

Hungary

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to employment are:

- the Hungarian Labour Code;
- the Act on the Legal Status of State Employees;
- the Act on the Legal Status of Government Officials;
- the Strike Act;
- the Act on Labour Supervision;
- the Act on Occupational Health and Safety;
- the Equal Treatment and Equal Opportunities Act;
- the Act on the Protection of Personal Data and the Publicity of Information of Public Interest;
- the Act on the Occupation of Foreign Workers in Hungary;
- the Act on the Protection of Inventions by Patents (Patent Act); and
- the Act on the Alcohol Testing of Employees.

2 Is there any legislation prohibiting discrimination or harassment in employment?

Pursuant to article 5, section (1) of the Labour Code, the principle of equal treatment must be observed in employment relationships.

More detailed non-discrimination provisions are included in the Protection of Equal Treatment and Equal Opportunities Act, which implemented various EU directives. The Equal Treatment and Equal Opportunities Act provides that direct and indirect discrimination, harassment, illegal separation and revenge are prohibited regarding gender, race, religion, nationality, ethnic affiliation, disability, political opinion, motherhood, sexual orientation, sexual identity, age, marital status, social origin, financial status, nature of the employment relationship, union membership, status or characteristics.

3 Is there any legislation protecting employee privacy or personnel data? If yes, what are an employer's obligations under the legislation?

Pursuant to the Hungarian employment and data protection laws, employers may only disclose facts, data and opinion concerning an employee to third persons if permitted by law or with the employee's consent. Employee information and data may be used for statistical purposes only and may be disclosed for statistical use, provided that it is not possible to identify the employees to whom the data and information refers.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

Law enforcement by government agencies plays a major role in the area of occupational health and safety and in the employment of foreign workers.

The primary government agencies are the Ministry of Social Affairs and Labour, the Labour Supervision Authority, the State Employment Service and the National Agency of Occupational Health and Safety.

Employment-related legal disputes are heard by the courts.

Worker representation

5 Is there any legislation mandating the establishment of a works council or workers committee in the workplace?

A works council must be established at the head office and at each branch office of an employer where at least 50 permanent employees are employed. The number of works council members to be elected increases with the number of employees at the head office or at the given branch office. The works council is granted broad information and consultation rights and certain measures must not be introduced by an employer without the prior approval of the works council (disciplinary rules, termination proceedings, staff questionnaires, monitoring of staff if the monitoring would affect human dignity, incentive payments, redundancy measures, etc). Members of the works council enjoy specific privileges regarding working time and termination of their employment.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks of applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Pursuant to the Act on the Protection of Personal Data and the Publicity of Information of Public Interest, personal data may only be used and obtained with the consent of the data subject or if permitted by law.

An employer may ask a job applicant for criminal records but only if this information is relevant for the position. The employer is not entitled to obtain such records directly from the authority.

Security checks may be conducted if they are required for the specific position.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

An employer may request a medical examination only if the applicant's physical condition is relevant to perform the relevant job. Medical examinations require the applicant's consent.

Employees must not be requested to take a pregnancy test or to provide the employer with a certificate thereon, unless it is required by law or is relevant for the position in question.

An employer may refuse to hire an applicant who does not agree to an examination if the examination is relevant for the position.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no prohibitions against alcohol testing of employees. An employer is obliged to check whether an employee attends work in an appropriate condition to perform his or her work and that the employee does not endanger himself or herself or others or cause damage to property.

Thus, alcohol and drug tests may be requested by an employer but such tests require the applicant's consent. Refusal to consent may lead to a rejection of the application.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to particular people or groups of people?

Generally, an employer may not give preference to particular people or groups of people when hiring because this could be considered as discrimination, which is prohibited by law.

Pursuant to the Equal Treatment and Equal Opportunities Act and the Hungarian Labour Code, an employer may give preference in hiring particular people or groups of people but only with the aim of overcoming the unequal opportunities of an explicitly designated group. This preference, however, has to be based upon a legal regulation. Such provisions and decisions may not infringe any fundamental rights or assure absolute advantages.

