THE EMPLOYMENT LAW REVIEW

Fourteenth Edition

Editor
Erika C Collins

THE LAWREVIEWS

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PREFACE

For each of the past 13 years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. Every year when I update this book, I reread the Preface that I wrote for the first edition 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. I have been practising international employment law for more than 25 years, and I can say this holds especially true today, as the past 14 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 14th 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 this publication grow and develop to satisfy its initial purpose: 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.

Speaking of changes, we have now been living with covid-19 for more than three years. In 2020, we entered a new world controlled and dictated by a novel coronavirus, one that spread at a rapid pace and required immense government intervention. The ways in which governments responded (or failed to respond) shed light on how different cultures and societies view, balance and respect government regulation, protection of workers and employee privacy. Employment practitioners around the globe have been thinking about and anticipating the future of work for over a decade. But with the onslaught of covid-19, the future of work was foisted upon us. Covid-19 has expedited the next decade of technological advancement and employer–employee relations, causing entire industries and workplaces to change in real time and not over the course of years.

Unsurprisingly, this year's text would not be complete without another global survey of covid-19 that summarises some of the significant legislative and legal issues that the pandemic has presented to employers and employees. The updated chapter highlights how international governments and employers continued to respond to the pandemic during the course of 2022, from shutdowns and closures to remote working and workplaces reopening. Employers around the globe have needed to be nimble to deal with the constantly changing environment.

The other general interest, cross-border chapters have all been updated. The #MeToo movement continues to affect global workforces. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other

countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

The chapter on cross-border mergers and acquisitions (M&A) continues to track the variety of employment-related issues that arise during these transactions. The covid-19 pandemic initially caused significant challenges to M&A. Deal activity slowed substantially in 2020, negotiations crumbled and closings were delayed. Although uncertainty remains about when M&A activity will return to pre-pandemic levels, it appears that businesses and financial sponsors once again have begun to pursue transactions. Parties already have begun to re-engage on transactions previously put on hold and potential sellers appear willing to consider offers that provide a full valuation. The content of due diligence may change because the security of supply chains, possible crisis-related special termination rights in key contracts and other issues that were considered low-risk in times of economic growth now may become more important. This chapter, and 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 2022 for multinational employers across the globe. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, 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 in the workforce remain under-protected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on 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. Particularly in the time of covid-19 and remote working, 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.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. 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 the six general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 37 jurisdictions around the world.

Covid-19 aside, in 2023, and looking into the future, global employers continue to face growing market complexities, from legislative changes and compliance challenges, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, addressing social media issues, negotiating collective bargaining agreements or responding to increasing public attention on harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that can no longer be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

A special thank you to the legal practitioners across the globe who have contributed to this volume for the first time, as well as those who have been contributing since the first year. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my Faegre Drinker associates, Xinyi Chen, Katherine Gordon, Caroline Guensberg, Konstantina Kloufetos, Zoey Twyford, Brooke Razor and Charlotte Marshall, counsel Emma Vennesson, and my law partners, Alex Denny, Nicole Truso and Claire Zhao, for their invaluable efforts in bringing this 14th edition to fruition.

Erika C Collins
Faegre Drinker Biddle & Reath LLP
New York
February 2023

Chapter 32

PAKISTAN

Saqib Majeed[1]

I INTRODUCTION

The employment law framework in Pakistan consists of the following:

a the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution);
b the federal and provincial employment laws;
c the law of contract; and
d common law and judicial precedents.

The Constitution contains several provisions concerning employment rights and protections. Article 11 of the Constitution prohibits slavery, forced labour, human trafficking and child labour. Article 17 entitles every citizen to form and join associations and unions. Article 25 prohibits discrimination based on sex.

Pakistan is a federal parliamentary republic, with powers shared between the federation and the provinces as provided in the Constitution. Previously, the federal legislature was entitled to enact laws concerning employment matters. The federal legislature enacted several laws governing various aspects of employment matters that had uniform application throughout Pakistan.

Pursuant to a constitutional amendment made in 2010, employment is now within the exclusive legislative competence of the provincial legislatures.[2] However, employment laws previously enacted by the federal legislature continue to remain in force either under a constitutional provision or because they were specifically adopted by the provincial legislatures. In some instances, while adopting these employment laws, the provincial legislatures made certain changes in them that would apply in their respective provinces. Thus, in certain aspects, the provincial employment laws on the same subject differ from each other.

