



**GLOBAL
EXPANSION
GUIDEBOOK
EMPLOYMENT**

Tunisia



Downloaded: 24 Apr 2025

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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TUNISIA



Last modified 10 April 2023

LEGAL SYSTEM, CURRENCY, LANGUAGE

Hybrid system of French civil law and Islamic Law, Tunisian Dinar (TND) and Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

While an entity does not need to have a physical presence (ie, subsidiary, company, branch) to hire employees in Tunisia, pursuant to Article 67 of the private international code, a foreign entity may be sued in Tunisia by the person it employs. Article 67 provides that "the employment contract is governed by the law of the State in which the worker usually performs his work."

In addition, from a tax point of view, the presence of a person working from Tunisia on behalf of a foreign employer may lead to the creation of a permanent establishment of the entity in Tunisia.

PRE-HIRE CHECKS

Required

All companies must conduct a medical examination of their employees at the time of hiring and provide periodic medical check-ups

However, a medical examination is not required for adolescents under 18 years of age in certain non-industrial jobs which are excluded by decree.

Permissible

Employers may ask employees to provide information relating to criminal records, subject to the prior consent of the employee. In some sectors, the employee does not have the right to refuse the presentation of their criminal record (for example, in the sectors of education, security and banking). There are no legal requirements or restrictions on education checks or reference checks. In principle, the resume contains the necessary education and work-related information, and the employer can request a copy of any diplomas or certificates of work or internship.

IMMIGRATION

The Labor Code regulates the general conditions of work for foreigners in Tunisia, taking into consideration the conventions concluded between the Tunisian Republic and foreign countries and specific legal provisions.

Foreign nationals seeking to work in a paid position of any type in Tunisia are required to have a work permit as well as a residence card marked "authorized to work in Tunisia."

There are 2 kinds of work permit:

1. A certificate of "non-submission to the work" - Attestations of non-submission for stamping of a work contract, issued by the Ministry of Employment
2. A work permit, issued by the Ministry of Employment.

HIRING OPTIONS

Employee

An employee is an individual who provides another natural or legal person with services under the direction and control of that person in return for remuneration. The Labor Code covers both permanent and seasonal /occasional work and both fixed and indefinite term contracts, as well as apprenticeship contracts. Both fixed-term and indefinite term contracts can be concluded for either full-time or part-time work. Apprenticeship contracts must be in writing, under penalty of nullity, and must be signed by the master; the apprentice, if they are of age; or their guardian, if they are a minor. The law provides for requirements regarding the age of the apprentice and the qualities of the master.

Independent contractor

Self-employed persons are individuals who lack an employment contract, including agricultural workers, farmers, tenant farmers, independent fishers, artisans with a professional certification and drivers. Self-employed persons are subject to Tunisia's social security regime and are responsible for paying the relevant social charges themselves.

Agency worker

The Tunisian Labor Code does not cover the concept of agency work but regulates the "subcontracting of labor" in articles from 28 to 30. Subcontracts are contracts concluded between an industrial or commercial chief of enterprise with a subcontractor who themselves recruit the necessary labor for the execution of a certain work or the provision of certain services.

The law clearly defines the cases in which it is the chief of company who incurs the responsibility of the employer, and the cases in which this responsibility is shared between the latter and the subcontractor. The law also regulates certain other aspects of this type of contract.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Generally, the law does not require an employment contract to be in writing insofar as it considers that the employment relationship can be evidenced by any means. However, part-time contracts, fixed term contracts and apprenticeship contracts must be made in writing.

Probationary periods

Probationary periods are allowed for both permanent contracts, as well as for fixed term contracts.

They are set by sectoral collective agreements and range from 3 months to one year depending on the professional category to which the employee belongs. They are renewable once for the same period if the employer considers that the probationary period is inconclusive.

Policies

Internal company regulations are not compulsory in Tunisian law, but are a useful document for organizing intra-company relations. The purpose of internal company regulations is to confirm the application to the company of health and safety regulations; to determine the general and permanent rules relating to disciplinary matters as well as the nature and scale of applicable sanctions; and to set out the procedures rules which apply to disciplinary sanctions. This document is, in principle, communicated to each new employee when they are hired and is subject of a provision in the employment contract.

The employer is required, in accordance with Article 85 of the Labor Code, to post schedules (working hours) at the premises of the company.

Third-party approval

The document which sets out working hours must be previously sent to, and endorsed by, the labor inspectorate with territorial jurisdiction.

LANGUAGE REQUIREMENTS

Contracts can be written in the desired language however, only Arabic and French are accepted by the public authorities (Arabic being the official language).

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All employees are covered by certain rules, including those related to working time and minimum wage, health in the workplace, non-discrimination and equality and compensation for work-related accidents and diseases.

Working hours

Tunisian labor law contains provisions for maximum weekly working hours (regime of 40 or 48 hours per week) and special circumstances that permit derogation from these provisions. In general, a regular work regime cannot

exceed 48 hours in a week, or an equivalent number of hours established for a period of time other than a week as long as the duration of that period is no longer than a year. In agricultural work, hours are limited to 2,700 hours over 300 effective working days.

