



International
Labour
Organization

The Effective Employers' Organization

A series of "hands-on" guides for building and managing effective employers' organizations



Services by Employers' Organizations

A global overview of services
in the field of labour law

Understanding challenges and opportunities



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Foreword

Delivering quality services to members is one of the key value-added of the employer and business organizations. By providing services they help members-companies to cut transaction costs, optimize regulatory compliance and overall improve their performance, thus contributing to sustainability and growth of business. From the institutional perspective, it is an essential strategy to retain existing members and attract new ones leading to greater representativeness and influence.

The global economic changes affected the organizations representing and serving business just as much as they affected businesses themselves. Employer and business associations are redefining their service strategies for a number of reasons. With the transformation of markets, the needs of member-companies have significantly changed reflecting the shifts in virtually all aspects of doing business - production processes, workplace relations, management and administration etc. As a result of these transformations, businesses demand new services that will help them respond to market challenges. On the other hand, growing market competition from private service-providers - consultancy firms, other associations and even highly-skilled individuals - forces organizations to make strategic choices, rethink old paradigms and innovate. The challenge of servicing a diverse membership - from large MNE's (that are less reliant on services) to SME's and micro-enterprises that place huge value on this offer - is also one of the factors influencing the re-thinking of the service role.

In this context, ILO's Bureau for Employers' Activities is expanding the Effective Employers' Organization toolkit with a new 'Service Series'. The Service Series consists of a cover-guide and a number of thematic guides on industrial relations and human resource services, labour law, which will be supplemented by other guides in the future. The cover-guide provides generic business strategies to design, deliver and monitor any services offered by employer and business organizations, whereas the thematic guides provide up-to-date information on current trends, innovative approaches, best practice and practical advice on specific service areas drawing on the experience of organizations around the world.

The launch of the Effective Employers' Organization: Service Series was made possible with the support of the Norwegian Government in the framework of the ILO/Norway Partnership Agreement 2010-11. The Series is a result of collaboration between the Bureau for Employers' Activities in Geneva and the Programme for Employers' Activities in the International Training Centre in Turin. I would like to thank Mr. Arnout De Koster and Ms. Tugschimeg Sanchir for conceptualizing the series and providing substantive inputs into the drafts, Ms. Anne-Brit Nippierd for coordinating the project, Mr. Christian Hess for conceptualizing and providing substantive inputs into the Labour Law Guide and Ms. Jeanne Schmitt, Mr. Paolo Salvai and Ms. Aude Guimont for doing the research and drafting several versions of the cover-guide and the Industrial Relations and Human Resource Services guide. Appreciation also is extended to Ms. Maria Cronin who did the research and drafted the Labour Law Services guide.

Deborah France-Massin
Director
Bureau for Employers' Activities
Geneva, 2012

Section One

Objective and methodology

Objective

Labour law services are in many employers' organizations (EOs) amongst the most important activities. This stems from the fact that labour regulation is a major component making up the environment for doing business. EOs have an important role in lobbying for adaptations and improvements of labour law, in line with members' changing needs.

Moreover, EOs provide member associations and member enterprises with relevant labour law information and advice.

While labour law services are well-established in EOs in industrialized countries, this is often not the case in EOs in developing/transition countries. EOs in the latter countries have a need for practical information and guidance on how to set up, run and constantly improve such a service. While general guidance on services provided by EOs is available, no such guidance seems to exist specifically for EO labour law services.

The objective of the present Guide is to help fill this gap.

Methodology

The guide is based on 12 case studies to reflect the varying legal systems/environments, as well as the varying labour law services offered by EOs all over the world. It seeks to extract good and innovative practice identified in these case studies and to describe efficient ways to organize and constantly improve labour law services. It also highlights current tendencies in labour law service provision.

The Guide is conceived as a practical tool that can be used by EO managers in charge of delivering the labour law service. It is meant to outline a systematic approach on how to deliver the service effectively and efficiently, in line with members' needs.

Through the guide, you will find some examples of labour law services put in place by employers' organizations. They are identified as follows:

Labour law service in action



The link with the other guides on services

This guide covers labour law services. Another guide “ Services by employers organizations in the field of industrial relations and human resources management” covers, on the basis of the same objective and a similar methodology , the subject of IR and HR services. A third guide in this series “ A strategic approach to service development” looks at common problems of developing and delivering sustainably ,. For both main types types of services. This third guide should hence be read in conjunction with this guide , if the reader wants to have, next to a description of labour law services, also a deeper insight in the “ How to develop and deliver”.

Section Two

The framework for labour law services in the employers' organization

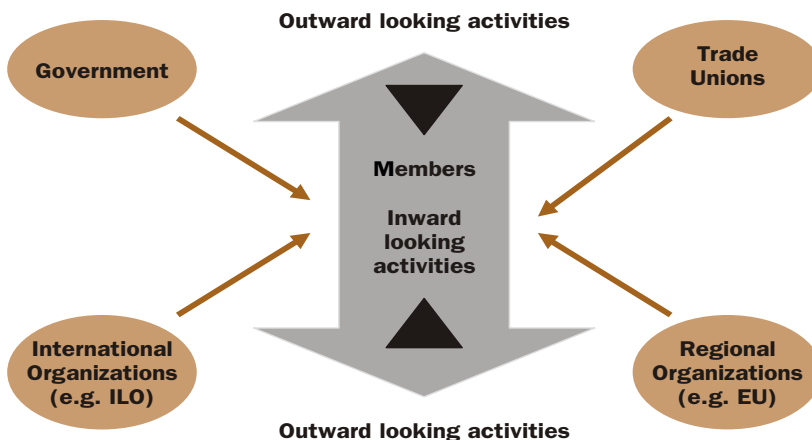
2.1 Introduction

Employers' organizations operate in different jurisdictions and political climates throughout the world. Their task is to provide representation and related services for their membership. Generally that membership comprises; individual enterprises, groups of representative bodies or associations of enterprises, or a combination of the two. While there is great diversity in the environment that enterprise operates within, developments in IT and globalization has strengthened the common threads that challenge business worldwide. Accordingly employers' organizations have a great deal in common notwithstanding their nationality, and it is valuable to share best practice experience.

The activities of any employers' organization can be categorized broadly under two headings:

- **Outward looking activities**, which are targeted towards external parties like government, trade unions, media and international agencies. These activities include advocacy and representation on behalf of business interests which are conducted nationally or internationally (for example at the ILO).
- **Inward looking activities**, which are directed towards the members and can be either individual or collective (for example, at regional or sectoral level). This activity is usually a service which can include information, advice and direct representation at appropriate third party interventions.

Figure 1. Employers' organizations' activities



The overriding challenge for an employers' organization is to work on behalf of members to create the best possible environment to support the creation and development of sustainable business. Labour law is an important factor in the business environment. The

member enterprise must comply with what can often be complex regulation and business decisions (like whether to expand or diversify) may be influenced by this regulation. The employers' organization has an important role to play in influencing regulation, for example by advocating for the simplification of labour law so that it can be easily understood and implemented and supports business development and competitiveness. The employers' organization can also assist members with the challenge of labour law compliance by helping them understand their obligations under law and to avoid disputes or legal challenges by applying best practice in the workplace.,.

While most employers' organizations believe that labour law services are right at the core of their activity - their *raison d'être* - the structure through which the service is delivered is quite diverse. For example, while the labour law department is a distinct unit in the German employers' organization, BDA, the situation is different for the Sri Lankan employers' organization, the EFC, where the labour law service is part of the labour and industrial relations services. In some organizations the labour law service is conducted with other legal services. One such example is in the Colombian employers' organization, ANDI, where the legal department integrates labour law, tax law and trade law services.

