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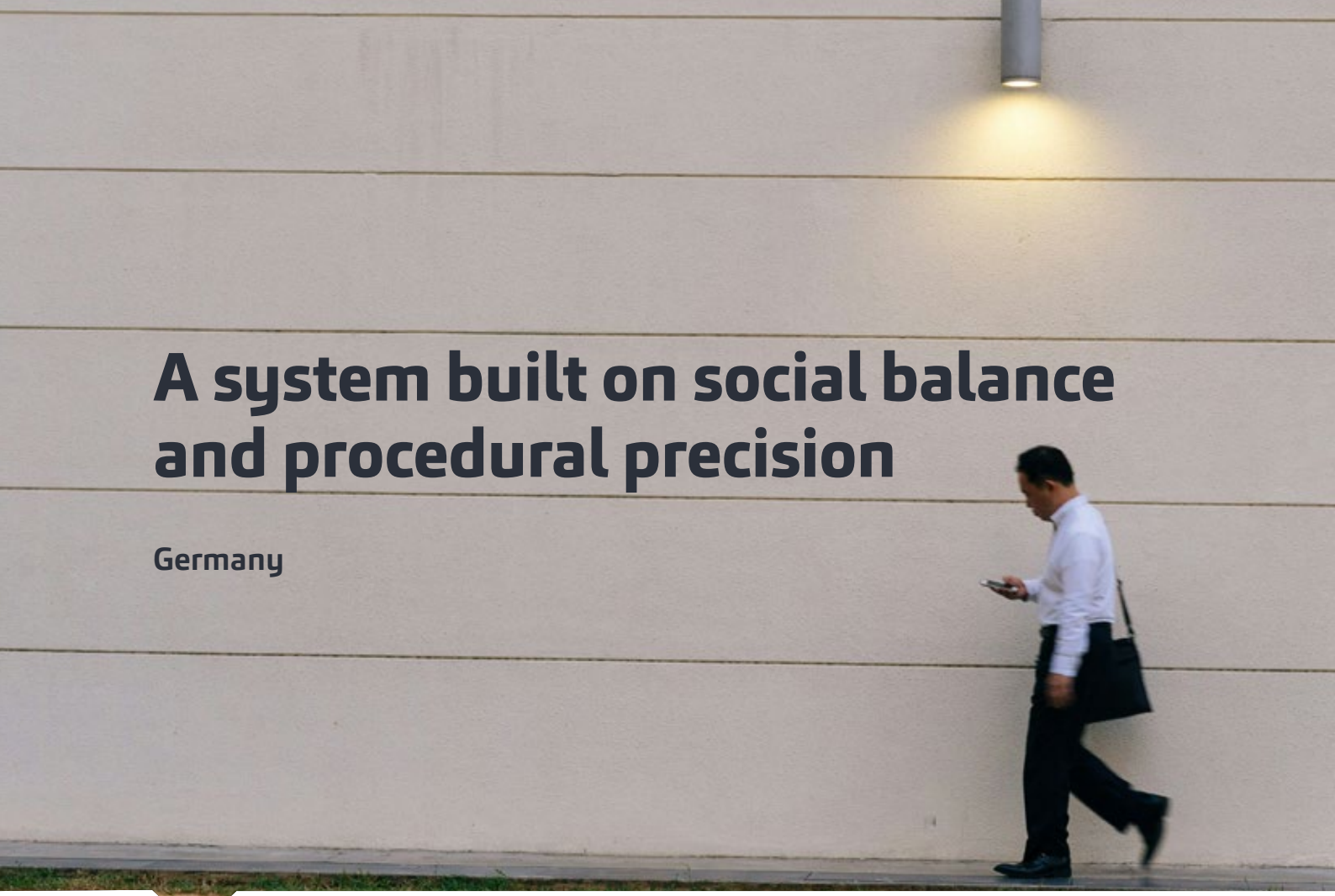
Operational restructuring and employment termination: a cross-jurisdictional analysis for a global workforce

Across global labour markets, dismissals grounded in operational or economic reasons remain one of the most legally sensitive and strategically complex decisions an employer can face. While the underlying motives are often comparable—market contraction, organisational redesign, automation, or structural shifts in client demand—the legal regimes governing such dismissals vary markedly between jurisdictions. This divergence affects not only the viability of restructuring projects but also their timelines, evidentiary requirements and potential exposure to litigation.

