The Employment Law Review

Eighth Edition

Editor
Erika C Collins

Law Business Research

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EDITOR'S PREFACE

Every winter we survey milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. At that time, I read the Preface that I wrote for the first edition back in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. This continues to hold true today, and this eighth edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see *The Employment Law Review* grow and develop over the past seven years to satisfy the initial purpose of this text: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2016 in nations across the globe, and this is the topic of the second general interest chapter. In 2016, many countries in Asia and Europe, as well as North and South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulation to ensure that all employees, regardless of sex, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, social media and mobile device management policies. Mobile devices and social media have a prominent role in and impact on both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement 'bring your own device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. 'Bring your own device' issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Last year we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2016, we saw several new, interesting and impactful cases that further illustrate the widespread and constantly changing global norms and values concerning religion in the workplace. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these four general interest chapters, this eighth edition of *The Employment Law Review* includes 48 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, in particular Gideon Roberton and Iain Wilson, for their hard work and continued support. I also wish to thank all of our contributors and my associate, Ryan Hutzler, for his invaluable efforts to bring this edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
January 2017

Chapter 22

GREECE

Effie G Mitsopoulou and Ioanna C Kyriazi[1]

I INTRODUCTION

In Greece, employment protection legislation is very powerful and it is generally held that Greece's labour market is strictly regulated. The principal sources of Greek labour law 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, Social Security and Providence, 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 and hours of work; and
b the Organisation for Mediation and Arbitration (OMED).

1 Effie G Mitsopoulou and Ioanna C Kyriazi are partners at Kyriakides Georgopoulos 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 local 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 courts of first instance are heard. The third and final court, where recourse against courts of appeal decisions are heard is the Supreme Court of Greece. The Supreme Court rules only on questions of law and not of fact.

II YEAR IN REVIEW

After robust protests and strikes that lasted many months, a new social security reform took place as of 12 May 2016 through Law 4387/2016, which introduced vast changes to the Greek social security system by establishing a social security fund for every person who provides services in Greece, regardless of his or her capacity (i.e., salaried employee or freelancer). This law mostly affects freelancers, by connecting their social security contributions to their net taxable income of the previous fiscal year. Moreover, the new law equates freelancers' social security contributions to those of salaried employees. These legal provisions have primarily led many freelancers to cease their entrepreneurial activity, since the cost of preserving it has outweighed any benefits. Businesses established in Greece also operate in great uncertainty since, as per said new law, they are now obliged to pay employers' social security contributions for the freelancers they engage. However, until today, limited guidance has been provided by the Ministry of Labour on the way said contributions will be paid and reported to the authorities. Social security contributions for salaried employees remain, for the most part, at the same rates.

III SIGNIFICANT CASES

Pursuant to the preliminary questions that were referred to the CJEU by the Council of State on whether the legal provisions of national legislation that determine the Administration's approval of collective redundancies in Greece (i.e., job market conditions, the business's situation and the national economy's interests) are compatible with the provisions of the 98/59/EC Directive or Articles 49 and 63 of the TFEU, the CJEU has issued its much-anticipated judgment.

The Court ruled that the Directive 98/59/EC must be interpreted as not precluding, in principle, national legislation, such as the case under judgment, under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority does not adopt, within the period prescribed by the law and following the examination of the

2 Labour Disputes Procedure (Articles 663 to 676).

documents of the file and the assessment of the labour market conditions, the situation of the undertaking and the interests of the national economy, a justified decision to reject part or all of the projected collective redundancies.

However, the Greek courts should review whether the application of the aforementioned assessment criteria (i.e., the labour market conditions, the situation of the undertaking and the interests of national economy) by the public authority deprives the provisions of the EU Directive of their practical effect.

Finally, the Court ruled that the economic crisis and the high unemployment rate that may exist in a Member State do not affect the aforementioned position.

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 or her employment relationship, as set out below. In some cases, the written form is also required (i.e., for part-time employment, temporary employment or renewal of fixed-term employment).

Presidential Decree 156/1994, implementing Directive 91/533/EEC, mentions that an employer must provide 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 or her rank, the category of his or her employment and the scope of his or her 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 indefinite 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;
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 or her 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 it will be terminated. Probationary periods should be reasonable considering the position of the employee. As per the Law 3899/2010, an employer can hire an employee for up to one year and then terminate his employment without payment of any severance payment.

In such case there is no legal requirement for either party to grant a notice period to terminate the employment agreement.

iii Establishing a presence

The issue of employing a person in Greece is related to tax and social security law, rather than employment law. In particular:

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 without prejudice to the provisions of any existing double tax treaty and report it to the Greek tax authorities; and

b the aforesaid employer must register with the recently founded national social security fund (EFKA) 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 be deemed to be operating a permanent establishment in the view of the tax authorities (i.e., it will be considered that the foreign company is doing business in Greece), but this issue has to be further assessed on the basis of the facts of each case and the provisions of the respective double tax treaty (if applicable).