The employment laws mainly govern the terms and conditions of employment and work conditions of blue-collar employees called workers or workmen. The employment of white-collar employees is largely governed by their employment contracts, the law of contract and the common law principle of 'master and servant'.

The labour courts have exclusive jurisdiction over disputes relating to the terms and conditions of employment of blue-collar employees and industrial disputes, and these courts try offences under the provincial employment laws.

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1 Saqib Majeed is the managing partner at Majeed & Partners, Advocates & Counsellors at Law. The author thanks Usman Zia, of counsel at the firm, for his valuable contribution.

2 However, in certain circumstances, the federal legislature can still enact laws for regulating certain employment-related matters; for instance, where it is required pursuant to an international treaty signed by Pakistan or in the case of laws applicable to trans-provincial businesses.

Each labour court consists of a presiding officer appointed by the provincial government. The provincial government also sets the territorial limits of the jurisdiction of each labour court.

The final decision of a labour court can be challenged through an appeal before the labour appellate tribunal. Each labour appellate tribunal consists of one member to be appointed by the provincial government and exercises jurisdiction within the territorial limits assigned to it by the provincial government.

Certain decisions of labour appellate tribunals may be challenged through an appeal before the High Court.

In respect of employment disputes in the Islamabad Capital Territory, trans-provincial industrial disputes and industrial disputes of national importance, the jurisdiction vests exclusively in the National Industrial Relations Commission (NIRC), which has no fewer than 10 members appointed by the federal government. The matters before the NIRC are heard and decided by the benches, each consisting of one member. A person aggrieved by a decision made by a bench of the NIRC may prefer an appeal to the full bench of the NIRC, which consists of three members.

In certain cases, the decision of the labour appellate tribunal or a full bench of the NIRC can be challenged before the High Court by invoking its extraordinary jurisdiction under Article 199 of the Constitution.

High Court decisions may be challenged through an intra-court appeal before the same High Court or before the Supreme Court of Pakistan. No appeal lies against a decision passed by the Supreme Court. However, the Supreme Court can be requested to review its decision on certain very limited grounds.

The jurisdiction in respect of employment disputes concerning white-collar employees is exercised by the civil court of appropriate pecuniary jurisdiction, and, in some cases, by the High Court. A decision of the civil court may be challenged before the district court or the High Court.

There are several statutes in each province and the Islamabad Capital Territory that regulate various aspects of employment. Some of these statutes are of universal application while others apply to specific categories of employees or workplaces.

The following are the main statutes governing the terms and conditions of employment and working conditions of employees.

a The Industrial and Commercial Employment (Standing Orders) Ordinances/Acts (ICESOs) and the Shops and Establishments Acts (SEAs) prescribe minimum terms and conditions governing the employment of blue-collar employees in certain industrial and commercial establishments.

b The Industrial Relations Acts (IRAs) entitle blue-collar employees working in specified establishments to form trade unions, regulate the formation of trade unions and prescribe the forums and procedures for raising and resolving industrial disputes and individual grievances of these employees.

c The Factories Acts (FAs) regulate certain terms and conditions of employment and working conditions of blue-collar employees working in factories. The FAs also prescribe certain health and safety standards for factories.

d The Minimum Wages Acts empower the respective provincial governments to declare certain minimum wages payable to blue-collar employees. The Payment of Wages Acts regulate the manner of payment of wages and prescribe the forum for redressal of grievances related to payment of wages.

e The Provincial Employees' Social Security Ordinances and the Employees' Old-age Benefits Act, 1976 (EOBA) entitle employees within their respective ambit to certain social security and retirement benefits, respectively, and require employers to make periodical contributions to the relevant government institutions. Likewise, the Workmen's Compensation Acts provide for payment by certain employers of compensation to certain categories of employees for injuries arising out of or during employment.

f The Occupational Safety and Health Acts (OSHAs) provide for occupational safety and health of persons at workplaces and lay down the procedures and prescribe requirements for the promotion of a safe and healthy working environment, and for the protection of persons against risks arising out of occupational hazards.

g The Protection Against Harassment of Women at the Workplace Acts (PAHWWAs) prescribe the penalties and lay down the procedure for lodging complaints related to workplace harassment. The PAHWWAs also call for psychosocial counselling and medical treatment of the victim or the accused.