Drawing on recent national analyses developed by Baker Tilly member firms in Germany, Spain, France, Belgium and the United Kingdom, this article offers a detailed comparative overview of how each jurisdiction approaches termination on operational grounds.



A system built on social balance and procedural precision

Germany

German law approaches redundancy dismissals through a dual lens: the individual justification required under the Protection Against Dismissal Act and the collective obligations that arise where a works council is present. No dismissal based on operational needs can stand unless three essential conditions are met.

First, the employer must be able to demonstrate that the role has become redundant as a result of a genuine entrepreneurial decision. Courts do not evaluate whether the business decision is optimal, but they do assess its coherence, requiring the employer to show that the organisational change effectively eliminates the position. Redundancy may result from a reduction in orders, rationalisation processes, changes in production methods or reduced turnover.

Second, the employer must prove that no suitable vacant position exists within the employing entity. A dismissal is invalid if an existing vacancy that matches the employee's profile—at the same or a lower hierarchical level—was not offered prior to dismissal. The obligation does not extend automatically to vacant roles within other companies of the group.

The third requirement, Germany's distinctive "social selection", obliges the employer to compare all employees who are interchangeable in terms of qualifications and job duties. Selection for dismissal must then be based exclusively on four criteria: age, length of service, family dependants and disability status. Employees who are least socially vulnerable must be selected first. Performance assessments or behavioural factors may not be used to influence the result. Determining the scope of the comparison group is often a contentious and litigation-prone stage of the process.

Where a works council exists, the employer must negotiate a reconciliation of interests and a social plan that typically includes severance formulas. Furthermore, the employer must consult the works council before issuing each individual dismissal. In addition, mass redundancies are subject to strict notification rules: any dismissal issued without prior notification to the Employment Agency is automatically invalid. Germany therefore offers a legally rigorous and procedurally demanding framework that requires careful planning and extensive documentation.

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Economic justification and rigorous collective procedures

Spain

Spanish law frames dismissals for operational reasons within the broader category of "business-related grounds", which may be economic, technical, organisational or productive. Employers must be able to substantiate these grounds through objective evidence. Economic grounds—such as persistent decreases in revenue or current or expected losses—tend to be the most defensible, while organisational reasons often attract stricter judicial scrutiny.

Individual terminations for objective reasons require formal notice and entitle employees to a fixed severance payment of 20 days' salary per year of service, capped at 12 months. However, the most complex area is collective redundancy, which is triggered when dismissals exceed statutory thresholds within a 90-day reference period. In such cases, employers must initiate a formal consultation procedure with workers' representatives, justify the grounds for the dismissals, and explore alternatives to termination before closing the process.

Spain is also characterised by strong judicial review. Procedural flaws or insufficient evidence may lead to a finding of "unfair dismissal", resulting in enhanced compensation calculated at 33 or 45 days per year depending on the period of service. More severe procedural breaches, such as failing to carry out the collective consultation correctly, may render the dismissals "null", requiring reinstatement with back pay. This legal landscape makes Spain a jurisdiction where thorough preparation, clear evidence and technical precision are essential.

