

XXIV Meeting of European Labour Court Judges
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NATIONAL REPORTS
QUESTIONNAIRE 1

"Access to Justice"

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Introduction

"Access to justice" could be understood in a broad or narrow sense. Typically it means having a case heard in a court or tribunal. With this in mind, the questionnaire does not include questions on law enforcement or settlement of labour disputes through mechanisms such as workplace grievance procedures, labour inspectorates and commissions, equality bodies or alternative dispute resolution through mediation, conciliation and arbitration outside state courts. Furthermore, in the light of some examples of change of conditions regarding access to justice which have been mentioned in the end of the last meeting, the focus of the questionnaire is rather on individual than on collective labour disputes.

While taking into account that the court systems in our countries have been described last year (*XXIII Meeting 2015: "Judicial Ethics and Independence", Question I¹*), questions in this respect are not included in the questionnaire. In the event that no report on "Judicial Ethics" had been presented for your country 2015, it might be useful to answer - in addition - the aforementioned first question of last year's questionnaire.²

¹ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/meetingdocument/wcms_423451.pdf

² The first question of the 2015 Questionnaire on Judicial ethics and independence was the following: "Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction."

Report by Judge Koen Mestdagh, Member of the Labour Chamber, Court of Cassation, Belgium.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others). Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

- Trade union members can consult the legal aid service of their trade union; the service is free (included in the membership fee).
- Unaffiliated employees will have to consult a lawyer; a first consultation will cost approx. 30 euros.
- In major cities in Flanders free legal advice is offered by volunteers of the NGO "The Legal Shop".

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... *(please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):*

Answer:

The Labour Tribunal, competent *ratione loci*

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

The Labour Tribunals have jurisdiction in all areas of individual labour law, including employment related matters such as discrimination or harassment at the workplace.

- c. Average waiting time before the first hearing? *Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).*

Answer:

The first hearing is an introductory hearing; normally the case is just adjourned, either to a set date in the near future (cases that only need a short debate) or undetermined (a calendar for the proceedings is decided within 6 weeks of the introductory hearing), but the case can immediately be taken by default of the defendant.

There is no waiting time for the introductory hearing; the claimant will submit the case for the first appropriate date, he only has to see to it that there are at least 8 days between serving the summons on the defendant and the introductory hearing.

- d. Average duration of the procedure in first instance? *Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).*

Answer:

It's hard to tell since the average duration in a particular Labour Tribunal is influenced by the social security cases. In employment cases the parties generally tend to demand more time and more rounds for submitting their argumentation. If the parties are willing, most Labour Tribunals are able to give a judgment within less than a year after the case has been submitted.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

a. In a labour court/tribunal of first instance it is mandatory to be represented by:

- a lawyer **Yes** **No**
- by others **Yes** **No**

b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance :

Yes **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

Although not mandatory, it is quite uncommon that the employee is not represented by a lawyer or a trade union representative.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes **No**

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

Before 01 June 2015, except for the cost of serving the summons by a bailiff (no longer mandatory since 01 September 2007), no fees had to be paid to start proceedings in a Labour Tribunal.

Since 01 June 2015 a tax has to be paid immediately if the value of the claim exceeds 250.000 euro; a sum of 300 euro if the value of the claim is between 250.000 and 500.000 euro, a sum of 500 euro if the value is above 500.000 euro.

Claimants unable to bear necessary costs can obtain legal aid; in that case the costs are registered *in debet*.

6. Other financial obstacles?

Yes **No**

**7. Mandatory preliminary proceedings inside/outside the court/tribunal?
(And if so: How long? Fees/costs? Obstacle or chance?)**

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

Do not exist.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Yes, but it happens exceptionally since there is no obligation for the parties to appear in person. If it occurs, the interpreter is paid by the Ministry of Justice.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

In most cases the parties are represented and don't attend to the hearing in person. However, if they wish to address the court themselves, they are entitled to and if they need to use sign language or a technical communication aid, they can. The court can probably provide for a sign language interpreter if necessary, but technical communication aids are not available.

d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

No

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The Labour Courts. Just like the Labour Tribunals they have jurisdiction in all areas of individual labour law and employment related matters.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

There is no access limit.

- c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

The answer for the first instance is also valid .

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

To submit the case to the second instance, a tax is due again; a sum of 600 euro if the value of the claim is between 250.000 and 500.000 euro, a sum of 800 euro if the value is above 500.000 euro.

- e. Name of third instance court – if at all - and conditions of access:

Answer:

The Court of Cassation. This is not a full third instance as the Court of Cassation doesn't judge the case itself but the judgment, based on the facts established by that judgment.

Representation by a lawyer of the Court of Cassation's bar (20 members for the whole country) is mandatory. Their fee for studying the case (looking for grounds for annulment of the judgment) is approx. 2500 euro. The fee for drafting a request consequently is also approx. 2500 euro.

A tax is due again, under the same conditions (800 euro for claims between 250.000 and 500.000 euro and 1.200 euro for claims above 500.000 euro.

It's mandatory to have the request served to the defendant by a bailiff. This can cost between 200 and 1.000 euro.

A person who can't bear these costs can be granted legal aid (if the financial requirements are fulfilled and the claim isn't obviously unjust, the Court will grant legal aid if it's bar to study the case and if a positive advice is given, the Court will grant legal aid to submit the case).

11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes **No**

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

There is no difference between the first instance and the second instance. If the appeal before the Court of Cassation is rejected, the claimant has to bear the costs. If the appeal is accepted and the attacked judgment thus annulled, the Court refers the case to another second instance court and leaves it to that court to decide on the costs. The party that loses the case will have to bear all costs, thus a claimant successful before the Court of Cassation may in the end still have to bear the costs of his appeal.

- i. Cost sharing, if partly unsuccessful?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

If on different points of litigation both parties are unsuccessful, the judge can divide the costs as seems appropriate to him. Again there is no difference between the first and the second instance. If the appeal is directed against several points of a decision, the Court of Cassation will condemn the claimant to bear a part of the costs if only one or more points of the decision are annulled and leave it to the court to which the case is referred, to decide on the other part of the costs.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The losing defendant has to reimburse the successful claimant. If the defendant is broke, the claimant will not be reimbursed. The answer is the same for the first and second instance.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes **No**

If you answered "Yes", please provide a short description (For all instances?).

Answer:

Since 01 January 2008 the losing party is condemned to pay the winning party a so called "proceedings indemnity", which is supposed to cover the fee and all costs related to the assistance of a lawyer. If an employee isn't assisted by a lawyer, but by a trade union representative, he won't receive this proceedings indemnity even if he wins the case.

A Royal Decree of 26 October 2007 sets the tariff. There is a scale depending on the value of the claim. For each value a basic amount, a minimal amount and a maximal amount is set.

E.g. if the value of the claim is between 2.500,01 and 5.000,00 euro, the basic amount is 715,00 euro, the minimal amount 412,50 and the maximal 1.650,00 euro. If the value of the claim is between 10.000,01 and 20.000 euro, the basic amount is 1.210,00 euro, the minimal amount 687,50 and the maximal 2.750,00 euro. If no value can be put on the claim, the basic amount is 1.210,00 euro, the minimal amount 82,50 and the maximal 11.000 euro. The absolute minimum (minimal amount for claims under 250 euro) is 82,50 euro and the absolute maximum (maximal amount for claims above 1.000.000 euro) is 33.000 euro.

In principle the judge will adjudge the basic amount for the value of the claim, but on request of a party he can grant less or more, without exceeding the minimal or maximal amount, providing he gives a particular motivation for this decision.

If the losing party benefits from legal aid, the minimal amount is adjudged, unless this is clearly unreasonable (a particular motivation for this decision has to be given).

The rules are the same for the first and second instance.

A "proceedings indemnity" for the appeal at the Court of Cassation doesn't exist.

Before 01 January 2008 a "proceedings indemnity" already existed, but it was much lower and didn't cover the lawyer's fee at all.

b. Other models:

Answer:

The "proceedings indemnity" is much lower in social security cases between the insured persons and the administration. The reason for this is that the administration always has to bear the costs, except if the claim of the insured person is considered to be harassing or reckless.

E.g. if the value of the claim is between 620,00 and 2.500,00 euro or if no value can be put on the claim, the basic amount is 120,25 euro, the minimal amount 98,25 euro and the maximal amount 142,25 euro, in the first instance, and resp. 160,36 euro, 132,86 euro and 176,86 euro, in the second instance.

12. Financial resources/legal aid in individual labor/employment law cases

a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

The legal aid is organized with cooperation of the Bar associations. They check if a person meets the income criteria for receiving legal aid.

For every kind of procedure a certain number of points is set. The value of one point is obtained by dividing the annual budget for legal aid by the total number of points the cooperating lawyers have earned during that year.

The total budget for legal aid in Belgium for 2011 was about 70.000.000,00 euro.

This budget doesn't cover the legal aid for an appeal to the Court of Cassation (except for in criminal cases). Legal aid for an appeal to the Court of Cassation in civil cases (including employment and social security) is offered by the Court's bar entirely pro bono.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

A (small) contribution of the person who receives legal aid is sometimes demanded, especially if he or she just meets the income criteria or has become a multiplayer.

b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

- trade unions cover all the costs for the legal proceedings they conduct for their members, including the lawyer's fee if they hand the case to a lawyer;

- it is possible that employees who are not unionized have a legal aid insurance from a commercial insurance company that includes employment disputes, but as far as I know it is uncommon;

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

In recent years the proceeding costs have augmented considerably. Not only because of the “proceeding indemnity”, but also because 21 % VAT is added to the fees of the bailiffs (since 2013) and the lawyers (since 2015). The tax to submit a case has also augmented (in a lesser degree for employment cases).

Before 2008 the costs in employment cases were quite low so the trade unions could support the claims of their members without financial risk. Since 2008 they have become more selective and won't support cases if the odds are looking bad.

Report by Ari Wirén, Vice-President of the Labour Court, Finland.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others). Please also specify whether the legal advice provided before trial is free or financially affordable

Answer:

Possibilities provided by the Finnish state:

Stately legal aid offices offer public legal aid to Finnish citizens and to foreigners as well. Public legal aid means that a citizen may be entitled to legal representative for taking care of a legal problem either partially or fully funded by the state. Legal aid covers all manners of legal issues a private citizen may encounter.

Legal aid is granted based on applicant's monthly income once the living expenses (including maintenance liability) have been deducted. This disposable income determines whether the applicant is granted legal aid entirely for free or if she/he is entitled to partial legal aid. Finland has fairly generous eligibility criteria, with approximately 75 per cent of people being eligible for full or partial legal aid.

Possibilities provided by the Finnish Union of Attorneys-at-Law:

The Attorneys-at-Law give consultation in 13 cities of Finland free of charge once a week.

Possibilities provided by trade unions:

Finnish trade unions often have insurance policies for their members which cover the lawyer's fees, in some cases even the legal costs of the opposite party. Some unions have own lawyers, who can give consultation and take care of the proceedings in question.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

Occupational Safety and Health Administration provides information about work relationships, employment contracts, termination of work relationship as well as about occupational health and safety issues.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

The Occupational Safety and Health (OSH) authorities oversee compliance with the Non-discrimination Act and employment legislation generally at work. Compliance with the Equality Act is monitored by the Ombudsman for equality.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. ... has to turn to the ... *(please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):*

Answer:

The possibilities are:

- a) for organized employees (members of trade unions) against members of employer's associations in cases that concern interpretation of a collective agreement: Labour Court
- b) for employees against employers, who are not members of any employer's association: District court
- c) in discrimination cases and collecting of pay for all employees the competent court is a District court

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No See supra

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

There is no obligatory mediation at district courts.
Mediation is possible if both parties agree.

Before proceedings can be started at Labour Court the trade union and the employer's association must have negotiations both at the company in question and between the union and association.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

The length of the proceedings in district courts vary greatly; anything from four months up to two years. The proceedings in the Labour Court usually take approximately six months.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**

If you answered "by others" with "Yes", please provide a short description:

Answer:

Every citizen has right to represent himself at a court of law. There are, however limitations for persons who can act as an attorney or counsel in district courts. In the Labour Court persons who are in the service of labour market organizations and who have passed a higher university level examination (normally LL.M) may serve as attorneys or counsels in a matter concerning or substantially relating to an employment relationship, and in the Labour Court as the attorney or counsel of a party.

- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance:

Yes No

See supra.

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

According to section 12, Act on the Labour Court, suits concerning private sector collective agreements are brought to the Labour Court and proceeded with before the Labour Court by the associations or employers who are parties to it (normally only by trade unions or employers' associations). Others bound by the collective agreement can not appear as plaintiffs unless the association which is a party to the collective agreement has given its consent or refused to start proceedings. The same applies to suits concerning public service collective agreements according to section 13, Act on the Labour Court.

In general courts of law the employees and the employers are qualified to start proceedings. According to a judgment of the Finnish Supreme Court (SC 1985 II 50) a trade union is not entitled to in start proceedings for e.g. collecting wages due to its members, but the proceedings must be started by the employees in question.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes No

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

See also answer about legal aid offices.

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes No

Answer:

The judge has, however, a responsibility to discuss all relevant matters together with the attorneys/counsels during preparatory hearing.

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

Court fees are to be paid to the Finnish state; in district courts EUR500; in the Labour Court EUR2000 (for private persons EUR500). The fees are paid after a final decision or judgment is handed out in the case

6. Other financial obstacles?

Yes No

If you answered "Yes", please provide a brief list or short description.

Answer:

Normally the party which loses the case must pay for the costs (lawyer's fees and costs in the case) according to Chapter 21 section 1 of the Code of Judicial Procedure. In proceedings in the Labour Court when the litigants have had sufficient grounds for legal proceedings due to the ambiguity of the case concerned, the Labour Court can order that each party carries its own legal costs.

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

According to Section 11.2 of the Act on the Labour Court when an employees' or public service collective agreement prescribes that negotiations should first be conducted aimed at settling a dispute relating to or arising from such an agreement, the matter in dispute can not be considered by the Labour Court until such negotiations have taken place except where it is evident that the plaintiff is not responsible for the failure to hold negotiations. This provision can be fulfilled even after starting the proceedings, though.

There are no mandatory preliminary pre-suit proceedings in district courts. In all civil cases that proceed to main hearing there is normally a preparatory hearing during which the judge has an obligation to try find out if there are any possibilities of reaching a settlement between the parties. It is possible, as well, to start mediation between parties either before a trial or during proceedings in district court according to act on mediation in civil matters and confirmation of settlements in general courts.

8. Language and disability as potential obstacle to access to justice

- a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

According to the Language Act every Finnish citizen (and company its language of record) has the right to use his/hers own native tongue (Finnish or Swedish) in a court of law and other state authorities. If a person can not understand either Finnish or Swedish in civil a case the person in question has a right to use interpreter. This can happen also in cases where the native tongues of the parties differ so that if a party can not understand the other party's pleas or the witness statements.

Normally in civil cases the costs for interpretation are paid by the party in question. These costs are counted as a part of legal costs of the plaintiff or the defendant. Article 6 of the European Convention of Human Rights must be observed and in some cases interpretation (and translations of the statement of claim/statement of defence and the judgment in the case) are provided by the court.

- b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No, these people have the same rights to legal aid and interpretation as any other people.

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

There are interpreters for sign language, as well. We have not encountered other communication aids yet, but in principle there are not any obstacles in Finnish legislation.

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

As a part of the planning of court buildings there are now standards to be observed in order to ensure that all citizens have access to our court buildings (elevators etc).

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The judgments of the Labour Court are final (Section 36, Act on the Labour Court) and they are immediately enforceable. There is, in principle, a possibility of an application of nullification of the Labour Court's judgment to the Supreme Court of Finland. Some have been filed in but none has been successful, yet.

The judgments of the district courts can be appealed to one of the courts of appeal in Finland. Thereafter the judgment of the court of appeal can be appealed to the Supreme Court of Finland if the Supreme Court grants a leave of appeal.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

According to Chapter 25a, Section 5 Code of Judicial Procedure, amended as of 1 October 2015, if an appeal is made against a judgment of a district court, a leave of continued consideration is needed in all civil cases. According to Chapter 25a, Section 11 a leave for continued consideration shall be granted, if

- 1) there is cause to suspect the correctness of the final result of the decision of the district court;
- 2) it is not possible to access the correctness of the final result of the decision of the district court without granting leave for continued consideration;
- 3) in view of the application of the law in other, similar cases it is important to grant leave for continued consideration in the matter; or
- 4) there is another important reason for granting leave.

- c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

The same provisions in Chapter 15, Section 2 of the Code of Judicial Procedure apply as stated supra. Everyone has a right to represent himself/herself. Otherwise there is an obligation to have an Attorney-at-Law or other lawyer (LL.M and approval by a state board for lawyers).

d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

The fee to be paid to the state is EUR500 in a court of appeal and EUR500 in the Supreme Court of Finland.

e. Name of third instance court – if at all - and conditions of access:

Answer:

See supra, the Supreme Court of Finland

11. Who has to bear the costs and fees at the end?

c. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

See supra. Normally the winning party pays nothing in the Labour Court, as well.

i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

According to Chapter 21, Section 3 of the Code of Civil Procedure, a part of the costs may be granted to the party who wins a major part of the case

ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes No

Answer:

Not refunded by the state/court in question. These costs are a part of the legal costs of the plaintiff. If the plaintiff is successful in the proceedings, the losing party (defendant) must compensate them to the plaintiff.

iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

The main rule is stated supra. In the Labour Court there is a possibility to order that each party must carry their own legal costs. As stated supra, a condition to make an order like this is that the litigants have had sufficient grounds for legal proceedings due to the ambiguity of the case concerned.

One must remember, however, that the litigants in the Labour Court are normally employees` unions and employers` associations. Thus the employees in question have no danger of being obliged to bear the costs of the case in normal cases.

12. Financial resources/legal aid in individual labor/employment law cases

a. Legal aid:

i. Does legal aid, provided by the state, exist?

Yes **No**

See supra.

ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

See supra. Legal aid is always granted based on applicant's monthly income once the living expenses (including maintenance liability) have been deducted. This disposable income determines whether the applicant is granted legal aid for free or partial legal aid (partly free legal aid).

b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes **See supra**

- Financial assistance/aid from organizations, trade unions?

Yes **See supra**

Short assessment: predominant/prevalent resources?

Answer:

It has been stated that legal aid is being offered quite generously in Finland with 75 per cent of the population being eligible for full or partial legal aid. Members of trade unions are usually better off financially to start proceedings than non-organized employees due to the support of the union behind them.

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

The reform of the court fees in Finland (in effect since 1 January, 2016) has seen a rise of court fees from EUR244 to EUR500 in general courts (district courts, courts of appeal) and from EUR244 to EUR2000 in the Labour Court. So far the number of proceedings started in the Labour Court has diminished by approximately 10-15 cases.

This can, however, result from the fact that there has been a very challenging situation in the labour market that was resolved only this week (the so-called Competitiveness Pact that among other things extends the duration of the collective agreements with 12 months, increases employees' annual working hours by 24 hours and freezes wages and salaries for the duration of the extended collective agreement period). The Competitiveness Pact covers approximately 87 per cent of all employees and civil servants in the labour market.

See e.g. following link:

http://yle.fi/uutiset/competitiveness_pact_signed_sealed_delivered_at_pms_residence/8957562

I. Identification of cases

1. Do employees have access to legal advice before trial?

Yes

If you answered “Yes”, please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, “virtual legal clinic” or/and others). Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

1. Trade unions provide for their members legal advice and representation in courts in the area of labour/employment law and social law (included in the membership fee). (In Germany trade union density sees a decrease during the last decades. It is estimated that 1960/1980 approximately 35% and 2000 approximately 22% of the workforce were members. Current figures/estimates are not available.)
2. Germany is a country where legal expense insurances are common. When the insurance issues a cover note, consulting the lawyer for legal advice is included. Some of the insurances provide “legal first aid” by a lawyer hotline.
3. Generally the costs for a first consultation of a lawyer are limited to the maximum amount of 190 Euro plus VAT, pursuant to the Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz – RVG). However, this may be amended by agreement.
4. Consulting a lawyer is covered by the state for persons in need if the conditions set out in the Legal Advice Aid Act (Beratungshilfegesetz) are fulfilled (in particular: low income; no other option, e.g. no legal advice through union membership or legal expense insurance).
5. Partial free offers of consultation by the advocacy/ lawyers associations.
6. The German Federal Ministry of Labour and Social Affairs is providing information and counseling via Internet and a telephone hotline (Bürgertelefon) (<http://www.bmas.de/DE/Service/Buergertelefon/buergertelefon.html>).

7. New forms of legal advice - lawyer hotlines: online legal advice, telephone legal advice (partial with a flat-rate for the first consultation starting from 29,00 Euro).

8. Anyone who feels to have been discriminated against on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual identity may turn to the Federal Anti-Discrimination Agency and to regional walk-in and counseling centers. The counselling staff members of the Federal Anti-Discrimination Agency cannot act as representative in court, but it will be examined whether there is a potential claim. This is similar for the regional centers. In case of dispute the Federal Agency can contact the opposing party, e.g. the employer and may initialize an out-of-court settlement.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes

If you answered "Yes", please provide some examples or a brief list:

Answer:

The German Federal Ministry of Labour and Social Affairs is providing two possibilities:

- general information via Internet and a telephone hotline (Bürgertelefon) (<http://www.bmas.de/DE/Service/Buergertelefon/buergertelefon.html>),
- asylum seekers can find information with "Fresh start for asylum seekers in Germany" (<http://www.bmas.de/EN/Our-Topics/Fresh-start-in-germany/fresh-start-in-germany.html>).

Counseling in cases of discrimination:

- The Federal Anti-Discrimination Agency is providing information on discrimination and how to combat discrimination. Slogan: "It is our goal to convince citizens of the view that diversity will move us all forward" (http://www.antidiskriminierungsstelle.de/EN/AboutUs/aboutUs_node.html),
- Information by regional contact and advice centres.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding

wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

- See above answer to question I.2;
- Trade unions provide information at their websites.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. ... has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

... has to turn to the First-instance Labour Court.

In Germany jurisdiction in employment matters is independent from civil jurisdiction. A legal action can be brought before a Labour Court if the matter disputed is covered by the Labour Courts Act. In such cases, Labour Courts have exclusive jurisdiction.

It is a three-tier system consisting of:

- first-instance Labour Courts
- second-instance Land Labour Courts and
- the final-instance Federal Labour Court

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

A legal action can be brought before a Labour Court if the matter disputed is covered by the Labour Courts Act:

- All disputes between employees and employers arising from the employment relationship, including those dealing with the existence or non-existence of a contract of employment, negotiations on entering an employment contract and its continuing effects, inadmissible action in the employment relationship and employment papers. This covers all possible claims and matters relating to an employment relationship, for example compensation and benefits, leave, employment references and other employment papers, compensation for loss, damage or time of competitive restriction, breach of prohibition of competition, company pensions, unfair dismissal, the validity of fixed-term contracts or the termination of contracts.

- Similar disputes arising from contractual relationships of development aid workers, volunteers and disabled persons working in sheltered workshops.

- Disputes of rights between the parties to a collective agreement or between one party to a collective agreement and third parties arising from collective agreements, or disputes relating to the existence or non-existence of collective agreements. Disputes arising from inadmissible action for the purposes of industrial action or in connection with questions of freedom of association (the right to organise) and the right of activity of an employer or employee representative.

- Disputes arising from the Works Constitution Act (such as the existence and scope of works council participation rights and the employer's responsibility to meet the expenses of works council activities). Disputes arising from the Senior Management Representatives Committee Act; matters arising from several co-determination acts such as the election of employee representatives to the supervisory board of a company, the capacity to conclude collective agreements and collective bargaining jurisdiction of trade unions and employers' organisations.

(<http://www.bundesarbeitsgericht.de/englisch/general.html>)

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

A first hearing (Güteverhandlung – preliminary conciliation hearing) will normally take place within 2 to 6 weeks after the action has been brought (depending on the caseload).