The provincial labour departments are primarily responsible for the enforcement of employment laws. Each provincial labour department performs its functions through various subordinate departments and offices, including the directorate of labour welfare, the employees' social security institution and the workers' welfare board. The designated officers of each provincial directorate of labour welfare perform various statutory functions assigned to them under the relevant employment laws, including chief inspectors of factories, chief inspectors of shops and registrars of trade unions.

The labour department of the Islamabad Capital Territory Administration is responsible for the enforcement of employment laws in the Islamabad Capital Territory.

The Employees Old-age Benefits Institute is responsible for the collection of contributions and payment of retirement benefits to employees under the EOBA. Likewise, the ombudspersons appointed by the federal and provincial governments under the PAHWWAs are empowered to take cognisance of complaints relating to harassment at workplaces.

II YEAR IN REVIEW

The covid-19 pandemic led to a slowdown in business activity and resulted in business closures and job loss. However, the post-pandemic recovery was rapid, except in sectors where women are more likely to be employed, such as manufacturing, education, health and professional services.

The government has taken several measures to encourage women's inclusion and participation in economic activities in recent years. Several directives were issued by the Securities and Exchange Commission of Pakistan to encourage companies to formulate gender diversity policies for recruitment, promotion and development of skills of women employees, and for providing them with a conducive work environment, such as through the provision of feeding facilities, better maternity leave and effective anti-harassment and speak-up policies.

Another significant development was the broadening of the scope of federal law protecting employees against harassment at workplaces, inter alia, by expanding the definitions of employee, harassment and workplace. Employees now include artists, gig workers, freelancers and home-based workers. Non-sexual gender-based discrimination can

constitute harassment and is actionable under the anti-harassment law. These amendments were prompted because of certain recent judgments issued by the superior Pakistani courts (discussed below).

The freelancer, platform worker and the gig workforce sectors saw tremendous growth post-pandemic. However, the legal consequences arising under local employment laws from these contractual relationships are not yet fully established.

Remote working and hybrid workplaces have also been recent hot topics. Large and sophisticated employers responded to these trends ignited by the pandemic by accommodating their employees and allowing remote working, where possible. However, there was no statutory recognition or legislative response to these relatively new trends.

III SIGNIFICANT CASES

In *Muhammad Rizwan Dalia and others v. Ombudsman and others*,[3] a division bench of the Sindh High Court interpreted the provisions of the PAHWWA as applicable in the Sindh province and rejected an argument that an employee can only file a complaint regarding sexual harassment at the workplace during her employment. The Court held that a complaint under the PAHWWA could be filed by a former employee as well. However, it must relate to harassment at the workplace while the complainant was working there.

In *Nadia Naz v. The President of Islamic Republic of Pakistan and others*,[4] the Supreme Court of Pakistan ruled that misdemeanour, behaviour or conduct unbecoming of an employee or employer at the workplace, may it be generically classifiable as harassment, is not actionable under the PAHWWA unless it is of a sexual nature. The Supreme Court severely criticised the PAHWWA, terming it a cosmetic and myopic piece of legislation that focused only on a tiny proportion of harassment. These adverse remarks prompted the federal government to amend the PAHWWA, as applicable to the Islamabad Capital Territory.

In *Malik Ubaidullah v. Government of Punjab and others*,[5] the Supreme Court acknowledged the right to work of persons with disabilities as recognised in Article 27 of the United Nations Convention on the Rights of Persons with Disabilities. The Court held that all establishments regulated by the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, in addition to ensuring that a 2 per cent employment quota is reserved for persons with disabilities, must also provide persons with disabilities with infrastructure, access, support and facilities to enable them to do their work without feeling physically or emotionally incapacitated.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

In cases where the ICESOs apply, an employer is required to issue a written appointment letter stating the terms and conditions of employment. An employee does not need to sign the appointment letter.

3 PLD 2022 Sindh 213.

4 PLD 2021 Supreme Court 784.

5 2021 PLC (C.S.) 65.

A written employment contract is not mandatory, but is generally recommended. In practice, written employment contracts are executed between the parties except in cases of small businesses and domestic workers where oral employment contracts are the prevalent practice.