Labour law services may be the primary function of the employers' organization and in some cases it represents the bulk of the organizations' activities. This is, for example, the case for the employers' organization in the French metalworking industry, UIMM. In others, it is one activity among many, such as in the Mexican employers' confederation, COPARMEX.

There is an inter-relationship between the various activities of the employers' organization. The common link is that they are all intended to serve the members. While recognizing the inter-relationships and the potential synergies that can arise amongst all services of employers' organizations, this Guide focuses specifically on labour law services and the case examples in the Appendix set out, in some detail, the context and approach of twelve different employers' organizations to these specific services.

This Guide and the examples outlined in the following chapters are relevant to employers' organizations whose members are either individual enterprises, such as the EFC in Sri Lanka, or representative bodies or associations of enterprises, such as the BDA in Germany, or a combination of both, such as the Federation of Uganda Employers (FUE).

2.2 Why should an employers' organization consider the development of labour law services?

The provision of labour law services is closely linked to the mandate, role and influence of the employers' organization. In many instances the establishment of the employers' organization had its origins in a desire by enterprise to influence the emergence of labour law regulation and to become informed on all issues relating to compliance. The issue of compliance is crucially important for the member enterprise. The risks are high for the company that gets it wrong or makes an error. Penalties include the possibility of state sanctions, costly litigation, damage to reputation and negative trade union activity within the enterprise. Accordingly, it is not surprising to note that many organizations find that their members rate the labour law service as being the most valuable or important and the most frequently used service.

Competitive pressures worldwide mean that enterprise must bring every item of expenditure (including membership subscriptions) under scrutiny. Accordingly the employers' organization must strive to be relevant and provide obvious value in return for the subscription paid by the enterprise. So the development of relevant and useful labour law services for members can be a key to both attracting new members and retaining the existing base.

With this backdrop, the strategic rationale used by many employers' organizations for the provision of labour law services can be summarized as follows:

- Many members expect such service to be provided
- It enhances the value of membership
- It increases the visibility of the employers' organization within the enterprise
- It helps the employers' organization build a strong reputation for excellence
- There is a clear synergy between the core competency of the employers' organization in the field of labour matters and the provision of labour law services
- Service provision may also create an opportunity for the employers' organization to raise additional income through new revenue streams and hence reduce reliance on membership subscriptions

There are many examples where employers' organizations have successfully developed labour law services. General trends show that these tend to be in the form of:

- A one-stop-shop for enterprise to get timely information on any particular labour law, advice on how to apply it and in some cases representation if things go wrong
- Bringing together available information from various sources like the statute itself, position papers from the lobbying process and case law from precedent cases
- Translating it all into accessible, timely and relevant guidelines that will help managers to implement the regulation and to insure that their enterprise is compliant
- Supplementing the guidelines with specific scenario advice based on the experience of enterprise. In doing so, helping the member to utilize any flexibility in the law or established good practice that is helpful to their operational needs
- Anticipating the typical queries and answering them proactively

Figure 2. A practical example of synergy in labour law activities and how this can translate into value added service for members

- A piece of labour legislation goes through a government process for enactment or amendment.
- The employers' organization makes representation to government on behalf of business, as the law is drafted, to try to ensure that business imperatives are protected.
- Once the law has been adopted, the labour law experts in the employers' organization analyze it in detail.
- Because they have been lobbying government throughout the process of drafting and enactment of this legislation, they have a lot of knowledge about the detail and how it is expected to apply.
- Based on the information that the employers' organization has gathered through consulting with their members while this legislation was in draft stage, professional staff can anticipate and answer frequently asked questions.
- From discussions with key bodies like labour courts or tribunals, the employers' organization will have some ideas about how jurisprudence is likely to develop.
- From this base of knowledge the employers' organization is able to very quickly issue a guideline on this new piece of legislation directed at members, highlighting the issues of most importance for them.
- In time there will be case law from labour courts or employment tribunals and the employers' organization will track these developments analyzing how precedent is developing and amending their advice to members accordingly.
- This process informs the ongoing policy advocacy work of the employers' organization as they lobby government for further improvements in the legislation to achieve an appropriate balance between the individual workers' need for protection and business imperatives.

2.3 Competitors

At all times it is important for the employers' organization to acknowledge existing or emerging competitors in the field of labour law service. Typically employers' organizations find that their main competitors in the field of labour law services are the major national and international consultancy and law firms and private lawyers. SMEs, for example, may access this type of support from local solicitors or accountants who are acting as advisors to their business in other fields. In some cases, however, employers' organizations have built alliances with these competitors finding that their activities can be complementary and that a constructive relationship can be mutually beneficial. Examples of this approach can be found in the German employers' organization, BDA.

There may also be a competitor business organization operating in the same jurisdiction. This might be, for example, a chamber of commerce, a regional or sectoral employers' organization.

Other competitors providing labour law services can be a governments' ministry of labour, national training agencies, or national funding or development bodies. The free availability of labour law information through the internet from these sources has created greater competitive challenges for labour law services in employers' organizations. In some

countries the area of labour law advice is so lucrative that specific HRM consultancy firms have been established. For example in the UK and Ireland there is a private sector consultancy firm providing labour law services for a monthly fee and offering an indemnity against dismissal awards.

In all cases, however, the employers' organization continues to have a competitive edge because of the existing relationship with the enterprise as a membership organization. Therefore the dynamic for the provision of this service is unique and tends to be not-for-profit. The labour law service from the employers' organization will either be free of charge or at a highly competitive rate for members making it attractive when compared to the high costs of consultancy or legal intervention generally.

In addition, the consultative position that the employers' organization has in society means that they have unique access to key decision makers in government and any relevant labour law institution. This gives important insights on how regulation is being developed and also timely information about what is planned and the possible outcomes. Many also hold key representative positions in national institutions like labour courts or tribunals, again giving them both an inside track and strong influence.

Section Three

Labour law service structures in employers' organizations

In the initial stages of developing a labour law service, or from time to time if conducting a strategic review of existing services, it is useful to consider the following checklist of items:

- Should the service be structured within the existing employers' organization or as a stand-alone independent unit?
- What are the staffing requirements and considerations?
- What qualifications will staff need and what training and development will be necessary?
- How should tasks be distributed?
- What are the budgetary considerations?
- What should the service use as sources for information?

It is clear from the experience of employers' organizations currently providing a labour law service that there is a range of options available, each meriting consideration. This chapter will look at each of these in turn.

3.1 Should the service be structured within the existing employers' organization or as a stand alone independent unit?

The most common approach is to create the labour law service within the employers' organization. This can be done in various ways. For example, in the EFC, labour law services are organized flexibly being the central activity of the organization. In Germany, the BDA has a labour law department and, in Ireland, IBEC's labour law services are fully integrated into industrial relations services. As an alternative to any of these internal options, the service can be established as a stand-alone independent organization. The Legal Services of Business New Zealand (profiled below) is an example of how this approach can work in practice.



Labour law services in action 1: An example from Business New Zealand of an external labour law service - EMA Legal

EMA Legal is an external labour law service provided as a joint venture between two of the main regional employers' organizations in New Zealand (EMAN and EMAC). All come under the umbrella of Business New Zealand Inc (Business NZ).

During the 1990s employment law in New Zealand became increasingly complex moving towards a contractual rights-based employment system. Trade union membership dropped off considerably at this time also. With the emphasis on contractual entitlements and interpretation members' need for labour law services increased.