A special feature of first-instance Labour Court proceedings in Germany was the preliminary conciliation hearing before the chair of the panel without the lay members (First-instance Labour Court cases are heard by a panel made up of one judge and two lay members representing the employers' and employees' sides respectively). Since 1st January 2002, the preliminary conciliation hearing has also been used in civil jurisdiction. It is the aim of the conciliation hearing to settle a case without a court hearing. The conciliation hearing is used to speed up the procedure and reach agreement between the parties or – if a settlement is not reached – to prepare the court hearing. In the conciliation hearing, it is also possible for the judge to enter default judgment as a result of the non appearance of one of the parties, or to issue a judgment based on the respondent's acknowledgement.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

A large number of cases is terminated after one month (2014: approx. 108.000 cases), normally settled by compromise. The largest number of cases is terminated in first instance within one to three months (2014: approx. 153.000), another large number within three to six months (2014: approx. 72.000). Other cases are terminated in first instance within six to twelve months (2014: approx. 45.000), only some in more than twelve months (2014: approx. 9.000) (source: http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Statistiken/Ergebnisse-Statistik--Arbeitsgerichtsbarkeit-2014.pdf?_blob=publicationFile&v=2).

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**

- by others **Yes** **No**

If you answered "by others" with "Yes", please provide a short description:

Answer: -----

- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance: **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

In first-instance Labour Courts the parties may either appear on their own behalf, or be represented by a lawyer, a representative of an employer's association or a trade union or any other authorised person. Being not represented is not frequent in practice.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

- No assistance of courts;
- The legal application office of the courts ("Rechtsantragstelle") can provide guidance without being allowed to give legal advice.
- See answers to questions I.1 and II.12.

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes **No**

If you answered "No", please provide a short description.

Answer:

There are two different kinds of Labour Court procedures, "Urteil" procedures and "Beschluss" procedures. They differ in terms of the kind of decision they lead to ("Urteil"

or “Beschluss”). The main difference is, however, that in “Urteil” procedures, it is the responsibility of the parties to provide the court with the necessary information and evidence needed to make a decision, while in “Beschluss” procedures, it is largely the responsibility of the court to establish the facts of the case.

In the vast majority of cases the “Urteil” procedure applies. The “Beschluss” procedure is only used for disputes arising from the Works Constitution Act, the Senior Management Representatives Committee Act and similar questions.

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

First-instance labour court procedures are intended to ensure that the risk of costs to be incurred is kept low for both sides. In contrast to legal procedures in civil jurisdiction Labour Court fees are comparatively low and should not fall due until the end of the instance concerned. In the “Beschluss” procedure, no court fees are payable at all.

6. Other financial obstacles?

Yes No

If you answered “Yes”, please provide a brief list or short description.

Answer: -----

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

See answer to question II.1.c.

8. Language and disability as potential obstacle to access to justice

- a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Translation and interpretation is available and free for a foreign party of proceedings (subject to reciprocity between nations)

- b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No specific barriers

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Since the introduction of the Disability Equality Act (Behindertengleichstellungsgesetz) public authorities and facilities are obliged to accessibility. In practice there remains a lot to do, especially tactile and auditive informations are often missing.

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

See answer to question II.8.c.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

Land Labour Courts (Landesarbeitsgerichte)

At appeal, the case is reheard by the higher court both on points of law and the facts of the case, which means that a fresh statement of the facts is generally admissible. The individual panels of Land Labour Courts, as with the first-instance Labour Courts, are made up of one judge and two lay members.

b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

The unsuccessful party (both parties could be partially unsuccessful) can lodge an appeal against the first-instance Labour Court's judgment with the relevant Land Labour Court if the lower court has granted leave to appeal or if the value of the cause of appeal exceeds 600 Euro. Additionally, an appeal can be lodged for all claims relating to the existence, non-existence or termination of an employment relationship. In the case of a default judgment, not normally open to appeal, an appeal is possible if the failure to appear at a hearing can be justified with good reason. A "Beschluss" procedure appeal against orders made by a Labour Court of first instance is heard by the relevant Land Labour Court. "Beschluss" procedure appeals neither require leave to appeal nor a minimum value of the cause of appeal. (<http://www.bundesarbeitsgericht.de/englisch/general.html>)

c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

In the Land Labour Courts, there must be representation by lawyers, or union and employer's association representatives.

d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

See answer to question II.11.a.

e. Name of third instance court – if at all - and conditions of access:

Answer:

The Federal Labour Court (Bundesarbeitsgericht).

An appeal on a point of law can be lodged against an appeal judgment by a Land Labour Court if the lower court has granted leave to appeal. By law, leave to appeal must be granted if a legal issue relevant to the decision of the case is of fundamental legal significance or if the judgment deviates from a judgment given by the Federal Court of Justice (Bundesverfassungsgericht), the Joint Senate of the Supreme Federal Courts (Gemeinsamer Senat der Obersten Gerichtshöfe des Bundes) or the Federal Labour Court. If the Federal Labour Court has not yet issued a judgment on a specific legal issue, leave to appeal has to be granted where the Land Labour Court's judgment deviates from a decision of another Senate of this Land Labour Court or from a decision of another Land Labour Court. Finally, leave to appeal must be granted if a procedural irregularity has occurred or if the judgment is based on grounds on which the parties concerned have not had an opportunity to present their comments. In the "Beschluss" procedure, leave to appeal must be granted for the same reasons. Equally, judicial review applications can generally only be lodged if leave to appeal has been granted.

If the Land Labour Court does not grant leave to appeal, an "appeal against denial of leave to appeal" can be lodged. By means of an "appeal against denial of leave to appeal", the applicant can claim that the requirements for granting leave to appeal are met. Should the Federal Labour Court allow this appeal, proceedings are continued as an appeal on a point of law or a judicial review application. (<http://www.bundesarbeitsgericht.de/englisch/general.html>)

11. Who has to bear the costs and fees at the end?

a. The winning party pays nothing, the losing party pays all.

Yes - with exceptions

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The unsuccessful party has to meet the fees and other costs (with the exception of fees/costs incurred in “Beschluss” procedures). However, in first-instance Labour Courts expenses incurred for income loss or representation in court are not reimbursed. For complainants this has not only bad but also good sides: In some cases it is of advantage that a complainant losing the dispute in court does - in first-instance - not have to pay the costs of representation of the adverse party (See also answer to question II.5.).

Fees (lawyers' fees and court fees) are dependent on the value of the lawsuit. This is the sum claimed or - for example - in lawsuits regarding protection against dismissal it is the value of three months' salary. With a gross monthly salary of 3.000,00 Euro the value of the lawsuit is 9.000,00 Euro. In such a case the general court fee (in case of decision) is 444,00 Euro in first-instance Labour Courts, 710,00 Euro in second-instance Land Labour Courts and 888,00 Euro in the final-instance Federal Labour Court.

To this must be added the court expenses (expenditure on postal and delivery charges, fees for experts and witnesses etc) and lawyers' fees.

Exemption from court fees is granted when the case is settled by a compromise.

- i. Cost sharing, if partly unsuccessful?

Yes **No**

If you answered “Yes”, please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

Pursuant to Article 92(1) of the German Code of Civil Procedure (ZPO) the Court orders that the costs are shared or that each party bear its own costs when parties succeed in part and fail in part of their claims.

However, in first-instance Labour Courts expenses incurred for income loss or representation in court are not reimbursed (see answer to question II.11.a.).

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered “Yes”, please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

Court fees are not paid in advance.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes , **but** exception for the first instance

If you answered "Yes", please provide a short description (For all instances?).

Answer:

In first-instance Labour Courts expenses incurred for income loss or representation in court are not reimbursed (see answer to question II.11.a).

- b. Other models: ...

Answer: -----

12. Financial resources/legal aid in individual labor/employment law cases

- a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes **No**

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

Legal aid (Prozesskostenhilfe) assumes the economic inability to cover the costs and that a reasonable chance of success of the legal action in question exists.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

Depending on the income and financial situation, legal aid services are without cost or granted for repayment (partly: monthly instalment payment). The same applies (reimbursement in whole or in part) when the recipients financial situation improves in the following years (up to 4 years).

b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

Answer:

Germany is a country where legal expense insurances are common.

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

Trade unions provide for their members legal advice and representation in courts in the area of labour/employment law and social (included in the membership fee).

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer: No.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

Answer:

Of course, typically attorneys-at-law provide consultation services against payment. The attorney's agreement is subject to the free agreement of the parties.

Free of charge legal assistance services are provided by state and administrative bodies, trade unions, the legal clinic seminars of universities and the forum pages of certain professional internet journals. Trade unions and international legal protection organizations typically provide consultation for non-members against the payment of a symbolic amount.

The state-organized and free of charge legal assistance services are ensured by the county government offices; this organization provides not only legal advice but also free of charge litigation representation for people in need. The opportunity of free of charge litigation representation and the legal aid are called employee legal aid in labour lawsuits, the eligibility for it is determined by the courts without request, ex officio. The limit of the eligibility to legal aid is the double the average wage established in the second year preceding the submitting of the legal action; i.e. in labour lawsuits it is usual that the employee has the opportunity to use the free of charge legal counsel.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

In addition to the provision of legal consultation and representation, through the state and administrative bodies the state tries to raise awareness to labour law knowledge, see: next point. Recently, e.g. there was a advertisement campaign in the media financed by the government, for the prevention of workplace accidents and combating undeclared work.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

All state bodies related to labour (National Employment Service, Labour and Work Safety Inspectorate, Equal Treatment Authority, Office of the Commissioner For Fundamental Rights (ombudsman), Labour Mediation and Arbitrator Service, Central Administration of National Pension Insurance, National Health Insurance Fund, etc.) operate websites, where people seeking information may find detailed descriptions, raising the legal consciousness of employees. On the part of the parts, the National Judicial Office publishes detailed descriptions about mediation opportunities and the rules of labour lawsuits. In addition, there are also professional internet journals (HR/Munkajog, Adózóna, etc.), the articles, forums of which increase labour law consciousness significantly, as well as the trade unions also conduct informational activities.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... *(please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):*

Answer:

Labour courts are specialised courts within the Hungarian judicial system. There are 20 labour courts in Hungary, 19 located in the county seats of the country, 1 situated in the capital city of Budapest.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Answer:

These courts have a special range of power in connection with terminations, loss of wages, compensations due to accidents in workplaces or compensations in connection with employment.

It means that the employee does not have to file his/her case with any other court, as the labour court has competence to deal with each of his/her claims.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

After filing a case with the labour court, the judge has to examine the employee's claims and their formalities. If the application containing the claims needs to be completed, the judge warns the employee of his/her duty to submit further documents or information to make the application appropriate for the first hearing.

If the application needs to be completed, the first hearing can be held at a later date, but still within 2 to 3 months from the submission of the application.

If the application completely meets both the formal and substantive requirements, the first hearing can be held within one month. The date of the hearing also depends on the judge's caseload.

The first hearing always begins with a conciliation session in an attempt to reach an in-court settlement between the parties. During the conciliation session, the judge tries to reconcile the dispute and, if it is possible, make the parties conclude an in-court settlement. If the judge succeeds in reconciling the parties' conflict, court proceedings can be terminated.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

The average duration of court proceedings in first instance is variable. However, it can be said that first instance proceedings can be concluded within one year.

According to the Code of Civil Procedure, conciliation in an attempt to reach an in-court settlement is the first step of the procedure. The judge tries to mediate between the parties, taking the facts and circumstances into consideration.

If this mediation is not successful, the judge informs the parties about the facts for which the taking of evidence is required, about the burden of proof, and also about the consequences of any failure of the evidentiary procedure. The parties are advised that the failure of the taking of evidence will fall upon the party required to produce evidence. Complicated cases may necessitate the involvement of one or more experts in the proceedings. In such cases, the length of proceedings is increased.

In general, it can be stated that 80% of the first instance cases in Hungary are concluded within one year.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

Answer:

a) It is not mandatory that the employee is represented in a labour court.

b) It is not mandatory that the employee is represented by a lawyer or by others in a labour court.

The plaintiff is entitled to file a case with the labour court without being represented by a lawyer or a representative of the trade union.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Answer:

If the application is not complete, and the individual plaintiff has financial difficulties, (s)he is entitled to request legal aid in Hungary. Legal aid may include pre-litigation advice and representation by a lawyer during court proceedings. The costs of legal aid are borne by the State or by the losing party.

