International Labour and Employment Compliance Handbook

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Edited by Salvador del Rey and Robert J. Mignin

Labour and Employment Compliance in United States

Third Edition

Baker & McKenzie LLP

Wolters Kluwer

International Bar Association

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United States

Legal Compliance with Employment, Labor, Benefits, Compensation and Immigration Laws and Regulations

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Legal Compliance with Employment, Labor, Benefits, Compensation and Immigration Laws and Regulations

1. LEGAL FRAMEWORK: EMPLOYMENT LAWS

The hallmark principle of employment law in the United States is "employment at-will." This means that either party to the employment relationship – employee or employer – may end (terminate) the employment relationship at any time with or without prior notice for any reason or no reason at all.

The employment "at-will" principle in the U.S. is subject to several exceptions. For example, although an employer is permitted to end the employment relationship for any or no reason, an employer cannot take any action based on an employee's disability, race, gender, age, national origin, religion, color, genetic information, pregnancy, veteran status, sexual orientation or other state, local, or federally protected characteristics.

Federal employment and labor laws cover most employees working in the private sector in the United States. In addition, state and local laws and regulations provide rights to employees that may be the same or exceed those granted by federal law. Accordingly, the laws of the state, county or town where the employee works should always be consulted with respect to any employment-related decision.

2. CONTRACTS OF EMPLOYMENT

2.1. Overview

Employees in the United States have relatively limited employment rights when compared to most other countries. Under the "at-will" employment rule, an employer in the U.S. is generally free to terminate an employee for any reason at any time with or without notice. In addition, other than laws relating to advance notice in mass layoff or plant shutdown situations, or possible obligations under union contracts, there is no obligation for an employer to provide terminated employees with any notice of separation or severance pay.

2.2. Written Employment Contracts

A significant exception to the "at-will" employment doctrine is a written employment contract which establishes an employer's obligations and employee's rights during and upon termination of employment. The vast majority of employees in the U.S., however, are not subject to an employment contract. Written employment contracts are generally provided only to executives, professionals or highly technical or other specialized employees.

2.2.1. Employment Contracts

If an employer enters into a written employment contract with an employee, the term of such contract is often for a set period of time. It is, however, possible to have an open-ended contract, which provides for termination upon reasonable notice given by either party. As a general rule, written employment contracts allow for termination only for "cause" as defined by the contract. Written employment contracts also establish compensation and benefits for the employee and often provide for the payment of certain severance and other post-termination commitments. It is possible to have an employment contract while expressly preserving the termination rights under the employment at-will doctrine.

2.2.2. Collective Bargaining Agreements

Fewer than 7% of employees in the U.S. private sector belong to a union or are covered by a labor contract. Labor contracts set wages, benefits and working conditions for employees and often establish procedures which