



International tips & tricks - part 1

Co-ordinated by **Mark Callaghan** - 31 May 2019

This month, with the assistance of our international colleagues across Littler, we've been collating some 'surprising facts' and 'top tips' for employers around the world. This month we have facts from Belgium, Colombia, Costa Rica, France, and Italy. Tune in next month for insights from Ireland, the United States, the Netherlands and more!

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.

United Kingdom

Surprising fact: Failing to notify an employee in writing as to how their severance payment has been calculated is a criminal offence. We've never heard of a conviction though...

Top tip: Restrictive covenants (especially non-competes) in the UK are very tricky to enforce, and courts often refuse to grant injunctions because the drafting is too broad for the employee in question. The first Supreme Court decision on this subject for 80 years is due imminently, which should provide more guidance on the proper use of these restrictions. We expect employers will be reviewing their restrictions shortly afterwards.

Belgium

Surprising fact: Belgian employees are not only entitled to normal salary during their annual leave, but also to a supplement called "double holiday pay". Do not be fooled by the name though, it "only" amounts to a mere 92% of normal salary.

Top tip: Employee representative bodies (works councils and health and safety committees) are elected every four years. The next election process will kick off in December 2019, with elections effectively being organized in the course of May 2020. Employers should start preparing now, as certain reference periods have already started.

Koen De Bisschop is an attorney in Littler's Belgium office.

Costa Rica

Surprising fact: On July of 2017, the Labour Procedure Reform came into effect and created the public attorneys' office for employment cases. Because of the income threshold needed to access a public attorney (individuals earning approx. \$1,494,80 per month or less), plus certain exceptions where income is disregarded (such as for discrimination claims), around 90% of the workforce has access to a public defence attorney paid for by the Government. Therefore, the number of claims filed in court has skyrocketed and these attorneys now handle twice as many cases as public criminal defence attorneys.

Top tip: Offer letters are very common in Costa Rica, particularly with international companies that import their normal practices and their common use of offer letters to engage candidates. One of the most common mistakes that can create liability for the company is not writing an expiration date on offer letters. Simply drafting a date by which the candidate must send back their acceptance can help companies avoid uncomfortable situations and having to pay compensation to candidates who fail to reply quickly to their offers.

Marco E. Arias is an attorney in Littler's Costa Rica office.

France

Surprising fact : An employee who has been elected as a staff representative or appointed as a union representative cannot be terminated without getting the prior approval of the French labour authorities, even by if the employee themselves agree (i.e. termination by mutual consent). The same protection applies for employees who have simply asked the company to arrange elections within the company.

Top tip: The forfait-jours arrangement is a specific working time arrangement for executives who have great autonomy and who are free to organize their own schedule so that they cannot work in the scope of a predefined working hours organization. However, these employees benefit from a right to disconnect from electronic devices. The employer should draft an agreement or an internal policy on the conditions of enforcement of such disconnection right.

Guillaume Desmoulin is an attorney in one of Littler's France offices.

Italy

Surprising Fact: If the employer fires an employee shortly after his or her marriage, a male employee cannot challenge the dismissal on the basis of the Code of Equal Opportunities for Men and Women. In these cases, the prohibition of dismissal by marriage is not applicable. However, a woman fired for the same reason can bring a claim. The Supreme Court rules that dismissal during the protected period for the marriage of a man cannot be considered illegitimate or discriminatory because the relevant provisions are aimed at guaranteeing women's family rights and responsibilities.

Top Tip: In order to demonstrate the legitimacy of a dismissal for economic reasons in Italy, the company is required to give evidence that the employee cannot be assigned to other positions consistent with his professionalism. Therefore, companies should ideally provide evidence that they have offered the employee alternative positions (if any), or that there were no alternative positions in order to support the lawfulness of the dismissal.

Carlo Majer is an attorney in Littler's Italy office.

Colombia

Surprising fact: In certain circumstances, for example during pregnancy, Colombian employers are prohibited from terminating the employment contract unilaterally. However, termination by mutual consent between the parties remains possible (unlike staff representatives in France- see above!).

Top Tip: Employers in Colombia must agree the employee's basic salary, benefits and any trial period in writing, otherwise these terms

will not be valid.

Marcela Trujillo and Ana Cristina Medina are attorneys in Littler's Colombia office.

Remember to look out for a further set of facts and tips coming very soon!