



International tips & tricks - part 2

Co-ordinated by **Dónall Breen** - 29 July 2019

With the assistance of our international colleagues across Littler we've again been collating some 'surprising facts' and 'top tips' for employers around the world. This month we have facts from Germany, Australia, New Zealand, USA, the Netherlands, Ireland and Mexico. If you've missed our last set of highlights, you can find them [here](#).

Littler has 1,500 attorneys in 80 separate offices. We are market leading experts in international employment law. For further information on our international capabilities, please feel free to get in touch with your usual GQ|Littler contact.

Ireland

Surprising fact: employees are required to be paid a 'Sunday premium' if they work on a Sunday. This is typically x1.3 their usual pay and employees can claim backpay if they haven't been paid it previously.

Top tip: for most employees working Monday – Friday on an annual salary you can simply make it a term of their contract of employment that their salary includes any entitlement to additional pay for working on a Sunday. Therefore, you don't need to keep count of any odd Sundays they do work. But be careful! These clauses are unlikely to be effective if included in the contract of an employee paid by the hour or on shift work.

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Germany

Surprising fact: unlike in many other countries, a post-contractual non-compete clause requires the employee's consent. Not only that, but the employee must be paid at least 50% of their average remuneration (base salary + benefits) for each month of the non-compete period (up to a maximum of two years). Without this remuneration post-employment non-competes are unenforceable even if the employee consents to them.



Top tip: a post-contractual non-solicit clause may be agreed without compensation for a reasonable period (12 months) to prevent a departing employee from enticing away your staff. However, an exemption applies in the event that the departing employee wants to hire a former colleague as an employee for their own business. Such clause would unreasonably hinder other employees' career development and are not enforceable.

Dagmar Lessnau is an attorney in Littler's German office.

Netherlands

Surprising fact: in the Netherlands a probationary period may last up to two months for contracts of indefinite duration. If a longer trial period is agreed, then this is invalid and no trial period applies at all. During the trial period dismissal without a permit is possible (a permit is usually required), even if the employee is sick, pregnant or unable to work. However, those reasons cannot be the basis for the dismissal.

Top tip: for fixed term employees tell them about renewing their employment agreement no later than one month before it would end. At this stage the employer is also obligated to inform the employee if the company will renew the employment agreement. Failing to do so on time may result in a fine of up to one month's salary and case-law has shown that judges are not reluctant in awarding this fine.

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Australia

Surprising fact: all employees in Australia who earn \$450 or more in any calendar month must be paid superannuation (pension) on top of their salary. Superannuation is the mandatory retirement benefit in Australia and the minimum amount payable is currently 9.5% of an employee's ordinary time earnings (excluding overtime). An important thing to note is that for the purposes of superannuation laws contractors who provide personal labour services are also considered to be employees.

Top tip: employers should ensure that the correct superannuation contributions are remitted on behalf of their employees and contractors (as applicable) in a timely manner. The current law requires quarterly payments into a compliant fund. Employees can select their own super fund or payments must be made into the employer's default fund. Paying an additional 9.5% on top of contractor fees will not satisfy the requirements - the super payments must be paid directly into a compliant fund.

Naomi Seddon is an attorney in Littler's LA office who is licensed to practice law in Australia, New Zealand and the United States.

New Zealand

Surprising fact: every employee must have a written employment agreement that contains minimum terms as set out in the law. Failure to ensure that the employment agreement is in writing can result in a fine of \$1,000 per employee. Although the employment agreement should be signed by the employer and the employee, it may still be valid even if it isn't. This means that where there is no signed agreement courts will look to any other written evidence of employment terms.

Top tip: employers should ensure that all employees have written employment agreements and that they are updated each time significant changes are made to an employee's employment. This includes, for example, changes to position, location of work and incentive payment structure.

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Mexico

Surprising fact: Mexico has several employment law rules that foreign employers may find surprising. All employees, except the General Manager, are entitled to participate in the sharing of 10% of the company's pre-tax profit; 90% of a company's workforce need to be Mexican; and every employee is entitled to overtime with no category of employee being excepted.

Top tip: probationary periods in Mexico work a little differently to those you may be used to. Employers may not terminate employees during their probationary period, the employer needs to wait precisely to the day the probationary period ends to terminate an employee.

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USA

Surprising fact: in addition to the more predictable categories for discrimination purposes, such as age, sex and disability, some US States protect more unusual characteristics including weight and status as a smoker.

Top tip: whether a non-competition agreement is enforceable in the U.S. varies from state to state. Some states are receptive to the enforcement of post-employment non-competition restrictions (such as Florida and Ohio) and other states are hostile to the enforcement of non-competes, such as California, which has a statute banning the enforcement of post-employment non-competition restrictions. A number of states, including Illinois, Maine, Massachusetts, New Hampshire and Rhode Island, recently adopted legislation barring the enforcement of post-employment non-competition agreements against either hourly workers or "low wage" earners as defined in the respective state laws. Similar proposed laws have been introduced this year in the state legislatures of Connecticut, Hawaii, Indiana, Maryland, Missouri, New York, Pennsylvania and Virginia.

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