Fixed-term employment contracts are permissible in the case of white-collar employees.

Fixed-term employment contracts are also permissible in the case of blue-collar employees protected under the ICESOs, but certain limitations apply in some provinces. For instance, in Punjab, fixed-term employment contracts with these employees are permitted only where the remuneration is calculated on a piece-rate basis. Likewise, in Khyber Pakhtunkhwa, fixed-term employment contracts with employees protected under the ICESOs require a no-objection certificate from the relevant governmental department. Furthermore, these contracts can be executed only for jobs of a peripheral nature (i.e., jobs that do not relate to a business' core activities).

Fixed-term employment contracts for blue-collar employees protected under the SEAs are not permitted. If the employee has completed nine months of continuous employment and a probationary period of three months, they shall be deemed a permanent employee and the termination of their employment will require one month's advance written notice or salary in lieu thereof.

The employment contract should include all essential terms, including job description, work hours, salary and benefits, details of applicable employer policies and codes, restrictive covenants, duration and termination, and notice period.

The ICESOs and the SEAs prohibit contracting out of the benefits allowed thereunder. Thus, in the case of employees protected under the ICESOs or the SEAs, employment contracts and company policies must not be inconsistent with the applicable statute.

Pakistani law requires that every written instrument pertaining to financial or future obligations shall be attested by witnesses. In practice, however, this mandatory legal requirement is not strictly complied with in respect of employment contracts.

For employees protected under the ICESOs, appointment letters (or employment contracts) must be issued to them at the time of their appointment. It is generally recommended to execute the employment contract in all cases before the commencement of employment to avoid uncertainty.

Any amendment in the terms of employment should be made with the express written consent of the relevant employee and supported by valid consideration.

Where the relevant employee is protected under any of the ICESOs or the SEAs, the amendment should not violate the applicable statute. Any modification to the standing orders contained in the ICESOs can be made only through a collective agreement; that is, a written agreement between the employer and trade union or unions.

ii Probationary periods

Probationary periods are allowed and frequently used for all employees. The probation period for employees covered by the ICESOs or the SEAs should be three months. During the probationary period, either party may terminate the employment agreement without giving advance notice to the other party.

In the case of an employee protected under any of the ICESOs, although advance notice is not required for termination of employment during the probationary period, the employer must issue a written termination order to the employee explicitly stating the reason for the action taken.

iii Establishing a presence

A foreign company can hire employees, either directly or through an agency or another third party without being officially registered to carry on business in Pakistan. However, depending on the provisions of the relevant double taxation treaty, if any, the direct hiring of employees by a foreign company can constitute a permanent establishment of the foreign company in Pakistan.

A foreign company that is not officially registered in Pakistan can also engage independent contractors. However, subject to the relevant double taxation treaty, the engagement of independent contractors by a foreign company in some cases may constitute a permanent establishment of the foreign company in Pakistan.[6]

In the case of a company having a permanent establishment in Pakistan, the business income of the foreign company directly or indirectly attributable to its permanent establishment in Pakistan shall be deemed as its Pakistan-source income and shall be taxed accordingly.

If a foreign company hires employees in Pakistan, it must pay the statutory benefits as per the local employment laws. Likewise, where a foreign company directly hires employees or pays their salaries, it will be subjected to withholding and reporting requirements under the local income tax law in respect of the salaries paid to these employees.

V RESTRICTIVE COVENANTS

Restrictive covenants are permissible and are frequently used in employment contracts.

An employment contract may validly require the employee to exclusively serve the employer throughout its term. Non-compete clauses will be enforced by the courts by issuing an injunction to perform a negative covenant.[7]

Post-employment restrictive covenants preventing an ex-employee from accepting employment with a competitor, from operating a competing business or from dealing with the ex-employer's customers or suppliers can also be enforced. However, these restrictive covenants must be reasonable and aimed to protect the ex-employer's confidential information and trade secrets to which the ex-employee had access during their employment. Where a restrictive covenant is sought merely to penalise an ex-employee, the court may refuse to enforce it and declare it void.[8]

6 Under Pakistani income tax law, the furnishing of services, including consultancy services, by a foreign company through employees or other personnel engaged for this purpose may constitute a permanent establishment of the foreign company in Pakistan.