To meet this need an agreement was concluded in 2003 between the two main regional employers' organizations (EMAN and EMAC) to pool resources and align their legal service offering which would be established externally. A managing solicitor was engaged and she set up EMA Legal.

EMA Legal works closely with employee relations advisors (within both regional organizations) on day-to-day advisory matters and collective bargaining resolution. EMA Legal provides labour law services directly to the members of both organizations. Synergy is achieved by sharing the same back office as the regional organizations e.g. membership, accounts etc. The lawyers now employed by EMA Legal are paid a salary and bonus incentive and they do not retain any fees which go directly to the regional organizations that fund EMA Legal.

Advantages

The main advantage to external organization is that it facilitates pooling of resources among a number of parent employers' organizations. This opportunity may arise where there are a number of employer organizations within a jurisdiction and it can be a cost effective approach avoiding duplication of service provision by the parent organizations. An external organization can also provide a highly focused professional service as its sole objective is the provision of labour law services.

Disadvantages

A possible disadvantage of this approach could be members identifying the external organization as a separate entity and there being some brand confusion between the organizations. In addition if the organization is not involved in the lobbying process its professional staff will not have regular contact with important decision makers, such as the Ministry of Labour, Parliament etc. This is a key competitive advantage for the conventionally organized employers' organization.

Considerations

An important consideration if working in cooperation with other employers' organizations on such an important structural initiative is the maintenance of a good and transparent relationship between the parent organizations. There must be very clear agreement on the individual organizations specific rights and responsibilities particularly relating to any financial commitments and legal liabilities.

3.2 What are the staffing requirements and considerations?

When establishing or developing a labour law service there are a number of staffing options (or combination of options) to consider, depending on the priorities and financial imperatives of the employers' organization.

Before any new activity is introduced, serious consideration must be given to the capacity of the organization to deliver the service to members in a timely way. It will be necessary to estimate the likely demand from members for the service and consider what type of staffing structure will be required to meet this demand.

The following options can be considered as individual solutions or may be combined to create a structure that is appropriate for requirements and maximizes the potential of the budget available.

(i) Engaging external expertise

An external consultant could be engaged by the employers' organization to provide labour law services to members.

Advantages

As the consultant engaged will be an expert in the field this is an option that will allow for the quick establishment of the service. If the consultant is a known business professional he/she will bring his/her good reputation and perhaps also a particular expertise or experience of relevance. This option also gives the employers' organization a lot of flexibility as the professional retained is not an employee of the organization: The contract of engagement could be established for a trial period and on a part-time basis. The consultant may be based in the employers' organization or may be located elsewhere as required.



Labour law services in action 2: Using an external consultant to provide service to far-flung members - Employers' Federation of Ceylon (EFC)

The structure of business in Sri Lanka presents specific challenges to the Employers Federation of Ceylon. While the majority of members are located in or near Colombo, the capital city, there are 22 regional plantation companies engaged in the manufacturing of tea and rubber. These plantation estates are highly significant with 250,000 employees but are located some distance from Colombo. To assist the EFC in providing services to these important members they have engaged regional representatives who are not employees of the EFC but only represent them in the regions. The regional representatives are paid a monthly retainer by EFC to provide their advisory service locally to members.

Disadvantages

A possible disadvantage of this approach is that the employers' organization will have less control than they would have if employing someone under a contract of employment. The external consultant may have other business commitments and clients. Also with this approach the experts engaged are less likely to transfer knowledge and learning within the organization and therefore if they leave/terminate their contract, they take the knowledge with them and the employers' organization may find itself having to develop the service over again.

Considerations

The contract that is entered with the consultant must be clear and unambiguous. As this will not be an employment contract, consideration must be given to issues like time commitment, obligation to pass on expertise to other staff within the employers' organization and future competition terms.

(ii) Recruiting an experienced professional

This option entails recruiting an established consultant or business professional in the employers' organization with relevant experience to take up the role of establishing and/or running the labour law service, as an employee. This option was chosen by Business New Zealand when they recruited an experienced professional to set up and manage their external labour law service.

Advantages

The recruited professionals bring their expertise into the organization and can get things moving quickly. Using their experience they can develop the structure and establish the standards for the service. Crucially they can be required as a priority to create a resource base that will be a legacy if they leave the employers' organization.

Disadvantages

As the professional is engaged as an employee of the employers' organization this option involves greater commitment and as such it could be considered to be a bigger step for the employers' organization than the option of engaging someone as an independent contractor.

Considerations

Finding the right person to fill this role is crucial. The remuneration package should be competitive to attract and retain an individual with appropriate skills. Any employment contract involves commitment by the employer and in the usual way prior consideration should be given to the job description to ensure that priorities are clearly set.

If recruiting a professional to establish a new service, steps should be taken to ensure expectations are fulfilled and to avoid any possible misunderstanding. This can be done by clearly outlining key objectives and agreeing reasonable timelines from the outset.

(iii) Graduate recruitment

This option involves taking on a bright graduate with a relevant background degree or qualification and providing them with the support and training to develop their skill and experience base. Such a graduate could be employed for a fixed period (say six or nine months) as a trainee.



Labour law services in action 3: Graduate Training at the Irish Business and Employers Confederation (IBEC)

For more than 25 years IBEC has operated an annual graduate training programme. Under this programme a number (between three and six) graduates are recruited on a nine month fixed term contract to work within the industrial relations and labour law service and to gain experience in labour law, industrial relations practice and managing membership relationships.

Over the course of the nine months the graduate learns by attending meetings, tribunals and labour courts with the experienced employee relations executives and labour law experts. As time progresses, the trainee can do preliminary drafting of third party submissions. They also assist with other employee relations queries but this is always under direct supervision from the experienced executive. Over the course of the training programme the graduate spends time with the legal team, with the employee relations professionals and with research and information. They also gain an insight into the broader activities of IBEC. The programme also includes a four week placement in the HR department of a member company and four weeks with one of IBEC's regional offices.

The graduates are eligible to apply for any vacancies that arise within IBEC and very often, depending on the organizational needs at the time, they are appointed to permanent positions within IBEC. Those who are not will most frequently gain employment within a member firm of IBEC working in the areas of Human Resources/employee relations or labour law.

Advantages

This is a low cost option which gives the employers' organization access to the brightest and best emerging talent. There is also an opportunity to become very familiar with the graduates before choosing an individual for a permanent position, which helps ensure the best fit between the candidate and the organization.

Disadvantages

The individual trainee needs significant investment by way of time and training to give them the opportunity to develop their skills. There is also a risk that once they have completed training the graduate becomes highly marketable and may be head-hunted by a leading private sector member.

Considerations

The option of recruiting a graduate may work best as a strategy to augment labour law services. In this way the employers' organization already has a resource established and the graduate joins the team. He or she can learn from the existing experts while also making a contribution by working under supervision.

If considering graduate recruitment it is worthwhile developing a relationship with the national universities. There is an opportunity for the employers' organization to become a highly regarded training ground for labour law professionals and this gives the organization access to the most sought after graduates.

While losing a graduate after training may not be desirable, there is a possibility of a positive by-product as a network of ambassadors for the employers' organization can be created as ex-graduate trainees pursue their career in industry.

3.3 What qualifications will staff need and what training and development will be necessary?

A review of current practice shows some diversity in the qualifications of professional staff depending on the employers' organization. While generally qualification to degree level is a minimum requirement, the discipline can vary depending on the working agenda of the labour law service.