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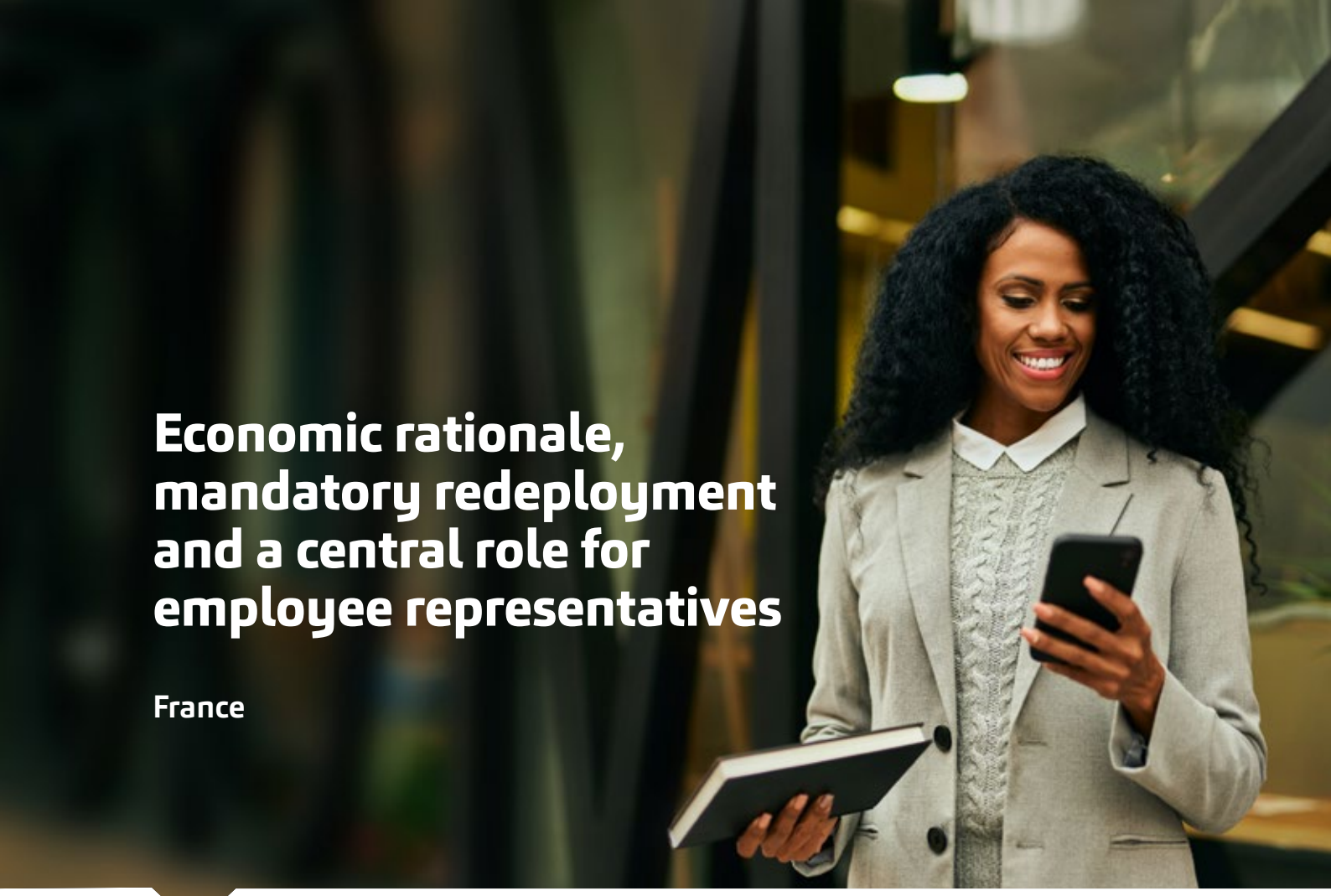

Economic rationale, mandatory redeployment and a central role for employee representatives

France

French law stands out for its detailed statutory definition of economic grounds and its particularly expansive redeployment duty. Employers may dismiss employees only if the decision is unrelated to personal conduct and is justified by economic difficulties, technological changes, a competitiveness-driven reorganisation or the closure of the business. The law provides concrete indicators to measure economic difficulties, including sustained decreases in turnover or orders over a prescribed number of consecutive quarters depending on company size.

The obligation to redeploy is one of the most stringent elements of French redundancy law. Before dismissing an employee, the employer must search for suitable alternative positions within the company and, where applicable, within other entities of the group located in France. A dismissal issued without demonstrating meaningful redeployment efforts is automatically considered to lack real and serious cause.

For collective dismissals, France imposes graduated consultation requirements with the Social and Economic Committee. When at least ten workers are dismissed within 30 days in companies with at least fifty employees, the employer must implement a Job Protection Plan, which is subject to validation or approval by the labour authorities. These procedures often shape the timing and structure of large restructurings, especially within multinational groups.

Employees dismissed on economic grounds may receive statutory severance, notice pay (unless exempted), and access to the professional security contract in certain circumstances. Legal challenges must be brought within twelve months, and compensation for unfair dismissal is determined according to a regulated scale. The French regime remains one of the most procedurally intensive in Europe.

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A flexible framework anchored in procedural fairness

United Kingdom

The United Kingdom adopts a more flexible, approach. Redundancy arises when there is a business closure or workplace closure or where employer's need for employees to perform work of a particular kind has diminished. A redundancy dismissal will be considered fair only if the employer has conducted a reasonable and transparent process prior to the dismissals taking effect, which must include: consulting the employee; applying objective and non-discriminatory criteria where a selection must be made between several employees and exploring alternatives to dismissal.