Overtime

Employees are allowed to work overtime, but overtime and make-up hours cannot cause the working week to exceed 60 hours except when there is urgent work needed to prevent imminent accidents or to organize lifesaving measures. Compensation for overtime in the agricultural and non-agricultural sectors is regulated by Articles 90 through 94 of the Labor Code or by collective bargaining agreements (CBA).

Wages

Minimum wages are set by decree on a sector-by-sector basis or by amendment of CBAs for specific sectors.

Vacation

In the non-agricultural sector, and for sectors not covered by a sectoral collective agreement, all workers who have worked for the same employer for a period equivalent to at least one month, and are engaged in effective work, have the right to one day per month of vacation up to a period of 15 days, comprising 12 business days. This allowance is doubled for a worker under 18 years old, regardless of length of service. Workers between the ages of 18 and 20 are entitled to 1.5 days per month of vacation up to a maximum of 22 days comprising 18 business days, regardless of length of service. The monthly leave allocation is increased by one day for those who have worked at the same company for at least five years, as long as the leave does not exceed a total of 18 days.

Workers are normally granted annual leave between June 1 and October 31 of each year. All workers are covered by the annual leave provisions, though the manner in which annual leave is granted differs by age and by sector. Paid annual leave cannot be contracted out of by agreement, even if it comes with compensatory payment.

For sectors covered by a CBA, vacation is determined by the agreement.

Sick leave & pay

Sickness suspends the labor contract but does not constitute cause for terminating the contract unless it is sufficiently serious, prolonged and if the needs of the company require it to replace the sick employee. Sick days cannot be deducted from annual leave. There are no restrictions on the number of days' sick leave that an employee can take. Sick pay is typically at two-thirds of the employee's daily rate, paid by the social security fund from the 6th day.

Maternity/parental leave & pay

Women are entitled to 30 days of paid maternity leave in the private sector. Men are currently only entitled to 2 days of paternity leave in the private sector. Maternity leave is not required to be paid to the employee by the employer. It is supported by social security.

Other leave/time off work

Employees may also be entitled to paid or unpaid leave for other reasons such as birth of a child, compulsory pre-military training and service in the armed forces, bereavement and marriage.

DISCRIMINATION & HARASSMENT

Article 5bis of the Labor Code prohibits discrimination between men and women in the application of the Code. In 2017, Tunisia also passed a law countering violence against women that includes economic discrimination in the form of violence against women. Tunisia is also a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women as well as its optional protocol.

Tunisia has laws that forbid employment discrimination on the basis of disability, provided that the disabled person is qualified for the job and provided that the job does not require specific physical abilities. There are also quotas for hiring disabled persons in the public sector and in large companies. Tunisia is also a party to the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Most recently, Tunisia adopted a law countering all forms of racial discrimination.

WHISTLEBLOWING

Tunisia adopted the Organic Law No. 2017-10 of March 7, 2017, which sets forth the terms and procedures for reporting corruption and mechanisms for protecting whistleblowers.

BENEFITS & PENSIONS

Pension regimes in Tunisia are almost exclusively administered through the state pension system, the National Social Security Administration (CNSS) in the private sector and the National Pension and Social Insurance Fund in the public sector. The pension system is a pay-as-you-go system and, in general, the retirement age is 60 and 62. The state retirement scheme provides a pension to the employee and a survivor's pension to the employee's spouse upon the employee's death.

DATA PRIVACY

Under Tunisian law, all people have the right to the protection of personal data related to their private life and this applies to both automated and non-automated treatment of data. Personal data is defined as information that directly or indirectly permits the identification of a physical person, except for data linked to public life or defined as such under the law. In general, any organization planning to process personal data must make a declaration of the data to be used to the National Authority for the Protection of Personal Data,. In addition, express written consent from the data subject is required in most cases, except for the consent of employees in the context of the processing of their personal data necessary for the performance of the employment contract.

Any transfer of personal data from Tunisia to another country requires the authorization of the National Authority for the Protection of Personal Data (INPDP).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The Labor Code states that the labor contract remains in place between the worker and the employer if the legal status of the employer changes. In other cases, the transfer of an employee from one company to another would require an agreement between all three parties.

EMPLOYEE REPRESENTATION

All companies with at least 20 permanent personnel are required to have a staff representation organization.

TERMINATION

Grounds

Employers cannot terminate the employment of an employee in the absence of serious fault on the part of the employee and an employer intending to dismiss a worker must indicate the cause of the dismissal in a letter addressed to the employee. Dismissing without a real and serious cause justifying it or without respect for legal, regulatory or convention procedures is considered abusive termination of employment.

The contract can also be terminated by mutual consent of the parties, or for economic reasons or by resignation of the employee.

Employees subject to termination laws

Any employee with a labor contract is subject to termination laws.

Restricted or prohibited terminations

Dismissal without the existence of a real and serious cause justifying it or without compliance with legal, regulatory, or conventional procedures is considered abusive (e.g., dismissals without serious cause of employee representatives, employees who are incapacitated, pregnant women or employees on parental leave).