7 *Colgate Palmolive (Pakistan) Ltd through Authorized Representative v. Rai Tahir Iqbal and another* (2018 PLC Note 42).

8 *Exide Pakistan Limited through Finance Director and Company Secretary v. Malik Abdul Wadood* (PLD 2008 Karachi 583).

VI WAGES

i Working time

Maximum working hours

The SEAs and the FAs contain provisions regarding maximum working hours. Generally, an adult employee can work for nine hours a day and 48 hours a week.

An adult worker must be allowed an uninterrupted break of one hour where they are required to continuously work for more than six hours in a day.

Night work

The normal closing time prescribed for businesses regulated by the SEAs is 8pm. However, this can be changed by the respective government.

The FAs do not place a limit on the amount of night work an employee can perform. However, where the work in a factory is carried out in shifts, the FAs regulate certain aspects of this work.

The SEAs and the FAs generally prohibit night work for female employees. However, female employees can opt out of this prohibition in some cases.

ii Overtime

Employees protected under the SEAs and the FAs must be paid overtime compensation for any work done beyond the normal working hours (i.e., anything above nine hours a day and 48 hours a week). Overtime compensation is paid in the form of higher wages and is calculated at double the ordinary rate of wages payable to the relevant employee.

The SEAs set different limits on the amount of permitted overtime work, which are 624 hours per year in the Islamabad Capital Territory, Punjab and Balochistan; 150 hours per year in Sindh; and 24 hours per week in Khyber Pakhtunkhwa.

The FAs also set certain limits on the amount of overtime work employees can undertake. Where an employee is engaged in a continuous process, the limit is eight hours per week. For employees engaged in preparatory or maintenance work, the limit is 12 hours per week. These limits can be relaxed.

VII FOREIGN WORKERS

While employers are required to maintain certain employment records, there are no special provisions for foreign workers.

At present, there is no limit on the number of foreign workers a company may have. However, the percentage of foreign workers in the total workforce must be disclosed by the company to the governmental authorities.

There are no restrictions on the length of a foreign worker's assignment. However, the foreign worker must hold a valid visa throughout their stay in Pakistan. A prolonged stay of a foreign worker who is temporarily present in Pakistan to execute contractual work on behalf of a foreign employer may constitute a permanent establishment under the income tax law.

To undertake employment in Pakistan, a foreign worker must have a valid work visa. There are different categories of work visas, depending, mainly, on the nature of work to be performed by the foreign worker. In most cases, visa applications can be submitted online. A work visa is issued initially for a period of three months based on an employment agreement

concluded with an employer in Pakistan. It can be further extended from time to time up to two years. A letter of recommendation from the Board of Investment is mandatory for an extension of a work visa.

The company must withhold income tax from the salary of a foreign worker. Likewise, the company must pay all local benefits for a foreign worker provided they qualify for those local benefits.

The local employment laws do not distinguish employees based on nationality. A foreign worker is equally protected under local employment laws. However, like a local worker, a foreign worker must satisfy the eligibility criteria laid down in the relevant employment law.

VIII GLOBAL POLICIES

An employer is not required by law to formulate internal discipline rules. However, it is generally recommended to do so.

The ICESOs prescribe mandatory discipline rules for blue-collar employees of certain establishments. These rules can be modified only through a collective agreement.

Likewise, the IRAs require that employers in certain designated establishments and factories shall not take decisions on certain matters including discipline rules without the advice of the designated employee representatives.

The internal discipline rules are not required to be filed with or approved by government authorities.

The ICESOs applicable in Sindh and Khyber Pakhtunkhwa expressly prohibit discrimination based on the gender, religion, political affiliation or ethnic background of employees. Similarly, the PAHWWAs lay down mandatory rules for the protection of women against sexual harassment in workplaces. The PAHWWAs also obligate employers, inter alia, to incorporate a prescribed code of conduct as a part of their management policies. The OSHAs also obligate designated employers to formulate policies concerning health and safety at workplaces.

All mandatory rules should be written in English, Urdu and a local language.

The mandatory rules are not required to be signed by employees. Notification of the rules in the manner laid down in the applicable employment law is sufficient.