The legal aid system functions independently from the courts and it is part of the public administration. Legal aid offices may provide free of charge assistance for employees in lodging their complaint.

- 4. Does the principle 'iura novit curia' apply to the proceedings?** (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Answer:

Court cases with foreign elements entail difficulties in finding the applicable law.

In such cases, the judge has to get to know every detail of the dispute and to decide on which substantive law is to be applied. This means that Hungarian courts apply the principle 'iura novit curia' in their proceedings.

Judges seized with such cases can turn to the Ministry of Justice, which can provide them with information on the applicable law of the country concerned.

There is a special procedure for the court to get to know the applicable law, which regulates the terms of the cognisance of the foreign legal materials concerned.

If every attempt to find out the content of the foreign applicable law fails and court proceedings would be prolonged significantly, the court can ignore the foreign applicable law and base its decision on Hungarian labour law.

II. Legal proceedings – Structures, formal and financial conditions

- 5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)**

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

In Hungary, the main rule in connection with duties on civil proceedings is the following: Claimants are obliged to pay duty in advance at the beginning of the process. The duty base in judicial civil proceedings shall be the value of the subject matter of the proceedings at the time of the opening of the proceedings.

The rate of duty on the duty base described above shall be, in court proceedings, 6% or not less than 15 000 forints and not more than 1 500 000 forints.

In labour disputes, the parties (interveners) shall be entitled to the right for the suspension of payment of costs irrespective of their income and financial situation.

The right for the suspension of payment of specific costs applies to the parties in that they shall have the right for the suspension of payment of duty. This means that court expenses must be borne by the parties in proportion to their successful/unsuccessful litigation at the end of the proceedings.

Furthermore, according to section 358/B of Act no. III of 1952 on the Code of Civil Procedure, if the absentee pay from an employment relationship to which the labour dispute pertains does not exceed the sum set forth by specific other legislation, the employee involved in the action as a party shall be entitled to exemption from costs or expenses granted to employees. Accordingly, full exemption from costs shall be granted - unless otherwise prescribed by law - throughout the entire duration of the litigation as from the date of submission of the statement of claim, covering the enforcement procedure as well.

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

In Hungary, there are no mandatory preliminary proceedings, litigants can turn directly to the court.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Section 6, subsection (1) of Act no. III of 1952 on the Code of Civil Procedure states that court proceedings are conducted in the Hungarian language. No one may suffer any disadvantage for not understanding the Hungarian language. According to subsection (2), in court proceedings - to the extent provided for by international agreement - parties shall be entitled to use their native language, or the language of their region or nationality.

In the light of these principles the court is required to use an interpreter where necessary. The costs of interpreters employed under section 6 shall be advanced and borne by the State.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

There are no specific barriers for them.

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Based on section 184, subsection (2) of Act no. III of 1952 on the Code of Civil Procedure, any person with hearing impairment shall be interviewed or questioned, upon request, with the help of a sign language interpreter, or shall be allowed to make a written statement instead of being interviewed or questioned. If any person who is to be heard in the action is deafblind, the hearing shall be conducted with a sign language interpreter at his/her request. Upon request, speech-impaired people shall be allowed to make a written statement instead of being interviewed or questioned.

In these cases the costs of interpreters shall be advanced and borne by the State.

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

Basically, there are no other obstacles, but not every court building is barrier-free.

9. **Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?**

Answer:

No

10. Conditions of access to the next instance(s):

1. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The second instance courts are the high courts. There are 20 high courts in Hungary in the country's 19 counties and in the capital city of Budapest (Budapest Metropolitan High Court).

Proceeding as courts of second instance, high courts review appeals lodged against the decisions of the labour courts.

2. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

There is no legal limit for access.

Other criteria of restriction:

- The time limit for the submission of an appeal is fifteen days from the time of delivery of the decision.
- The appeal shall be submitted at the court of the first instance in writing, or recorded in the minutes.
- The appeal shall indicate the decision contested and shall contain the party's argument for having the decision modified, showing also the specific provisions to be amended. New facts and evidence may be presented in the appeal if the appellant came into possession of the new fact or the new evidence after the decision was rendered in the first instance, provided that such new fact or evidence would have been to his benefit had it been considered originally.
- In the appeal new facts and evidence may be presented, or a motion for the performance of taking of evidence that was ignored by the court of first instance can be made if it is intended to demonstrate the unlawfulness of the decision adopted in the first instance.

a. Mandatory representation?

Yes No

b. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

c. Name of third instance court – if at all - and conditions of access:

Answer:

There are no third instance courts to hear labour law cases. The Curia, Hungary's highest instance judicial forum, is responsible for the review of final decisions if these are challenged through an extraordinary remedy.

11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The winning party pays nothing, the losing party pays all. The answer to this question doesn't differ in the first instance courts and appeals. The expenses of the winning party shall be covered by the losing party. The court shall ex officio decide on the bearing of court costs, except if the winning party requested the court not to render a decision concerning the bearing of court costs. The costs of interpreters shall be advanced and borne by the State. The costs of translation shall be advanced by the State on behalf of the party entitled to use his/her native language, or the language of his/her region or nationality, and they shall be borne according to the general provisions on the bearing of court costs. The parties may not be required to cover any costs that may have occurred for - otherwise avoidable - reasons within the court's control. These costs shall be covered by the State as described in specific other legislation.

The court shall determine the amount of court costs by taking into consideration the information the party has provided and verified to the extent necessary. The court costs awarded to the party may not exceed the amount actually charged. If the party did not charge or verify the costs, the court shall determine the amount of court costs of its own motion in light of other data and information from the proceedings. No costs may be charged subsequently.

- i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

If each party succeeds on some and fails on other heads, the court shall decide on court costs in proportion to the degree of success and in consideration of the sums advanced by the parties. If the difference between the ratio of success and losing, and between the sums advanced is insignificant, the court shall order that the parties bear their own costs.

The answer to this question doesn't differ in the first instance courts and appeals.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The costs of labour court proceedings are advanced by the State.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

For all instances, an exemption from the payment of costs or expenses does not constitute an exemption from the payment of the winning party's lawyer's fees by the losing party.

12. Financial resources/legal aid in individual labour/employment law case

- a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

In order to encourage the creation of institutions for the socially disadvantaged in which they will be able to receive professional legal advice and representation in court in the course of asserting their rights and resolving legal disputes, the Hungarian Parliament adopted Act no. LXXX of 2003 on Legal Aid. The State shall, within the framework of providing legal aid, provide persons assisted extrajudicially with the right to have recourse to legal aid as provided for herein. Legal aid providers shall give the parties legal advice or prepare submissions or other papers for them, and - if so authorised - inspect the documents of their case, and the State shall pay or advance the legal aid providers in lieu of the parties for the pertinent costs and fees in the amounts specified by law.

The hourly fees of legal aid providers shall be established by the Parliament in the Central Budget Act in such a manner that the amount will be the same or higher than the fee established for the previous year.

If, owing to their income and financial situation, a party becomes entitled to have the State assume payment of the legal services fee, the party shall have recourse to legal services without cost.

If, owing to their income and financial situation, a party becomes entitled to have the State assume advance payment of the legal services fee, the party shall repay the State the advanced fee within the period stipulated in the resolution authorising the aid. A period of not more than one year may be granted for repayment, and repayment in instalments within this term may also be authorised.

We have no information on the volume/amount of public legal aid provided per year.

Obstacles:

No aid may be granted, even if all criteria have been properly met, in the following cases:

- the party has already received the costs of legal representation or effective legal representation has already been provided for the party in a particular case in the form of an aid granted within the framework of another state aid system;
- no aid may be granted to a party for a period of five years from the date of withdrawal if any previously granted aid had been withdrawn on account of the disclosure of false data;
- if, despite being obliged to do so, the party failed to repay to the State the fee for legal services previously provided to him/her, or to another person; or
- if the party obstructs the investigation intended to verify the information provided in his application.
- whose application for legal aid is submitted in bad faith, or the procedure to which the request pertains appears completely without merit from the outset from the party's point of view.
- the party's litigation appears to be malicious or completely without merit from the outset;
- the party appears as an assignee and it is likely that the purpose of the assignment is to make it possible for the party to litigate with the use of the aid;
- the procedure is for prior discovery.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

We have no information about this question.

- c. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

Trade unions can provide legal assistance to employees. We have no information about the forms of possible financial aid

13. **Recent trends and developments changing individual labour disputes** (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

There are no recent and relevant developments.

Report by Kevin Foley, Chairman, Labour Court, Ireland.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer: The primary source of legal advice for employees before trial is commercial lawyers. In addition the State funds a network of Citizen's Information Centres where voluntarily provided legal advice is often available on a clinic type basis. Trade Unions provide professional services to members and that can include legal advice when required. The state does not directly provide support for or directly make available legal advice for cases before statutory tribunals.

The State does provide a system of civil legal aid which is made available to citizens who are unable to afford the costs associated with obtaining legal advice through private lawyers. However, civil legal aid is not available for cases before statutory tribunals. If a case progresses to the civil courts (whether by way of a statutory appeal or an application for judicial review) civil legal aid may be available.

In cases involving employment equality, legal advice and representation (including before statutory tribunals) can be provided by the state body - The Human Rights and Equality Commission.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

The Workplace Relations Commission is a state body with a range of functions including that of promoting awareness among employers and employees of the rights of employees and the responsibilities of employers. The Commission is the body charged by the state with informing employers and employees through all available means including web based information, telephone help lines and media campaigns.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Answer:

The Workplace Relations Commission is the body charged with disseminating information and raising awareness as regards all aspects of employees' rights in employment

In addition The Human Rights and Equality Commission has statutory responsibility for promoting adherence to the principle of equality in employment.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... *(please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):*

Answer:

Legal proceedings based on the employment rights of the employee as set out in a wide range of statutes are generally commenced at first instance with the Adjudication Service of the Workplace Relations Commission – a body established on 1st October 2015. Legal proceedings based on other legal rights founded in civil law are commenced in the ordinary courts.

There is a hierarchy of courts in which civil proceedings are commenced at first instance. There are three courts of first instance, namely, The District Court, the Circuit Court and The High Court. The District Court and the Circuit Court are courts of local and limited jurisdiction. Their jurisdiction is primarily limited by the quantum of damages being claimed and the nature of the claim being pursued. The High Court has full and unlimited original jurisdiction in all matters that are not reserved to either the District Court or the Circuit Court.

In general, all employment rights litigation must be initiated before the adjudication service of the WRC. However, certain types of action in employment related matters must be initiated in either the Circuit Court or the High Court. These would include claims based on common law or breach of contract and applications for injunctive relief.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered “Yes”, please provide a short description:

Answer:

The jurisdiction of the tribunal of first instance is limited to disputes that involve the application of rights and duties expressly prescribed by statute. If a dispute arises in relation to a matter not legislated for, the dispute cannot be pursued as matter of employment law. It can, however, be pursued as a dispute of interest under the industrial relations Acts. These Acts provide the Labour Court and the WRC to investigate trade disputes and to make non legally binding recommendations on how the dispute should be resolved.

Where a worker claims that a term in his or her contract of employment, which is in excess of the legal minimum requirement, has been contravened by his or her employer, that dispute could not be pursued through the WRC or the Labour Court as an employment rights issue. It could, however, be pursued as a trade dispute under the Industrial Relations Acts. A claim arising from a breach of an employment contract (which does not come within the ambit of employment legislation) could be pursued

outside the employment tribunal system in contract law in a civil court of competent jurisdiction.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

The average waiting time before the first hearing is 13 weeks or up to 20 weeks where the parties have voluntarily availed of mediation. Mediation is an out of court settlement option at first instance

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

Hearings at first instance may vary significantly depending on complexity and statute but on average all matters are disposed of at a single sitting of less than one day's duration.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**
- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance: **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

It is common practice for parties at first instance to avail themselves of legal representation or representation by a Trade Union or Employer's representative body.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes No

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

The State generally provides no assistance in lodging a complaint although The Human Rights and Equality Commission does have discretion to provide such assistance in certain cases involving equality in employment. The alternative course is to secure legal representation at commercial rates, representation by a Trade Union or an Employer's representative body of which the party is a member.