Third-party approval for termination/termination documents

Cases in which a third party must be consulted in relation to the termination of employment are when an employer seeks to terminate a member of the Consultative Commission or a unionized employee, or make an economic dismissal. The Consultative Commission is the staff representative body, made up equally of representatives of management and elected workers. An employer who intends to dismiss a union member or a personnel representative must apply for the opinion of the labor inspectorate. An employer who intends to make a dismissal for economic reasons must obtain the approval of the competent authority (see also “Mass Layoff Rules”).

For an indefinite term contract, the employer must provide written notification of termination.

Mass layoff rules

An employer intending to lay off an employee for economic or technical reasons as part of a mass layoff is required to notify the Labor Inspectorate of the reasons, and justifications, for the layoff. The Labor Inspectorate

must then investigate and submit a dossier within 15 days to the Regional Commission of Control of Layoffs or to the Central Commission of Control of Layoffs, both of which contain representatives from the employer's union and the employee's union and are presided over by an official from the Labor Inspectorate. The Commission must then give its opinion within 15 days and can reject the employer's plan or propose alternative courses of action such as employee retraining.

Notice

For indefinite/fixed term contracts, employees are entitled to a notice period. Its duration depends on what is provided by the relevant CBA. Each sector is subject to its relevant CBA and, in the absence of a specific agreement, the framework CBA applies.

Statutory right to pay in lieu of notice or garden leave

An employer who does not wish to observe the period of notice may pay the employee compensation for non-compliance with the period of notice. Garden leave as a concept does not exist in Tunisia. However, there is a provision in Tunisian labor law under which laid off employees do not have to work for the last half month of their employment so that they have time to search for a job.

Severance

After the expiration of the trial period, severance is due to all employees if they were terminated without serious fault. The severance payment is calculated according to what is provided in the relevant CBA.

POST-TERMINATION RESTRAINTS

The following restrictions are allowed:

Non-competition; non-dealing; non-solicitation of clients; non-solicitation of employees; non-employment of employees; protection of confidential information during / post-employment.

The law does not regulate the duration of restraints except for non-competition clauses in certain sectors (electricity and electronics) which is limited to 2 years and within a radius of 100 km from the head office etc. In practice, it is generally applied for a period of 2 years. However, it is important that these restrictions are reasonable and justified.

Non-competes

Permissible.

Customer non-solicits

Permissible.

Employee non-solicits

Permissible.

WAIVERS

The legal framework surrounding settlement agreements and waivers of rights in Tunisia is not well-developed. Nevertheless, Tunisian law considers the employee to be the weaker party to the employment contract and imposes a certain social public order to be respected by employers. The Labor Code specifies that any agreement under which an employee purports to renounce their rights to leave is not valid even if compensated in return.

In addition, the Code of Obligations and Contracts states further that any renunciation of a right must be strictly construed and are confined to the scope that was plainly intended by the individual. Ambiguous acts cannot be taken as an indication of the renunciation of a right.

Finally, any agreement that is contrary to the law concerning reparation of harms resulting from work accidents and work-related illnesses is void. This includes any renunciation of rights on the part of beneficiaries.

REMEDIES

Discrimination

Any person who commits an act or makes a statement containing racial discrimination with the intention of contempt or offending dignity shall be punished by imprisonment for a period of 1 month to 1 year and a fine of TND 500 to TND 1,000, or by one of these two penalties.

The penalty shall be doubled if the perpetrator has de jure or de facto authority over the victim or if they have abused the powers of their office.

If the perpetrator is a legal person, the penalty is a fine of between TND 5,000 to TND 15,000.

The prosecution of the legal person shall not prevent the penalties provided for in this law from being imposed on its representatives, managers, joint partners or agents whose own liability is established.

Unfair dismissal

Employees terminated for an abusive reason can sue for damages in the Labor Court (Conseil de Prud'hommes). In addition to the notice period, the end of service severance and any other outstanding allowances, employees can claim damages which vary from 1 month's salary to 2 month's salary for every month the employee has worked at the company up to the equivalent of three years' salary. Employees who were terminated for a serious reason, but where the termination did not follow proper procedure, can receive damages also, between 1 and 4 months' salary. Damages in a fixed-term contract are fixed to a salary amount equal to the remaining duration of the contract.

Failure to inform & consult

The Consultative Commission does not have co-determination rights as the employer can choose not to take its advice. A failure to inform and consult the Commission in appropriate circumstances would deem a dismissal to be abusive for non-compliance with legal and contractual procedures.

CRIMINAL SANCTIONS

Most employment offenses in Tunisia lead only to fines at the low rate of TND 24 - 60. However, some specific offenses can result in imprisonment including:

- Intentional interference with the free selection of members of the Consultative Commission or with the selection of workers' delegates
 - Repeat offenses regarding the formation of unions
 - Foreign workers working illegally who continue to work after being ordered to stop
 - Offenses concerning dangerous or unhealthy work environments
 - Interference with those who inspect establishments for compliance with health and safety provisions.
 - Illegal strikes or lockouts
- Failure to comply with requisition measures
 - Stealing company equipment

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