Legal qualification is most common and in organizations like BDA in Germany and GICAM in Cameroon, professional staff are lawyers specializing in labour law. Also staff at assistant level in the Federation of Swaziland Employers and Chambers of Commerce (FSE&CC) have a diploma in labour law.

IBEC in Ireland recruits staff from other disciplines, mainly business degrees. They provide certified training (from their training service) for all professional staff once employed. IBEC is an example where the labour law service is fully integrated into the industrial relations service and staff are required to have labour law expertise as well as industrial relations skills.

A broader approach can be found in the Tokyo employers' association which is an employers' group coming under the umbrella of Japan Business Federation (Nippon Keidanren). They have established a Management-Labour Consultation Centre to handle various questions from member companies on corporate management, human resources and labour issues. The Centre is staffed by specialists ranging from lawyers, management consultants and tax accountants to clinical psychologists and advisors specializing in employment of the disabled. These specialists offer advice to members by telephone or through face to face consultations.

Developments in information technology mean that most professional staff in employers' organizations have access to a computer and new graduates usually have good word processing skills. In view of this development and also because of financial imperatives many employers' organizations have reduced the number of support staff employed or in some cases expanded the role of the support person into junior professional roles while professional staff are increasingly expected to do more of their own administration and typing. Where support staff remain, examples from the BDA in Germany and IBEC in Ireland show that within the labour law service they tend to carry out traditional support functions and have secretarial qualifications.

Once in employment, labour law specialists will need ongoing training and development to keep their qualifications up to date. Many organizations like the BDA and IBEC provide training and general skills updating opportunities for labour law staff internally. For example, skills up-dating might be in areas such as speech writing or presentation skills. Staff also has the opportunity to attend expert conferences which are held for members. Additionally, those with legal qualifications may be part of an external professional body (a law society) which organizes regular education seminars. There are also international organizations, like the Academy of European Law, which organize seminars that are of interest to labour law services and provide a developmental opportunity for staff attending.

3.4 How should tasks be distributed?

There is a subtle difference between the tasks of providing information, advice and direct representation and the skills needed to conduct each. Information services require expertise relating to the detail of the topic, advice requires a level of experience from which to give guidance, and representation requires skills in advocacy and negotiations.

There is considerable overlap between the three areas and professionals may start out as experts in one area and develop their skills in the others. Many employers' organizations distribute labour law tasks along the above lines, in some cases professional staff specialize in particular areas of labour law and in others professional staff are required to be experts in all labour laws and adept at providing all three types of service. For all service provision, strong interpersonal skills particularly listening and the ability to maintain good customer relations are essential.

As labour law services grow, specialists in a particularly complex topic may be engaged to boost the skills of the team and to handle particularly challenging cases for members (examples could be occupational health and safety, social security or emerging equality regulation).

3.5 What are the budgetary considerations?

As with other employer organization activities the major budgetary outlay is staffing costs. Usually expenditure on personnel will represent 80% of the overall budget. The other large expense items include contribution to overhead (building, lighting, heating etc), travel and subsistence, computer and mobile communication costs. For many labour law services, access to information (for example, subscriptions to relevant publications or for access to important websites) is a further budgetary commitment to be considered.

EMA Legal in New Zealand estimates access to information to be the second biggest cost item on their budget covering subscriptions to technical legal resources, mainly on line, but also some hard copy publications. The main providers their legal experts access are Brookers (part of the Thomson Group) and Lexis Nexis. In the CPC in Chile, a major budgetary commitment is to an external company for the provision of information on legislative developments on a weekly basis.

For any labour law service there is a strategic decision to be made about how it is to be funded:

- Is the labour law service to members to be funded by the core subscription to the employers' organization as part of their membership fee (example: IBEC in Ireland)?
- Is the labour law service to be funded separately by a specific contribution from either affiliate or parent organizations or from an additional payment from members for any service that they use (example: EMA Legal in New Zealand)?
- Is the labour law service to operate a hybrid approach whereby members get some service as part of their membership fee (typically information and advice) but pay for the most time consuming and direct services, such as representation (example: EFC in Sri Lanka).

3.6 What should the service use as sources for information?

There are a range of information sources typically used by employers' organizations to build up their labour law research and information database. Increasingly information sources are electronically based (e.g. internet based) which is making it easier for the employers' organization to source information while at the same time widening the scope of information that is easily available. The main sources of information include:

- Ministry of labour – publications to summarize or explain labour law Bills and Acts, periodicals with labour law information, website and so on.
- Other ministries and governmental institutions.
- Political parties – for formal and informal information on their position in relation to labour law proposals.
- Universities – particularly law faculties but also business faculties where there may be a legal unit for publication of articles or essays, research projects, doctoral thesis on issues of specific relevance to labour law.
- Labour law periodicals – electronic base or web based.
- Labour courts, tribunals and other law courts dealing with labour law and contractual cases and precedent – generally information on case findings highlighting the development of jurisprudence.
- Information from national and international labour law seminars and workshops (for example, the ILO's annual International Labour Conference (ILC) in Geneva).
- Relevant umbrella bodies like Business Europe, the Confederation of Asian and Pacific Employers (CAPE), the Adriatic Regional Employers Centers (AREC) or the International Organisation of Employers (IOE) in Geneva.
- Informal sources – generally picked up by professional staff through their interaction with various civil servants, Government institutions, journalists and the media and so on.
- Others - can include members who are an important source of information for the employers' organization. This can be a particularly valuable source for information on how a piece of labour law is implemented in practice and the challenges that arise.

Section Four

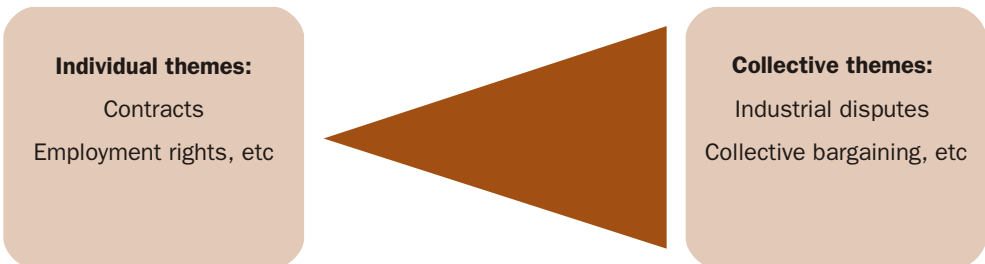
Themes and issues covered by employers' organizations' labour law services

A starting point for the development of labour law services is to consider the themes that will be covered. It may be useful to group the major labour law themes under two separate headings:

- **Regulation concerning the individual worker** – this includes the employment contract, the workers' entitlements regarding hours of work, annual leave, working conditions, health and safety and the respective duties and rights of the employer and worker.
- **Collective regulation** – this covers the rights of trade unions and employers' organizations, including issues such as procedures and immunities for industrial disputes and dispute resolution mechanisms.

There are a number of major labour regulation themes which will dominate the agenda of the labour law service. The lists below (3.1 – 3.3) outline the most common of these. When developing the service initially, it is helpful to identify members' priorities and then (depending on resources available) to focus on delivering a service in the most important areas. Once expertise is developed in core areas, consideration can be given to expanding the service into some broader labour law areas. At all times, however, it is important to regularly check with members to assess their needs and priorities. It is also important to keep in mind that at any time, the process of tracking and influencing a complex piece of emerging labour regulation can place an enormous demand on the resources of the employers' organization.