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes No

If you answered "No", please provide a short description.

Answer: It is the responsibility of the parties to make their case including setting out the legal authorities and case law upon which they rely on to support their case.

In that sense the Labour Court follows the common law tradition and the role of the court is to hear evidence and evaluate the arguments advanced by the parties. However, a Court cannot decide a case contra legem. The Court cannot give a decision that is erroneous in law simply because the parties failed to cite the law correctly or at all.

That can frequently arise in cases in which parties are unrepresented or are represented by persons who are not lawyers. In such cases the Court would regard itself under a duty to identify the applicable law and to draw it to the attention of the parties. That can often be done at a case management conference in which the parties meet with the Court for the purposes of identifying the issues arising in the case before it is set down for hearing. Moreover, where a party is unrepresented, the Court has a tradition of rendering as much assistance as possible to that party in advancing his or her case, as is consistent with the requirements of judicial impartiality. That may involve advising the parties on the applicable legal principles on which the case will be decided.

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

There are no financial formalities to be fulfilled to start legal proceedings.

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

No mandatory preliminary proceedings

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Interpretation is provided if required and paid for by the state through the Adjudication Service of the Workplace Relations Commission at first instance and the Labour Court on appeal.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No – the employment laws of the State apply to all employees. There is a difficulty in enforcing the rights of illegal migrants. The Superior Courts have taken the view that a contract of employment entered into by an illegal migrant is itself tainted with illegality and is consequently unenforceable in law by application of the principle “ex turpi causa non oritur action”

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Yes they have that right and the tribunal / court will be responsible for any costs arising therefrom.

d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

Courts and tribunals are required to ensure that all buildings are accessible to disabled persons and that the Court / Tribunal functions in such a way as to ensure equal access for all person regardless of disability.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The Labour Court is the single appellate Court for all complaints regarding employment rights as set out in the extensive employment legislation of the state.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

There is no legal limit for access.

- c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

The question of representation is at the discretion of the parties and commonly they choose to be represented legally or by Trade Unions or Employer's representative organisations.

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

- e. Name of third instance court – if at all - and conditions of access:

Answer:

The Labour Court is the final arbiter of fact. An appeal lies from decisions of the Labour Court to the High Court on a point of law only. The decisions of the Labour Court are also subject to judicial review by the High Court where it is contended that the Court acted outside its jurisdiction.

11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes **No**

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer: Parties are responsible for their own costs at first and second instance.

- i. Cost sharing, if partly unsuccessful?

Yes **No**

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

There are no Court fees.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes **No**

- b. Other models: ...

Answer:

Costs are the responsibility of the parties themselves.

12. Financial resources/legal aid in individual labor/employment law cases

- a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes **No**

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer: N/A

- b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes **No**

- Financial assistance/aid from organizations, trade unions?

Yes **No**

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

The Workplace Relations Act, 2015 came into being on 1st October 2015. That law amalgamated into the Workplace Relations Commission the functions (including first instance adjudication of employment rights complaints) of the Equality Tribunal, the Employment Appeals Tribunal and the Labour Relations

Commission. The same Act amalgamated the appeal functions of the Employment Appeals Tribunal with those of the already existing Labour Court. The result is a single pathway for all employment rights cases via a first instance hearing at the Adjudication Service of the Workplace Relations Commission and an appeal to the Labour Court.

Report by Judge Asaf Harel, Israeli Haifa Regional Court, in collaboration with Judge Varda Viert Livne and Judge Yigal Plitman, President of the National Labour Court.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes **No**

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

In Israel, there are several options available for workers seeking, before trial, legal advice and representation in the field of employment law. Among the more prominent organizations are:

- **Legal advice provided by unions:** The Histadrut Ha-Clalit (the biggest employees' organization in Israel), which gives its members legal advice and representation in court. This service is provided either by lawyers or by Histadrut's representatives, who are not lawyers, but have ample knowledge and experience in the field of employment law.

- **Advice provided by NGOs:**

1) All Rights (Kol-Zchut) is the leading website about rights and entitlements in Israel, including employment rights. The website, which is managed by a private, non-profit organization, provides both information in a variety of relevant issues as well as links to numerous other websites that supply an even fuller database for those who seek legal information about their rights.

2) The Movement to Fight Poverty in Israel operates the "Ha-Lev Bamishpat" ("The Heart In the Law") project, which is the biggest legal voluntary project in Israel, through which the volunteers provide free legal assistance. One of "Ha-Lev Bamishpat"'s programs is operating legal clinics in the Tel-Aviv, Haifa and Be'er Sheva Regional

Labour courts, where volunteers- law students with the counsel and guidance of experienced lawyers- provide legal advice to people of low means, who are most often not familiar with their legal rights. The volunteers assist in drafting and filing suits against employers, who are encroaching on the employee's rights.

3) "Yadid"- Rights Centers in the Community- is an association working for support and empowerment of the disadvantage population in Israel. The association runs several rights centers in multiple cities, where anyone can find free legal advice in numerous topics and legal fields, among them- employment law, in an attempt to fulfil the applicants' rights.

4) Kav Laoved- Worker's Hotline is a non-profit organization, which aims to protect the rights of the most disadvantaged workers in Israel- including those employed in outsourcing and receiving low wages, Israeli citizens from minority groups, Palestinians, migrant workers, refugees and asylum seekers, and new immigrants. The service provided addresses violations through individual assistance, advocacy, outreach and more. The organization has both employees and numerous volunteers. It educates the relevant communities and societies by raising awareness of workers' rights via distribution of informational flyers detailing workers' legal rights in numerous languages, publishing thematic flyers, research and reports, and conducting workshops and lectures for workers as well as students, lawyers, etc. The individual workers, in need of advice, may contact Kav Laoved via public reception hours, the internet, and Kav LaOved's telephone hotline.

- Legal advice provided by the State:

1) Legal Aid- a department in the Ministry of Justice, which assists litigants in representation before judicial bodies in many civil matters, including employment law. It is offered free of charge for those meeting the specific criteria (which includes both an income criteria as well as a requirement that the claim has an actual potential to prevail in court), aside from a relatively low initial fee.

2) "Shil"- Citizen Advice Service- is a unit in the Ministry of Social Affairs and Social Services (operating in collaboration with the municipalities), aimed to assist all members of the public in giving advice and guidance regarding citizens' rights and obligations, and the services he or she are entitled to. This service is offered free of charge, and provided by experienced advisers, working voluntarily.

Legal advice provided by the Israel Bar Association: Pro-Bono- the Israeli Bar Association provides legal representation to disadvantaged claimants that did not meet the criteria of the Legal Aid program provided by the Ministry of Justice. In order to be eligible for this assistance, the applicant must meet certain criteria regarding income and the likelihood the legal claim will prevail.

- **Legal advice provided by legal clinics:** There are a number of universities that operate legal clinics designated to provide workers with advice and assistance in the field of employment law and their respective rights.

- **Advice provided by Law firms:** In addition, there are many legal websites- of private law firms- that offer employees information about their rights and assistance, via forums, chats and setting individualized appointments (in some cases, the first meeting/ counseling session is free).

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

Yes. The Ministry of Economy and Industry's website has a lot of information in a variety of topics regarding employment law and employees' rights. The website is easily accessible. In addition, from time to time there are commercials on the radio or the t.v., sponsored by the Ministry, encouraging workers to visit this website, and to educate themselves about their rights.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

Yes. There are other bodies dealing with specific areas of employee's rights, such as the Equal Employment Opportunities Commission; the Supervisor responsible for employment of pregnant women; and the Commission for Equal Rights for Persons with Disabilities (operating under the supervision of the Ministry of Justice). Information about these bodies is easily found on the Ministry of Justice and the Ministry of Economy and Industry websites.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

The Regional Labour Court is the proper forum for litigation involving employment law. There are five Regional Labour Courts, located all across the country.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

Generally speaking, the employee may file a lawsuit against the employer with the relevant Labour Court, on any matter stemming from the work relationship, aside from suits arising from torts taking place in the workplace and in connection to the work. In the latter case, the parties have to litigate their suit in the General Court System. An exception to this rule is when the relevant tort involves defamation, in which case the suit will be litigated in the Labour Court system. It should be noted that when two proceedings relating to the same employment relationship take place- one in the Labour Court and the other in the General Court System, the latter will be suspended until the Labour Court gives its final decision.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

On average, it takes between four to five months from the time the suit is filed to the time it is first heard- whether in a "regular", pre-trial proceeding or in an in-court settlement procedure (in-court mediation). Suits up to a monetary sum of €6,500 are adjudicated in an expedite manner (called "Expedite Trial"). For Expedite Trial the relevant time span is three months.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

On average, the life span of an employment litigation in the Regional Labour Court, from the time the suit is filed to the time it is concluded (whether by a judgment given in a "regular" trial proceeding or in an in-court settlement) is about ten months. In Expedite Trial suits, the time span is shorter- only six months.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- c. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**

If you answered "by others" with "Yes", please provide a short description:

Answer:

At the Regional Labour Court it is not mandatory for a party to be represented by a lawyer or any other person- with or without a legal education. The rules in this matter are very lenient- a party may represent himself, or receive representation from anyone he wishes, even a close friend.

- d. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance : **Yes** **No**

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

As mentioned above, there are several bodies that assist claimants in lodging complaint and file a suit against the employer. There are no inner court authorities providing such assistance.

- 4. Does the principle 'iura novit curia' apply to the proceedings?** (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes No

If you answered "No", please provide a short description.

Answer:

The Israeli legal system has characteristics typical to common-law legal systems. Therefore, the principle of "iura novit curia" does not apply fully. Nevertheless, in the Labour Court System, the judicial panel (consists of a judge and two public representatives) is the one who determines the facts of the case at hand and applies the relevant law. There is a legal presumption of "judicial notice", meaning that the judges know the statutes and case law for the cases they preside over. It should be noted, however, that the parties are still responsible of establishing their case by referring to the relevant law they believe will guarantee the remedy they seek. Usually, the court will apply the law according to the legal arguments brought by the parties. However, since the Israeli legal system is not a pure common-law system, the court may apply a law, which was not included in the legal arguments of the parties.

- 5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)**

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

In order to file a suit, a plaintiff must pay a fee, which is usually equal to 1% of the monetary value sued (and not less than €32). It should be noted that there are certain components in the suit, which are fee-exempt. In addition, there are type of plaintiffs, who are exempted from paying any fee whatsoever, such as people represented by Legal Aid provided by the State. Plaintiffs with low incomes, may apply to the Court and request an exemption from court-fees. It should be noted that court fees in the Labour Courts are lower than those paid in the General Court System.

- 6. Other financial obstacles?**

Yes No

**7. Mandatory preliminary proceedings inside/outside the court/tribunal?
(And if so: How long? Fees/costs? Obstacle or chance?)**

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

In many instances, the parties are referred to a preliminary mediation procedure prior to the prehearing. These mediation procedures are held in court, by public representatives or law clerks, and are free of charge. However, the parties have the right to wave this option, and request to appear directly in front of the judge.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Language interpretation is available upon the request of the parties or the court. In case the interpretation is needed to one of the formal languages - It is provided and fully funded by the State.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No. Migrant workers- either legal or illegal- have full access to justice, exactly as local citizens.

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Yes. The law (Equal Rights of Persons with Disabilities (Accommodations for Access to Services) Regulations (2013) mandates that the Court Administration will bear the cost of hearing aid systems in the court rooms and sign language interpreters, as well as provide transcript services for parties (and lawyers), who are hearing impaired.

d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

With regard to physical access to court buildings, according to current law (Equal Rights of Persons with Disabilities (Accessibility Accommodations to a Public Place, Which is An Existing Building) Regulations (2011)), any existing building in which a public service is given, must be accommodated to suit the needs of persons with disabilities. This must be done in order to allow them to receive equal services, independently, and in a respectable manner. This means that any public building constructed- court

buildings included- goes through a licensing procedure that guarantees it will be built with all the relevant accommodations, or else it will not get a permit to operate. Older court buildings are required until 2018 to take the necessary steps in order to meet the criteria mentioned in the regulations. The Ministry of Finance, in collaboration with the Courts Administration, bears the cost for this process.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

There is a technical condition- any plaintiff must file his statement of claim in writing. This document may be submitted either printed or in handwriting.

