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Market Intelligence

LABOUR & EMPLOYMENT 2022

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

This *Labour & Employment* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Regulatory trends
Sector focus
#MeToo movement
Restrictive covenants

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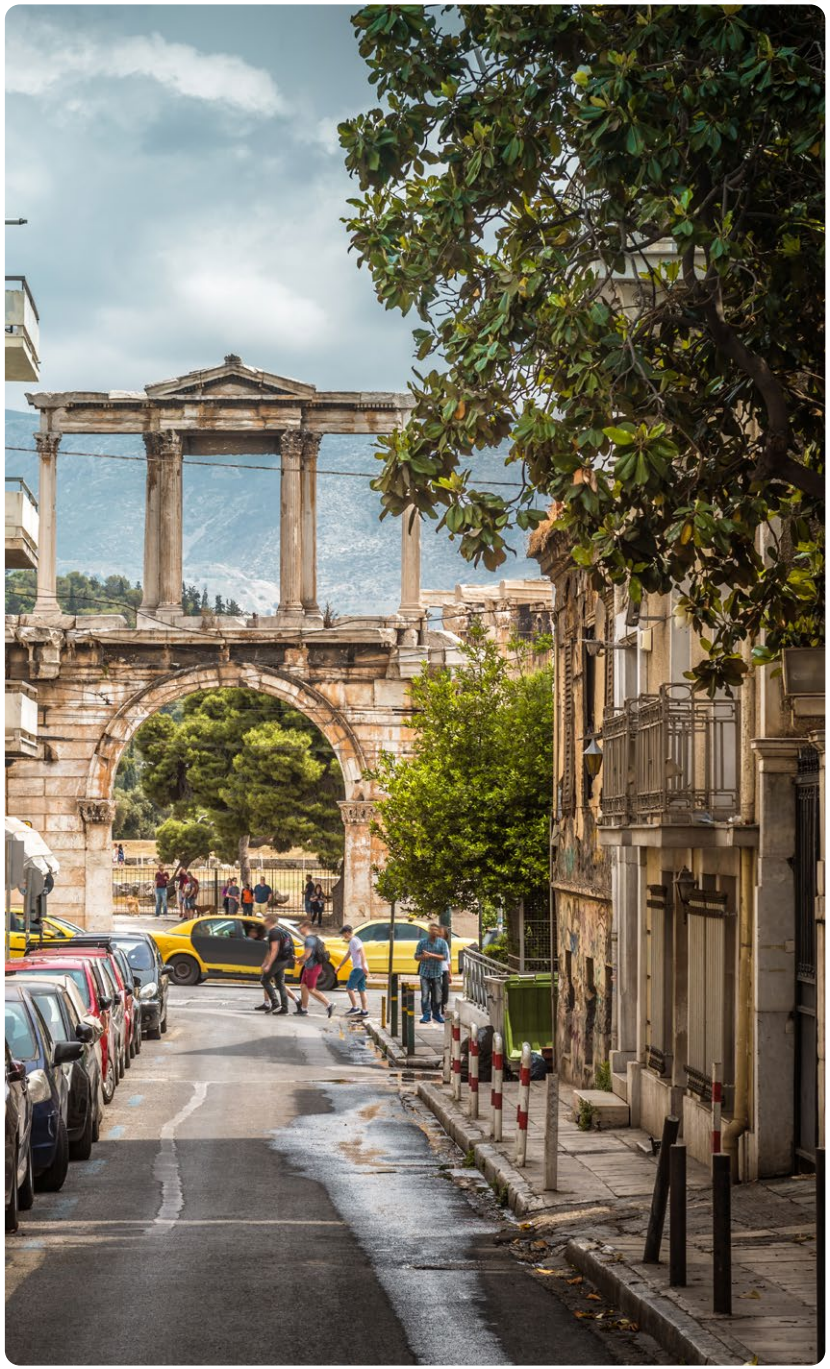

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Greece

Angeliki Tsatsi is the head of the employment department at Karatzas & Partners (K&P) and brings years of experience, advising domestic and international clients on major labour and employment cases. Angeliki has significant experience in M&A transactions, having led the K&P team in a wide range of prominent M&A transactions in Greece, both for international and domestic clients, for the acquisition of shareholdings in commercial, TMT, real estate, pharmaceutical and services providing companies, as well as companies operating in the energy sector, insurance companies and credit institutions.

