyond the Court of Appeal, appeals can be made to the Supreme Court.

Alternative dispute resolution and settlement

Alternative dispute resolution (ADR) is widely encouraged by employment tribunals as a means of facilitating a resolution between the parties outside of the judicial process.

In the context of disputes in employment tribunals, parties have access to several methods of ADR, both prior to and after the lodgement of proceedings. All of these methods are confidential, and the discussions between the parties as part of these processes must not be referred to at the final hearing if they prove unsuccessful in resolving the dispute. For the processes that involve an employment judge, a different judge will always preside over the final hearing.

Conciliation through Acas

The Advisory, Conciliation and Arbitration Service (Acas) is automatically notified of every claim in an employment tribunal, and a conciliator is assigned. The conciliator will be available to act as an independent and impartial intermediary through whom the parties can explore settlement. Acas conciliators cannot comment on case prospects, advise a party on how to conduct their case, or influence parties on whether to accept or reject a settlement offer.

Since May 2014, it has been a requirement, in respect of most claims heard in an employment tribunal, that before an individual can issue a claim, they must notify Acas of their intention to do so, for the purposes of initiating early conciliation (EC). During the EC period, the clock effectively stops on the time limit for bringing proceedings. If EC ends without a resolution, Acas will issue a certificate with an EC number, and the claimant is free to issue proceedings. The EC number must be quoted on the claim form, unless the proceedings are exempt from the EC requirement. There is no obligation on the parties to engage with the EC process. However, EC can prove an effective tool for resolving individual employment disputes before they have a chance to get off the ground. In its annual report and accounts for 2024-25,^[31] Acas confirmed that it had secured conciliated settlement, or other positive outcomes, in 38 per cent of EC notifications to it – the highest level of success in the 10 years since EC was introduced.

Judicial mediation

Judicial mediation (JM) is a voluntary and confidential service offered by employment tribunals after proceedings have been initiated. It is generally offered only for cases that are expected to have final hearings of three days or longer, and even if the parties consent to it, it is ultimately up to the tribunal to decide whether or not a case is suitable for JM.

As with a private mediation, during a JM, an employment judge acts as mediator and seeks to assist the parties to reach settlement. The employment judge will not express a view on case prospects. Unlike private mediation, the parties do not pay for the service (except for any associated legal expenses, which each party will bear themselves). However, as a JM is listed for no more than a day of tribunal time, and increasingly takes place by video or telephone, the process may not provide the necessary time or appropriate forum to achieve a resolution. However, even if it is unsuccessful, it can serve to focus the minds of the parties and increase the chances of securing an agreed settlement soon after. Guidance issued by the president of the employment tribunals on ADR in July 2023^[32] stated that the success rate of JM, since it began in 2009, is 65 to 70 per cent.

Judicial assessment

Judicial assessment is a less utilised method of ADR in which the parties consent to an employment judge conducting an impartial evaluation of the case, based on the information available to them, and providing an assessment of prospects. The assessment is confidential, and parties are not bound to agree with or act on the assessment given by the employment judge. Judicial assessment can be conducted at any stage of the proceedings, upon request from the parties.

Dispute resolution appointment

Unlike other methods of ADR, dispute resolution appointments (DRAs) are compulsory where an employment judge orders it – and it is becoming increasingly common in some tribunal regions for a DRA to be listed in every case that meets the complexity requirements. Reserved for more complex cases, such as discrimination and whistleblowing, that are generally listed for a final hearing of six days or more, the process commences after exchange of witness statements. It involves attendance at a hearing (usually by telephone or video) where an employment judge will review the statements and key documents and endeavour to give a view on prospects and remedy. The employment judge will not normally engage in settlement discussions between the parties so, unlike a JM, is not acting as a mediator. Parties are not bound to accept the views of the employment judge expressed at the DRA, but the process may encourage the parties to enter settlement discussions or refine the issues to be determined at a final hearing.

A legally binding settlement of statutory employment claims can be achieved through either:

1. a settlement agreement satisfying a number of statutory conditions, including a requirement that the employee has received independent legal advice on the terms and effect of the agreement before signing; or

2. a COT3 agreement concluded through Acas.

Impact of EU law

From 1 January 2024, employment tribunals are no longer required to interpret legislation compatibly with (pre-2021) EU law or to enforce 'directly effective' rights that rely directly on EU treaty or directive provisions.^[33] However, they remain bound by pre-2021 Court of Justice of the European Union case rulings (known as 'assimilated EU case law') when interpreting relevant EU law-derived claims, until UK higher courts depart from these case rulings or they are modified by UK legislation. Supreme Court and Court of Appeal (among other UK higher courts) have powers to depart from assimilated EU case law 'when it appears right to do so'. The new Labour government has revoked legislation (that was due to take effect from 1 October 2024) to broaden these powers and enable tribunals and lower courts to make references to higher courts requesting a departure from assimilated EU case law. This will be revisited in the context of efforts 'to reset UK relations with the EU', and the legislation may be reintroduced.

