
EMPLOYMENT CONTRACTS: MORE SIMILARITIES THAN DIFFERENCES

DAVID LUDLOW UK ECOVIS LEGAL PARTNER

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David Ludlow Ecovis UK Legal Partner

Munich, 16 January 2017 - What types of employment contracts are there in various countries and what basic requirements with respect to form and content need to be observed?

These were the questions which Ecovis, a consulting firm specialising in medium-sized businesses, addressed to partner offices which are members of its global network. Replies came in from 21 countries, from Europe to Australia. "The results were surprising in that there is a high degree of similarity in the

responses, independent of each country's economic development and legal system", says Alexander Weigert, a member of Ecovis' board of management, in reaction to the findings of the survey. The most striking example was that in all the countries surveyed, except for the United Arab Emirates (UAE), there is a statutory minimum wage, although this does not apply to foreigners in Saudi Arabia. The most common type of contract, at 90%, is fixed-term employment contracts. Permanent contracts are also standard practice (81%). No fewer than six countries (29%) – i. e. Germany, Austria (both for public officials), Netherlands, Poland, UAE and Vietnam – also ►

◀ have lifetime contracts, which may not be terminated before the employee has reached the statutory pensionable age or another age agreed upon.

Almost every second partner office cited other forms of employment contract. Among these are those which probably exist in most other countries, such as part-time work (such as three days a week or four hours a day) or seasonal contracts (in Vietnam, for example, being fewer than twelve months). In Australia, casual employment with an unspecified number of working hours also plays a role; similar casual work contracts are also known in Great Britain. In Poland there is a form of employment covered by a special contract for substitute work, for example when replacing a colleague on maternity leave, where the contract terminates upon the return to work of the person being substituted for.

Fixed-term employment contracts are possible without any restrictions in almost every third country. However, they still generally have to comply with legal regulations and cannot be renewed as often as the employer likes; in Austria, for example, it is limited to two renewals. "In Switzerland", says Dr. Dominique Ott, lawyer with the Ecovis office in Zurich, "It is possible that an employee who has concluded various consecutive fixed-term contracts with one and the same employer (so called "Kettenarbeitsverträge") is then treated like an employee with a permanent contract". The rule applicable in Malta, says Anthony Vella, Ecovis' partner there, is that "if a fixed-term contract of service expires and the employee

nevertheless continues working, he or she is considered a permanent employee if he or she is not given a new fixed-term contract within twelve working days of the previous one expiring".

Taking all the responses into consideration, in every second country the number of times a fixed-term employment contract can be renewed is limited; to take China and Vietnam as examples, no more than two renewals are permitted. In Poland

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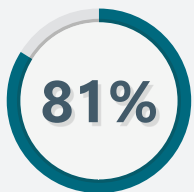
too, a maximum of three successive contracts is allowed, besides which the total of the terms may not exceed 33 months. In the Netherlands, the limit is three contracts within two years. In Bulgaria, a fixed-term employment contract with one

and the same employer may be concluded for a definite period which shall not be longer than three years. "If the employee continues working for five or more work days after the expiry of the agreed period, without the written objection of the employer, then the fixed-term contract shall be converted into a permanent working relationship, provided the job is vacant", explains Albena Yaneva, lawyer and partner in the Ecovis office in Sofia.

In Croatia, the total period permitted for successive fixed-term employment contracts is three years at the most. If the same worker then continues to be employed, this is regarded as the conclusion of a permanent contract. In Great Britain, the threshold is four years. "In Hungary, the maximum period is five years, both for renewed contracts and in cases where another such contract is concluded within six months of the expiry of the fixed-term employment contract", says Dr. György Zalavári, lawyer and partner with Ecovis in Budapest. In Serbia, fixed-term employment contracts end after two years at the latest.



No fewer than six countries have lifetime contracts, which may not be terminated before the employee has reached the statutory pensionable age.



Permanent contracts were standard practice in 81% of the 21 countries that completed the survey,



The most common type of contract, at 90%, is fixed-term employment contracts.

“In France, fixed-term employment contracts can never lead to permanent employment, since this is obviously linked to normal, permanent business”, says Cedric Perretta, a partner with Ecovis in Paris. “This is because, according to our labour laws, they are only permissible in certain cases, in particular the prolonged absence of an employee or manager, or a temporary upswing in business activities.”

In most countries, foreign employees require a working permit which is often issued with the proviso that it is only valid if the position in question cannot be filled by a suitable native employee. Generally, foreign employees holding a permanent working permit are treated as natives, and within the EU this also applies to citizens of other EU countries. In China, foreign workers must apply for work and residence permits and be able to show they have sufficient professional experience, among other things. The term of the contract is limited to five years. In Israel, a work permit is required and the employer has to bear 15% to 20% additional expense in the form of taxes. There is no limit whatsoever to the employment of foreigners in the United Arab Emirates (UAE).

By contrast, businesses in Saudi Arabia are required to employ a minimum percentage of Saudi citizens, this percentage varying according to the industry. In Turkey there is a rule that one foreign worker is permitted for every five Turkish employees. “In China, one foreigner may be employed for every ten Chinese citizens. However, the ultimate decision lies with the employment agency responsible”, says Jakob Loibl of the Ecovis office in Beijing.

Although, according to the details submitted by the partner offices participating in the survey, 40% of the countries have no requirements for the employment contract to be in writing, this is general practice in all the countries surveyed. In Vietnam, fixed-term contracts of fewer than three months may be concluded orally, whilst in Turkey a written contract is only required for a term of longer than one year.