Typically, the mandatory rules are required to be posted on a notice board at a prominent place in the workplace. Additionally, these may also be posted on the company intranet.

Disciplinary rules are not required to be incorporated into employment contracts. Likewise, an employee is not required to sign them. It will be sufficient that the employment contract makes an express reference to the applicable rules and policies and provides for consequences in the case of non-compliance. An employee must be duly notified in writing of all internal rules and policies of the employer and provided with copies of or access to the same (such as through the company's intranet). The employer should expressly reserve the right to modify the internal rules and policies without the employees' consent.

IX PARENTAL LEAVE

Only female employees are entitled to maternity leave under the Maternity Benefits Acts (MBAs). Paternity and other parental leave is not allowed.[9] Maternity leave is paid by the employer.

To be entitled to maternity leave, the female employee must be employed with the same employer for at least four months before the date of expected delivery. However, under the MBA applicable in Sindh, the benefits are available to female employees who have worked with the same employer for a continuous period of at least one year preceding the date of expected delivery.

Female employees in the Islamabad Capital Territory, Punjab, Khyber Pakhtunkhwa and Balochistan are entitled to 12 weeks of maternity leave, out of which six weeks shall be postnatal leave.

In Sindh, female employees are entitled to 16 weeks of maternity leave, out of which 12 weeks shall be postnatal leave. Furthermore, certain employers in Sindh are obligated to set up facilities within the premises, which female employees must be allowed to visit four times during the day to nurse, wean and feed their child.

Female employees on maternity leave are protected from dismissal.

X TRANSLATION

English and Urdu are the official languages in Pakistan. The prevalent practice is to prepare employment documents in the English language. If the employment documents are prepared in a foreign language, they must be translated into an official language.

Except for certain mandatory rules and policies that must be prepared in English, Urdu and a local language, there is, as such, no legal requirement for translation of employment documents prepared in an official language into a local, or the employee's native, language.

In the case of blue-collar employees, it is generally recommended that employment documents are prepared in or translated into Urdu or a local language understood by the employees.

Translation of the documents by a certified translator or notarisation of the translation is not required except where these documents are prepared in a foreign language and are required to be produced as evidence in legal proceedings before a local court.

Where any employment documents are required to be translated into a local language, a failure to do so may subject the employer to a fine. Likewise, if the employment documents prepared in a foreign language are not translated into a language understood by the employee, a local court may refuse to enforce them based on a lack of informed consent by the employee.

XI EMPLOYEE REPRESENTATION

The IRAs entitle employees of certain establishments to form or join trade unions. They regulate the formation of trade unions and the election of office bearers of trade unions. They also prescribe the procedure for the designation of collective bargaining agents and prescribe different modes and forums for settlement of industrial disputes and redressal of individual grievances of employees.

9 A bill to allow paternity leave to certain employees is pending before the federal legislature.

The IRAs also entitle employees' participation in management. They require that regulated establishments with 50 or more employees must form work councils, management committees or joint management boards (representative bodies). Employees are entitled to a representation in the relevant representative body.

The ratio of representation of employees in a representative body can be between 30 per cent and 50 per cent.

Employees' representatives on the representative bodies are elected from among the employees of the relevant establishment through a secret ballot. However, if the establishment has a collective bargaining agent, they nominate the representatives.

The office bearers of a trade union are elected in the manner laid down in its constitutional document. Likewise, the collective bargaining agent for an establishment with more than one registered trade union is determined through a secret ballot. Where there is only one registered trade union, it can be designated as the collective bargaining agent if it has as its members no less than one-third of the total number of employees of the relevant establishment.

The length of a representative's term on the representative body is two years from the date of their election or nomination. The maximum term of an office bearer of a trade union is also two years. A collective bargaining agent is also designated for two years.

Representatives are entitled to participate in meetings of the relevant representative body and on all matters relating to the management of the establishment, except commercial and financial transactions. They may also give advice, on their own initiative, concerning matters relating to the management of the establishment.

Employers must provide all reasonable information requested by a representative body. Employers must not decide on certain matters, including service rules, discipline policy and the conduct of employees, without the written advice of the employees' representatives. Likewise, where the employees' representatives have advised the employer on a matter, the employer must consider the advice at the highest management level and send its response within six weeks.