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The National Labour Court, sitting in Jerusalem, is the second (and final) instance court.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

The main limit relates to schedule, not to monetary amounts: in term of dates, every party has the right to appeal a Regional Labour Court judgment to the National Labour Court within 30 days if it concerns a civil case, and within 45 days if it is a criminal case. In addition, whenever the party does not have a right to appeal, but must ask for the National Labour Court's permission to appeal (for instance, when the appeal relates to a Regional Court's judgment in an Expedite Trail), such request must be submitted within 15 days from the day the relevant decision was given.

- c. Mandatory representation?

Yes No

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

In term of fees- there are different court fees, based on the nature of the decision/ judgment appealed. The regular fee for appeals is about €81.

e. Name of third instance court – if at all - and conditions of access:

Answer:

The Israeli National Labour Court is regarded as the final instance. In rare cases, the Israeli Supreme Court, sitting as the High Court of Justice may- upon its discretion- hear a petition against a ruling of the National Labour Court. This may only be done if the Supreme Court finds both that a substantial legal error has occurred and that justice requires intervening in the National Labour Court's decision.

11. Who has to bear the costs and fees at the end?

a. The winning party pays nothing, the losing party pays all.

Yes **No**

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

Usually the losing party pays the costs of the winning party but it is up to the relevant Court's discretion to determine the exact amount with regard to the amount of money the losing party pays the winning party- if at all. In many cases the fees ruled are less than those actually paid.

i. Cost sharing, if partly unsuccessful?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

In case no party declared as "winner", each party pays for its own costs and attorney fees. If the claim is partly successful, cost and fees may be awarded partially, and thus shared.

ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

In case the suit is settled before the fourth hearing, the plaintiff may be reimbursed by the State for court fees (any amount paid above the minimum fee of about €32, as mentioned above). In trials, which are fully heard, if the losing party is the defendant, he may be required by the court to reimburse the plaintiff for his court fees. These rules only apply to the Regional Labour Court.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

Again, this decision is up to the court's discretion, and is usually based on the nature of the suit and the claimant's original odds to prevail. Usually the costs determined by the court are not high, and can be much lower than the fees actually paid by the employer.

12. Financial resources/legal aid in individual labor/employment law cases

c. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

As mentioned above, under certain criteria, the State (Ministry of Justice) will provide free legal assistance and representation to the employees. Such criteria include: the legal issue at hand is one that is mentioned in the Legal Aid Regulations (1973); the person seeking for the legal aid meets the income requirements; and after examination of the claim it is determined that the claimant has a legal chance to win the case. The representation will be usually made available to the claimants by private lawyers, contracted by the state.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

In case legal aid is provided by the State, the employee will not be charged for any attorney fee. However, the claimant will have to pay a participation fee, in order to apply for the legal aid program to begin with, in the amount of about €8. In case his request is granted, and he will be awarded legal representation, the claimant will have to pay additional fee, in the amount of up to €23 (the exact amount will be determined based on the claimant's financial ability).

d. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

Today, there are more lawyers in Israel than ever, and their number is only rising with each passing year. This means that the possibility for plaintiffs to gain access to the different courts- including the Labour Court System- is increasing. In addition, more and more mechanisms, e.g. organizations and websites, are aiming to make employees aware of their rights, give them the proper information and tools to claim their rights, and offer them free legal advice in order to guarantee these rights. It also should be noted that there are fewer places of work that are organized, i.e., where the employees are represented by a employees' organization, and disputes- even regarding an individual worker- may be dealt with in the confine of the workplace. This fact means that workers are forced to use the "instrument" of the Labour Court System as a mean to claim and litigate the case against the employer. In terms of procedures, more and more cases are directed to in-court mediation- held by either law clerks or public representatives, and many of them are settled even before the first scheduled pre-hearing before the judge.

Report by Judge Filippo Curcuruto, President, Labour Chamber, Appeal Court of Rome, Italy.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

Workers have the possibility to call on Unions to obtain legal advice related to their case. This kind of help can be provided free of charge or at a very low rate, it depends on the Unions selected.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

A special administrative body, named “Consigliere di parità” (counsel for equality of opportunity”) has been created with the task of promoting and controlling the implementation of the principle of equal opportunity and not discrimination between men and women in the workplaces (see articles 12 and 13 of the law of 11.th April 2006 n. 198).

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

An employee which intends to start legal proceeding against the employer should apply to the Labour Court, which is a specialized branch of the Court of first instance.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered “Yes”, please provide a short description:

Answer:

Every dispute between an employer and his employees concerning the labour relationship has to be brought before the Labour Court of first instance. The jurisdiction of this court includes for exemple claims for personal injuries suffered by the worker during worktime because of the behaviour of others colleagues, even though not directly caused by the employer.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

According to the law (art. 415 of Italian civil procedure code) the first hearing should take place within 60 days from the day the claim has been lodged. However, as labour judges are generally overloaded with work, this deadline is seldom met. The waiting time varies from Court to Court. Usually the first hearing takes place within 4-6 months from the submittal of the claim.

It's worth pointing out however, that in case of claims related to the wrongful dismissal of the employee the 60 days time-limit is usually observed.

In labour dispute no conciliation procedure before the first hearing are provided for by the law. During the first hearing the Court has the duty to try and conciliate the parties.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

about 1 year; this time frame is usually reduced in case of wrongful dismissal claims

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- e. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**
- f. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance: **Yes** **No**

Answer:

see answer 2 a.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

Assistance is provided for by Unions through a lawyer; see also answer n. 1

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes **No**

If you answered "No", please provide a short description.

Answer:

It's worth noticing that because of a change in the Italian civil procedure code dating back to ten years ago the principle "iura novit curia" also applies with regard to the collective agreements concluded by trade unions and employers' organisations at national level. (see art. 360 n. 3, of the Italian code of civil procedure, as modified by art. 2 of the law of 2.th February 2006, n. 40)

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

In every civil claims and therefore also in labour claims there is a certain amount to be paid, in advance, by the plaintiff to the State. A recent law (law n. 228/2012) modified the rules related to the fees charged to plaintiff in labour matters. The amount of these fees is reduced by 50% compared to what should be paid in a civil claim, due to the sensitivity and importance of the issue, in first and second instances.

However, the amount is related to the value of the claim and there is a wide range since it could be as less as 21,50 Euro for claims up to 1.100, 00 Euro and 843,00 Euro for claims up to 520.000,00 Euro, for a first instance ruling. In any case, these rules do not apply in case the plaintiff has a personal income which is less than three-fold the amount requested for the admission to legal aid (which is about 11.000 Euro). Should be this the case, the plaintiff is not required to pay any fees.

The payment of fees is mandatory also in case of proceedings before the Court of Appeal and the Supreme Court and, in such case, they are increased (actually for the proceeding before the Supreme Court there is no difference between labour and civil and commercial matters, since the amount to be paid, even if it is always related to the value of the claim, is not reduced by 50%).

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

see answer n. II 1 c.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

In every proceeding before a Court the official language is Italian. Translation at State expense could be provided only for witnesses who can't speak Italian.

- b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

There are no barriers for regular migrants. Many of them bring claims against their workers, actually.

The illegal migrants, obviously, refrains from applying to a Court as they have no interest in showing up.

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

The Italian code of civil procedure (art. 124) establishes that if a person with hearing and/or speech impairments has to be questioned the questions could be put and the answers could be given in writing.

Depending on the circumstances an interpreter could also be appointed.

The losing part will bear the cost.

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

Court buildings usually comply with conditions about accessibility to disabled persons.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

Pursuant to one of the most important article of our Constitution (art. 24) every one has the ability to use courts to protect his/her rights and pursue claims. Therefore no formal obstacle can be legally put on the way to the Court.

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

Appeal Labour Court (Corte d'appello, sezione lavoro)

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

No legal limits for access

c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

To apply to a Labour Court either in first or second instance a lawyer is needed, with no exceptions.

d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

See answer n. 5.

e. Name of third instance court – if at all - and conditions of access:

Answer:

Supreme Court (Corte Suprema di Cassazione). No conditions of access.

11. Who has to bear the costs and fees at the end?

a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

There is no difference about that between the first-instance Court and the appeal Court (and the Supreme Court for that matter)

i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

In case you are partly unsuccessful is up to the court to decide which percentage of the cost you have to bear.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The winning party has the right to the reimbursement of every fees he/she had to face for the trial. There is no difference about that between first instance, appeal or procedure before the Supreme Court of Cassation.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

This is the consequence of a recent change in our code of civil procedure e (art. 92 modified by the law n. 162 of 10.th November 2014) .

The law, as it stands now, provides that the Court may decide that the losing party does not have to bear the fees of the winning party exclusively when the matter at issue was a totally new one or the Court decision overruled previous decisions on the same topic.

12.Financial resources/legal aid in individual labor/employment law cases

e. Legal aid:

- iii. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

To get legal aid by the State a claimant or a defendant has to meet some financial conditions, proving that due to a low income he/she can't afford the cost of the lawsuit. As for the moment the personal income should not exceed about € 11.00 in order to qualify for legal aid.

Legal aid by the State is actually used but not very often. Unfortunately at the moment I have no information about the quantitative side of it.

- iv. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

No.

- f. Other financial resources for legal proceedings?
- From commercial insurance companies?
Yes **No**
 - Financial assistance/aid from organizations, trade unions?
Yes **No**

Short assessment: predominant/prevalent resources?

Answer:

Prevalent aid from Trade Unions.

13.Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

The procedural law regarding wrongful dismissal disputes changed recently in order to ensure more rapid decisions, either in first or in second instance and before the Supreme Court as well.

There aren't any other major changes especially concerning the labour disputes. Nevertheless labour disputes procedures, being part of civil proceedings, have been affected by the recent considerable modifications of the existing system.

These modifications aim mainly to prevent applicants from further challenging the first instance decisions before the Appeal Court and the second degree decision before the Supreme Court.

To reach this goal the code of civil procedure now provides that the second degree court may quickly dismiss the appeal whenever it deems that the first instance decision should clearly be uphold.

As for the procedure before the Supreme Court, this Court might as well quickly dismiss a claim when it deems that the second instance decision comply with the decisions previously taken by itself and that there is no room for an overruling.

It seems that these changes were inspired, at least partially, by the german code of civil procedure.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

Approximately 52 percent of Norwegian employees are members of a labour union and have access to legal aid through their membership. Further, there are legal clinics conducted by law students which provide assistance for free or for a small fee. These legal clinics receive financial support from the state. There are also legal clinics where legal aid is provided by lawyers on pro bono basis. People with small or very little income are, according to specific regulations, entitled to legal aid financed by the state, see answer to question 12.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

The Labour Inspection Authority has a particular responsibility to provide information and guidance on rights and obligations according to the Working Environment Act, but that responsibility does not comprise information on legal rights, access to court and so on.

Since 2004, there has been a considerable increase in the number of foreign workers in Norway. Thus, the state has put a lot of effort into providing information to foreign workers on rights and obligations on the Norwegian labour market.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Answer:

Cf. answer to question 2 above.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. ... has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

In individual disputes: The district court (first instance).

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

The Norwegian court system consists of general courts and only a very few specialized courts. The general courts have jurisdiction in all areas of individual labour law.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

According to the Working Environment Act section 17-1 fourth paragraph, the court must prioritize cases on dismissal, suspension, illegal temporary employment, illegal hiring, etc. We have no specific data on hearings in cases concerning individual labour law, cf answer to question d below.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

We have no specific data for labour disputes. In 2015, the average duration of a civil legal process was 5,6 months. This may include attempts on mediation and conciliation procedures.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**
- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance : **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

We have no specific data on this, but employees will generally choose to be represented by a lawyer.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes No

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

A party to a dispute without legal representation may file an oral complaint before the court. According to the Dispute Act, the judge or the court has a duty to provide assistance to fulfill the legal requirements for a proper writ. The court shall also give the parties guidance on procedural rules, routines and other formalities as necessary to enable them to safeguard their interests.

See also answer to question 1.

