The Employment Law Review

Third Edition

Editor

Erika C Collins

Law Business Research

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THE EMPLOYMENT LAW REVIEW

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Erika C Collins

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EDITOR'S PREFACE

Erika C Collins

Employment relations in 2011, and legislative and judicial developments in the area of labour and employment law, continue to be coloured by the financial downturn that began in 2008 along with related economic uncertainty, including the recent sovereign debt crisis throughout the Eurozone. As was the case last year, the 'Year in Review' and 'Outlook' sections of nearly every chapter in this edition detail efforts by countries both to address the continuing effects of the economic downturn and to implement regulations aimed at preventing similar crises in the future. Governments continue to seek ways to decrease financial burdens on businesses, including the costs of labour, in an apparent effort to increase competitiveness and stimulate business. In Italy and Greece, for example, new rules regarding collective bargaining permit companies to agree to company-level collective labour agreements that are less favourable to employees than the sector-level collective agreements that otherwise would govern. And in the United Kingdom, the government confirmed its commitment to the Red Tape Challenge, a deregulation programme expressly aimed at reducing the burdens on businesses. On the flip side, many governments also sought to implement rules and regulations aimed at preventing the types of behaviour that are viewed as having caused or contributed to the ongoing financial crisis. In Brazil, for example, the Central Bank has approved a resolution aimed at reducing risk-taking in banking activity by tying executive compensation to long-term results, through the requirement that specified percentages of incentive compensation are paid in company equity and/or deferred over a period of several years. And in Ireland, the Prevention of Corruption (Amendment) Act 2010, signed into law in December 2010, and the Criminal Justice Act 2011 both provide for protection for whistle-blowers who report certain offences.

Another trend during 2011 has been an increasing focus, in a number of jurisdictions, on privacy and protection of individuals' personal data – a topic that can be of utmost importance to employers, who typically collect and hold a great deal of personal, and sometimes sensitive, information about their employees. There has long been a dichotomy between the US and EU approaches to data privacy. In the US the workplace is not considered private, and the US has taken a sectoral, 'patchwork'

approach to data protection that consists primarily of reacting to data privacy issues as they have arisen in various industries. Accordingly, where privacy rights exist in the US they are largely the product of industry-specific laws. In the EU, by contrast, there is an overarching right to privacy stemming from the European human rights charter that all European countries are party to, and the EU data protection directive applies to all handlers of personal data, whether they are financial institutions, employers or internet retailers. It appears from recent developments that the EU approach is winning the day. In the last year, a number of countries – including, notably, India, Korea, Malaysia, Mexico and Singapore – have passed or implemented data privacy and protection laws that follow the EU model.

The third edition of *The Employment Law Review* includes several enhancements meant to better serve employers and employment-law practitioners operating in the global arena. These include two general-interest chapters – one addressing employment issues in cross-border mergers and acquisitions and the other social media in the workplace – as well as a new section in each country chapter addressing translation requirements for employment documents. This edition also boasts the addition of seven new countries, bringing the number of covered jurisdictions to 51. As with the first two editions, this book is not meant to provide a comprehensive treatise on the law of any of these countries but rather is intended to assist practitioners and human resources professionals in identifying the issues and determining what might land their client or company in hot water.

The third edition of *The Employment Law Review* has once again been the product of excellent collaboration, and I wish to thank our publisher and all of our contributors, as well as Michelle Gyves, an associate in the international employment law practice group at Paul Hastings, for their tireless efforts to bring this book to fruition.

Erika C Collins
Paul Hastings LLP
New York
January 2012

Chapter 19

GREECE

Effie G Mitsopoulou, Nicholas C Maheriotis and Ioanna C Kyriazi[1]

I INTRODUCTION

In Greece, employment protection legislation is very high. It is widely believed that Greece's labour market is strictly regulated. The principal sources of Greek labour law regulating employment relationships are the following:

a the Greek Constitution;
b the Greek Civil Code;
c laws (there is an extensive structure of laws, legislative decrees, presidential decrees and ministerial decisions (which are enacted on the basis of legislative authorisation) for the regulation of employment relationships);
d case law; and
e international treaties.

The principal governmental institution for the regulation, monitoring and administration of labour relationships is the Ministry of Labour and Employment, which comprises central and regional services through various departments and inspectorates.

In terms of organisations and departments, reference must also be made to:

a the Supreme Council of Labour, whose board comprises representatives of the government, social partners and specialists, constituting an advisory body issuing opinions on various labour matters such as work regulations, work conditions, hours of work, etc.; and
b the Organisation for Mediation and Arbitration ('OMED').

1 Effie G Mitsopoulou and Nicholas C Maheriotis are partners and Ioanna C Kyriazi is a senior associate at KGDI Law Firm.

The Greek Code on Civil Procedure provides a specific chapter concerning the settlement of collective or individual disputes between employer and employee.[2]

This procedure takes place before the Single Member Court of First Instance, which issues judgments under the special Labour Disputes Procedure. This is a quicker and more flexible procedure than the standard one. The procedure on evidence is not subject to strict conditions and the judge may freely evaluate any available means of evidence.

The second instance court for labour claims is the Court of Appeals, where appeals against decisions of the Single Member Court of First Instance are heard. The third and final court where recourses against the Court of Appeals decisions are heard is the Supreme Court of Greece. The Supreme Court rules only on issues of law and not on facts.