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Employment contracts must be concluded in writing. If there has been a failure to provide the employee with a written contract, the employee may, within 30 days of commencing the job, claim that the employment contract is invalid. An employment contract must contain:

- the names and addresses of the parties;
- the place of employment or, if the employee will not work at only a specific location, information that the employee may be required to work at variable locations;
- a brief description of the work to be performed; and
- the amount of the employee's basic salary.

Other typical, but non-compulsory, terms are:

- the employment commencement date;
- the envisaged term of employment for fixed-term contracts;
- the trial period;
- the agreed working time;
- the annual holiday entitlement;
- liability matters;

- confidentiality;
- non-compete rules;
- the termination notice period; and
- a general reference to applicable collective bargaining and works agreements (if any).

11 To what extent are fixed-term employment contracts permissible?

In the absence of an agreement to the contrary, an employment relationship is established for an indefinite period. The period of fixed-term employment must be determined according to the calendar or by other appropriate means. Except for employees in executive positions, a fixed-term employment may not exceed five years including extensions and any other fixed-term employment created within six months of termination of the previous fixed-term employment relationship. A fixed-term employment contract must be considered open-ended if the employee works for at least one extra day following the expiry of the initial fixed term with the knowledge of his or her immediate superior. A fixed-term employment contract extended or established again between the same parties is deemed to be employment for an indefinite period if it has been concluded without the legitimate interests of the employer for concluding a fixed-term contract and impairs the employee's rights.

12 What is the maximum probationary period permitted by law?

At the time of establishing the employment relationship, a trial period of a maximum of three months may be stipulated in the employment contract. For civil servants, the maximum duration of the trial period is six months. Deviation from this rule is not permitted. During the trial period, either party may terminate the employment relationship in writing with immediate effect and without providing reasons.

13 To what extent are covenants not to compete valid and enforceable?

During the employment relationship, employees must not behave in a manner which could jeopardise the legitimate economic interests of the employer. After the termination of the employment relationship, employees may only remain subject to this obligation if they have agreed to it prior to the termination of the employment contract. The agreement must be in writing and its duration may not exceed three years. Furthermore, the employee must receive appropriate consideration for such post termination undertaking.

14 What are the primary factors that distinguish an independent contractor from an employee?

An employment relationship must be established by concluding a written employment contract defining the workplace, the regular salary and the scope of activity. An employee must discharge its duties personally and may not perform his or her services through subcontractors or agents. An employee uses the employer's assets (working tools) when performing his or her duties and is subject to the employer's instructions on how and when to perform. Contrary to an independent contractor, an employee is fully embedded in the employer's organisational framework.

An independent contractor is essentially free to determine his or her activities, his or her working hours and his or her place of work. An independent contractor provides his or her services without (most of) the above restrictions and with his or her own working tools.

The Hungarian Labour Supervision Authority and the Hungarian courts may determine that an independent contractor rendering personal services is an employee if he or she is retained or commissioned by only one employer and regularly performs work only for this specific employer.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity to a related entity?

There are no numerical limitations on short-term visas. If a work permit is required for the performance of work in Hungary (which is the case with non-EU nationals and the nationals of a few EU member states), a work visa is also required. Generally once the work permit has been obtained, the work visa is issued almost automatically unless there is a reason to refuse the issuance of the visa to the given person.

16 Is spousal work authorisation available?

Spouses must obtain their own work permit (if a work permit is required) to legally work in Hungary. Spouses and dependants of business visitors may travel to Hungary. Depending on their nationality, they may need to obtain a visa prior to entry. Spouses and dependants should submit an application for a family member residence visa along with the principal application for a residence visa for working purposes.

17 What are the rules about having a work-authorized workforce and what are the sanctions if you do not?

The relevant Territorial Office of the National Agency of Occupational Health and Safety is responsible for controlling employers and the employment of the work-authorized workforce. The Territorial Office may impose a fine on the employer if the employer fails to obtain a required work permit. A foreign worker may also be expelled from Hungary if he or she is not in the possession of the required work permit.

Terms of employment

18 Are there any restrictions or limitations on working hours and can an employee opt out of such restrictions or limitations?