4. Does the principle 'iura novit curia' apply to the proceedings?

(Is it the responsibility of the judge to establish the applicable law ex officio?
[whereas the parties furnish the facts of a case])

Yes No

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

According to the Court Fees Act the main rule is that the plaintiff has to pay court fees in advanced according to the regulations in the Act. However, the law makes an exception when the employee goes to court against the employer and the case concerns the employment relationship, cf. the Court Fees Act section 10 No 10.

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

Some disputes must be brought before a conciliation board before the case can be brought before the district court. As a general rule, this will not apply in individual labour disputes due to an exemption in the WEA.

When the case is brought before the district court, the court shall consider the opportunity to reach an amicable settlement either through mediation or through judicial mediation. There are no data on the use of judicial mediation in individual labour disputes, but a general impression is that many disputes, including labour disputes, are solved through judicial mediation. (In 2015 the district courts used judicial mediation in 1885 of all the cases brought before them, and a settlement was reached in 1330 of these cases.)

The Dispute Act also has provisions on a “small claims procedure”. The small claims process is meant as a cheaper and more effective method for dealing with the simpler disputes. A case heard as a small claims case, shall be concluded by judgement within three months after the writ of summons was submitted. There are also limitations as to what costs may be compensated. Compensation for legal fees will be limited to 20 % of the amount in dispute, and never more than NOK 25 000.

8. Language and disability as potential obstacle to access to justice

- a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Interpretation is available if necessary. Basically, it is the parties themselves who must bear the costs, but if the court finds that interpretation is necessary, the state will cover the expenses.

- b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

There are no specific barriers to access to justice for regular immigrants. For employees who work in Norway on a temporary basis, it will depend on international conflict rules. However, according to some EU Directives which also applies to Norway, employees from EEA countries will have access to the Courts both in their home country and in Norway. Illegal migrants would probably have difficulties if they don't have identification papers.

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

The Discrimination and Accessibility Act requires that public buildings must be accessible and that necessary needs are met for persons with disabilities. This also applies to the courts. The State must bear the cost of the necessary adaptations.

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

See answer to question 8 c.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

The Courts of Appeal.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

An appeal against a judgment in an asset claim cannot be referred for hearing without leave of the court of appeal if the value of the subject matter of the appeal is less than NOK 125 000. Disputes concerning a dismissal will be considered as an asset claim if the employee only seeks compensation.

The court of appeal may also refuse leave to appeal against a judgment if it finds it clear that the appeal will not succeed.

- c. Mandatory representation?

Yes No

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

See answer to question 5.

- e. Name of third instance court – if at all - and conditions of access:

Answer:

The right of appeal to the Supreme Court depends on permission from the Court ("leave to appeal"). Leave to appeal will only be given if the appeal raises whose significance extends beyond the scope of the current case or if it is important for other reasons that the case is determined by the Supreme Court.

11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

In principle, the answer does not differ.

There are some exceptions from the main rule: The court can exempt the opposite party from liability for legal costs in whole or in part if the court finds that weighty grounds justify exemption. In the assessment the court shall, in particular, have regard to whether there was justifiable cause to have the case heard, whether the successful party can be reproached for bringing the action or has rejected a reasonable offer of settlement, or

if the case is important to the welfare of the party and the relative strength of the parties justifies an exemption, cf. the Dispute Act section 20-2, paragraph 3. Generally, there may be

- i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

If neither of the parties has won the case, in full or in essentials, they have to cover their own costs. The answer does not differ in the first-instance courts and appeals.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The court fee may be included in the total costs of the case by the winning party.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

The lawyer's fees may be included in the costs of the case. It is the same rule for all instances.

12. Financial resources/legal aid in individual labor/employment law cases

g. Legal aid:

v. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

For people with low income and assets, the state may pay for legal assistance, both outside and inside the courts, according to the Legal Aid Act (free legal aid). Free legal aid does not cover assistance that is covered by other schemes, for instance by insurance or by membership in a union.

In 2015 the state contribution to free legal aid was nearly 46 mill. NOK (4,9 mill. Euros). This covers all sorts of disputes. We have not figures for employment disputes in particular.

vi. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

The employee has to pay a contribution of 25 percent of the expenses, but limited up to a given maximum, cf. the Legal Aid Act section 9.

h. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

It is possible to take out legal protection insurance, but that's as far as we know, not very common for employees.

Even if it's common to achieve legal assistance as a member of a trade union, cf. answer to question 1, we have not information on whether it's common to provide financial assistance or aid by the unions.

13. Recent trends and developments changing individual labour disputes

(in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

No recent trends or developments.

Report by Judge Marjana Lubinič, Supreme Court, Slovenia.

I. Identification of cases

Some cases are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of unfair dismissal and reduced wages. Cases considering the rights of personal data protection, safety and health at work or anti-discrimination can be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

Legal advice is provided by:

- unions (legal service) - free
- state (legal aid for those, who can't afford a lawyer) - free
- courts (legal application office) - free
- several NGO organizations and private services (phone information, web sites) - free

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

- Ministry of labour, family, social affairs and equal opportunities - web site, publications, seminars

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)? *Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.*

Yes No

If you answered “Yes”, please provide some examples or a brief list:

Answer:

- Ombudsman - human rights in general
- Labour inspectorate - collects reports of violation - for all types of claims
- State office for equal opportunities - anti-discrimination
- Non-government organizations
- Institute of occupational health
- Institut of labour and social law etc.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

Labor court of first instance

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered “Yes”, please provide a short description:

Answer:

The employee files a lawsuit with a claim and with description of relevant facts. He/she can bring a suit directly to the court in case of termination of employment and in case of reduced wages or compensation or other monetary claims. In other cases he/she has to file a claim to an employer firstly and he/she has to ask to stop breaching a contract or to stop violate his/her rights. Then he/she could file an action (if employer doesn't fill in an application).

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

The disputes concerning termination of employment have a priority. The first hearing has to be performed in 60 days (it is provided by law as an indicative deadline), in-court settlement included (but it is difficult to conduct).

In other cases the average waiting time is from one month to a year or even more (it depends on a region, some district courts have higher influx than others).

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

An average duration of the procedure is (according to Annual report for 2015), including in-court settlement, 12,3 months (in 2014 an average duration of the procedure was 12,6 months).

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:

- a lawyer **Yes** **No**
- by others **Yes** **No**

- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance :: **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

In last 10 to 15 years it has become a common practice to establish legal representation.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

Labor courts don't have legal application offices, but courts of general jurisdiction do - an employee can get assistance in lodging a complaint there. The state provide a legal assistance by free legal aid (not only to file an action but also to represent an employee in procedure) for those who are not able to bear the costs (there are conditions provided by law).

The assistance is provided by private bodies as well (trade union's legal services for members, there are also a few pro bono lawyers and some NOG organizations).

- 4. Does the principle 'iura novit curia' apply to the proceedings?** (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes No

- 5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)**

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

A plaint fee has to be paid in advance, when the complaint is lodged. If it is not, the court send a plaintiff a written warning - if the fee is not paid in next 15 days, the claim is considered withdrawn. The fee depends on value of the matter in dispute and starts from 36 EUR (value of the matter in dispute less than 300 EUR) to 4. 350 EUR (value of the matter in dispute 500.000 EUR), above 500.000 EUR the fee is higher for 220 EUR for each 50.000 EUR.

If the claim is not monetary (e.g. relocation etc.), the fee iz 41 EUR.

In disputes concerning termination of employment, student's work, company scholarship, and temporary work there is no fee for the employee, or student or temporary worker. The employer always has to pay a fee (for an answer to a claim). In collective disputes there is no fee either.

The fee can be paid by parts or the plaintiff can be acquitted of payment.

- 6. Other financial obstacles?**

Yes No

**7. Mandatory preliminary proceedings inside/outside the court/tribunal?
(And if so: How long? Fees/costs? Obstacle or chance?)**

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

Preliminary proceedings outside the court are provided for employee, who has to address a claim to an employer before lodging the complaint in the court. He has to ask the employer to stop breaching a contract or to stop violate his rights. Then he can lodge a complaint (if the employer doesn't fill his obligations in 30 days). If this procedural requirement is not respected, the court refuses the claim. The only exceptions are disputes concerning termination of employment and monetary claims.

Other proceedings (in-court settlement) are not mandatory.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Interpretation is provided at the hearing if necessary. The party in dispute in which favour the interpretation is made bears the costs (temporary - if he win the case, he gets reimbursement from other party).

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

There are no barriers to access to justice for regular and illegal migrant workers.

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Yes, each person with speech and hear impairments has the right to choose to communicate through other means like signs language or technical communication aids. At a party's request, the court must provide an interpreter. Persons with hearing or visual impairment also have the right to access to legal documents and submissions of the parties and other participants in a form that is suitable for them. According to our Civil Procedure Act, which is in use also in labour disputes, each party of dispute has to bear its own costs (if he/she win the case, he/she gets reimbursement from other party) and there is no exeption, provided by the Act. If the person of such impairments is a witness or an expert, he has this right too. The costs of a witness or expert are, according to the Act, the burden of a party who proposed the hearing.

However, in practice, the costs of interpretation and provision of legal documents in an adapted form to parties, witnesses and other participants with speech and hearing impairments are not charged but are paid from the court's funds. This arrangement arises from the Constitutional Court decision, establishing the unconstitutionality of the civil procedure rules which fail to regulate the problem in question. The Constitutional Court has pointed out, that "the fact that blind and partially sighted persons are an objectively disadvantaged social group, the existing regulation of civil procedure does not ensure the necessary and appropriate accommodations that would enable them to exercise their right to fair treatment in proceedings on an equal basis with others. Such omission of the legislature entails a constitutionally inadmissible interference with their right to non-discriminatory treatment. The legislature namely failed to demonstrate that any constitutionally admissible reason existed for the denial of necessary and appropriate accommodations."

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

In some court buildings there are obstacles (difficult accessibility of court buildings, narrow elevators), because some buildings are still inappropriate.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

Except for the procedural requirement (preliminary proceeding at the employer, deadline to lodge a complaint - 30 days from the alleged violation), there are none.

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

Labour and social high court

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

There is no limit.

- c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

There is no mandatory representation. Complainant can file an appeal himself/herself. But if he/she has a representative, it has to be a lawyer (an attorney or an lawyer who is a trade union's employee).

d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes **No**

If you answered "Yes", please provide a short description.

Answer:

The fee has to be paid in advance, the conditions are the same as for procedure for the court of first instance (see an answer no. 5).

e. Name of third instance court – if at all - and conditions of access:

Answer:

The Supreme Court is the third instance.

The access to the Supreme Court is granted in all disputes concerning termination of employment, claims above the amount 40.000 EUR and collective disputes. In other disputes has to be granted by the Supreme Court on a special request of a party in dispute.

The Supreme Court allows revision:

- If it is expected the decision of the Supreme Court would be of an important legal question,
- if the decision of the court of second instance deviates from the case law of the Supreme Court in relation to a legal question which is essential for the decision or
- if in the case law of court of second instance there is no uniformity on such a legal question, and the Supreme Court has not yet ruled on this.

11. Who has to bear the costs and fees at the end?

a. The winning party pays nothing, the losing party pays all.

Yes **No**

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

It is no difference between first and second instance.

i. Cost sharing, if partly unsuccessful?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

Costs, in partly unsuccessful case, are shared and it depends on percentage of success. There is no difference between the first, the second and the third instance.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

Each party pays his/her costs and fees, regardless on the final result of the dispute (for example: even if an employee wins the case, he has to pay a court fee for a judgement). However, who bears the costs and fees in the end, it is the matter of reimbursement. It is the same for all instances.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes **No**

If you answered "Yes", please provide a short description (For all instances?).

Answer:

The employee has to bear the employer's lawyer fees. The exception are disputes concerning termination of employment - the employer bears his own costs and fees even if the employee is the losing party. It is the same for all instances.

12. Financial resources/legal aid in individual labor/employment law cases

- a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes **No**

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

Legal aid in individual labour

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

No

- b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Not by my knowledge.

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

The trade unions offer legal services for their members.
They represent them for free.