The IRAs prescribe an employer's duties towards trade union members, including refraining from discriminating in matters related to employment, promotion, work conditions, transfer or termination based on participation in trade union activities. These practices are considered unfair labour practices on the part of employers.

Joint management boards should hold meetings at least once every three months and work councils should meet at least once a month.

XII DATA PROTECTION

i Requirements for registration

At present, Pakistan does not have comprehensive personal data protection legislation. However, the government has recently approved the draft Personal Data Protection Bill, 2022 (the PDP Bill), which is likely to be enacted soon. The PDP Bill requires the registration of data controllers and data processors with the National Commission for Personal Data Protection (NCPDP). However, the registration requirement will not apply where a data controller or a data processor is already registered with another local regulator.

At present, an employer is not specifically required to identify with particularity the information being processed. However, the employer must obtain the written consent of the

employee for the processing. It is generally recommended to inform the employee about the information being processed.

The PDP Bill obligates data controllers to inform data subjects by written notice, among other things, about the processing of their data, and also provide a description of the data being processed.

Access to information must be limited to these individuals and third parties, and for the purposes for which the written consent of the employee has been obtained or where the employer is required to provide access to this information under the law. The company should ensure adequate technical protection of information.

The PDP Bill states that the data of a data subject shall not be disclosed without their consent for a purpose or to a person not already disclosed at the time of collection of the data. Data controllers must take practical measures for the protection of data by having regard to the nature of data and the harm that would result from unauthorised or accidental access or disclosure of data. A data controller must comply with the international standards as may be notified by the NCPDP after the enactment of the PDP Bill.

ii Cross-border data transfers

At present, there is no restriction on the cross-border transfer of an employee's data. However, consent of the relevant employee to the transfer should be obtained.

The PDP Bill permits the cross-border transfer of personal data if the destination country offers adequate protection. In the absence of adequate protection, the cross-border transfer of personal data will be allowed where the transfer is under:

a a binding contract;
b explicit consent of the data subject;
c international judicial cooperation; or
d any other grounds to be specified by the NCPDP.

iii Sensitive data

At present, sensitive data is not defined.

Sensitive data under the PDP Bill includes data relating to access control, financial information, citizenship number, biometric data, physical, behavioural, psychological and mental health conditions, medical records, an individual's ethnicity, religious beliefs, political affiliation, physical identifiable location, travel history and online identifiers.

The PDP Bill requires that a data controller shall not process any sensitive personal data without explicit consent of the relevant data subject except on certain limited grounds, including where this processing is necessary for exercising or performing any right or obligation that is conferred or imposed by law on the data controller in connection with employment.

iv Background checks

There is no specific statutory prohibition on background checks. Background checks are generally allowed if they are necessary to determine the suitability of a candidate for a particular role or other justifiable reasons. For instance, credit checks, criminal records checks or checks regarding the integrity and honesty of a candidate are usually employed for jobs of a financial nature.

Background checks should not be conducted to discriminate among candidates. It is recommended to obtain the written consent of the candidate for background checks.

v Electronic signatures

Electronic signatures are permissible in Pakistan. The requirement under any law for affixing signatures shall be deemed satisfied where electronic signatures are applied.

Electronic signatures are valid and enforceable for offer letters and employment contracts. A document cannot be denied legal recognition, admissibility, validity, proof or enforceability on the grounds that it is in electronic form and electronically signed. Likewise, the requirement under any law for any document, record or information to be in written form will be deemed satisfied if the document, record or information is in electronic form. However, it must be accessible for subsequent reference.

Wet ink signatures are usually preferred for offer letters and employment contracts.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

The employment of an employee, other than an employee protected under any of the ICESOs, may be validly terminated without cause if so provided in their employment contract.

In the case of an employee protected under any of the ICESOs, the employer must issue a written termination order, which shall explicitly state the reason for the action taken.

Likewise, in the case of termination of employment of an employee protected under any of the ICESOs on the grounds of misconduct, the employer must follow a prescribed statutory procedure that involves inquiry into alleged misconduct and provision of an adequate opportunity to the employee to explain the circumstances alleged against them.

Except in the case of a mass retrenchment or redundancy (discussed below), an employer is not required to notify a government authority of the dismissal.

An employer is not required to notify the works council or trade union about the dismissal except where the employer is contractually required to do so under a collective agreement.