Collective disputes

Collective disputes are dealt with by the Central Arbitration Committee (CAC). The CAC is an independent body with statutory powers, with members from a mix of employer and worker representative backgrounds.

The main area of work for the CAC is the statutory recognition of trade unions. This also includes applications for recognition to end existing collective bargaining arrangements. The CAC also has statutory powers to hear applications and complaints regarding:

1. the disclosure of information for collective bargaining purposes;
2. information and consultation arrangements;
3. the establishment and operation of European works councils;
4. European public limited liability companies; and
5. arbitration on trade disputes.

Matters before the CAC will not always go to a hearing if the panel assigned to the application considers that a decision can be made on the papers.

In decisions on trade union recognition, there is no mechanism for appeal, but a dissatisfied party could challenge a CAC decision through judicial review. The EAT can hear appeals of CAC decisions involving applications relating to information and consultation arrangements and European works councils.

Proposals to simplify the statutory recognition process are set out in the new Labour government's Employment Rights Bill. These proposals include removing the current requirement on a union seeking statutory recognition to demonstrate to the CAC that the majority of a proposed bargaining unit is likely to support statutory recognition.

The Bill also proposes removing the current requirement to have 40 per cent of all workers in the bargaining unit vote in favour of recognition during a ballot, instead only requiring a simple majority of votes cast to be enough to win the ballot.

Types of employment disputes

The employment tribunals have jurisdiction to hear most workplace disputes, including unfair dismissal, wrongful dismissal, constructive unfair dismissal, discrimination (including equal pay), whistleblowing detriment claims, claims for redundancy pay and unlawful deduction from wages. They can also hear breach of contract claims in certain, limited circumstances. Other types of workplace disputes can be heard in the civil courts (such as the High Court of Justice).

The majority of claims to employment tribunals must be presented within three months plus one day of the date of dismissal or other act (or latest of the acts) complained of, although an employment tribunal has discretion, in many cases, to extend time. A small number of claims have a slightly longer time limit of six months, including claims for a statutory redundancy payment and equal pay

However, the Employment Rights Bill will extend the current three-month time limit for employment claims to six months. This change is expected to take effect in October 2026.^[34]

Unfair dismissal

Employees have statutory protection against unfair dismissal under the Employment Rights Act 1996. A dismissal will be fair if the respondent employer can establish that dismissal was for a potentially fair reason (conduct, capability, redundancy, statutory illegality or restriction, or some other substantial reason), that a fair procedure was followed and that it acted reasonably in treating the reason as a basis for dismissing the employee.

In addition, an employee may bring a claim of constructive dismissal where they have resigned in response to a fundamental and repudiatory breach by the employer of an express or implied term in their employment contract. For example, allegations of bullying where an employee is unable to stay in employment may form the basis of a claim for constructive dismissal.

Remedy: compensation

If an unfair dismissal claim is upheld, employment tribunals have the power to award compensation for financial losses, subject to the application of statutory caps. Compensation is awarded in two parts: a basic award and a compensatory award.

Remedy: reinstatement and re-engagement

Alternatively, an employment tribunal has the power to make an order for reinstatement and re-engagement. A reinstatement order has the effect of treating the claimant as though

they were never dismissed. As well as being required to return the claimant to the same role they were in prior to dismissal, and on the same terms, the employer must also make payment to the claimant in respect of all lost pay (including any applicable pay rises), benefits and pension entitlement in the period between the dismissal and the date of the reinstatement order. If reinstatement is not ordered, a tribunal may order re-engagement, which requires that the claimant be re-engaged by the employer, its successor or an associated employer in a job that is on comparable terms with the one they were dismissed from.

Reinstatement and re-engagement orders are relatively rare in practice, but there has been an increase in the number of claimants seeking them over the past few years. Strategically, it can be a lucrative remedy for highly paid claimants who do not have a whistleblowing or discrimination claim, both of which have uncapped compensation (see below). This is because the employer may be ordered to pay arrears of pay from the date of the dismissal to the date of compliance with the order, and this sum is not subject to the statutory cap that applies to financial compensation for unfair dismissal.