Full-time employment working hours are eight hours a day or 40 hours per week. The agreement between the parties may stipulate a shorter working time for full-time employment. The parties may agree to increase the working time of full-time employees to a maximum of 12 hours daily or 60 hours per week for employees working on-call duty or who are close relatives of the employer or the owner (any member of the business association holding more than 25 per cent of the votes in the company).

Employees may be required to perform overtime work only in justified and extraordinary circumstances but not more than 200 hours in a calendar year or 300 hours in a calendar year under a collective agreement. If stipulated by collective agreement or requested by the employee, overtime work must be ordered in writing.

The working schedule must be defined so that the daily and weekly working time of employees does not exceed 12 and 48 hours respectively, and the daily and weekly working time of

employees working on-call duty may not exceed 24 and 72 hours – including overtime work.

19 What categories of workers are entitled to overtime pay and how is such pay calculated?

As compensation for overtime work, the employee is entitled to an overtime supplement or to extra time off. The basis for the calculation of such overtime supplement is the employee's personal basic salary.

For overtime work performed in excess of the daily working time or over and above the relevant working time cycle, the employee is entitled to a 50 per cent supplement on the employee's personal basic salary. The parties may agree in the employment contract that in lieu of an overtime supplement a monthly lump sum is payable for overtime work. The parties may also agree that time off must be granted in lieu of a salary supplement. The time off may not be less than the duration of the overtime work performed.

The salary supplement for work on a resting day must be 100 per cent of the employee's personal basic salary or 50 per cent if another resting day is provided. Unless otherwise agreed, the time off and the resting day must be allocated before the end of the month following the month in which the overtime work was performed. When working time is specified in cycles, the time off or the resting day must be allocated before the end of the given working time cycle.

20 Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to annual leave, comprising basic and extra annual leave for each calendar year spent in an employment relationship. The basic annual leave time amounts to 20 working days and increases according to the age of the employee. Employees with children, blind employees and employees working in dangerous circumstances are entitled to extra annual leave. Also, a collective agreement or an employment contract may stipulate additional annual leave.

21 Is there any legislation establishing the right to sick leave or sick pay?

Employees are entitled to sick leave for the time they are incapacitated to work due to illness. During the first 15 days of sick leave in a given calendar year, sick pay (80 per cent of 'absence fee') is paid by the employer. Thereafter, and for the period of sick leave due to accidents at work and occupational diseases the employee will receive payment from the social insurance institution. An employee's incapacity to work shall be certified by a physician.

22 In what circumstances may an employee have the right to take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Employees have the right to take a leave of absence, for example in the circumstances outlined below:

- leave of absence related to pregnancy and childbirth: pregnant women and those who have just given birth are entitled to a total of 24 weeks' maternity leave. Such leave must be scheduled to commence four weeks before the expected date of birth, if possible. The mother must also be granted work time allowance for nursing. Upon the birth of his child, a father will be entitled to five days of work time allowance,

which the employer must allocate within the two-month period following the date of birth on the days requested by the father;

- upon the death of a close relative;
- for the duration of performing citizens' duties;
- if being incapacitated due to illness;
- for the entire duration of compulsory medical examination (including pregnancy tests);
- for the duration of blood donation or for at least four hours if it takes place outside the workplace; and
- for union and works council members to fulfil their tasks as such members.

In the above cases, the employee will receive 'absence fee'. An employee make unpaid leave of absence, for example, for the purpose of taking care of a child until the child's third birthday.

23 What employee benefits are mandated by law?

There are no benefits mandated by Hungarian law. Employers may support the employee's cultural, welfare and health care needs and the improvement of their living standards. Employers may decide to make a contribution to the payment of the membership due of the employee in a voluntary health or pension insurance fund.

Employers are obliged to pay social insurance contributions, including pension and health insurance.

24 Are there any special rules relating to part-time or fixed-term employees?

Pursuant to the Protection of Equal Treatment and Equal Opportunities Act, an employee may not be discriminated against because of the nature of his or her employment relationship (part-time or fixed term).

An employment relationship established for a fixed term may only be terminated by mutual consent or by extraordinary dismissal or during the trial period with immediate effect. (See also the last paragraph of the response to question 30.)