Figure 3: Themes for labour law services



SECTION 4

4.1 Individual employment law and compliance

Many employers' organizations currently providing labour law services find that their members repeatedly rate it as the most valuable and frequently accessed service. Within this area, legal compliance to individual regulation is often the priority. For example, a 2008 review of member interaction by IBEC found that member queries were dominated by individual labour law issues. A total of 50% of all contact to the organization from members, large and small, related to queries about employment contracts, discipline, the termination of employment, and labour laws relating to the individuals' rights and entitlements.

The extent of support needed by the member will often relate to their size with larger enterprises having access to some levels of expertise within their company and SME's often being entirely dependent on the employers' organization to provide them with direction and guidance.

The following are the most important labour law themes covering the individual worker:

(i) Employment/contractual issues

The employment contract is a complex and usually highly regulated area of labour law. As there is great diversity in the way that work can be structured, member companies often need assistance in how to apply the regulation in a way that will meet their needs for flexibility. The regulatory framework may or may not be helpful in this regard. Typical themes include:

■ Permanent, part-time and fixed-term contracts

Employers will frequently look to their employers' organization for guidance in drafting employment contracts to ensure compliance with legislation, to follow best practice in setting terms and conditions of employment and maximize available flexibilities. Conflict usually arises between the employer and employee when the basis of the employment contract is not clearly understood and there are different expectations (for example in a case where an employer only requires the employee for part time hours but the employee had an expectation of working more).

■ Atypical contracts including flexible work, term time working, e-working

Atypical contracts are a useful way to build flexibility into the workplace which can be helpful when demand is fluctuating and the company's requirement changing. They can, however, be complex legally and the labour law service is well positioned to provide members with expert advice on establishing the correct type of contract so that it can be executed appropriately. Enterprises will usually look to their labour law service for advice and guidance when disputes arise regarding interpretation of any term of the contract.

■ The question of status – is the worker an employee or a contractor?

This question can be highly contentious and it is important for the relationship to be clearly outlined and understood by both the individual and the enterprise from the outset. Labour law services usually have experience and expertise in relation to both international and domestic legislation and precedent on this issue. They therefore provide a useful resource for the member enterprise to help them avoid any legal pitfalls.

■ The issue of casual employment and the informal economy

Labour law services can guide enterprise to avoid the pitfalls of the informal economy.

■ **Clauses restraining activity on leaving employment**

Employers will often look to their employers' organization for guidance when establishing contracts of employment for key staff members who have access to clients and proprietary information. It is normally possible to restrain activity should such a staff member leave the enterprise, however, this has to be clearly established from the outset and the legal requirements for enforcement are different in each jurisdiction.

(ii) Discipline and employment termination

Under the heading of discipline and dismissals the effective management of performance is an ongoing issue within many organizations as they try to improve competitiveness and raise performance standards and productivity. Employers' organizations can utilize their expertise to provide specific guidance to enterprises to assist with all of the procedural and legal issues that arise when individual performance issues are at stake. This is particularly relevant when disciplinary procedures are being invoked by the company or termination of employment is being contemplated.

Typical themes include:

- Discipline in the workplace, equity and procedures
- Termination of employment if performance issues are not resolved
- Promotion and equal treatment considerations
- Redundancy
- Retirement

Typically termination of employment and all related issues represent the most contentious type of workplace problems with potential to cause conflict. It is also an area that is often highly regulated so there is potential for legal proceedings to be taken against the enterprise when things go wrong. Labour law services will often assist members if it becomes necessary to discipline an employee, prior to termination being considered. As the process of discipline is aimed to assist the employee to make the necessary changes to meet the required standards and continue in employment, the labour law service is well positioned to guide the member enterprise on the issue of fair procedure. Once termination becomes necessary a priority for the enterprise will be compliance with the law and avoiding unnecessary conflict. The labour law service usually has a depth of experience and expertise in these areas which is highly valued by the member.

(iii) Occupational health and safety

Most labour law services include occupational health and safety. In some cases this falls directly within the labour law area, in others it is an independent unit within the broader industrial relations service. In yet others, occupational health and safety activities are part of the social security service. Occupational health and safety is an area where some employers' organizations have developed training programmes and consultancy services aimed at assisting members to comply with legal obligations.

In African employers' organizations, such as GICAM in Cameroon and FUE in Uganda, the issue of HIV/AIDS and tackling illnesses like malaria and tuberculosis in the workplace also feature prominently on the labour law agenda.

(iv) Remuneration and payment for different types of leave

There may be regulation around the application of minimum pay and benefits. On an individual basis this would typically include themes like:

- Minimum wage
- Equal pay
- Absence and sick leave
- Leave
- Payment for holidays, Public holidays, sick leave, overtime
- Working time and breaks

Information on pay, benefits and terms and conditions of employment can be useful to employers and can also be difficult to access from a reliable source. With a strong membership base the employers' organization can be a valuable source of this information which they can collect through surveys. The information will be most relevant if it is structured to reflect sectoral or regional practice or organized to reflect information about specific job roles. While this would not typically be a service provided by the labour law service, it represents a synergy as it is a useful internal resource for those working in the labour law area preparing position papers or lobbying positions on any particular regulation. It is also information that may be used to substantiate a case when defending a member at a labour court or employment tribunal.

(v) Other areas of individual employment legislation

Some other important themes for labour law services addressed at the individual worker level are:

- Equal treatment
- Recruitment procedures
- Data protection
- Record keeping
- Work permits

In each of these areas the overriding priority for the member enterprise will be legal compliance.

(vi) Social security

Some employers' organizations provide services for members clarifying obligations and dealing with practical queries that arise relating to social security. ANDI in Colombia, for example, has found that member interest in this area has increased in recent years because the law is technically complex and there is a lot of constitutional court activity to be tracked and interpreted. The most regular queries that arise relate to:

- Legal procedures for registering employees
- Pensions issues

The BDA in Germany has a social protection department which represents members' interests in - and advises members on - all questions relating to social security law including health insurance and pension issues.

In African countries like Uganda, Cameroon and Swaziland, social security regulation is changing and the employers' organizations are actively involved in representing members' interests to influence this change. In Swaziland, for example, there is no overarching social security law and the area is regulated by the Swaziland National Provident Fund Order (to which employers in the private sector are obliged to contribute) and a Workmen's Compensation Act which requires all employers to take up insurance to cover occupational accidents. In recent times there have been moves to realign the area under the new Ministry of Labour and Social Security. The employers' organization, FSE&CC, has been active in representing members concerns about duplication and lobbying Government for appropriate consultation.

The experience in Uganda relates to the proposed liberalization of the social security sector which is funded by employer and worker contributions. The FUE are in the forefront of the debate advocating for liberalization on behalf of their members. The agenda is similar for GICAM in Cameroon where social security is being reformed. GICAM regularly publish their opinion through for instance, press briefings aimed at influencing the development of social security regulation ensuring that the business community is consulted and the outcome is supportive of business.

4.2 Collective labour law issues

The main collective labour law themes involve interaction with the trade unions. Their extent and importance to the labour law service will depend on the national regulatory framework for industrial relations, some being highly regulated in the collective arena while others are not so.

The themes that are most important in setting the regulatory framework are:

- Laws on trade unions and employers' organizations
- Collective bargaining law and practice

(i) Change management and conflict resolution

An organizations' capability to manage change and conflict can be essential to its survival. The employers' organization is well positioned to offer advisory services (legal and otherwise) for companies facing such challenges. This can include guidance and representation of members through the use of dispute resolution mechanisms, labour courts or tribunals as relevant in the particular country.

