

# Employment & Labour Law

First Edition

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Published by Global Legal Group

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# Morocco

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## **General labour market trends and latest/likely trends in employment litigation**

The recent Moroccan labour law of 11th September 2003, organised as a code together with its implementing decrees, has definitively modernised and simplified the rules governing the relationship between employers and their employees. This law has already maintained a very favourable social protection to employees and Moroccan case law has confirmed at length that the applicable law provides good protection to employees.

Along with Moroccan labour law, social security regulation is part of the applicable law governing the relationship between employers and employees. The Social Security Law of 31st December 1959 aims at guaranteeing employees' pensions and cover against disability, medical expenses and/or any harm incurred by the employee during his duty and/or any career illnesses.

Generally, employment contracts must be in writing but they can be entered orally, except when the contract is for a fixed term, or part-time. Indeed, oral fixed-term contracts and oral part-time contracts are categorically deemed to be indefinite-term contracts. Definite-term contracts can occur only if they are required for substitution of an employee by another in case of suspension of contract of employment, or if there is a temporary increase of the company's activity, or if the proposed work of the candidate has a seasonal character. Part-time employees can be hired for a maximum of 6 months, non-renewably. Nevertheless, the part-time employment contract, which must necessarily be in a written form, should specify respectively the reason justifying part-time hiring, the term of the employment task, the amount of the salary, and the salary payment mode, together with the probationary period if any.

Moreover, the new Moroccan constitution of July 2011 and the applicable labour law strictly prohibits discrimination on the basis of country of origin, name, political opinions, trade union activities, ethnic group, race, religion, health, sex or family situation of the persons and of the employees. Discrimination is a criminal offence subject to judicial sanctions.

The employment contract may provide for various covenants such as non-compete and confidentiality clauses. Specifically, the non-compete clause should take into consideration the particularities of the job position of the employee concerned, but it should be limited both geographically and in time. Moroccan case law considers that two years is the maximum limit of a non-compete clause, and no financial compensation is necessary to enter into such a covenant. The employer is free to consider confidentiality clauses.

Among other responsibilities, employers must inform employees about any changes to terms and conditions relating to the collective labour rules, the measures concerning health and security, mandatory membership of the national health and pensions organisation, and the name of the insurance company covering employees against work injury and occupational diseases.

It should be noted that a recent personal data protection law of 18 February 2009 has been published and come into force, and is applicable to employers, who must comply with said employees' data protection law.

In addition, should an employee be in trouble with his employer or if his employment is terminated, he may at no judicial cost file a claim against his employer before his residency judicial court near his residence. Thus, Moroccan courts are overloaded with often tendentious social cases necessarily ruled



by the courts until final judgement. Hopefully, recent labour law has put an end to the previous court's discretionary power in awarding at-discretion damages to dismissed employees. The maximum amount of damages cannot exceed 1.5 months' net salary per year of service capped to 36 months, regardless of the number of years of the employee's service with their employer.

Besides, the labour law regulates for the first time the temporary employment agencies whose employees are very often hired on a long-term basis, mainly with corporations, but in full breach of related applicable law.

Generally, the new labour law as practised for nearly ten years as of today, has clarified a number of unpredictable and risky situations to employers. Specifically, it states in one document a code for precise figures as to an employee's probationary period, notice period, compensation for supplementary worked hours, annual leave, severance and damages if any. Indeed, an investor starting its business and hiring employees may calculate in advance the legal risk and related financial exposure it faces for any possible future reorganisation of its business, or when deciding its closure.

#### **Key case law affecting employers' decision making over dismissal, redundancies dismissals etc.**

Moroccan courts are very formalistic toward the enforcement or even interpretation of the applicable labour law. For example, when an employer decides to terminate an employee for a serious fault such as theft, fraud, drunkenness, insulting behaviour, etc. it cannot take such a decision without summoning the disorderly employee to a meeting in order to give him a chance to argue with or challenge such a serious charge, in the presence of the employee's representative. Should such a meeting not be held, the court would consider the termination as abusive and the dismissed employee would be entitled to full compensation including severance and a separation amount.

It should be noted that the role of the labour authority has become much more constructive, specifically when an employment relationship is close to being terminated but with some dispute between employer and employee about the compensation to be paid. Here, the law authorises the competent labour authority to undertake a conciliation between employer and employee and, if successful, to settle under minutes duly executed by both parties as a final and binding decision, for the termination amount to be paid to the employee. Such a conciliation will close for good the employment relationship, removing all possible claims the employee may file before the courts.

Furthermore, redundancies are generally characterised by employees, labour authority and courts as termination with no cause, and they generally proceed to full compensation of the terminated employees. There are indeed very few situations where local authorities approve when informed about such a large economic pay off. Here again, economic issues are subordinated to the social side of the situation.

With respect to employers who notify newly hired employees about their required compliance with the company's code of conduct, such a document being in digital or in hard copy, it must be executed and duly accepted without any reservation by the employees, with periodic renewal of the same procedure when the code is amended. Unfortunately, Moroccan courts do not consider breach of the said code of conduct provisions as a serious fault, and they rather generally focus on article 39 of the labour law. This states a list of serious faults which may lead to the termination of an employee without any compensation, and on the same law's article 36 which provides for the non-valid grounds for dismissal.

In conclusion, the internal dismissal process is very precise and formal and the employer should comply with all of its details – for example, the termination of a general manager of a company being simultaneously an employee and a legal representative with the employing company, cannot be decided with a simple execution of the manager's social mandate. Such a special decision must

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persons having lost their jobs, and free medical care named “RAMED” to persons with financial difficulties.

**Likely or impending reforms to employment legislation and enforcement procedures**

After nearly ten years of existence and practice of the law, it is very likely that the Moroccan government shall undertake the lifting of the Moroccan Labour Law which is often considered by investors as a considerable risk to their business and sometimes unfair to their interests. The new trend, embodied by the development of temporary employment agencies, is to give much flexibility to employers to adapt their human resources to the evolution of their business. The right to employment for life has evaporated and the evolution of the modern workplace requires rapid adaptation by young workers. Therefore, such new economical, social and technological trends imply a need to change applicable labour laws in order to comply with the new challenges, giving as much protection as possible to the employees.

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