II YEAR IN REVIEW

The economic crisis continued this year, enormously affecting the employment relations. The unemployment rate in September 2011 was 17.5 per cent, compared with 12.4 per cent in the previous year; further job losses are expected. The public sector also began to be affected by the enactment of new provisions to that effect. Significant changes in the field of labour law, addressing both the outcome of the international economic crisis and Greece's own financial problems, have continued. More than two new laws have been passed and more are expected in the coming months.

Law 3986/2011 was issued on 30 June 2011 entitled 'Emergency Measures for the Implementation of the Medium-Term Fiscal Strategy Framework for the years 2012-2015'. This provided for an extension of the maximum duration of successive fixed-term employment agreements from two to three years. It further provided that, in the instance that there are more than three consecutive renewals of fixed-term employment agreements during the above-mentioned period of three years, then it is presumed that the employment agreement covers the employer's permanent requirements, and it is therefore converted into an employment agreement of indefinite duration.

The most recent law, 4024/2011, entitled 'Retirement regulations, unified payroll in the public sector, employment reserve and other measures for the application of the Medium-Term Framework for Fiscal Strategy for years 2012-2015', was passed on 27 October 2011 and brought changes in collective bargaining. More specifically, according to Article 37 of said law, a company-level collective labour agreement prevails over the relevant sector-level collective labour agreement. This means that, under a company-level collective labour agreement, remuneration and employment terms may deviate from the relevant sector-level collective labour agreement up to the level of the National General Collective Labour Agreement. A company-level collective labour agreement may be concluded not only between the employer and the employees' union, but with the so-called 'association of employees', which is stipulated by law 1264/1982, regardless of

2 Labour Disputes Procedure (Articles 663 to 676).

the total number of the employees in the company. An association of employees may be incorporated by the three-fifths of the total number of the employees in the company.

Hot topics this year relate mainly to the implementation of work-rotation systems, with fewer working days and lower salaries as an alternative to redundancies. The majority of companies in Greece have implemented various reorganisation and restructuring projects during the past year in order to decrease their employment costs and secure the continuance of their business activity. A large number of companies have also implemented work-rotation systems or suspension of an employment for the period allowed by law, in an effort to reduce costs and as an alternative means to terminations.

III SIGNIFICANT CASES

The Court of First Instance of Athens ruled for the first time on the use of social networking sites in employment.[3] The Court addressed the issue of an employee spending working time on Facebook, and ruled that the employee's dismissal was lawful and has been carried out for a serious and valid cause.

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

There is no general legal requirement regarding the conclusion of a written employment agreement. What must be handed over in writing to the employee by the employer are the main terms and conditions of his employment relationship, as mentioned *infra*. In some cases, the written form is also required (i.e., for part-time employment, temporary employment, renewal of fixed-term employment, etc.).

Presidential Decree 156/1994, implementing Directive 91/533/EEC, mentions that the employer must provide the employees with at least the following information in writing:

a the full particulars of the contracting parties;

b the agreed place of work, the headquarters of the company or the employer's address;

c the post or the specialisation of the employee, his rank, the category of his employment and the scope of his work (job description);

d the date on which the employment contract or relationship starts (or started), its duration, and if it is for a fixed or idefinite period;

e the duration of paid leave of absence, as well as the manner in which it will be granted and the time at which it may be taken;

f the obligation to pay severance in the case of termination of the employment contract or relationship, and any advance notices by the employer and the employee that must be legally observed;

g any and all amounts due to the employee for basic salary and bonuses, and the manner in which these will become due;

3 Decision No. 34/2011.

h the normal daily and weekly working hours; and
i reference to the applicable collective labour agreement, which determines the minimum payment and work conditions of the employee.

Employees can be informed of the above by delivery of a written employment agreement:
a within two months from the actual starting date of employment in the case of an indefinite duration;
b within 15 days for part-time employment; and
c within five days for fixed-term employment.

Any amendment or change of the existing employment terms and conditions should be concluded in writing and should be signed by both parties in order to avoid any claim on behalf of the employee regarding unilateral detrimental change in his employment terms and conditions.

ii Probationary periods

The employment agreement may provide that an employee will be employed for a specified but reasonable period, after which the employer decides, fairly and objectively, whether said employment agreement will continue to apply or whether same will be terminated. Probationary periods should be reasonable considering the position of the employee.

There is no legal requirement for either party to grant a notice period in order to terminate the employment agreement. It should be noted that as per the new Law 3899/2010, an employer can keep an employee for up to one year and then terminate his or her employment without any severance payment.

iii Establishing a presence

The issue of employing a person in Greece is related to tax and social security law, rather than employment law. More particularly:
a any entity that employs any person in Greece must register with the Greek tax authorities and obtain a tax registration number. The employer must withhold income tax on the employees' salaries and report it to the Greek tax authorities; and
b the aforesaid employer must register with the appropriate social security fund or relevant organisation and insure its personnel with such fund. This means that the employer should pay to the social security authorities the contributions due for the employed personnel.

However, due to the fact that the employee provides his services in Greece, the foreign company will face the risk of permanent establishment ('PE') in the view of the tax authorities (i.e., it will be considered that the foreign company is doing business in Greece).