Before making such an order, the employment tribunal must take account of the claimant's wishes, the practicalities of any such arrangement for the employer and any conduct by the claimant that the respondent employer asserts caused or contributed to some extent to the dismissal. If an employer fails to act on a reinstatement or re-engagement order where it was otherwise considered practicable for it to do so, the tribunal has powers to make an additional award of between 26 and 52 weeks' pay. This will be payable to the claimant in addition to any award of compensation for unfair dismissal, and statutory caps will be disapplied where required to ensure that the claimant recovers the full amount payable to them for salary lost between the date of dismissal and the reinstatement or re-engagement order. There are therefore potentially significant practical and financial consequences for employers if such an order is granted, particularly if the claimant occupies a senior, high-earning position.

At present, protection against unfair dismissal is available to employees with a minimum of two years' qualifying service with their employer (with some exceptions). However, under the Employment Rights Bill, protection against unfair dismissal is to become a day one right. The Bill also introduces a new statutory initial period of employment (akin to a probationary period) during which time employers will be able to apply a simplified procedure to dismiss an unsuitable employee. There will be a period of extensive consultation on the finer details of the reforms, including the dismissal procedure that employers are to apply to dismissals during the statutory initial period of employment, before the new rights come into effect in 2027.^[35]

Discrimination

Under the provisions of the Equality Act 2010, workers have pre-employment protection against discrimination while applying for jobs. Once in employment, all workers, regardless of length of service, are protected against discrimination, harassment and victimisation on grounds of age, race, gender reassignment, disability, pregnancy or maternity, marriage or civil partnership, sexual orientation, sex (including equal pay) and religion or belief. Disabled workers can also bring claims for failure to make reasonable adjustments and discrimination arising from disability.

Claims of direct discrimination, harassment and victimisation may be presented against individual named respondents as well as the employing or engaging entity. If the complaints are upheld against both the employer and any individual respondents, the parties are jointly and severally liable.

Discrimination claims are very attractive to claimants because as well as there being no minimum qualifying service to bring a claim, compensation is uncapped, and tribunals have the power to make awards for both financial and non-financial losses that arise from the discriminatory act or acts. This will usually include an award for injury to feelings, assessed based on the application of 'Vento' bands, named after the case in which guidelines for injury to feelings awards were set down.^[36] Compensation will be awarded within a low, middle or upper band, which is determined based on an assessment of numerous factors, including the severity of the act or acts and the impact on the claimant, including on their health and career. Based on current Vento bands (which are reviewed annually), typical injury to feelings awards can range from £1,200 up to £60,700. The tribunal has discretion to make an award exceeding the upper limit of the upper Vento band in the most serious of cases. Awards for aggravated or exemplary damages and personal injury may also form part of compensation awarded for discrimination. Successful claimants can also be awarded uncapped compensation for loss of earnings where they have been dismissed for a discriminatory reason.

Equal pay

Legal protection against pay inequality between men and women has existed since 1970. This is currently enshrined in the Equality Act 2010. By law, a sex equality clause is implied into every employment contract to remedy any contractual term (e.g., basic pay, contractual bonuses and commission, overtime and allowances, other contractual benefits, and holiday and sick pay entitlement), which is less favourable than the equivalent terms in the comparator's contract. A suitable comparator will be someone of the opposite sex in the same employment, performing either like work, work rated as equivalent or work of equal value.

Complainants relying on the third limb, work of equal value, must be able to show that their work is equal to that of their comparator in terms of the demands made on them by reference to factors such as effort, skill and decision-making. Where there is a dispute as to whether work of equal value is being carried out between a claimant and their comparator, the tribunal will determine the issue using adapted rules of procedure set out in the ET Rules,^[37] which may include the appointment of an independent expert by the tribunal to assist with its determination of the question. It is common for equal value to be pleaded in the alternative to a claim based on like work or work rated as equivalent, or both. In such cases, the tribunal will invoke the special procedure and move to consider the equal value aspect of the claim only if the other limbs have not been upheld.

A claim for equal pay can be presented in the employment tribunal during employment, or within six months of the employment relationship coming to an end. This is an absolute time limit, with no discretion on the part of the employment tribunal to extend time. However, while equal pay claims are commonly (and usually more appropriately) brought in the employment tribunal, they can also be presented in the civil courts as a breach of contract claim, where there is the benefit of a longer limitation period of six years for bringing such a claim. Where an equal pay claim is upheld, the employment tribunal will

make a declaration of the complainant's rights under the sex equality clause, and resulting contractual changes shall be permanent. Arrears of pay may also be awarded, up to a maximum of six years, working back from the date the claim was lodged.