In addition, many employers' organizations can gather information on examples of success and failure in managing change or conflict resolution and can, based on this information, give advice on how best to explain the rationale for change to maximize employee and trade union buy-in and commitment. Managers need to know and understand the industrial relations implications of all change initiatives and how to deal with them.

In the area of conflict management and resolution, the labour law service may work directly with the member enterprise or work together with other labour law experts (for example those in the industrial relations area) to provide the service.

Typical themes in this area can include:

- Resolving collective industrial relations conflict
- Legal aspects of disputes, immunities, injunctions
- Managing changes in work practice and organization
- Handling collective grievance in the workplace
- Rationalization and redundancy
- Transferring a business

(ii) Employee engagement and communication

Good communications within a company can improve employee engagement which can enhance the working environment making it more open to change. Employee engagement has been found to be critical in delivering organizational performance particularly during challenging times. There are a number of legal dimensions to communication and in some jurisdictions (for example, EU countries) there is regulation specifying minimum standards for collective communications in times of change.

In addition to specific guidance on the terms of any applicable law, the labour law service can provide information on good practice nationally and internationally in addition to providing direct service and advice or actual representation for interactions with trade unions.

4.3 International themes

International labour regulation can have a direct impact on national labour law. The employers' organization will be relied on to track developments on behalf of members, and in so doing to identify the impact that they will have for national regulation and to advise accordingly.

Examples of international regulation include ILO Conventions which, for instance, ANDI in Colombia find have gained significant importance in recent times. A driving force behind the Colombian experience has been the negotiation of a Free Trade Agreement (FTA) with the United States and the European Union. Arising from this ANDI expect that their labour law area will gain in importance and will need to be further strengthened as more ILO Conventions are implemented.

4.4 Other service themes and possible synergies

The service agenda for the employers' organization can be very broad. There are often synergies in how they are delivered to members and in many cases professional staff are required to have expertise in a number of important areas.

COPARMEX in Mexico is an example of an employers' organization providing a broad range of legal business services for members, in addition to labour law services. These include commercial legal advice on issues such as:

- Copyrights
- Brands
- Commercial names
- Patents
- Industrial design
- Company secrets
- Licenses
- Leasing contracts

Section Five

Activities and working methods for labour law services

The employers' organization delivers its range of labour law services in different ways depending on the activity and the requirements of the members. As described in Section 1, the service activity may be both externally focused (aimed at relevant external parties i.e. government) and internally focused (directed to members or groups of members). This section outlines the main channels for the delivery of labour law services and the factors that influence each.

5.1 Working methods for outward looking activities in labour law services

(i) Representation vis-à-vis government and trade unions

The most common outward looking activity for an employers' organization involves dialogue with government and/or with trade unions on new or emerging labour regulation. It can include appearing before parliamentary select committees which may be a consultative step in considering or developing regulation. It may also include (sometimes working with other units of the employers' organizations like the industrial relations unit) representing employers in tripartite negotiations involving trade unions and government. In addition, as an alternative to passing new labour laws, some national systems encourage the development of agreed regulation through dialogue and negotiations involving trade unions, employers' organizations and, on occasion, government.

For example, through the system of social partnership in Ireland, a code of practice has been agreed between the Government, trade unions and employers to regulate terms and conditions of employment for home workers (i.e. people working domestically in housekeeping and child care).

Outward looking activities can include both formal and informal interactions with key stakeholders. Informal interactions are highly valuable and maximize the unique position of the employers' organization in society. They can, however, represent a challenge for the employers' organization as they may be 'off the record' and the employers' organization must devise a clear communications strategy to keep members informed of developments while maintaining the balance of confidentiality with useful informal sources.

(ii) Representation at international level

Labour law also has an international dimension covering issues like international labour conventions. Within this there can also be a regional dimension as is the case with the EU where much labour law enacted domestically by member States has its origins at EU level and employers are represented by Business Europe. Other regional structures include the Confederation of Asian and Pacific Employers (CAPE) and the Adriatic Regional Employers' Centre (AREC). The employers' organization participates in international developments and

keeps informed by actively participating in international organizations like the ILO and the relevant representative organizations such as the IOE and others.

International labour law can be complex and extremely difficult for an individual business to track and understand without the assistance and expertise of their representative organization.

(iii) Representation on labour law bodies

Governments often ask the established employers' organization to nominate or suggest a business representative to fill a role in tripartite state institutions. In the labour law area these bodies may include labour courts, dispute resolution institutions, tribunals and judicial courts. Sometimes the employers' organization will nominate a prominent member to fill the position or they may appoint someone from their permanent executive.

Representation in important labour law bodies is an influential activity for the employers' organization. It brings the employers' perspective to the application and interpretation of existing labour law and business influence and input to legal adjudications like dismissals cases or grievance disputes.

Some interesting examples of representation in tripartite councils can be found in Japan as follows:

- **The Labour Policy Council** is a tripartite body comprising public administrators, trade unions and employers represented by the Japan business federation, Nippon Keidanren. The Council advises the Minister of Health, Labour and Welfare on issues relating to the crafting and revision of labour regulation in Japan.
- **The Management Lawyers Council** (which Nippon Keidanren cooperates with) is a nationwide organization of attorneys at law (500 in all) founded in 1969 to bring about closer cooperation among members and contribute to the development of good relations between management and labour. Among this Council's activities are study meetings to explore practical labour law and legal cases, researching and reporting labour related law and court cases, and dealing with labour law queries generally from employers' organizations and corporate managers.

(iv) Position papers and campaigns

As part of their lobbying activity, particularly relating to emerging labour law or regulation, many labour law departments prepare position papers highlighting the impact of the proposed regulation on business. These position papers are a useful resource for the organization and it is a good investment of time and resources to ensure that they are of good quality. In time the employers' organization can build a reputation for preparing quality position papers based on sound analysis and judgment. For example, if legislation is being considered on termination of employment, the labour law service will analyze the proposals and work through the practical implications for member companies. Sometimes the particular expertise that the labour law service will bring to the process will include pointing out inconsistencies or possible contradictions in the proposed new law. A position paper or campaign may be initiated to highlight these matters to key stakeholders and the public. The position paper can be highly influential and may be used as a resource by government officials and others if considered a balanced and informed assessment of the implications of a particular proposal.

The purpose of the position paper is to influence decision makers. To maximize the value of executive time spent on developing it competently, the employers' organization can then use

the completed document as a starting point to be edited and targeted at a new audience i.e. members. This may be by way of a publication, like a guide for employers to help implement a new law, a newsletter to keep members informed of how things are progressing, or an update during the whole process. It may also be used as a resource to inform the drafting of a speech or press release which can be part of the campaign to highlight the employers' arguments.

In certain circumstances, employers' organizations may decide to conduct a full campaign on an emerging labour law issue of particular importance. This will usually involve an integrated approach worked out between the labour law unit and the organizations' public relations specialist, which includes publishing a position paper, keynote speeches, press releases, media interviews and participation in public debates.

The labour law service of IBEC in Ireland regularly prepares position papers on emerging legislations. These are technical and comment on the detail of each proposed clause that is of concern, giving reasons and arguments to substantiate the employers' position and suggesting solutions if appropriate. A recent example of a position paper is the 'IBEC Submission to the Joint Committee on Enterprise Trade and Employment on the Employment Law Compliance Bill 2009. It can be accessed on www.ibec.ie in the employment law section.