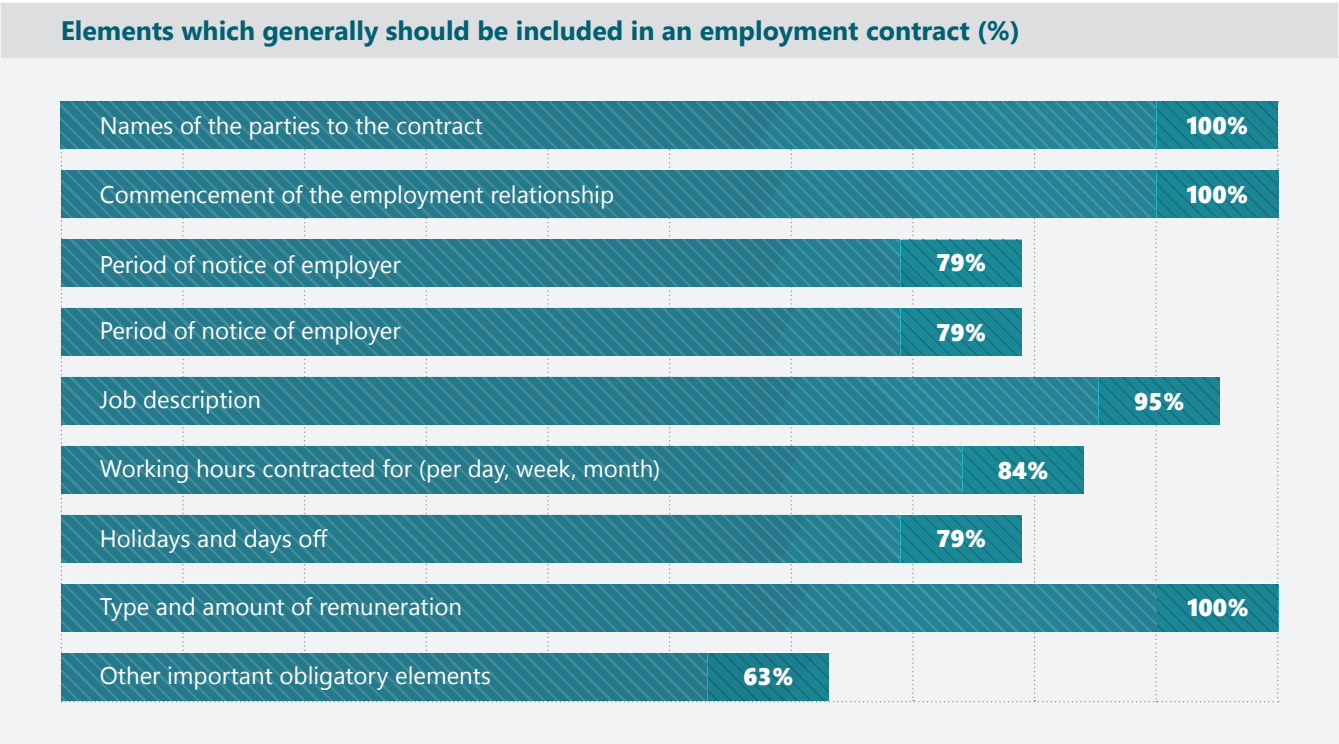
There are legal periods of notice in 19 of the 20 countries (95%) in which partner offices responded to this question in the survey. In Australia, federal or state regulations outline minimum periods of cancellation of employment contracts in 122 industries or occupations. The Fair Work Act specifies minimum periods of notice for the minority of employees not covered by those regulations. In Malta, the statutory requirements only apply if employer and employee have not agreed upon a different period of notice.

In China, the legal period of notice is 30 days but here too, individual arrangements can be agreed upon in the employment contract. As in other countries, the employment relationship may be terminated without notice in the case of violations of laws and regulations. In Hungary, the general legal period of notice is also 30 days. If the employer wishes to terminate the contract, the notice period increases in relation to the number of years worked. Contracts may be concluded which extend the period of notice to up to six months. In Vietnam, the notice period is 30 days for fixed-term employment contracts and 45 days for permanent and lifetime contracts.

Considerable conformity exists with respect to the basic elements which an employment contract should include (see table). In some countries, the period of notice or number of days holiday are not considered necessary, for example because:

- they only need to be included in the employment contract if they exceed the statutory minimum (Israel) or
- they are governed by the respective collective agreements which in turn must be cited in the employment contract (Spain).

In almost every country (90%) trial periods are usual, followed by a confidentiality agreement not to disclose company secrets (67%) and the prohibition of ancillary jobs or the obligation to have these approved by the employer (57%).





Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 4,500 people operating in over 60 countries. Barlow Robbins are the sole Ecovis legal partner for the UK. www.ecovis.com



To discuss anything in the article further please contact David Ludlow in our Employment Law team. davidludlow@barlowrobbins.com 01483 543 210

**BARLOW
ROBBINS**
SOLICITORS

GUILDFORD
The Oriel
Sydenham Road
Guildford, Surrey GU1 3SR
T: +44 (0)1483 543210
F: +44 (0)1483 464260
E: info@barlowrobbins.com

WOKING
Concord House
165 Church Street East
Woking, Surrey GU21 6HJ
T: +44 (0)1483 748500
F: +44 (0)1483 729933
E: woking@barlowrobbins.com

GODALMING
Church House
30 Church Street
Godalming, Surrey GU7 1EP
T: +44 (0)1483 417121
F: +44 (0)1483 426836
E: godalming@barlowrobbins.com