The employer could use a third-party provider (such as an employment agency) in order to hire the employees through such company; but this scenario (which is the only

option for companies not established in Greece) contains the risk of an eventual claim from the employee that his actual employer is the foreign company.

The foreign company may engage an independent contractor in order to provide services in Greece. However, as mentioned *supra*, a permanent establishment in Greece will be created if it is considered that the foreign entity carries on its business activities in Greece through said independent contractor. If the company is found to have a permanent establishment in Greece, then it will be subject to Greek income tax and will be obliged to pay significant amounts of tax penalties and interest for not complying with the provisions of Greek tax legislation.

If the foreign company hires employees directly, then it should apply certain provisions of the Greek labour legislation which constitute public law rules; namely, the payment of severance in the case of the termination of the employment contract, minimum legal salary, etc., since they will provide their services in Greece. However, if the foreign legal provisions are more favourable for the employees, then the latter will apply.

V RESTRICTIVE COVENANTS

There is no specific legal provision regarding non-compete clauses; these are addressed by case law.

More specifically, Greek courts have ruled that in order for a post-termination non-competition clause to be valid, the employer must offer a 'reasonable' compensation to the employee, which must be in relation to the restriction imposed (duration, geographical area, activity or business sector, etc.). There is no specific formula or amount provided for by law. A compensation of at least 50 per cent of the employee's total salary for the restriction's duration would ensure the validity of the clause. On a case-by-case basis, however, the covenant could be considered valid, even if the employee is not given compensation – as is the case when an executive receives extremely high wages, bonuses, extra benefits, etc., and the restriction period of the covenant is short.

Non-compete clauses can also provide for a penalty in the case of non-compliance.

In Greece, the average restriction period of such a clause (usually for executives and depending on the company's needs) can vary between six months and one year.

During the employment period, any act the employee undertakes that competes with the employer is unlawful and can be used by the employer to terminate the employee with cause.

VI WAGES

i Working time

The legal working time is eight hours per day and 40 hours per week, except for specific categories of employees (i.e., bank employees, electricians, builders, under-age employees etc.), who are employed for fewer hours. The employer and employee may agree that the latter will be employed for fewer working hours but remunerated for 40 hours.

According to Greek law, any work provided by the employee between the hours of 10pm and 6am is considered night-work and is remunerated with an additional 25 per cent.

There are no limits provided by law on the amount of night-work that may be undertaken by the employees; however, certain categories of employees are not allowed to provide any night-work (pregnant women, minors, etc.).

ii Overtime

According to Greek labour legislation, all employees who work in excess of the statutory working hours are entitled to receive relevant compensation for their overtime work. Only executive employees are exempted from this rule. For all the other categories of employees, the overtime legal provisions apply.

According to Greek law, the provision of work in excess of 40 hours per week and up to 45 hours ('overwork') is compensated by an amount equal to the employee's hourly wage plus 20 per cent. Any work above the 45-hour limit ('overtime'), requires the prior approval of the Labour Inspection Authority, which is granted only in special circumstances (e.g., unexpected workload, temporary needs). If such approval is granted, the compensation for overtime is equal to the employee's hourly wage plus 40 per cent.

Every hour of overtime that does not comply with the formalities and approval procedures provided for by law is called 'exceptional overtime'. For every hour of exceptional overtime employees undertake, they are entitled to compensation equal to the current hourly wage plus 80 per cent.

Overtime is calculated on a daily basis, while overwork is calculated on a weekly basis.

The employer is not allowed to give its employees compensatory time off (i.e., an hour off at some later date for every extra hour worked) instead of paying them overtime. However, the employer can offset any overwork – but not overtime – by the amount of the employees' salary which is higher than the statutory minimum. Said provision should be included in the employment agreement of the employee in order to be valid.

The competent Labour Inspection Authority might give a special approval for the realisation of a limited number of overtime work during a specific time period (i.e., up to 120 hours of overtime per year). However, as mentioned *supra*, the employee might undertake exceptional overtime in excess of said limits, which is compensated by an 80 per cent increase on top of the employee's hourly wage.

VII FOREIGN WORKERS

The details of all workers, both Greek and foreign (such as name, surname, speciality, date of hire, type of employment relationship, hours of work) are notified to the Labour Inspection Authority.

There is no limit on the number of foreign workers a workplace or company may have.

The length of a foreign worker's assignment depends on the type of registration certificate or residence permit that he holds, according to Presidential Decree 106/2007

(applying to European nationals) and Law 3386/2005 (applying to third-country nationals).

Therefore, European nationals who wish to work in Greece for more than three months are provided with an EU national registration certificate for an indefinite period by the police authorities.

In the case of third-country nationals, the duration of the residence permit varies, as provided in Law 3386/2005. Four common categories of residence permits are presented *infra*.

a Article 15 of Law 3386/2005 residence permit: this initially lasts for one year and can then be renewed every two years. Simple employees who wish to work in Greece for longer periods are provided with such a residence permit;

b Article 17 of Law 3386/2005 residence permit: this initially lasts for one year and can then be renewed every two years. Executive staff, who wish to work at a Greek branch or subsidiary, are provided with such a residence permit;

c Article 18 of Law 3386/2005 residence permit: this initially lasts for one year and can be then renewed for another six months. Third-country nationals who move to Greece from a company established in a Member State of the EU or the EEA in order to provide specific services within the framework of the relevant agreement between the above company and the counterpart who exercises his activities in Greece are provided with this residence permit; and

d Article 19 of Law 3386/2005 residence permit: this lasts for six months and can be renewed for another six months. Third-country nationals who are specialised technical personnel and move from a company established in a third country in order to provide services in Greece within the framework of a services agreement (i.e., installation, testing and maintenance of supplied products) are provided with this kind of residence permit.