13. Recent trends and developments changing individual labor disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

There are attempts to simplify the procedure in „mass complaints“ (when a great number of employees lodge a complaint against the same employer on the same subject of dispute). The law provides performing a „test case“ (a model proceeding). The court decides the common questions and adopts the decision in model proceeding. All plaintiffs in the test procedure are bound by the decision on common issues.

There is also a trend to limit or to reduce repeats and returning the cases in a new trial to the court of first instance. It is the rule, that the appeal court adopts the decision in senate. However, the law provides an exception: a hearing at the appeal court to supplement the proceedings (instead of repeal the first instance judgment) and to adopt the final decision.

The truth is that this two solutions are not practiced a lot (they are not popular among judges).

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

There is a service free of any cost given by the lawyer Association and they also may obtain it from the Trade Unions.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

Through the labour inspectors.

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

Answer:

As I said labour inspectors and trade unions.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

First instance is the Juzgado de lo Social, with one professional judge.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

It has jurisdiction in all areas of individual labour / employment areas and including social welfare, also in collective claims with some exception of jurisdiction for the Audicncia Nacional and Tribunal Superior de Justicia.

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

Depending on the sort of claims, dismissal and any lawsuit affecting fundamental rights for instance are to be heard prior to other sort of claims like salaries and social welfare, going the difference from two months to nine months.

That does not include the time previously spent in conciliation procedures that takes place in a State Agency.

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

The time of the procedure instance is not so long because it just need to communicate to the other party and it does not need any answer, being the cause of delay in the procedure strictly speaking the possible difficulties in communication with the other party. The most important cause for delay is the number of lawsuits that are pending before the court.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

a. In a labour court/tribunal of first instance it is mandatory to be represented by:

- a lawyer **Yes** **No**
- by others **Yes** **No**

b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance: **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

However not being mandatory, it is common practice that the parties appears in court with a lawyer. In that case they must give warning to the other party.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered "Yes", please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

There are some law firms that have a service of pro-bono lawyers, and also the trade unions for their associates, but the most important burden is carried by the legal aid form the public institution.

4. Does the principle 'iura novit curia' apply to the proceedings?

(Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes **No**

If you answered "No", please provide a short description.

Answer:

An example can be that of a claim for dismissal. No matter if the applicant has asked for any of the consequences the judge, once he has decided wick degree of unlawfulness is will impose the proper consequences.

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Answer:

Not any fees on the employee.

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

Conciliation before the State Agency. Not any costs.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Yes . The Territorial Authority pays for it.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No there is not.

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Yes they can. No there are not.

d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

No. There are facilities to that purpose.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No there are not.

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

Tribunal Superior de Justicia

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

The economic limit at 3000 euros. No admision undeer this sum. Other legal criteria depends on the nature of claim.

- c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

Through a lawayer or through a diplomate called Graduado Social.

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

- e. Name of third instance court – if at all - and conditions of access:

Answer:

Tribunal Supremo

11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

It does not differ but there the peculiarity that even being the employee the loser party, it does not pay to the other.

- i. Cost sharing, if partly unsuccessful?

Yes No

Answer:

Yes but never the employee.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Answer:

No fees in advance

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

12. Financial resources/legal aid in individual labor/employment law cases

a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

It is paid by the territorial authorities, Comunidad Autonoma.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

Not any.

b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

13. Recent trends and developments changing individual labour disputes

(in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

The last reform in legal procedures comes from the L. 36/2011 -10 October.

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered "Yes", please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, "virtual legal clinic" or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

1. If you are a member of a trade union, the union can give you legal advice, free of charge. (Approximately 70 % of the workforce are members)
2. Any person has the possibility to get legal aid from a lawyer at a law firm during two hours. The cost of advice is set at a flat fee of 1 654 SEK (160 Euro) / hour (2016). You can get the fee reduced by half if you have an income that is less than 75 000 SEK/year. If you are not of legal age and have no income and assets, you can get free advice.
3. If the case concerns discrimination the Equality Ombudsman can give advice, free of charge.
4. In cases of discrimination there are also anti-discrimination bureaus giving legal aid, free of charge.

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes **No**

If you answered “Yes”, please provide some examples or a brief list:

Answer:

1. The Equality Ombudsman in cases of discrimination.
2. The trade unions have the task to inform their members and employees in general. The union members and local organisations of the unions also gives information to the employees at a workplace level.

Example: Now during the summertime LO (the Swedish Trade Union Confederation – unions for blue collar workers) advertise and inform young employees with a job during the summer period to contact the union if they have any questions about their rights.

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

1. If the employee is a member of a trade union/an employee’s organisation and there is a collective agreement and the union has decided to take the case to court, the Labour Court of Sweden is court of first instance, and last instance. The union is than plaintiff. (In such cases there have normally been negotiations between the employer’s organization and the employers’ organisation on both a local and a central level).
2. In other cases it is the District Court that is first instance. The employee is than plaintiff. That judgment of the District Court can be appealed to the Labour Court, as last instance.
3. In cases of discrimination the Equality Ombudsman can, as plaintiff, take the case to the Labour Court, as first and last instance. If the employee is a member of an union, this is the case if the union has decided not to take the case to court.

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

The Labour Disputes (Judicial Procedure) Act (1974:371) governs what is an labour dispute.

The Act applies to judicial procedure to be followed in disputes concerning collective bargaining agreements and other **disputes relating to the relationship between employers and employees** (labour disputes).

Cases concerning work environmental issues at the workplace – cases where the employer is not acting according the Work Environmental Act – is not concerned to be a labour dispute. (Decisions in individual cases – the employer – taken by the Swedish Work Environment Authority under the Act or under regulations issued pursuant to the Act may be appealed to an administrative court.)

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

An oral preparation of the case at The Labour Court is held in approx. six months.
(We have no figures for the district courts)

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

A case at the Labour Court takes 12–14 months, on an average, from the case started at the court to a judgment, including in-court settlement options.

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

- a. In a labour court/tribunal of first instance it is mandatory to be represented by:
- a lawyer **Yes** **No**
 - by others **Yes** **No**

- b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance : **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

1. If it is the Labour Court that is first instance, the union is part in the process on behalf of the member (the union is representing the employee). The union does not have to be presented by a lawyer. The organisations though have lawyers employed that are representing the union or the union authorise a lawyer on a law firm to represent the union.

(If the union decides during the process not to represent their member, the employee, the Labour Court is no longer competent to deal with the case and then sends the case to the District Court, if the employee so wishes).

2. If a District Court is first instance it is not mandatory that the employee is represented by a lawyer or any other person.

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

4. Does the principle 'iura novit curia' apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes **No**

If you answered "No", please provide a short description.

Answer:

The Swedish Code of Judicial Procedure states as follows.

A judgement may not be given for something else or more than that properly demanded by a party. The judgement may not be based on circumstances other than those pleaded by a party as the foundation of his action.

The principle 'iura novit curia' applies in the framework of the circumstances pleaded.

During the preparation, the court shall proceed, depending upon the nature of the case, the issues in dispute to be elucidated and the parties to state everything that they wish to invoke in the case. By questions and observations the court shall attempt to remedy unclear and incomplete statements made by the parties.

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

1. The procedure at the Labour Court is free of charge. Neither party has to pay a fee to the court. The costs for the court are covered by the State budget.
2. If the dispute begins in a District Court, there is an application fee of normally 2.800 SEK (280 euro).

6. Other financial obstacles?

Yes No

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

There are no mandatory preliminary proceedings, except for the usual preparations that the court is responsible for, to prepare the case for a full hearing.

In The Labour Disputes (Judicial Procedure) Act there is however a rule that states that an action may not be considered by the Labour Court before negotiations has been taken place between the union and the employers' organisation. If the defendant claims that the provision has not been fulfilled and the Labour Court finds that is the case the Court dismisses the case.

The court has the obligation, by law, to work for a settlement. The judge therefore asks the parties – usually during the oral part of the prehearing – about the possibilities to reach a settlement. The disputes in court are quite frequently resolved between parties prior to the full hearing, sometimes very close to the full hearing. This is valid for both the Labour Court and the District Courts.

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

Yes, it's available if necessary. The state pays for the interpretation.

b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

No, it's the same rules as for Swedish citizens.

c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

Persons with hearing and speech impairments have the right to choose to communicate through other means, free of charge. If the technique is not available at a court it is possible to have the hearing in a court where the technique is available or to install it for one hearing, if possible.

Anyone who has been appointed as an interpreter by a court has the statutory right to compensation. This also applies for the sign language interpreter. The interpreter is entitled to reasonable compensation for work time lost and expenses that the mission has required. The reimbursement applies to a particular interpreter tariff determined by Swedish National Courts Administration.

d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

Swedish authorities, including the courts, are required to identify and remove barriers for people with disabilities. Questions on disability must be included in planning, decision-making and processes in the Courts daily activities. This work should be planned and strategically. People with disabilities shall be able to communicate with the Court and to share information through printed media, telephone, web, film and meetings. People with disabilities must get possibility to visit a Court and to take part and participate in the activities there. The premises must also serve as a workplace for people with disabilities.

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

No.

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

As already said, if a District Court is first instance the Labour Court is the second and last instance. The case can be tried only after a decision of approval of the appeal by the Labour Court.

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

The case can be tried only after a decision of approval of the appeal by the Labour Court.
No fees.

- c. Mandatory representation?

Yes No

- d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

- e. Name of third instance court – if at all - and conditions of access:

Answer:

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11. Who has to bear the costs and fees at the end?

- a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

The losing party shall reimburse the opposing party for litigation costs unless otherwise provided. This is the case in the District Court and in the Labour Court as first and last instance.

- i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

1. If several claims are contained in the same case and the parties win in different parts respectively, each party shall be required to bear his own costs, or one of the parties shall be awarded an adjusted compensation for his costs, or, if the costs attributable to different parts of the case are possible to separate, the liability to compensate for costs shall be determined correspondingly. If the that part which a party lost is of only minor importance, however, he may receive full compensation for costs.

The same is the case if only a part of a party's claim is granted.

2. For labour disputes there is a special rule that says that the court has the right to adjust the obligation to pay costs or to declare that each party should bear its own costs in cases where the losing party had good reasons to try the case.

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

In the cases where the losing party has to pay for the employees costs at a District Court it includes the application fee that the employee has paid to the court.

- iii. If losing the case: Does the employee have to bear the employer's lawyer's fees?

Yes No

If you answered "Yes", please provide a short description (For all instances?).

Answer:

1. At the Labour Court as first instance it is the union that is part in the process. The employee is not part and does not pay any costs for the trial (he or she has legal aid through there union). If the union loses the case (the employees claim) the union has to bear the employers costs for the trial, "to the extent that the costs were reasonably incurred to safeguard the party's interest".

2. At the District Court and the Labour Court as second and last instance the employee bears the costs if he or she loses. In those cases it is possible to get legal aid from the state. decided by the court. The state then pays the costs for the lawyer appointed by the court, but not for the costs of the employer.

12. Financial resources/legal aid in individual labor/employment law cases

a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes No

If you answered "Yes", please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

It is used in labour disputes. If the employee doesn't have an insurance to cover the cost of the dispute, it is possible to get legal aid.

Following is from the website of the Legal Aid Agency.

1. Legal aid is true of individuals, thus not associations, companies and the like. In exceptional cases, an entrepreneur / business legal aid.

2. Do you have a right protected by any of your insurance, you cannot get legal aid

3. Do you have an economic base of more than 260 000 per year, you are not entitled to legal aid. More about the economic basis, you can read about the application and fees.

4. You will have need of legal help and it should be reasonable to state contributes to your costs in the dispute. This assessment does Legal Aid Authority or the court (if the case is already in court).

For these rules, there are some exceptions, including:

1. As a rule, you will not get legal aid if the matter involves a value that is less than half a base amount (44 200/2 = 22 100 kr, 2 200 Euro.)

2. If you do not have insurance but because of your financial situation should have an insurance policy, you cannot get legal aid.

3. The dispute shall be entered in any court or authority in another country, you can only obtain legal aid if you are a resident of Sweden, and there are special reasons.

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

The person who are getting legal aid, have to pay some of the costs. Legal aid is never completely free. If the financial circumstances change significantly during the proceedings, the fee changes.

b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

See above

13. Recent trends and developments changing individual labour disputes (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer:

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