An employee does not have a statutory rehire right except, as discussed below, in the case of a retrenchment or redundancy. Likewise, an offer of suitable alternative employment is not mandatory. However, where an employee is protected under any of the ICESOs, the court may order reinstatement of the employee in the case of wrongful termination.

Except in the case of certain employees protected under the ICESOs or the SEAs, prior notice or pay in lieu thereof is not required unless so provided in the employment contract. For termination of employment of an employee designated as a permanent worker or employee under any of the ICESOs or the SEAs, an advance written notice of 30 days or salary in lieu of notice is required.

A female employee cannot be terminated while on maternity leave.

Except for employees designated as permanent workers under the ICESOs, severance payments and other dismissal indemnities are not required unless contractually agreed.

Permanent workers under the ICESOs are entitled to a gratuity payment upon termination of their employment on any grounds other than misconduct. However, a gratuity payment will not be required in cases where an employer has set up a provident fund to which the employer's contribution is not less than the contribution made by the employee.

The parties can enter into a settlement agreement concerning a dismissal. However, this agreement must be supported by valid consideration and must be properly structured, as the ICESOs and the SEAs prohibit contracting out of the statutory benefits provided to the employees protected thereunder.

ii Redundancies

The decision to make an employee protected under any of the ICESOs redundant must be supported by a valid reason, such as the reorganisation or shutting down of business.

In certain establishments to which any of the ICESOs apply, the employer must not terminate the employment of more than 50 per cent of protected employees, or close down the establishment without prior permission of the provincial government or, as applicable, the labour court. Furthermore, in the case of multiple redundancies, the employer shall retrench the most-junior employees in the relevant category.

However, there is no specific obligation to notify the works council or trade union.

Where any number of employees protected under the ICESOs are retrenched and the employer proposes to rehire within one year of the retrenchment, the employer must notify the retrenched employees belonging to the relevant category and allow them to offer themselves for re-employment and must give them priority according to the length of their respective past employment.

The same notice and severance requirements apply in the case of redundancy as are applicable in the case of dismissal. Likewise, the parties can also enter a settlement agreement.

XIV TRANSFER OF BUSINESS

There is no specific business transfer law in Pakistan that protects employees affected by a merger, acquisition or outsourcing transaction. Employment contracts do not automatically transfer from the old employer to the new employer upon transfer of business. Likewise, an employee's period of service with the old employer and the corresponding employment benefits do not automatically transfer to, and count towards, their service with the new employer. The best practice is to conclude a tripartite agreement between the employee, old employer and new employer governing these matters. In certain cases, such as mergers and amalgamation of companies, the scheme of amalgamation approved by the court may also include matters related to the transfer of employment and connected issues.

XV OUTLOOK

Hybrid workplaces and remote working are now a reality. Employers must prepare themselves for new challenges posed by these modern trends and must implement robust policies governing various aspects of employment in hybrid workplaces to ensure proper compliance with employment laws and to mitigate the associated risks, including cybersecurity, confidentiality breaches and data privacy. This is especially important because the existing employment laws do not address these issues.

It is expected that personal data protection legislation will soon be enacted in Pakistan. Employers must evaluate beforehand whether their current practices and policies concerning processing, protection and privacy of employee data will be compliant with the upcoming local data protection law.

Female inclusion in economic activity is also expected to remain a priority. Employers will be expected to take practical measures to provide a conducive work environment for female employees.

Appendix 1

ABOUT THE AUTHORS

SAQIB MAJEED

Majeed & Partners, Advocates & Counsellors at Law

Saqib Majeed is the founder and managing partner of the firm. He has more than 20 years of experience in the legal services industry. He carries out both contentious and non-contentious work for clients.

Saqib specialises in banking and finance, corporate, regulatory and public procurement, and is also involved in the firm's litigation and employment groups. He has worked on several pre-eminent and high-profile transactions in Pakistan.

Saqib has significant experience in Pakistani corporate and commercial laws and is a specialist in cross-border commercial transactions, including restructurings, acquisitions, joint ventures and business alliances.

Saqib has significant litigation experience. He frequently advises foreign clients on litigation matters before courts in Pakistan as well as in court and arbitration proceedings abroad on matters governed by Pakistani law.

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