As head of K&P's employment department, she regularly advises international and domestic corporate clients on employment matters relating to their operation in Greece (including on remote working issues and the implementation of policies against workplace violence and harassment), while also handling the employment aspects of international business transactions, including transfers of undertakings, corporate restructurings and M&As.

QUESTIONS

1 What are the most important new developments in your jurisdiction over the past year in employment law?

In response to international trends and to employment market needs that were highlighted during the covid-19 pandemic, such as the need for work-life balance, remote working and the protection of employees against violence and harassment, Law 4808/2021, which entered into force in June last year, introduced significant reforms to the Greek employment law regime.

The same law laid the groundwork for the application of a digital system of working time monitoring, through the use of digital cards and the online, real-time, transfer of the respective information to the supervising authorities.

In compliance with the newly established legal requirements and building on the experience of the pandemic period, many employers have adopted remote working policies and have adapted their leave and benefits policies in accordance with the enhanced leave regime and flexible working arrangements available to parents and caregivers.

Moreover, all employers are bound to protect their employees against violence and harassment in the workplace, while those with more than 20 employees are obliged to adopt specific policies. This is currently one of the main employment law compliance challenges, in view of the significant fines that were recently introduced for respective breaches.

In terms of the specific reforms introduced, as far as the balance between work and family life is concerned, the leave spectrum has been extended to include, among others, paternity and caretaker leave, leave to women following medically assisted reproduction methods and single parent leave, whereas employees with children up to 12 years old or caregivers are entitled to a flexible employment


Angeliki Tsatsi

regime, under certain conditions, including remote working and a flexible working time schedule. The prohibition of discrimination against any employee having recourse to such protective provisions is expressly provided by the law, which also provides that termination due to the fact that the employee exercised any such rights is not valid (establishing a partial reverse of the burden of proof in favour of the employee).

The right to remote working was regulated in detail and delineated, with the introduction of the right to disconnect being one of the most significant changes. This means that remote workers have the right not to respond to calls and email correspondence or perform any professional duties after their working time schedule but also during their annual leave. This provision, the adoption of which can be deemed as one of the results the pandemic brought in the Greek labour market, also brings the Greek labour legal order with regard

> "The impact of the #MeToo movement and the legislative changes that followed had a significant effect on reporting violence and harassment incidents in the workplace. Reports increased significantly."

to this issue closer to the European standards and is assessed as a positive step towards balancing personal and professional life and minimising the risks for unregistered overtime work.

Finally, one of the most important developments is the broad personal scope of protection with regards to cases of violence and harassment in the workplace, since potential candidates and trainees, providers of independent services, etc, fall under the ambit of the provisions, as well as the obligation of employers to adopt policies to combat such incidents.

Although the majority of the provisions are seen as positive developments, they still need to be further clarified and implemented. For instance, the regime that will govern the implementation of digital cards in the workplace, which is still to be fully adopted, creates uncertainties as to its practical aspects, but it can be considered as a step towards transparency and digitalisation of labour law relations.

2 What upcoming legislation or regulation do you anticipate will have a significant impact on employment law in your jurisdiction?

A draft law implementing Directive (EU) 2019/1937 on the protection of persons who report breaches of EU law is soon to be voted on, following the completion of the public consultation process.

The draft law addresses the issue of the protection of persons who work in public or private sectors or who liaise with such public or private companies and undertakings in the context of their professional activities and report violations of EU legislation.

The provisions of the draft law aim at establishing guarantees for the persons in question, in such a way as to, on the one hand, minimise or even eliminate the risk of prosecution or retaliation and, on the other hand, protect their personal data.

The personal scope of the draft law is broad in order for it to raise the threshold of protection. The definition of an employee is broad and includes not only *stricto sensu* employees but also other individuals who, in the context of exercising their professional activities, may acquire information about actual or potential violations of European law and thus become vulnerable and exposed to various forms of retaliation. The extent of protection also covers cases where the employment relationship has expired or has been terminated.

The draft law sets forth the context of the reporting procedure to be followed and establishes a wide range of obligations for the employers. It is expected that it would have a significant impact on employment relationships, given that it establishes a system of internal reporting, which may work in parallel with already established systems for the reporting of workplace violence and harassment incidents, as well as internal disciplinary procedures, while its protective provisions may, in certain cases, override

confidentiality clauses in employment contracts and provide whistle-blowers with an enhanced protection against retaliation measures, including dismissal, with the employees benefiting from a reversal of the burden of proof in the respective judicial procedures.