In collective redundancy situations, the legal framework becomes more prescriptive. When an employer proposes to dismiss twenty or more employees within ninety days at a single establishment, collective consultation with elected representatives or recognised trade unions is mandatory. Minimum consultation periods must be observed—thirty days for twenty to ninety-nine dismissals and forty-five days for one hundred or more—and the Secretary of State must be notified in advance. Failure to comply may expose the employer to protective awards of up to 13 weeks' pay per employee.

Employees with sufficient service are entitled to statutory redundancy payments calculated on the basis of age and length of service, subject to statutory caps. Many employers opt to enhance these payments. The UK system, though more flexible than continental regimes, requires a disciplined and transparent procedure to avoid findings of unfair dismissal.

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Broad dismissal rights with several limitations to be observed

Belgium

Under Belgian law, the decision to dismiss employees rests primarily with the employer and is thus first of all an entrepreneurial decision. In the private sector, the validity of a dismissal does not depend on the reasons for the dismissal. There are in general two ways to terminate open-ended employment contracts: (i) dismissal with a notice period to perform, during which the employment should continue unchanged (e.g. garden leave may not be unilaterally imposed), and (ii) termination of the employment contract with immediate effect. In the latter case, a severance indemnity in lieu of notice (calculated on the salary and benefits) is paid.

There are some limitations to the right to dismiss. The employer will have to assess on a case-by-case basis whether dismissals can be implemented. For example, the employer may have to comply with dismissal criteria determined by the Works Council within the company or needs to consider sectoral or company CBA's on job security.

Besides, the employer will need to check if the concerned employee is protected against dismissal for any reason (for example employees' representatives in the social bodies, parental leave, time credit, pregnancy, etc.). Depending on the type of protection against dismissal, different scenarios may apply. For example, the employer may first have to comply with a specific procedure before proceeding with dismissal, or the employer will have to be able to demonstrate that the dismissal was not related to the reasons for the protection.

The dismissal may obviously not be discriminatory and in most cases the employer will need to be able to justify the reasons for the dismissal (based on the national CBA no. 109) upon the employee's request. If the dismissal is deemed being "manifestly unreasonable" (not linked to performance, attitude or operational needs of the company) additional compensation between 3- and 17-weeks' salary may be due on top of the notice/ severance indemnity in lieu of notice.

If multiple dismissals are considered during any moving 60-day reference period, employers will need to take the rules on collective dismissal into consideration. Those rules apply to companies with 20+ employees. Thresholds vary by company size (10 employees in companies with 20–100 employees, 10% in companies with 100–299 employees and 30 employees in companies with 300+ employees). Before proceeding with such collective dismissal, employers must inform and consult the Works Council to explore alternatives and mitigation measures. A social plan is often negotiated, including legal entitlements and additional benefits such as extra severance, voluntary departure programs, and improved outplacement. Non-compliance leads to criminal sanctions.

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Comparative Table

Severance and Notice Periods (Based on Provided Presentations Only)

Country	Severance / Redundancy Payment	Notice Period
Germany	• No statutory obligation to pay severance. • If a works council exists, severance payments are typically negotiated within a social plan. These formulas are flexible, but generally take into account length of service, salary, and in some cases age, with additional premiums for disability and dependants.	• Notice must be in writing (wet ink) by the legal representative • Notice periods depend on length of service and range from four weeks (to the 15th or end of a calendar month) up to seven months to the end of a calendar month, unless a longer period has been contractually agreed.
Spain	• Objective dismissal: 20 days' salary per year (cap: 12 months). • Unfair dismissal: 33/45 days per year (varies by service period).	• 15 calendar days.
France	• Statutory severance: 1/4 monthly salary per year for first 10 years; 1/3 per year thereafter (unless CBA provides more).	• Notice period exists; must be worked unless exemption or acceptation of the CSP by the Employee. • In case the employee accepts the CSP, the equivalent of the notice period (all social security contributions included) is paid to the French employment agency.
United Kingdom	• Statutory redundancy pay based on age and length of service; maximum amount indicated. • May be enhanced contractually.	• Collective consultation periods (30/45 days) are included. • No individual statutory notice period specified.
Belgium	• Notice period or severance indemnity in lieu of notice legally determined in function of seniority of the employee (e.g. 8 weeks for 1 year seniority, 18 weeks for 5 years seniority, 33 weeks for 10 years seniority, etc.). Different notice periods apply for employees who entered into service before 1/1/2014. • If manifestly unreasonable: 3 – 17 weeks salary and benefits.	• No 'additional notice': either notice is to be performed, either a severance indemnity in lieu of notice is paid.