In the case of both European nationals and third-country nationals who wish to work in Greece for more than three months, the issuance of a residence (work) permit is necessary.

While for European nationals the prior issuance of a visa is not required to enter Greece, third-country nationals who wish to work in Greece must be provided with a D-type (national) visa, of the same kind as the residence permit for which the third country national will apply. The duration of such D-type (national) visa is three months. Within such period, the third-country national must submit to the competent authority all required documentation for the issuance of the relevant residence permit.

Concerning local benefits, the foreign worker is fully equalised with Greek workers. In the case of foreign employees, double tax treaties include specific provisions regarding these matters.

The foreign worker is protected under Greek employment laws, as Greek workers.

VIII GLOBAL POLICIES

According to Greek labour legislation, in order for a company to impose any disciplinary sanction on its employees, the existence of an internal working regulation is required.

This regulates issues regarding the execution of work, disciplinary issues, behavioral issues, the company's organisation and functions, promotions, etc.

Companies that employ more than 70 people are obliged to draft an internal working regulation, either unilaterally by the employer or by the employer together with the employees' representatives. The regulation, which should be drafted in the Greek language, must be submitted and ratified by the Labour Inspectorate once finalised.[4]

Following its official approval, the regulation should be posted in a public space in the company's premises and the employees must be given individual and personal notification of it, either via hand-delivery or through the company's intranet. Thereafter, the internal working regulation constitutes part of the employment agreement of all the company's employees.

Furthermore, the disciplinary sanctions that may be imposed by the employer are defined by law: oral or written reprimand, formal warning, fines and compulsory suspension from work.[5]

These sanctions are imposed only for disciplinary offences that disrupt order, discipline and peace in the establishment and generally affect its operation. The nature of such offences and the corresponding sanctions must be provided in the internal working regulation of the employer, in accordance with the fundamental principle *nullum crimen, nulla poena sine lege*: conduct does not constitute a crime, and no punishment may be imposed, unless the law so prescribes.

IX TRANSLATION

There is no legal provision regarding a requirement for the translation of an employment agreement in the Greek language. If the employee has fluent knowledge of a foreign language and is by such means able to fully understand the content of the employment agreement, then the agreement may be made in said foreign language. The same applies for offer letters, confidentiality agreements, restrictive covenant agreements, bonus and other incentive plans, etc. If the employee lacks knowledge of the foreign language and the document is not translated in Greek, he or she may contest the validity of the document.

However, all documents which should be be notified to the Greek labour and social security authorities (e.g., the notification of hiring to the Greek Employment Organization, the dismissal letter, the notification of voluntary resignation, the Internal Working Regulation etc.), must be originally drafted in the Greek language.

In any case, in order for any document to be lawfully submitted to a Greek court, it should be translated into the Greek language.

4 Law 2874/2000.

5 Article 1(3), Legislative Decree 3789/1957.

X EMPLOYEE REPRESENTATION

All employees who have completed two months' employment in the enterprise or establishment or sector in which they are working have the right to become a member of one union within the enterprise or establishment and one second-grade union in the industry or sector in which they are working, provided they fulfill the legal criteria as set by the union's Articles of Association.

Furthermore, employees in undertakings employing more than 20 people have the right to vote and establish a works council for their representation.

Works councils are made up of three to seven members and are elected by the employees of the undertaking during a general assembly convocation. Works councils have an advisory role contributing to the improvement of working conditions and the development of the undertaking through its participation. Hence, they purport to make joint decisions with the employer on the following:

a the draft of the internal working regulation of the undertaking;
b the health and security regulations;
c the planning of holidays;
d the relocation of employees disabled by work accidents to appropriate posts; and
e the planning and control of cultural, entertainment and social events.

Even though the existence of works councils is not common practice in Greece, EU Directive 94/45/EC on the establishment of European works councils has been implemented into Greek law.[6]

According to this Decree, the representatives of the employees who participate in the special negotiating body can create a European works council in collaboration with the central management of the undertaking. The said representatives are elected by the trade unions, where they exist, or, alternatively, by works councils, where these function, or, finally, by the employees in a direct election.[7]

The European works council is created either by the initiative of the central management of the undertaking or by the initiative of at least 100 employees or their representatives. Where no initiative is taken, then there is no obligation to create a European works council.

The European works council representatives are covered by specific protection, which is the same that Greek union members enjoy, namely, protection against dismissal during their term and for one year following the end of their term and special paid leave of absence that may extend to 15 days per year in order to exercise their rights, such as participation in meetings of the European works council, etc. They are also entitled to two hours' leave per week in order to inform the employees of all related issues.