(v) Press/media

The media is an important vehicle for the employers' organization to use in communicating any business message to the broader community. Strategic use of the media can also make an important contribution to influencing people in key decision making positions.

By effectively engaging with the media, the employers' organization can also promote their profile and market themselves to potential members. The type of media profile adopted by the employers' organization is an important strategic decision as it will drive public relations activity. In some organizations the Director General or President is considered their public face and the key media spokesperson. In others, media activity is integrated into the broader work program of the labour law service, guided by a public relations and press department. An example of this broader approach is found in BDA in Germany. The labour law department of BDA prepares press releases and press conferences on every important legal policy development as well as on important court decisions. This preparation takes place closely together with the public relations and press department.

BDA labour law service also analyses the election programmes of political parties in the run up to a general election. They publish an overview of the relevant positions adopted by each party, followed by the BDA position and an overall BDA comment.

(vi) Member participation in service delivery

Members are a tremendous resource to a labour law service in terms of the experience and expertise which they can share. The structure of labour law services of the CPC in Chile maximizes member participation and input. Through an ad hoc work commission they access legal expertise from members who serve on their Commission of Labour, Training and Employment. The members of this Commission are legal specialists and labour or human resource experts from member firms. They contribute to the work of the Commission on a pro bono basis and in addition they also participate in internal work and advisory groups in CPC's branches. The work of the Commission and advisory groups is to analyze the potential impact of new labour regulation and advise the Presidency and Executive Committee of CPC accordingly.

(vii) Conferences

Participation in seminars and conferences both nationally and internationally is an important activity for the employers' organization. Interaction nationally with universities, state bodies and education centres can be an important platform for the employers' organization to communicate their message to key stakeholders and decision makers.

International conferences (for example the ILO's annual International Labour Conference or various others run by organizations like IOE, CAPE or AREC) may be also used by the employers' organization to facilitate information sharing and networking, to promote debate on important policy matters and to learn from the experience of others.

5.2 Working methods for inward looking activities in labour law services

Inward looking services are delivered by the employers' organization directly to the member enterprise or group of members as appropriate. For many employers' organizations these labour law services provided directly to the member are considered by members to be the core benefit of membership. It is often the crucial element that brings the enterprise into membership of the organization in the first place.

Direct services generally involve one to one communication between the member and the employers' organization. This leads to the development of solid relationships between business people and the permanent executive within the employers' organization, which in turn contributes to member loyalty, aids member retention and helps the member feel a sense of belonging to their business representative organization.

(i) Information and advice

The provision of information and advice to members is the bedrock of a labour law service. When the member is looking for advice on a particular labour matter, most labour law services find that telephone is the most popular mode of communication. This tends to be followed by face-to-face meetings and written communication. The face-to-face meeting is usually held when the member needs a more detailed consultation or direct assistance with a complex difficulty. The detail of the particular query will determine which mode of communication is most appropriate.

Information provision can be either reacting to a member query (for example, as a response to a specific question about the terms of a piece of labour legislation), or it may be a proactive initiative from the employers' organization (for example, in the case of a new piece of legislation the organization may proactively issue guidelines to members about what they need to do to comply).

In the EFC in Sri Lanka, 75% of all member queries are handled by telephone, email or fax. The BDA in Germany find that email has taken over as the key medium for distributing information and advice to members and as a result they are currently working to develop all services electronically. The growing importance of electronic communication is also reported by many other employers' organizations examples include FSE&CC of Swaziland and UIMM in France.



Labour law services in action 4: Information and advice – the approach of the employers’ organization in the French metalworking industry – (UIMM)

The provision of information and advice by telephone is a major component of UIMM activities. As far as members are concerned, advice by telephone has the advantage of speed and solutions that are adapted to each specific situation. In the case of simple or purely technical questions, e-mail now often replaces the telephone.

With complex questions, particularly those requiring advice from several lawyers with different specialities (e.g. social security, collective agreements and vocational training), the procedure followed often involves special meetings, telephone appointments, or consultations in writing. Consultation in writing is still the means most frequently used to clarify a point of principle.

Information and advice is also provided on a daily basis through circulars or e-mails on the UIMM website.

(ii) Direct representation of the individual member

Direct representation is the third pillar of labour law services targeted to the individual member or groups of members, such as a branch or regional group. Generally this will involve representing the enterprise at negotiations with trade unions, for instance for collective bargaining or if a dispute or strike should arise. It also involves representation at third party institutions such as labour courts or tribunals and mediation sessions. Representation services are offered by many employers’ organizations. In certain cases, such as in Ireland, it is part of IBEC’s core service and covered by the membership subscription. In others, such as EFC in Sri Lanka and the FSE&CC in Swaziland, it is non-core so a fee is charged for the representation at a competitive rate.

(iii) Publications

Most employers’ organizations issue a regular newsletter or bulletin to members. In addition to this there are a wide variety of publications which outline policy or give information, explanation and guidance. These may be issued on a commercial basis or as part of the membership service. With developments in technology, electronic publishing and circulation by email or through the web is beginning to take over from paper publishing and circulation. Although electronic publication has the advantage of low cost, the extent of its use will of course depend on the level of internet and computer access among the membership.

Some examples of successful and innovative labour law publications from employers’ organizations include the following:

■ Nippon Keidanren – Japan

The Bulletin of Judicial Precedent in Labour and Economy – this is a bulletin published three times each month which summarizes court decisions on labour issues and directives from Japan’s Central Labour Relations Commission. It includes commentary and explanatory text and is targeted as an information resource for HR and industrial relations managers.

A range of handy explanatory booklets to guide managers through the important aspects of recent legislative developments:

- Q & A: A Handy Guide to the Amended Labour Standards Act (July 2009)
- A Handy Guide to the Amended Part-Time Workers Act (April 2008)
- A Handy Guide to the Amended Equal Opportunity and Treatment Act (Dec 2006)

■ IBEC – Ireland

IBEC's Human Resources Management Guide

This Guide provides employers with a comprehensive resource on employment law with a section on each key piece of legislation. It comes in one easy-to-use volume with web back-up and annual updates. Drawing on IBEC's unique expertise, the Guide details the range of legal requirements which govern the employment relationship. These have then been integrated with good HR practice and translated into practical guidelines and sample.

■ Employment law at a glance wall chart

Occupational health and safety at a glance wall chart

These wall charts are in poster format and they highlight the main provisions of key pieces of legislation in an eye catching lay out that many managers find useful. The posters are frequently framed or mounted and displayed on a wall in the HR department. They are updated as required when laws change.

■ EMA Legal – New Zealand

EMA Legal writes a monthly column on labour law issues for three business magazines.

- One is produced by EMA Legal's two parent organizations
- The second is a regional newspapers monthly business magazine
- The third is a well known employment law and practice periodical for employment advisor professionals in New Zealand

(iv) Internet

The Internet offers a tremendous opportunity for labour law services. Most employers' organizations have a website which explains who they are and what they do. However, there is a growing trend to provide service through the web by making the website a comprehensive repository of information. In addition to posting newsletters and publications on their website, many organizations have a labour law section on their site where they post their explanatory notes, deal with frequently asked questions or provide links to other useful information. This information is valuable so it is usually protected by password and only accessible to members.

Developments in technology allow the employers organization to monitor traffic on their website to see what is considered most useful. They can also set up discussion groups and have pod casts or video links to recordings of important events or speeches. Effective use of a website by an employers' organization can be a cost effective way to provide timely service to members.