3 How has the #MeToo movement impacted on the investigation or settlement of harassment or discrimination claims in your jurisdiction?

The impact of the #MeToo movement and the legislative changes that followed had a significant effect in reporting violence and harassment incidents in the workplace. Reports of sexual harassment in the workplace increased significantly compared to complaints addressed to the Greek Ombudsman authority in past years. As employment law lawyers, we receive increased requests from our clients for advice on relevant matters.

According to the applicable legislation, all employers are obliged to receive, investigate and manage any complaint or report with regards to violence and harassment, with confidentiality and in a manner that respects human dignity. Moreover, businesses with more than 20 employees are required to adopt internal policies for incidents of violence and harassment.

In terms of dealing with violence and harassment at the workplace, the law uses an expanded definition of the workplace. Thus, transition to and from the workplace, professional travel, professional events and educational activities but also communications (email correspondence, etc) are covered, since many harassment cases take place in this framework, which is linked directly or indirectly with the employment relationship. Furthermore, jobseekers and all forms of employment, regardless of their contractual status or legal characterisation, are included in the protective scope (interns, volunteers, providers of independent services, etc), whereas

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employees whose employment relationship has expired or been terminated also fall within the protective scope of the law. At the same time, the threat of harassment is sufficient for a violation of the legal framework to be established.

In any case, the employer is obliged to take the necessary measures to prevent and deal with incidents of violence or harassment, to duly inform the employees and to assist the competent authorities in the investigation of the submitted complaints, by applying the respective policies for the management of complaints and reporting procedures and maintaining confidentiality and impartiality at the same time.

In cases where the perpetrator is an employee, immediate measures are required on the part of the employer, starting from strict recommendations, change of position, working time schedule and place of providing work. Depending on the significance of the incident and whether it is committed several times, the adopted measure may be termination of the employment agreement of the breaching employee, under the caveat that the said termination does

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not constitute an abusive exercise of right. If the perpetrator is the employer, fines and cessation of operation of the business may also be imposed.

In the event that the measures are deemed insufficient to deal with such violations, the employee's right to leave the workplace without being deprived of their salary and without other adverse consequences is established, as long as there is an imminent serious risk to their life, health and safety.

In any case, the dismissal and any adverse treatment of the victim are prohibited, whereas termination of the victim's employment relationship as a countermeasure for the exercise by the latter of their rights in the case of harassment is invalid. The burden of proof is partially reversed, and if the employee establishes, before a court, facts from which it may be concluded that the dismissal falls within the above list, it shall be for the employer to prove the opposite, while strict sanctions are imposed by the Labour Inspectorate against an employer who harasses or does not take the necessary measures immediately for the investigation into and settlement of such incident.

The #MeToo movement, as a social movement, in combination with the newly enacted legislative framework, has enhanced social and individual awareness on violence and harassment issues and encouraged reporting of relevant incidents. The rise in the relevant reports is most probably a result of a more receptive environment and a protective legal regime, since employees are not as reluctant to report as before.

4 What are the key factors for companies to consider regarding the enforcement of restrictive covenants against departing employees?

Restrictive covenants binding the employees after termination of their employment relationship are frequently met in the individual employment agreements in Greece, mainly in the context of managerial and senior employees' agreements.

Although such restrictive covenants are not specifically regulated by Greek law, established case law has set certain criteria for the validity thereof, with a focus on the post-termination non-compete obligation.

According to case law, restrictive covenants are subject to the control of abusive exercise of rights as well as to control of proportionality, whereas factors such as the material scope, time and geographic extent of the covenant are taken into consideration. These criteria are assessed on a case-by-case basis, and non-observance with such rules may lead to restrictive covenants being unenforceable. The payment of a special compensation is one of the key factors assessed by Greek courts for the validity of post-termination non-compete obligations.

The protection of the legitimate business interests of a company is the main reason for the restrictive covenants to be included in the employment agreements, but this is also linked with the nature of the company interested in enforcing such covenants. For example, technology companies developing software and emerging or start-up companies implementing innovative business practices or having a considerable market dynamic with regards to the products or services created or provided impose such covenants to key employees who have access to confidential information, know-how or customer relationships.

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5 In which industry sectors has employment law been a hot topic recently? Why?

The evolution of technological connectivity and automation systems open up a multitude of new opportunities, in the context of which new employment relationships are created. Given the particularities of the employment relationships created in the framework of the so-called platform economy, their legal characterisation is challenging and at the same time crucial for law practitioners.