Liability for acts of employees

25 Under what circumstances may an employer be held legally liable for the acts or conduct of its employees?

If an employee causes damage to a third person in connection with his or her employment, the employer will be liable towards the person who suffered the damage.

Taxation of employees

26 What employment-related taxes are mandated by law?

All wages paid to employees working in Hungary are subject to personal income tax. In addition, both the employer and the employee are obliged to pay other contributions (for example, health and pension insurance contribution) based on the salary of the employee. The rates of these taxes and contributions are changed almost every year. Benefits may also be subject to personal income tax.

Employee-created IP

27 Is there any legislation addressing the parties' rights with respect to employee inventions?

Act XXXIII of 1995 on the Protection of Inventions by Patents (Patent Act) regulates inventions resulting from an employment relationship. This Act differentiates between service inventions and employees' inventions.

Service invention is the invention of a person whose duty – resulting from an employment relationship – is to work out solutions which could qualify as an invention. Employees' inventions are the inventions of a person who works out an invention within the framework of an employment relationship, but without having the duty to work out such an invention, provided that the invention falls within the employer's business activity.

In the case of an employee's invention, the employer will automatically have the right to use the patent or to license the use thereof. The employer's rights are not exclusive. In the case of a service invention, the employer will be the patent owner. The inventor or employee must inform the employer about the service invention or the employee's invention immediately following its creation.

Termination of employment

28 Can an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employment relationship may be terminated by ordinary or by extraordinary notice. The employer's notice of termination must contain the employer's clear and justified reasons for termination, unless the employee qualifies as an executive or if the employee is entitled to retire. Termination notices which fail to include a clear and justified reason are unlawful.

The reasons for the termination by ordinary notice may only be connected with the abilities of the employee, his or her conduct in relation to the employment and the operations of the employer.

Termination of an employment contract by extraordinary dismissal is possible if the other party wilfully or by gross negligence commits a grave violation of substantive obligations arising from the employment relationship, or otherwise behaves in a manner rendering it impossible to further uphold the employment relationship.

In the case of a dispute, the employer must prove that the reason for dismissal was real (actual) and relevant.

29 Must notice of termination be given prior to dismissal? Can an employer provide pay in lieu of notice?

Written notice is always required. There may be two types of notices: In the case of a so-called 'ordinary notice of termination', the notice must be given at least 30 days prior to the effective date of termination. The so-called 'extraordinary notice of termination' will have immediate effect, ie, no notice period must be respected. An extraordinary notice is permitted only in very serious cases (more precisely defined by law). An ordinary notice is permitted in less serious cases.

If the reasons for a termination are based on the employee's work performance or conduct, the employee must be given the opportunity to learn about the reasons for the planned termination and to present his or her defence against the complaints raised against him or her, unless this cannot be reasonably expected

from the employer in the light of the given circumstances.

Generally, it is not possible to pay an amount of compensation to the employee in lieu of the notice period and thus terminate the employment relationship with immediate effect. In the case of employment for a definite period of time, it is permitted to terminate it prior to the expiry of the definite term and without providing reasons for the termination provided that the average salary for the remaining term (up to a maximum of 12 months) is paid to the employee.

30 In what circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

During the trial period either party may terminate the employment relationship with immediate effect without reasoning or payment. In the case of an extraordinary termination, the employment also ends with immediate effect, and if the reasoning is lawful, no special payments are compulsory. However, the cases in which an extraordinary termination is permitted are very limited.

In the case of employment for a definite period of time it is also possible to terminate such employment without reasoning with immediate effect but in this case the average salary for the remaining term (not exceeding 12 months) must be paid to the employee.

31 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

After at least three years of employment the employee is entitled to severance pay if his or her employment relationship is terminated by ordinary termination or as a result of the dissolution of the employer without a legal successor. The employee is, however, not entitled to severance pay if he or she qualifies as a pensioner on or just before the date on which his or her employment is terminated. The amount of the severance pay must be increased by three months' average earnings if the employee's employment is terminated within the five-year period preceding his or her eligibility for old age pension.

Severance is the sum of the 'average salary' for:

- one month for up to three years;
 - two months for up to five years;
 - three months for up to 10 years;
 - four months for up to 15 years;
 - five months for up to 20 years;
 - six months for up to 25 years;
- of employment with the given employer (predecessor).