Presidential Decree 40/1997 does not refer directly to the term of the office of European works council representatives, but provides that the elections of the Greek representatives should take place according to Greek law (Laws 1767/1988 and 1264/1982), which regulates the election of local unions and provides that the

6 Presidential Decree 40/1997.

7 Article 12 of Law 1264/1982 and Article 4 of Act 1767/1988.

elections take place every two years. However, Greek law does not provide for any legal consequences in the case of non-re-election of the representatives in question.

XI DATA PROTECTION

i Requirements for registration

Law 2472/1997 on the protection of individuals with regard to the processing of personal data, implementing Directive 95/46/EC ('the Data Protection Law') is the main data protection law in Greece.

The company must notify the Data Protection Authority ('DPA') in writing about the establishment and operation of a file or the commencement of data processing.

Further, the DPA shall grant an authorisation for the collection and processing of sensitive data, as well as an authorisation for the establishment and operation of the relevant file, upon request of the controller. Should the DPA ascertain that processing of sensitive data is being carried out the notification of the existence of such a file pursuant to Article 6 of the Data Protection Law is considered to be a request for an authorisation.

The authorisation is issued for a specific period of time, depending on the purpose of the data processing. It may be renewed upon request of the controller.

A copy of the authorisation is registered with the Authorisations Register kept by the DPA.

Any change in the above data must be communicated without undue delay to the DPA. Any change other than a change of address of the controller or his representative shall entail the issuance of a new permit, provided that the terms and conditions stipulated by law are fulfilled.

The controller is exempted from the obligation of notification, according to Article 6, and the obligation to receive an authorisation, according to Article 7 of the Data Protection Law in the certain cases.

According to the Data Protection Law, personal data is lawfully processed, provided that:

a it is collected fairly and lawfully for specific, explicit and legitimate purposes and fairly and lawfully processed in view of such purposes;

b it is adequate, relevant, not excessive in relation to the purposes for which they are processed at any given time and accurate; and

c it is kept up to date and in a form which permits identification of data subjects for no longer than the period required, for the purposes for which such data were collected or processed.

Pursuant to DPA Regulatory Act 1/1999, during the collection of personal data the controller (the employer) is obliged to keep the data subjects (the employees) informed.

According to Article 5 of the Data Protection Law, the processing of personal data is permitted only when the data subject has given his consent. Said consent must always be opt-in (e.g. ticking a box, signing, etc.). Exceptionally, in certain cases data may be processed even without such consent.

Further, the written consent of the data subjects is required only when processing sensitive data. The data subject reserves his right to withdraw his consent to the processing of his personal data.

The Data Protection Law provides data subjects, such as employees with a right to access.

The right to access consists of the data subject's right to know the content of his personal file; that is, which of his personal data is or has been subject to processing. The subject has a right to see all personal data relating to him as well as its source.

The right to access is exercised by means of a relevant application to the controller and a payment. This payment will be returned to the applicant if his request to rectify or delete data is considered valid by the controller or the DPA, in the case of an appeal before it. The controller must in this case provide the applicant without undue delay, free of charge and in an intelligible form, a copy of the rectified part of the data relating to him.

Should the controller not reply within 15 days, or should his answer not be satisfactory, the data subject is entitled to appeal before the DPA. If the controller refuses to satisfy the request of the party concerned, he must notify the DPA as to his response and inform the party concerned as to his right of appeal before it.

The processing of personal data must be confidential. It must be carried out solely and exclusively by persons acting under the authority of the controller or the processor and upon his or her instructions.

In order to carry out data processing, including transfer, the controller must choose persons with corresponding professional qualifications providing sufficient guarantees in respect of technical expertise and personal integrity to ensure such confidentiality.

The controller must implement appropriate organisational and technical measures to secure data and protect them against accidental or unlawful destruction, accidental loss, alteration, unauthorised disclosure or access as well as any other form of unlawful processing. Such measures must ensure a level of security appropriate to the risks presented by processing and the nature of the data subject to processing. The DPA must, from time to time, issue instructions concerning the level of security of such data and the protection measures necessary for each category of data in view of technological developments.

If the data processing is carried out on behalf of the controller, by a person not dependent upon him, the relevant assignment must necessarily be in writing. Such assignment must necessarily provide that the processor carries out such data processing only on instructions from the controller and that all other obligations arising from this Article shall *mutatis mutandis* be borne by him.

ii Cross-border data transfers

The Data Protection Law reflects the European Union principle of the free flow of personal data. In other words, data can be transferred freely within EU Member States and to third countries that have been recognised by the European Commission as guaranteeing an adequate level of protection (so far, the Isle of Man, Argentina, Canada, Switzerland, Jersey and Guernsey). The DPA interprets the word 'free' as authorisation-free. Even

though the DPA's authorisation is not required for data transfers within the EU and to countries providing an adequate level of protection, notification is still required.

With regard to transfers of personal data to third countries, the prior authorisation of the DPA is required, unless an exception applies.

Relevant employee notification is necessary.

Authorisation of the DPA is not necessary if data is transferred between a data controller established in the EU and a data importer based outside the EU on the basis of model contractual clauses approved by the European Commission. Model clauses ensure safeguards for the transfer of personal data to non-EU countries. More precisely, they state in a clear and detailed way the obligations of the data importer and of the data exporter, their liability, and the data subjects' rights, under their capacity as third party beneficiaries. When data is transferred outside the EU on the basis of model clauses, notification to the DPA will be sufficient for the transfer to take place.