The most important employment law issue that arises in connection with the gig economy is whether the relationship between the persons collaborating with digital platforms is characterised as employees or providers of independent services. Such characterisation entails serious implications and may lead to increased personnel cost, since if persons working in the field of platform economy are considered as employees, then a wide range of protective provisions apply.

The issue has recently created controversy. For instance, last year one of the leading online-operating food delivery platforms in Greece announced that all employment agreements concluded between the latter and people offering delivery services would be modified to a freelancing relationship, namely a relationship of provision of independent services, thus deviating from the application of mandatory labour law provisions. The issue gave rise to political controversies and social outrage.

Greek Law 4808/2021 has established specific criteria that establish a presumption in favour of the independent services relationship, including the existence or not of the right to use a subcontractor or substitute, exclusivity and the right to unilaterally decide on the workload. At the same time, it provides that even independent service providers to digital platforms enjoy enhanced protection, in terms of health and safety and the right to unionise, declare strikes and negotiate and conclude collective agreements. This regime is in anticipation of further regulation of platform workers' status at a European level.

6 What are the key political debates about employment currently playing out in your jurisdiction? What effects are they having?

The main political debate over the past year with regards to Greek labour law focused on the newly enacted Law 4808/2021; the introduction of reforms to working time arrangements had given rise to controversies, with the centre of attention being the fact that the eight-hour daily working time schedule could be raised to 10 hours in the context of a different working time arrangement with an individual employee.

The main concerns were that the flexible arrangements would open the door for the abolishment of the eight-hour working day in practice, which would further deteriorate the employment regime (already aggravated due to the austerity measures adopted in the previous years).

The response of the Ministry of Labour was that working time arrangements that deviate from the standard one (ie, 40 hours per week and eight hours per day in the case of a five-day working week) were already provided as an option by means of an agreement with the employee union, but now became possible by means of an individual written agreement, following a request by the employee, if there is no employee union or it is not possible to reach an agreement with it. The relevant option is included in a series of measures aimed at providing more flexibility to the parties.

Moreover, the minimum legal wage is another topic of political controversies. The minimum wage for employees and blue-collar workers has been increased twice during 2022 to reach €713 gross per month for employees, whereas the gross minimum daily wage is €31.85 for blue-collar workers, given the enhanced fiscal performance that the Greek economy has reached due to the programmes of financial assistance during the past decade. However, opposition parties criticise such increases as being insufficient, given the upcoming energy crisis and the increased financial need of Greek citizens.

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QUESTIONS

The Inside Track

What are the particular skills that clients are looking for in an effective labour and employment lawyer?

If clients are companies or undertakings, the level of skills and performance required for employment lawyers is advanced. Commercial awareness, not only of the domestic but also of foreign and most importantly European markets, is a key characteristic that an employment lawyer should possess. Moreover, communication skills and creative problem-solving oriented to the specific needs of each company also play a significant role. Keeping information confidential and meeting the deadlines of the projects are also crucial, since the M&A sector requires precise programming and time management skills. Especially on employment, suggesting compliant and efficient solutions, while maintaining workplace peace and minimising conflicts, is essential for the business of the client.

What are the key considerations for clients and their lawyers when handling employment disputes?

An important factor affecting the way employment disputes are handled is striking the balance between the employer's and the employees' interests by maintaining confidentiality and protecting the employees' personal data, but also the company's reputation. Also taking into account that court proceedings in Greece are often time-consuming, creating a prolonged uncertainty, clients and lawyers focus on resolving employment controversies before disputes are brought to court.

As far as court proceedings are concerned, one of the main considerations in view of the newly introduced reforms is that the burden of proof is partially reversed in many cases in favour of the employees, to provide enhanced protection against retaliation to victims of violence and harassment, employees using their rights to flexible working arrangements, etc.

What are the most interesting and challenging cases you have dealt with in the past year?

We handled the employment part of large M&A projects, entailing a transfer of undertaking, the legal framework of which is particularly strict with regards to safeguarding employees' rights and status, as well as several projects in the TMT and banking sectors.

As far as new employment market trends are concerned, we worked on digital nomad cases, assisted clients with the adoption and implementation of remote working and flexible working policies and handled cases of workplace harassment. The latter are particularly challenging, since they need to investigate potential incidents and take the required measures while safeguarding confidentiality.