Conclusion: divergent paths through a shared landscape

While all jurisdictions acknowledge the need for organisations to adapt their workforces to evolving business realities, they diverge significantly in how such changes must be legally implemented. Germany and France impose detailed statutory regimes combining substantive justification, redeployment duties and extensive consultation requirements. Spain adds robust judicial oversight and the possibility of reinstatement in cases of procedural defects, while the United Kingdom—though comparatively flexible—still places procedural fairness at the centre of any lawful redundancy.

For multinational employers, these differences mean that restructuring cannot be undertaken through a single global protocol. Effective workforce transformation requires early legal assessment, coherent documentation and careful alignment of corporate decisions with local requirements. In an environment where economic imperatives and employment protection coexist in tension, understanding these jurisdictional nuances is essential to achieving legally sound and operationally sustainable restructuring outcomes.

Employer of Record models in international employment law: a convergent idea with divergent national realities

The Employer of Record (EoR) model has become one of the most frequently discussed tools in global workforce planning. For companies expanding without establishing local entities, the appeal is obvious: an EoR assumes the role of legal employer, handles payroll and compliance, and leaves the client free to focus on operations. Yet this operational simplicity contrasts with a highly fragmented legal landscape. Even when the commercial model remains identical, national laws define employer authority, labour leasing and regulatory obligations in ways that can radically alter the legality of an EoR arrangement.

Across the jurisdictions examined—Germany, Spain, Belgium, Austria, and Norway—a common pattern is clear: regulators do not assess EoR structures based on branding or contractual language, but on who truly exercises employer authority and where the work is physically performed. This seemingly simple distinction produces substantial divergences, particularly between jurisdictions that regulate labour leasing heavily and those that apply more general employment law principles.

- **Germany** offers a good illustration of regulatory evolution. After a restrictive interpretation in 2024, where EoR arrangements for German-based companies were viewed as unauthorised employee leasing even when work was carried out entirely abroad, the Federal Employment Agency shifted position in 2025. Under the current guidance, an EoR arrangement does not fall within the scope of the German Employee Leasing Act when the employee performs the work fully outside Germany and does not travel into the country at any point. For businesses hiring foreign-based remote workers, this restores a workable level of certainty. However, the moment any work is performed in Germany—whether through travel, partial remote work, or integration into German operations—the full regulatory regime applies. That regime is strict: licensing obligations, statutory limits on maximum leasing duration, equal pay and equal treatment rules, precise contractual requirements and substantial fines for non-compliance. In some cases, an unintended employment relationship with the German client may even arise automatically. Germany therefore permits EoR arrangements, but only under carefully delimited conditions.

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- **Spain** by contrast, presents one of the toughest environments for the model. Spanish legislation prohibits unauthorised worker leasing and reserves employee assignment for licensed Temporary Employment Agencies. Most EoR structures involve the worker performing services under the practical authority of the client, a scenario that Spanish law explicitly restricts. The consequences are significant: regulatory fines of up to EUR 225,018, recognition of an employment relationship with the end-client and associated salary, social-security and severance liabilities, as well as reputational and compliance exposure. Because of this, companies operating in Spain typically opt for either direct employer registration or the establishment of a branch or subsidiary. These alternatives require more investment but provide legal certainty that EoR structures cannot reliably offer.

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- **Belgium** adopts a quite strict position. Belgian law does not define EoR arrangements but applies the Employee Lending Act to examine whether the client exercises elements of employer authority. It is generally accepted that EoR arrangements are not possible and illegal, outside the framework for temporary agency work. Indeed, the general rule is that employer authority may only be executed by the legal employing entity and may not be transferred to another entity (client). The analysis is factual: approval of holidays, reporting of absences, disciplinary measures, determining the nature of the work, or involvement in salary decisions may all trigger the qualification of illegal employee lending. Belgium offers two lawful pathways: an EoR may operate as an authorised interim agency, (different rules apply in each region), or as a service provider of the client that does not transfer employer authority to the client. The fact that, in practice, the EoR does often not exercise actual employers' authority over the workers places the client/user in a very uncomfortable position, seeing as one of the consequences of an illegal lease of personnel is the automatic creation of an employment contract with the client/user. The distinction is fine, and the risks of error include both criminal and civil liability for the parties involved. Belgium therefore requires close attention to day-to-day operational reality, not simply to contractual drafting.