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. In such event, a permanent establishment in Greece will not be created if it is considered that the foreign entity carries on its business activities in Greece through said independent contractor under the condition that the latter acts in the ordinary course of his or her business. 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 that constitute public law rules since they will provide their services in Greece; namely, the payment of severance in the case of the termination of the employment contract, minimum legal salary, etc. However, if the foreign legal provisions are more favourable for the employees, then those will apply.

V RESTRICTIVE COVENANTS

There are no specific legal provisions 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 proportion 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 term of the restriction 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 remuneration, 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 clauses (usually for executives and depending on the company's needs) can vary between six months and one year.

During the term of the employment agreement, any act the employee undertakes that competes with the employer is unlawful and can be used by the employer to terminate the employee with justification.

VI WAGES

i Working time

The legal working time is eight hours a day and 40 hours a week, except for specific categories of employees (i.e., bank employees, electricians, builders, underage 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 legal working time is eight hours per day and 40 hours per week (for employees who work five days per week). All employees who work in excess of the statutory working hours are entitled to receive compensation for their additional work. Furthermore, 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 increased by 20 per cent. Any work above the 45-hour limit is considered as overtime work. Employees are compensated by an amount equal to the employee's hourly wage increased by 40 per cent for each hour of legal overtime work and up to 120 hours per year. The amount for legal overtime work over 120 hours per year is equal to the employee's hourly wage increased by 60 per cent.

Every hour of overtime that does not comply with the approval procedures is called 'exceptional overtime'. For every hour of exceptional overtime employees are entitled to compensation equal to the current hourly wage increased by 80 per cent.

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

An 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. However, such a provision should be included in the employment agreement in order to be valid.

Overtime work is allowed for up to two hours per day and 120 hours per year. The employer is obliged to inform the labour authorities during the first 15 days of each month of the total overtime of each employee that took place the previous month.

Moreover, the employer is obliged to maintain a 'special book of overtime work', where he or she should note the overtime work of each employee. It is mandatory for the employer to record in the book the legal overtime work of each employee.

However, as mentioned above, an employee might undertake exceptional overtime work 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 and 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 or she holds, according to Presidential Decree 106/2007 (applying to European nationals) and Law 4251/2014 also known as the new Immigration Code (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, four common categories of residence permits for work purposes are introduced by Article 7 of Law 4251/2014:

a A1 –for salaried employment or rendering of services or project;
b A2 – for employees for specific purposes;
c A3 – for investment activity; and
d A4 – for highly qualified employees, also known as the 'Blue Card'.

The duration of the initial residence permit is for two years and each renewal lasts three years.

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 visa.

The duration of a visa is three months. Within that 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.

Foreign workers, like Greek workers, are protected under Greek employment laws.

Finally, Law 4146/2013, in its Article 6, provides for the first time that residency permits can be granted to non-EU citizens who buy real estate (property) in Greece.

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 (IWR) is required. This regulates issues regarding, among others, the execution of work, disciplinary issues, behavioural issues, the company's organisation chart and functions, and promotion procedures.

Companies employing more than 70 people are obliged to draft an IWR, either unilaterally by the employer or jointly with the employees' representatives. Once finalised, the IWR, which should be drafted in Greek, must be submitted to and ratified by the Labour Inspectorate.[3]

Following its official approval, the IWR should be posted in a public space in the company's premises and the employees must be given individual 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.[4]

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 specifically provided in the IWR of the employer, in accordance with the fundamental principle that conduct does not constitute a crime and no punishment may be imposed, unless the law so prescribes.

IX TRANSLATION

There is no legal provision requiring the translation of an employment agreement in Greek. If the employee is fluent in a foreign language, then the agreement may be signed in that language. The same applies for offer letters, confidentiality agreements, restrictive covenant agreements, bonus and other incentive plans, etc.

3 Law 2874/2000.

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

However, all documents notified to the Greek labour and social security authorities (e.g., the notification of hiring to the Greek Manpower Employment Organisation, the dismissal document, notification of voluntary resignation, IWR, etc.), must be drafted in Greek.

In order for a document to be lawfully submitted to a Greek court, it should be translated in Greek.

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 fulfil 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 repositioning of employees disabled by work accidents into 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 2009/3/EC on the establishment of European works councils has been implemented into Greek law.[5]

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.[6]

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

5 Law 4052/2012.

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

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 to inform the employees of all related issues.