However, if the parties to a model contract decide to amend the wording of the agreement, then authorisation of the DPA will be required and a simple notification will not be sufficient.

If the data importer has joined the Safe Harbor network, notification to the DPA is sufficient for the data transfer to take place and authorisation is not required.

It is also possible for multinational companies to transfer personal data outside the EU within their group of companies with the adoption of binding codes of corporate conduct by same.

iii Sensitive data

According to the Data Protection Law, personal data is any information identifying a data subject, namely, any natural person to whom data refers either directly or indirectly and whose identity is known or can be ascertained, in particular by reference to one or more factors, specific to his physical, physiological, mental, economic, cultural, political or social identity. Information referring to a company or organisation does not constitute personal information. Therefore, details such as one's name, address, telephone number, age, income, health information, social security number, race, ethnicity, religious beliefs or even car registration plate that can be traced back to its owner constitute personal data. Further, a computer IP address also constitutes personal data, as it is possible to match an IP address to an Internet user through the Internet service provider.

According to the Data Protection Law, 'sensitive data' means data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a society, association or trade union, health, social welfare and sexual life, as well as criminal charges or convictions.

Under the Data Protection Law, the collection and processing of sensitive data is prohibited. As an exception, the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted by the DPA when certain conditions occur: the data subject has given written consent; processing the data is necessary to protect the vital interests of the data subject; the data subject is physically or legally incapable of giving his or her consent, etc.

iv Background checks

In Greece employers are generally free to check employment references and other information presented by job applicants. This can be done by enquiries to third parties and, in particular, former employers. However, Directive 115/2001 of the Greek Data Protection Authority provides, for the collection of employees' personal data, that 'personal data collection related to workers or candidates by third parties is allowed,[8] but only when it is necessary for the fulfillment of a specific purpose. Two basic prerequisites are prior notice given to the candidate that information regarding him or her will be asked for from third parties, and his or her explicit consent to this. The person who will ask third parties for information has the obligation to inform the candidate, for the purposes of the collection and processing, of the type of data, as well as the consequences of a possible refusal of consent.

Data collection and processing concerning information about criminal prosecutions and convictions is necessary for certain job posts. It is stressed, however, that the above-mentioned collection and processing is legitimate and lawful only on the condition that the data is directly related to the specific employment and absolutely necessary for reaching a specific decision within the specified framework (criminal record for employees managing money, etc.). Due to the nature of this data and the extent of possible offence if this is used, they will be collected directly and exclusively from the candidate.

Although the DPA has not ruled explicitly on credit checks, it could be argued that the same applies, with regard to them, due to the nature of the relevant data and the extent of possible offence if they are used.

XII DISCONTINUING EMPLOYMENT

i Dismissal

The procedure of termination of the employment contract depends on the type of the employment contract (namely, whether it is a fixed-term or indefinite-term contract) and on the contracting party (employer or employee) who terminates the contract. Contracts for an indefinite term can be terminated at any time, unilaterally by either party, with or without prior notice, but always with a severance payment if the employer terminates the contract.

If the employer terminates the contract with prior notice then he will have to pay half the severance payment provided by Law 2112/1920 (see *infra* under point (ii)). If the employer terminates the contract without prior notice, then he will pay the whole amount of the severance, which will be calculated according to the employee's seniority.

Severance payments are calculated on the normal remuneration of the last month of employment of the dismissed employee, plus any and all allowances (holiday pay, etc.) to which the employee is entitled as part of his usual pay.

In all cases of termination, the written form of the termination is required and the legal severance has to be paid on the date of termination. If the severance is not paid

8 According to Article 4 Paragraphs 1 and 5, Paragraph 2a, b and e.

at the same time that the written termination is handed over or served to the dismissed employee, the termination is null. Termination can take place without requiring the mention of a specific reason to the employee, but the employer must be able to prove that termination has not been made abusively if such termination is contested in court.

The employee has a three-month statute of limitation to contest the validity of the termination before the court as of the termination date. Separation agreements are often used in Greece in order to avoid litigation.

The employer is not under the obligation to notify the employees' representatives in case of individual termination of the employment agreement.

Limited special cases provide for special protection procedures against dismissal, such as war veterans, members of the board of directors of the union, pregnant employees and new mothers.

ii Redundancies

Under Greek law, collective dismissals are considered those which:

a exceed six employees per month for companies employing 20 to 150 employees; and

b exceed 5 per cent of the employees for companies employing over 150, and which in any instance exceed 30 employees per month.

Consequently all the redundancies that do not fall under this definition are considered individual redundancies, not related to the performance or behaviour of the employee but due to, for example, restructuring, reorganisation, economic losses leading to reduction of the workforce, etc.

Individual redundancies

In the case of individual redundancies the employer must serve the employee the termination in writing, he must at the same time pay the severance due provided for by the law and he must have applied the selection criteria as per case law when selecting the redundant employee.