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- **Austria** places EoR arrangements squarely within the scope of its Temporary Employment Act. Austrian law views the model as a form of personnel leasing, because the employee is (physically) integrated into the client's organisation and performs work under the client's instructions. Austrian law thus applies where the physical place of work lies within its boundaries, regardless of where the work results would materialise (a mere virtual integration of a foreign employee performing work for an Austrian client would thus not suffice for the application of Austrian statutes governing temporary employment). This triggers a coherent set of labour, social-security and tax obligations. Penalties may arise under the Temporary Employment Act, trade regulations or wage-and-social-dumping legislation. The client may also face liability for unpaid wages and social insurance contributions if the EoR fails to comply. There is additional uncertainty around employer attribution: depending on who is directly obliged to pay remuneration, courts may regard the client as the true employer. Cross-border deployments may also raise permanent establishment questions from a tax perspective. Austria therefore allows EoR arrangements, but only within a highly regulated framework.

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- **Norway** represents a different model. There is no statutory regime for EoR services. Instead, EoR arrangements appear to be assessed under general labour and tax rules, without a specific licensing or compliance structure aimed especially at the EoR concept. While this suggests flexibility, it also means that employers must analyse, on a case-by-case basis, whether the client's level of control triggers ordinary employer obligations or risks associated with misclassification. Norway therefore does not prohibit the EoR model but does not provide specialised regulatory guidance either. Norwegian law has, however, strict regulations regarding lease of employees from staffing companies, both abroad and nationally. These regulations will make EoR difficult to handle by Norwegian law.

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- **The Netherlands** has no dedicated EoR legislation but applies a strict factual test: if the client exercises day-to-day employer authority (instructions, supervision, approving leave), the client may be reclassified as the true employer, with all related obligations (wages, social security, dismissal protection). If the EoR acts as a temporary agency, agency work rules apply (registration, equal treatment). Non-compliance can lead to fines and joint liability for unpaid wages and taxes.

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Taken together, these jurisdictions illustrate a common tension. The EoR model is designed as a global compliance solution, but national rules on employer authority and employee leasing remain fundamentally local. Where rules are permissive—such as Germany's foreign-to-foreign scenario, or Norway's general-principles approach—the model can operate effectively. But in jurisdictions with strict employee-leasing regimes, notably Spain, Belgium and Austria, EoR structures require careful calibration to avoid reclassification and substantial legal exposure.

Understanding these divergences is essential for organisations considering EoR deployment. A model that is fully compliant in one jurisdiction may be unlawful in another, even when the operational arrangement remains identical. Fragmentation in labour-leasing rules, the allocation of employer authority, and tax and social-security obligations makes local analysis indispensable. Companies should therefore treat EoR as an option, not an automatic solution, and involve local advisers early in the process to ensure compliance and alignment with national regulations.

Comparative overview of EoR regimes (summary)

Country	General stance	Key compliance triggers	Main risks
Germany	Permissive only when work is fully outside Germany and no travel occurs	Any work performed in Germany; supervision or integration into German organisation	Fines, criminal liability, unintended employment relationship
Spain	Highly restrictive; EoR generally incompatible with labour-leasing rules	Client exercises day-to-day authority; worker placed at client's disposal	High fines, automatic recognition of employment with client, social-security liabilities
Belgium	As a rule, prohibited. Strict factual test: permitted if there is actual and to the extent this employer authority remains with EoR or if EoR is an authorised interim agency	Approval of holidays, absence reporting, disciplinary power, salary decisions	High criminal and/or liability for illegal employee lending
Austria	EoR treated as temporary employment under the AÜG	Worker integrated into client's organisation and subject to its instructions	Penalties under labour and trade law, liability for wages and contributions, PE risk
Norway	No dedicated EoR regime; general labour and tax rules apply	Assessment of actual employer control and tax obligations	Misclassification, employer obligations, payroll and tax compliance issues
Netherlands	No dedicated EoR regime; strict factual assessment; agency work rules may apply	Client exercises employer authority; EoR acts as agency; work performed in NL	Reclassification as employer, joint liability for wages and taxes, fines, payroll tax and PE risk