In April 2025, the government launched a 12-week call for evidence on various areas of equality policy, which included improving the enforcement of equal pay rights, by the establishment of an Equal Pay Regulatory and Enforcement Unit, with trade union involvement.^[38]

Whistleblowing

The number of public interest disclosure (whistleblowing) claims lodged in employment tribunals has been increasing steadily in recent years. This is likely, in part, due to a societal shift towards speaking up and increasing parliamentary and regulatory focus on improving protection for whistleblowers.

In order to qualify for protection as a whistleblower, an individual must establish that they meet the conditions of a qualifying disclosure under Section 43B of the Employment Rights Act 1996. A qualifying disclosure is a disclosure of information that the individual reasonably believes tends to show one or more of six statutory failings. The individual must also reasonably believe that the disclosure is in the public interest. Under pending reforms tabled in the Employment Rights Bill, the government will amend the existing legislation to list sexual harassment as a specified relevant failing.

Whistleblowers have protection against detriment and dismissal on grounds of having made a protected disclosure. In detriment cases, proceedings can be issued against the company and individual named respondents.

Uncapped damages can be awarded to successful claimants and, where there is a finding of whistleblowing detriment, the tribunal may also make an award for injury to feelings.

Taking account of the complexity of the law in this area, the increased likelihood of named respondents, the airing of 'dirty laundry' in public and the potentially significant financial and reputational costs, whistleblowing cases are often considered to be high risk for businesses.

The Employment Rights Bill will add disclosures involving sexual harassment to the list of qualifying disclosures. These disclosures are currently covered (although, not expressly) in the current list of relevant failures, but this update makes it explicitly clear that this information may qualify as a disclosure, provided that the 'public interest' and 'reasonable belief' tests are met.

Breach of contract

Breach of contract claims by employees or former employees in the employment tribunal are subject to a number of jurisdictional limitations, which include the following:

1. the employment relationship must have ended, and the breach must have arisen or been outstanding at the date of termination;
2. the tribunal cannot award more than £25,000 in damages; and

3. there is a strict three-month time limit for presenting a breach of contract claim (compared with a more generous six years in the civil courts).

In addition, the parties generally bear their own costs in employment tribunal litigation. While a costs application can be made in certain circumstances, it is rare for winning parties to recover their legal costs. This is compared with the civil courts, where an order for costs will usually follow against the losing party on determination of the claim.

For these reasons, the employment tribunal will not be the appropriate forum for higher-value claims, or those brought by existing employees, and claimants will instead opt to issue proceedings in the County Court or High Court – for example, a claim by a senior executive for losses sustained because their employment was terminated without notice, or a claim for loss of entitlement under, or unreasonable exercise of discretion for, the operation of a particularly lucrative bonus or share scheme.

Employers can pursue breach of contract claims against former employees in an employment tribunal by way of counterclaim if that former employee is pursuing a breach of contract claim against them. It is, however, far more common for employers to pursue such claims in the civil courts.

Other types of employment dispute in the civil courts

Employers that discover that a former employee is intending to or has acted in breach of contractual obligations (whether during employment or in post-termination restrictions) may seek to enforce those obligations by applying for injunctive relief in the High Court. One of the key factors for securing injunctive relief is establishing that damages would not provide an adequate remedy to compensate for the breach. Alternatively, employers can seek damages for breaches of obligation that have already happened, where the employer has suffered financial loss and injunctive relief is not the appropriate remedy.

Other claims, such as reputational claims (e.g., actions in negligence over the content of an employment reference) or protection from harassment under the Protection from Harassment Act 1997 (distinguished from an action for harassment under the Equality Act 2010), will fall exclusively within the jurisdiction of the civil courts.

Employment tribunals do not have jurisdiction to hear claims concerning breaches of data protection legislation, so parties seeking a legal remedy must issue proceedings in the civil courts.

Outlook and conclusions

As we look to 2026 and beyond, several other key areas are anticipated to become focal points in the realm of UK employment disputes.

The integration of artificial intelligence (AI) in the workplace is likely to spark significant discussions around the risks of discrimination as employers and employees navigate the complexities of AI-driven decision-making processes.

Health and safety concerns relating to mental health, the long-term impact of covid-19 and whistleblowing are expected to remain at the forefront as organisations strive to balance operational needs with employee welfare.

We also expect to see more restrictive covenant disputes, especially those concerning non-compete and confidentiality agreements, as businesses seek to protect their interests in a competitive but difficult market.

Looking further forward to 2027, the 'once in a generation' overhaul to employment law under the Employment Rights Bill will take full effect. We expect to see significant changes to the employment relationship, particularly with the new industrial relations framework and enhanced worker protections and trade union rights.

These topics will undoubtedly shape the landscape of employment law and dispute resolution in the UK, necessitating vigilant attention from legal professionals, employers and employees.

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