As per Greek law, severance is due according to the past service of each employee and whether a notice period has been given or not. In practice, however, the notice period is rarely respected. The employer is not obliged by the law to notify the employee before dismissal. It remains at his absolute discretion. If the employer decides to grant the legal notice, he will pay the employee half the statutory severance. Severance payments are calculated based on the normal remuneration of the last month of employment of the dismissed employee, increased by any and all allowances (holiday pay, etc.) to which the employee is entitled as part of his usual pay, as well as by any and all fringe benefits he was entitled to.

The law provides the amount of severance payment the employer must pay when he decides to dismiss the employee.

The following tables refer to the statutory provisions in case of termination, with or without a notice period.

Duration of employment	*Termination without prior notice/severance due*	*Termination with prior notice/ severance due*
1–4 years	2 monthly salaries	1 monthly salary
4–6 years	3 monthly salaries	1.5 monthly salaries
6–8 years	4 monthly salaries	2 monthly salaries
8–10 years	5 monthly salaries	2.5 monthly salaries
10 years (full)	6 monthly salaries	3 monthly salaries
11 years (full)	7 monthly salaries	3.5 monthly salaries
12 years (full)	8 monthly salaries	4 monthly salaries
13 years (full)	9 monthly salaries	4.5 monthly salaries
14 years (full)	10 monthly salaries	5 monthly salaries
15 years (full)	11 monthly salaries	5.5 monthly salaries
16 years (full)	12 monthly salaries	6 monthly salaries
17 years (full)	13 monthly salaries	6.5 monthly salaries
18 years (full)	14 monthly salaries	7 monthly salaries
19 years (full)	15 monthly salaries	7.5 monthly salaries
20 years (full)	16 monthly salaries	8 monthly salaries
21 years (full)	17 monthly salaries	8.5 monthly salaries
22 years (full)	18 monthly salaries	9 monthly salaries
23 years (full)	19 monthly salaries	9.5 monthly salaries
24 years (full)	20 monthly salaries	10 monthly salaries
25 years (full)	21 monthly salaries	10.5 monthly salaries
26 years (full)	22 monthly salaries	11 monthly salaries
27 years (full)	23 monthly salaries	11.5 monthly salaries
28 years (full) and over	24 monthly salaries	12 monthly salaries

Termination with prior notice: time of employment	*Time frame of the prior notice provided for by law*
2 months to 2 years	1 month
2 years (full) to 5 years	2 months
5 years (full) to 10 years	3 months
10 years (full) to 15 years	4 months
15 years (full) to 20 years	5 months
20 years (full) and above	6 months

Selection criteria result from the application of the social and economic criteria provided for by Greek case law, which defines the order of the employees to be made redundant. These should be carefully applied by the employer during the selection procedure of the employees to be made redundant.

The main criteria used, according to case law, are:

a performance of the employee;

b seniority;

c age;

d family responsibilities (e.g., number and age(s) of children);

e financial situation; and
f difficulties in finding a new job.

Among those criteria, case law gives a general and firm preponderance to the performance of the employee.

Such application must be based on a general, overall appreciation of all the criteria, without discriminating a particular one. However, it has to be mentioned that certain court decisions have given a relative priority to the criterion of seniority.

In the procedure of selecting the employees to be dismissed, the interests of the company may not be ignored.

There is no express legal requirement for a social plan. Nevertheless, implementing a plan of this kind would reduce the risk of the redundancies being considered abusive by the court.

Finally, the employer must inform and consult with the employees' representatives on the forthcoming restructuring 'in the appropriate time, way and content'.

Collective redundancies

Specific provisions exist for collective redundancies.

If an employer employs between 20 and 150 employees in any calendar month, the collective dismissal procedure will apply if the employer dismisses more than six employees per month and for companies with over 150 employees, more than 5 per cent of the total workforce and in total more than 30 employees per month.

In cases of collective redundancies, consultation and negotiations with the representatives of the employees, as well as with the Ministry of Labour, must take place and alternative solutions must be proposed to the employees' representatives so as to minimise the impact of the dismissals.

If the company has employees' representatives, the employer must inform and consult with them regarding the collective dismissals. If no employees' representatives exist, then a specific five-member committee is elected by the general assembly of the employees. If no committee is elected, the company has to address itself to the Labour Centre (higher-level union of employees) and request the appointment of employees' representatives. If such this does not succeed, the employees with the higher seniority will be appointed by the management of the company. If these appointed employees refuse to accept this role, this will result in a withdrawal of the negotiations. The obligation of information and consultation with the representatives includes the obligation to discuss the crucial issues related to the collective dismissals, and the obligation for both parties to come up with solutions in order to avoid or reduce the number of dismissals, or at least ease their negative consequences.

The duration of the negotiation period is provided by law, i.e., 20 days from the invitation of the employer to consult. Either of the parties, however, has the right to either extend or stop the information procedure before the lapse of the 20-day period, if they consider that no agreement may be found or if an agreement is reached. Any termination in violation of the regulations regarding collective dismissals is null and void.

The result of the negotiations is drafted in minutes and submitted to the Prefecture or the Ministry of Labour, depending on the location of the company's premises. If said

negotiations result in an agreement, then the employer may proceed with the dismissals, as per the agreement, 10 days after it submitted the minutes of the negotiations to the Administration (Prefecture or Ministry of Labour). If the parties have not reached an agreement, then after the 10-day period, the Prefecture or the Ministry may extend the negotiations for another 20 days or decide to prohibit the realisation of some or all of the dismissals.