Law 4052/2012 does not refer directly to the term of 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 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, as currently in force, 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 or her 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 that permits identification of data subjects for no longer than the period required, for the purposes for which the 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 or her consent. Consent must always be opt-in (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 or her right to withdraw consent to the processing of his or her 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 or her personal file; that is, which of his or her personal data is or has been subject to processing. The subject has a right to see all personal data relating to him or her, 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 or her 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 or her.

Should the controller not reply within 15 days, or should his or her 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 or she must notify the DPA as to his or her response and inform the party concerned as to his or her 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 or her, the relevant assignment must necessarily be in writing. The 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 or her.

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, Andorra, Faroe Islands, State of Israel, New Zealand, Uruguay and Guernsey). Personal data may also be freely transferred to any US organisation that has been registered to the

Privacy Shield system. 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.

DPA authorisation 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.

Finally the DPA started lately to accept that multinational companies can transfer personal data outside the EU within their group of companies with the adoption of binding corporate rules.

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 or her 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 and 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 sex 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,[7] but only when it is necessary for the fulfilment 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 infromation 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 above applies 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 it will have to pay half the severance payment provided by Law 2112/1920 as amended by Law 4093/2012 (see Section XII.ii, *infra*). If the employer terminates the contract without prior notice, then it will pay the whole amount of the severance, which will be calculated according to the employee's seniority.

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 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.

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

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 with a termination notice in writing; it must at the same time pay the severance due provided for by the law and it must have applied the selection criteria in accordance with case law when selecting the employee to be made redundant.

Pursuant to 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 its absolute discretion. If the employer decides to grant the legal notice, in accordance with the following table, it will pay the employee half the statutory severance.

Years of service under same employer	*Notice period*
From 12 months to 2 years	1 month before termination
From 2 years completed to 5 years	2 months before termination
From 5 years completed to 10 years	3 months before termination
10 years completed or more	4 months before termination

The amount of severance due in case of termination of an indefinite-term employment agreement without prior notice is determined as follows:

Completed years of prior service with the same employer	*Severance amount (monthly salaries)*
1–4	2
4–6	3
6–8	4
8–10	5
10	6
11	7
12	8
13	9
14	10
15	11
16 and above	12

For the calculation of the above severance the regular earnings of the last month under full employment shall be taken into account.

Private sector employees who have completed more than 17 years of service with the same employer are entitled to an additional severance of one monthly salary per year of service (over the 17 years) and up to 12 monthly salaries, as described in the following table:

Completed years of service under same employer until 12/11/2012	*Additional severance amount (monthly salaries up to €2,000 each)*
17 years	1
18 years	2
19 years	3
20 years	4
21 years	5
22 years	6
23 years	7
24 years	8
25 years	9
26 years	10
27 years	11
28 years completed or more	12

For the above calculation, the following factors shall be taken into account:

a the time of service completed by the employee until 12 November 2012, irrespective of the time of its dismissal; and

b the regular remuneration of the last month under full employment, up to €2,000.

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 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 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 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 employer's obligation to inform and consult 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 (namely, 20 days from the invitation of the employer to consult). Both parties, however, have 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 (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-a-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 it to sign a release or 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.[8]

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 before 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.[9]

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 email or by hand distribution of hard copies, all at the same time and before the transfer.

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 the consultation are drafted in minutes, which can either be an agreement or the final position of the two parties involved (employees and employers).[10] 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.[11]

There is no specific reference to other potential legal consequences, such as the invalidity of dismissals if no consultation took place. However, that risk cannot be excluded.

XIV OUTLOOK

The ongoing financial crisis and economic instability in the Greek private sector continues to put a strain on employment in the country. Because of the high rates of taxes, social security contributions and the occasional exceptional levies that are imposed, companies are

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

9 Presidential Decree 178/2002, Article 6.

10 Presidential Decree 178/2002, Article 6.

11 Presidential Decree 178/2002, Article 9.

having a hard time not only hiring new personnel and boosting their productivity, but also maintaining their existing headcount. The year 2017 is going to be crucial for both the private sector and the country's overall economy.

Appendix 1

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Effie G Mitsopoulou studied law at the University of Aix–Marseille and at King's College London (LLM). She has been a member of the Athens Bar Association since 1986. She joined Kyriakides Georgopoulos Law Firm in 1985 and heads the firm's employment law practice. 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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Ioanna Kyriazi studied law at the University of Thessaloniki, faculty of law (LLB, 1998), and further obtained an MSc in human resources management from Athens University of Economics and Business (MSc, 2004). She has been a member of the Piraeus Bar Association since 2000. She joined Kyriakides Georgopoulos Law Firm in 2006 and is working as a partner in the employment law practice. She advises multinational and Greek companies of various industries on all aspects of employment issues, including corporate restructurings, outsourcing, temporary agency work issues, individual and collective dismissals, incentive schemes, European works councils, collective bargaining agreements, as well as social security issues. She also litigates before Greek courts regarding various employment claims.

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