32 Are there any procedural requirements for dismissing an employee?

If the reason for the termination by the employer is based on grounds of the employee's work performance or conduct, the employee must be given the opportunity to learn about the reasons for the planned dismissal and to present his or her defence against the complaints raised against him or her, unless this cannot be reasonably expected from the employer in the light of all the given circumstances.

If the employment of a works council member is to be terminated by ordinary termination, the prior written consent of the works council must be obtained.

33 In what circumstances are employees protected from dismissal?

Employers may not terminate an employment relationship by ordinary termination during a period of incapacity to work due to illness, of sick leave for the purpose of caring for a sick child, for leave of absence without pay for nursing or caring for a close relative, during a treatment related to a human reproduction procedure as specified in other legislation, during pregnancy, for three months after giving birth, or during maternity leave and during regular or reserve army service. These restrictions do not apply for the termination of an employment contract in respect of an employee who qualifies as a pensioner or an 'executive'.

34 Are there special rules for mass terminations or collective dismissals?

The rules regarding mass termination (or collective redundancy) apply when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

- of at least 10 workers, when employing more than 20 and less than 100 employees;
- of 10 per cent of the employees, when employing 100 or more, but less than 300 employees;
- of at least 30 persons, when employing 300 or more employees within a period of 30 days for reasons in connection with its operations.

When an employer plans to implement collective redundancy, it must commence consultations with the works council or with the workers' representatives at least 15 days prior to the decision on the collective redundancy. At least seven days before the consultations, the employer must inform the workers' representatives in writing about the reasons for the planned redundancy and the number of workers to be made redundant. To reach an agreement, the consultations must cover, at least, the possible ways of avoiding collective redundancy, the principles of the redundancy, the means of mitigating the consequences and reducing the number of employees affected.

A written agreement about the result of the above consultations must be concluded and a copy thereof must be filed with the competent employment centre. The employer must notify the relevant employment centre of its intention to implement a collective redundancy at least 30 days prior to the implementation thereof. This notification must contain the personal data (including social security number), the last position, the qualifications and the average salary of each employee to be made redundant. Additionally, the employer must notify the employees affected by its intention of the collective redundancy at least 30 days prior to delivery of the termination notice.

Dispute resolution

35 Can the parties agree to private arbitration of employment disputes?

In the interests of settling a conflict, the parties may use the services of an independent mediator who is not involved in the conflict. The parties must request the participation of the mediator jointly.

For settling a collective employment dispute, the parties may agree to appoint an arbitrator. The decision of the arbitrator will be binding if the parties agreed on this in advance in writing.

Update and trends

Generally, annual leave must be taken in the year in question. According to the recent changes in labour law, however, one-quarter of annual leave may be transferred to the following year but only due to a particularly important business event affecting the employers' interests or due to a serious reason directly affecting the employer's operations. Even in such a case, annual leave must be used by 31 March, or where there is a collective bargaining agreement, by 30 June, of the following year.

Employers must schedule one-quarter of the annual leave as requested by the employee but the employee has to inform the employer 15 days in advance. According to the most recent changes, however, an employee may schedule 3x3 days from his or her annual leave without informing the employer 15 days earlier.

36 Can an employee agree to waive statutory and contractual rights to potential employment claims?

An employee may not waive his or her rights regarding the protection of his or her salary and his or her personal rights in advance, nor may he or she conclude a preliminary agreement which may impair his or her rights.

An agreement which is in breach of any legal regulation regarding employment relations or any other statutory provision is invalid. Collective or other agreements may only deviate from the provisions of the Hungarian Labour Code if they contain more favourable terms for the employee.

37 What are the limitation periods for bringing employment claims?

Claims related to employment relationships may be brought within three years. The period of liability for damages caused by criminal offence is five years, or longer, as consistent with the statute of limitations for such criminal liability.

For the enforcement of claims in connection with the termination of employment, employees, trade unions and workers' councils may file a legal action within 30 days of learning of the cause for the action. In the notice of termination, the employee must be informed of this 30-day time limit. If the employer fails to do so, the employee will be entitled to file a lawsuit within the general limitation period of three years.

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