Early exit plans are not expressly regulated by Greek Labour Law. Consequently, in order for the company to avoid the difficulties of the collective dismissals procedure (i.e., granting of authorisation by the Ministry of Labour, time constraints etc.), it is common practice for employers to provide, through exit incentive programmes, 'packages' which differ on a case-by-case basis and usually provide for additional severance pay, namely, one-and-half times the amount of the legal severance or more, or other incentives or benefits, to induce employees to leave their employment voluntarily.

Separation agreements are often used in restructuring procedures. They usually include monetary incentives which include the amount of severance due, additional amounts voluntarily granted, pension enhancements, payment of the social security contributions due until actual retirement if applicable, outplacement services etc., according to the specific needs of the company.

In exchange for the offered package, the company requires all employees who accept to sign a waiver.

XIII TRANSFER OF BUSINESS

Transferring an enterprise to a new holder ('successor') does not affect the existence of the employment relationship, as Greek law provides that the transferor and the transferee remain jointly and severally liable for all claims arising out of employment relations up to the date of the transfer.[9]

The new employer is obliged to observe the terms and conditions of employment established in the relevant collective agreement, arbitration award or contract of employment. All the acquired rights of the employees are protected. An exception is made for private pension schemes, according to which the successor has the right to maintain, amend or discontinue the existing pension schemes.

As regards the information of the employees' representatives, it must take place 'on time, before the realisation of the transfer'. In practice, 20 days prior to the completion of the local agreement is considered reasonable for the conclusion of the information process, which includes information about the exact or the eventual date of the transfer, the reasons of the transfer, the legal, financial and social consequences of the transfer as far as the employees are concerned and the measures to be taken regarding the employees.[10]

In cases where no trade union or works council exists, all employees, both those to be transferred as well as the remaining ones, must be informed in writing, via e-mail or by hand distribution of hard copies, all at the same time and before the transfer.

9 EC Transfer Directive 187/1977, Presidential Decree 572/1988, Presidential Decree 178/2002.

10 Presidential Decree 178/2002, Article 6.

If the two employers intend to take measures that will amend the status of the employees, the employees' representatives need to be consulted in order to reach an agreement. The results of said consultation are drafted in minutes, which can either be an agreement or the final position of the two parties involved (employees–employers).[11] However, the employers – under the condition of non-abuse of rights – may not follow the position of the employees' representatives. In the absence of a union or works council the verbal consultation can take place by invitation of all the employees to participate in a meeting with the management. Alternatively, the employees may elect an *ad hoc* 'committee' to present them at the consultation process.

In the case of a breach of the information or consultation process of the employees' representatives, Greek law provides only for a fine.[12]

There is no specific reference on other eventual legal consequences, namely, the invalidity of dismissals if there was no consultation procedure, etc; however, said risk cannot be excluded.

XIV OUTLOOK

The employment market in Greece is still undergoing a period of uncertainty. Unemployment is high and is expected to rise. Laws and statutes that remained intact for many decades have been reversed. Greek legal provisions are constantly being amended in order to give employers various ways to cut down their expenses, namely the employment cost, the possibility to implement salary reductions, to terminate by paying a lower amount of severance, etc.

The hottest topic presently is the right to reduce salaries and allowances both in the public and in the private sector. Pensions and their reduction is also at the heart of many debates and is strongly opposed.

11 Presidential Decree 178/2002, Article 6.

12 Presidential Decree 178/2002, Article 9.

Appendix 1

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Effie G Mitsopoulou studied law at the University of Aix–Marseille (Master's degree in law) and at King's College, University of London (LLM). She has been a member of the Athens Bar Association since 1986. She joined KGDI in 1985 and heads KGDI's employment and labour law department. She is an active labour law litigation lawyer and also advises on general labour law issues of domestic and multinational companies. Effie's experience enables her to deal with complex and varied labour issues, such as restructuring, transfer of undertakings on an international level and cross-border projects, implementation of collective redundancy plans, pension plans, employee benefits, as well as immigration and data protection law issues which are also included in her area of practice.

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Nicholas C Maheriotis studied at the University of Thessaloniki and continued his studies at the University of Southampton, England, where he studied Maritime Law (carriage of goods by sea, marine insurance). Nicholas has been a member of the Athens Bar Association since 1982. During his years of experience Nicholas has handled many shipping law cases and defended the interests of some of the biggest shipowners established in Piraeus, Greece, against claims arising from marine casualties, at all levels of the Greek courts. He has acted on a wide range of civil and commercial cases, and has particular litigation experience in labour law cases. Nicholas also has experience in drafting employment contracts, advising major companies established or operating in Greece on all aspects of labour law.

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Ioanna Kyriazi studied law at the University of Thessaloniki, faculty of law (LLB 1998) and obtained her MSc in human resources management from Athens University of Economics and Business (MSc 2004). Ioanna has been a member of the Piraeus Bar Association since 2000. Ioanna joined the firm in August 2006 and is working for the labour law department. Before joining the firm, Ioanna gained significant experience in all issues of employment law by working as the legal adviser for one of the most renowned private employment agencies. She also has extensive experience in the employment aspects on outsourcing transactions both in individual and collective labour law, maritime labour law, as well as in the field related to social security law.

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