Two Major Labour Law Changes on Paid Leave – Immediate HR Impact

France

1. Paid leave now counts towards overtime calculations

In a landmark ruling issued on 10 September 2025, the French Supreme Court (Cour de cassation) aligned national practice with EU law and changed how overtime must be calculated. In France, the legal working week is 35 hours, and any time worked beyond this threshold is considered overtime. Until now, only hours of actual work triggered overtime pay, while paid leave days were excluded from weekly working time thresholds. From now on, paid leave days must be treated as if the employee had worked when calculating weekly overtime. In practice, this means that if an employee takes a paid day off but works longer hours on other days of the same week, those extra hours must still be paid as overtime (with the corresponding tax and social exemptions).

What to do:

- Review payroll systems and working time software to ensure paid leave is included in weekly overtime calculations.
- Monitor upcoming guidance on the social and tax treatment of these overtime hours.

2. Paid leave must be rescheduled when overlapping with sick leave

In another ruling on the same day, the Court overturned long-standing French practice. Previously, employees who fell ill during their annual leave could not request that their leave be postponed. Now, following EU principles, if an employee provides medical proof and notifies the employer, any sick days occurring during paid leave must be reclassified as sick leave, and the corresponding paid leave must be postponed to a later date.

What to do:

- Update internal procedures and HR policies to allow for rescheduling of leave in case of overlapping sick leave.
- Train HR and line managers to handle such requests and adjust leave records accordingly.
- Ensure employees know they must promptly inform the employer and submit a medical certificate.

Key Takeaways for Employers with Staff in France

- These rulings reflect a clear alignment with EU law protecting employees' right to genuine rest.
- Companies must update payroll and leave management practices without delay to ensure compliance.
- A failure to adapt could lead to back pay claims and litigation.
- Consider seeking advice to review and adjust internal processes in HR and payroll.

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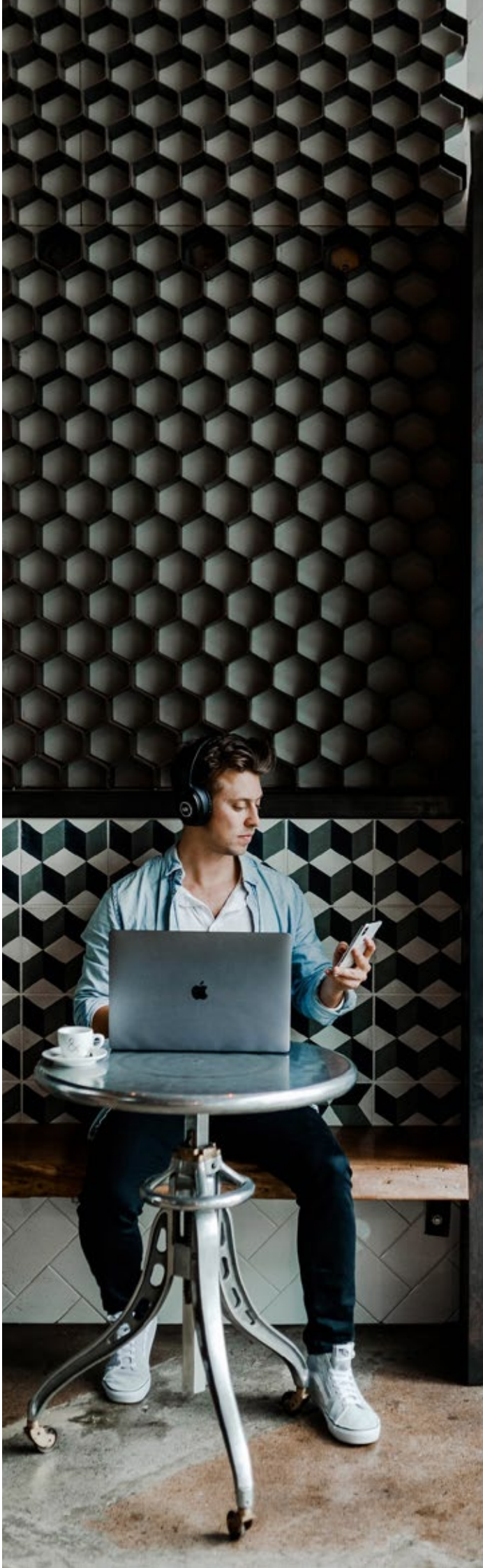

Employment Law and Immigration considerations for non-UK businesses setting up in the UK

If a non-UK client is setting up an entity in the UK, they will have lots of considerations including premises, relevant insurance, UK bank account etc. As a start-up business, however, they will typically have no UK-compliant Employment Law HR documentation in place for their employees and may not even realise that it is a legal requirement.

