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The Legal 500 Country Comparative Guides

Monaco

EMPLOYMENT & LABOUR LAW

Contributing firm

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Monaco.

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MONACO

EMPLOYMENT & LABOUR LAW



1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

During the first lockdown in 2020, terminations except for serious misconduct, redundancy planned before the pandemic and physical unfitness were prohibited and such “authorised” dismissals required the approval of the Labour inspectoral.

Since the pandemic, partial unemployment has been put in place in the companies impacted by the public health measures. It provides payment of part of the wage by the employer (70% of the gross salary) which in return receives a State aid.

In addition, economic measures have been put in place to avoid redundancies such as exemption of employer social taxes, economic recovery aids and relaxed regulations for working from home.

2. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

2.1 Permanent contracts

2.1.1 Dismissal without stating grounds

The law provides that **permanent contracts** can always be terminated by either party willingly. The termination shall take effect at the end of the notice period. In this event, the employer does not have to give any reasons.

However, the employer must not abuse this unilateral termination option.

Case-Law considers that the employer cannot use this type of dismissal to conceal unlawful reasons (discrimination) or the breach of laws of public order,

and specifically:

- Those relating to redundancies (see question 3),
- Those relating to the protection of certain employees (see question 11).

Finally, the case-law considers that the employer must respect the employee’s rights and the circumstances of the termination must not be wrongful (see question 8).

2.1.2 Dismissal with a valid reason

Permanent contracts can also be terminated on real grounds such as, without limitation:

- disciplinary reasons;
- professional incompetence;
- physical unfitness;
- economic grounds.

2.2 Fixed-term contracts

Fixed-term contracts cannot be terminated unilaterally by the employer without stating grounds.

Such contracts may be terminated before expiry of their term by the employer on grounds of serious reasons, gross misconduct, force majeure or those set out specifically in the contract or the company’s internal regulations.

They can also be terminated early by mutual agreement.

3. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The following rules apply when at least **two employees** are being dismissed at the same time. Failure to meet the provisions below is subject to criminal sanctions.

3.1 The reality of economic difficulties

Employers dismissing staff on economic grounds must provide evidence that the dismissal is justified by economic difficulties or the necessity to safeguard the competitiveness of the company, as well as the effectiveness of the abolition of the position.

3.2 The mandatory consultations and timeframe

The Labour Inspectorate and the staff representatives, if any, must be informed of the proposed redundancies and the relevant economic factors, as well as the order of lay-offs and the measures to limit the dismissals.

Whether the redundancy is justified by economic difficulties, a merger, a company restructuring or the departure of the company from the territory of the Principality of Monaco, the staff representatives must be summoned to negotiate before the final decision is taken.

2.2.1 When the dismissal is justified by economic reasons, a period of 8 days to 1 month (depending on the number of dismissals envisaged) must be respected between the 1st meeting of the staff representatives and the final decision.

2.2.2 In the event of collective redundancies envisaged within a period of 6 months, following a merger of several enterprises, a concentration of the means of production between several establishments dependent on one or more enterprises, a restructuring of the company or departure from the company of the territory of the Principality, the period between the first meeting of the staff representatives and the final decision is increased from 1 to 3 months depending on the number of dismissals envisaged.

3.3 The order of dismissal

For each professional group concerned by the redundancies, the employer must respect the following order of dismissal, as provided by the law:

1. Foreigners domiciled outside the bordering towns,
2. Foreigners domiciled in the bordering towns,
3. Foreigners domiciled in Monaco,
4. Foreigners married to a Monegasque national,
5. Monegasque nationals.

In each of the above categories, seniority in the workplace will also be considered with regards to indemnification; if the employee has been working there for at least two years, a seniority bonus of one year per dependent child will be granted. This bonus cannot

exceed five years.

When the dismissal only affects one occupational category, the employee(s) affected by this measure may apply to be paid into a lower category under certain conditions.

Non-compliance with these provisions is subject to y criminal sanctions.

3.4 Priority of re-employment and measures to reduce the number of dismissals

Dismissed employees are entitled to a priority of redeployment and employers contemplating redundancy must limit as much as possible the number of dismissals by resorting to retirements or voluntary departures.

The re-employments take place in the reverse order to the dismissals.

4. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

If there is any change in the legal status of the company by sale or merger, all the employment contracts are automatically transferred from the seller to the buyer.

Employers could be ordered to pay damages to employees if dismissed in the context of a business sale.

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

The basic statutory notice is, (except in cases of gross misconduct):

- One month after six months' service;
- Two months after two years' service.

For executive employees ("cadre"), there is a customary practice which entitles them to three months' notice, whatever their seniority level.

The notice periods above may be extended by a collective agreement, the employment contract or the company's internal regulations.

6. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Dismissal takes effect upon the employee’s receipt of the dismissal letter.

Except in case of dismissal for gross misconduct for which the employee is not entitled to compensation and leads to immediate departure, employees will leave the workplace at the end of their notice period. Employers cannot anticipate their exit from the workplace by paying any sum.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Employers may decide to put dismissed employees on garden leave, with maintained pay until the end of the notice period.

During this period, employees are still bound by their employment contract and especially their duties of loyalty and confidentiality.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

There is no mandatory termination procedure.

The only requirement is to notify in writing the termination since the notice period runs from the date the letter is delivered to the employee.

Depending on the grounds for dismissal, further requirements may have to be complied with.

- **Redundancies** (see question 3)
- **Dismissal on the ground of physical unfitness** requires prior medical examination and redeployment searches in order to find an alternative for the dismissed employee.
- **Protected workers** (see question 11)
- **Dismissal without stating ground** must be preceded by the invitation to a preliminary meeting.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

In any case, non-compliance with prescribed procedures entitles the employee to damages for unfair dismissal.

Failure to meet these provisions is also subject to criminal sanctions.

10. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements and corporate agreements may provide specific requirements relating to notice period and severance pay.

The Labour Collective Agreement amendment provides specific requirements on redundancies (see question 3).

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

11.1 Dismissal on the ground of physical unfitness

Physical unfitness must be notified to the employer who must explore all possibilities of redeploying workers. If redeployment is not possible or if the employee declines it, the employer shall obtain the prior consent of a Commission to dismiss the employee.

11.2 Protected workers

Employers shall obtain the prior consent of the Dismissal Commission to dismiss the following employees:

- Pregnant employees, employees on parental leave or adoption leave;
- Staff representatives, union representatives, harassment officers;
- Labour Court member.

Non-compliance with the procedure or the commission’s negative opinion entitles the employee to damages for unfair dismissal. Failure to meet these provisions is also subject to criminal sanctions.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Employees are protected against discrimination under the International Covenant on Civil and Political Rights.

Any sanction taken against an employee in a context of harassment, sexual blackmail or violence is null and void.

The employer is required to take the necessary measures to terminate the facts above and appoint an officer responsible for collecting the reports of those facts.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

The termination which occurs in a context of harassment or on the grounds of discrimination can be sanctioned as an unfair dismissal and entitle the employee to damages.

There is no obligation for the employer to reinstate the illegally dismissed employee.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

(See question 2)

Employees on fixed-term contracts cannot be dismissed *per se* but the contract can be terminated unilaterally by the employer in certain cases (see question 2).

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Currently there is no form of protection provided by law.

16. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

In the event of a **dismissal without stating grounds** the employee is entitled to a severance pay equal to the amount of the daily wage multiplied by the number of months of seniority.

In case of **dismissal with valid reason**, except for gross misconduct, the employee is entitled to the French severance pay that is ¼ of monthly wage per year of seniority for 10 first years and 1/3 from de 11th

The parties can always agree on a contractual indemnity higher than the above allowances.

17. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The employer and the employee may conclude a settlement agreement after the dismissal by which the employee waives his right to sue the employer for all causes related to the termination.

This settlement must provide for reciprocal concessions on the part of both parties.

It can include non-disclosure and/or confidentiality clauses, limited in time and subject to a penalty clause.

18. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Non-competition clauses are enforceable if they are justified by the company's legitimate interests, limited in time and space, financially compensated, and do not make it impossible for the employee to find another employment. The extent of these limits depends on the activity of the employee and its duties.

The employer can waive the non-competition clause upon termination, hence avoiding the payment of the compensation.

Breach of the non-competition clause by the employee is sanctioned by the reimbursement of the compensation, the application of a penalty clause, if any, and being liable to stop the competitive activity.

19. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Non-disclosure clauses may prohibit the employee from disclosing information that was known to his/her former employer, on the condition that it is limited in time.

Such clauses may also be subject to a penalty clause.

20. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

There is no such obligation in Monaco for the employer.

21. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Employers have the burden of proving the reason for the

dismissal. This proof can be challenging to provide, especially on the grounds of dismissal for personal reasons.

The employers tend to rush because of the lack of legal dismissal procedures.

Except in case of serious misconduct, they should take the time to establish proof of the alleged facts, summon the employee to a preliminary meeting to hear him/her on these facts and allowing him/her to be assisted by a staff representative or another employee. This contradictory procedure allows to establish communication which sometimes has been broken.

Most importantly, the employer should consult a lawyer in case of a high seniority employee dismissal.

22. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

A law is being considered relating to the whistle-blower protection under which employers should set up specific measures.

A harmonisation between Monaco and the European Union is being debated. In this event, it could impact the order of dismissal and the regulations relating to discrimination and social cover.

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