The basics

All employers in the UK are required to have Contracts of Employment, a Disciplinary Procedure, a Grievance Procedure and a Privacy Notice as a minimum, even if they only have one employee. There are then other policies and procedures which they can implement so that employees are clear on their entitlements and responsibilities e.g. Leave and Sickness Absence, IT and Social Media policies, and various "family-friendly" leave policies.

UK Employment Law

Non-UK clients may also not have an in-depth knowledge of UK employment law in respect of issues such as working hours, breaks, annual leave, pensions, notice entitlements, statutory sick pay, and termination of employment. UK labour law differs greatly to that in other countries and it is important for non-UK clients to be aware of these differences. In addition, there are some norms in the UK of which non-UK clients will not be aware.

- The Working Time Regulations 1998 set out that employees may not be required to work more than 48 hours per week on average and are entitled to daily and weekly rest periods. They also provide for a minimum of 28 days' annual leave, inclusive of the UK's national holidays.
- The Pensions Act 2008 requires all UK employees who earn over £10,000 per annum to be enrolled into a pension scheme and to have contributions paid into it by their employer.
- The Employment Rights Act 1996 sets a minimum notice period of one week after the first month of employment, increasing to one week per year of service up to a maximum of twelve weeks after twelve years. It is, however, the norm in the UK to set notice periods by contract.
- The Statutory Sick Pay Regulations 1992 provide sick pay from the fourth day of sickness absence onwards, up to a maximum of 28 weeks in any rolling twelve-month period.
- The Employment Rights Act 1996 defines fair reasons for dismissal and provides that employees can only be dismissed after a fair procedure has been followed.

Currently, the Employment Rights Bill is progressing through the UK parliament. If enacted, this will radically overhaul legislation in respect of Statutory Sick Pay, Unfair Dismissal and working hours for Zero Hours or Variable Hours workers.

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Illegal Working

All employees are also required to demonstrate that they have the Right to Work in the UK, either by being British or Irish nationals, having Settled Status (also referred to as Indefinite Leave to Remain) or a visa which gives them the right to live and work in the UK. In accordance with the Immigration, Asylum and Nationality Act 2006, any employer who employs an individual who does not have the Right to Work in the UK and who has not taken reasonable steps to check this prior to the employee commencing work (known as the "statutory excuse") is liable for a civil penalty up to £60,000, a criminal conviction of five years, and potential closure of the business.

Employee Relations

As the UK business embeds, employers may well find themselves experiencing employee issues such as poor timekeeping or absences from work. Acts of misconduct may start to arise. Non-UK employers may be unsure of the process for addressing an underperforming employee or may have concerns regarding an employee with a long-term medical condition.

UK labour law, in conjunction with the Advisory, Conciliation and Arbitration Service (ACAS) codes of practice sets out processes for dealing with all of these issues. Failure to do so correctly can render the employer liable to costly claims against them in the Employment Tribunal: an award for Unfair Dismissal can be as high as £118,223, whilst awards for Unlawful Discrimination are uncapped. Conversely, a failure to address issues due to a fear of being sued can impact on the organisation's productivity and profitability, as well as employee morale. It is therefore important to deal with such matters in a timely but fair manner.

Immigration

As a non-UK client setting up a UK business, there may be a need to recruit from the home country into the UK. This requires applying to the UK Home Office for a Sponsor Licence under the Skilled Worker route, and then assigning a Certificate of Sponsorship to the individual for them to make their Visa Application.

If the client wishes to second an existing employee to the UK business on a temporary basis, similarly they will need to apply for a Sponsor Licence but under the Global Business Mobility route. Again, a Certificate of Sponsorship will need to be assigned to the individual for them to make their Visa Application.

The Immigration White Paper published by the UK Government in May 2025 contained lots of amendments to the UK Immigration Rules to be enacted over a period of time (some provisions already came into effect in July, and others are due to be introduced in December and January). Non-UK employers wishing to bring workers to the UK from the home country will need to be aware of these changes.

It is important to note that it is a criminal offence in the UK for a non-regulated person or firm to offer immigration advice.

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