Labour law services in action 5: Case example of IBEC's service provision through Internet

IBEC has recently launched a new range of employment law compliance tools for members aimed at helping employers to ensure they are fully compliant with Irish employment legislation and to reduce the exposure of employers to claims by employees. The tools are available on line through the website www.ibec.ie and consist of an online audit service and an online contract of employment.

The audit tool consists of a series of checklists to ensure that the member's employment contracts and policies include all the details required by law. Every question in each of the checklists relates to an issue that is required by employment law to be addressed in an employers' contract of employment or in a formal written policy. The member simply clicks on the audit link, completes the check list and saves the answers as they proceed.

The saved answers result in a scorecard which explains the level of compliance. The online contract enables members to adapt a flexible draft to their needs. It includes all the necessary clauses to ensure compliance with the Terms of Employment (Information) Acts 1994 – 2001 and also outlines a number of IBEC recommended clauses which are not strictly required by legislation but represent best practice.

Both the online audit and the contract are available to members free of charge. Linked to this service there is an option, having completed the audit and using the audited scorecards, to have with a full legal review by one of IBEC's in-house solicitors. A fee is charged for this part of the service which includes a review of all policies and a sample of the company's contracts and records. The solicitor advises the company on the best format and structure for personnel records to ensure compliance with labour or industry regulation.



Labour law services in action 6: BDA developing on-line labour law services in Germany

BDA are currently developing their website to provide a broad range of online service options particularly in the area of labour law. The most important web-based labour law service is called 'arivd-web'. It is an extensive database available exclusively to members via their membership password. In this database members can research all labour law documents (circulars, position papers, statements etc.) circulated by BDA.

Further online services include an 'early warning system' where members can fill in interesting decisions of the labour court along with their own comments or observations. This is particularly for decisions that mark a new precedent or suggest a new direction for the court and it can provide a useful 'early-warning' for other members.

In addition to this members can also evaluate the quality of BDA labour law circulars on line, through their certified quality management system ISO 9001. This gives BDA very useful feedback from members.

While most of these services are in the early stages of development and roll out, they are a strategic priority for BDA and the web is central to future service development plans.

(v) Training/briefings/workshops

Seminars and conferences are frequently organized by labour law service departments to facilitate training or to update and brief members on topics of interest to the business community, such as new or updated labour legislation.

Some labour law services provide members with briefings or seminars on important legal developments as part of their core service. For instance in New Zealand, EMA Legal provides members with four free briefing seminars a year in a regional road show format. In each seminar there is a session called “What’s new – legal update” in which the local EMA Legal lawyer delivers an update prepared centrally on relevant new or pending employment legislation and important case law developments.

Training is an important activity for many employers’ organizations and is commonly conducted on a commercial basis. The experience and expertise of the professional staff working in the labour law area can usefully be applied to delivering training for managers in member companies. Many employers’ organizations find that they have built a strong reputation for delivering high quality and practical training particularly in the area of labour law which is the most popular for members. They also find this a useful income stream.

The EFC in Sri Lanka, for example, developed their training service in the late 1980s to meet member demand for proactive services and advice to help with the avoidance of dispute situations.

Today, training is a significant component of the direct services offered to EFC members. The EFC has gained a very good reputation as one of the leading training organizations on labour law and industrial relations in Sri Lanka. There are two reasons for this. Firstly, the professional staff, who deliver the labour law training, have in depth technical knowledge and practical experience on employment issues. Secondly, the EFC also has a good reputation for its labour law and industrial relations literature. EFC has recently worked in collaboration with the ILO to introduce a certified labour law course.

(vi) Networking

Through networking opportunities that can be organized by the labour law service, managers can share experiences and learn from each other. This is often considered a key benefit of membership by managers who welcome the opportunity to meet with other similar professionals. The employers’ organization can facilitate networking in a safe environment that respects the member’s sensitivities and need for confidentiality. This encourages honest exchange about labour law challenges and creates the opportunity to learn from peer experience.

The following case example from the EFC in Sri Lanka shows how an activity can be a labour law service at the same time as a networking opportunity for managers to meet and share experience with other managers.



Labour law services in action 7: EFC Employment Law Clinics in Sri Lanka

Every other month, the EFC conducts a 'Clinic' for the management staff of member companies where employment and business-related issues are discussed. It is an open forum which is usually conducted by the Director General and the Deputy Director General along with other senior members of the professional staff.

The Clinics give EFC an opportunity to ascertain common issues of concern to members. Most of the questions that are raised at the Clinics are in relation to labour law issues. The Clinics also provide a useful insight into the labour law training needs of members. In addition, these Clinics are a useful training ground for the young professional staff of the EFC as they are made aware of practical issues of relevance to HR executives, production and other management staff.

Section Six



Further references

The main reference material used for this publication comes from 12 case studies prepared by the employers' organizations themselves. These case studies are available in summary format in the previous Section of the Guide (Section Six). Their website details are here listed.

Websites for employers' organizations' case studies

-  The Employers' Organization of Cameroon – GICAM
<http://www.legicam.org/>
-  The Employers' Federation of Ceylon – EFC
www.employers.lk
-  The Production and Trade Confederation of Chile – CP
www.cpc.cl
-  The Employers' Organization of Colombia – ANDI
www.andi.com.co
-  The Employers' Organization in the French Metalworking Industry- UIMM www.uimm.fr/
-  The Confederation of German Employers' Associations – BDA
www.arbeitgeber.de
-  The Irish Business and Employers' Confederation – IBEC
www.ibec.ie
-  Nippon Keidanren – the Japan Business Federation
www.keidanren.or.jp
-  The Mexican Employers' Organization – COPARMEX
www.coparmex.org.mx
-  EMA Legal – the labour law service of Business New Zealand
www.emalegal.com.au/
-  The Federation of Swaziland Employers and Chamber of Commerce – FSE&CC
www.business-swaziland.com/
-  Federation of Uganda Employers – FUE
www.employers.co.ug

Publications

-  ACTEMP, The Effective Employer Organisation - Guide Four, Revenue Building, ILO, 2005
-  International Organization of Employers, *The Service Role of Employers' Organizations*, IOE publications, Geneva, 2002

ILO resources of interest to labour law services



Labour Legislation Guidelines:
For guidance on the drafting or revision of labour laws see:
www.ilo.org/public/english/dialogue/ifpdial/llg/main.htm



Employment Protection Legislation Database (EPLex):
Information on employment protection legislation in 50 ILO member States
www.ilo.org/dyn/terminate/termmain.home



National Labour Law Profiles:
Information on labour laws for 30 countries (13 European countries)
www.ilo.org/public/english/dialogue/ifpdial/info/national/index.htm



Employer toolkit on ILO standards (under preparation):
A joint publication by ACT/EMP and IOE
www.ilo.org/public/english/dialogue/actemp/whatwedo/projects/standards.htm

Other relevant information available on line



Information on better regulation from a piece of work conducted by the EU Commission dealing with a measurement of EU law:
http://ec.europa.eu/governance/better_regulation/index_en.htm



Information from OECD on regulatory reform:
http://www.oecd.org/topic/0,3699,en_2649_37421_1_1_1_1_37421,00.html



Information from the World Bank ranking the regulatory environments.
This is a yearly ranking of countries by their regulatory environment on nine topics of importance for doing business
www.doingbusiness.org/

Section Seven

Case studies

The following part presents 12 case studies respectively from the following employers' organizations:

1. Inter-Enterprise Group of Cameroon – GICAM
2. The Employers' Federation of Ceylon – EFC
3. The Production and Trade Confederation of Chile – CPC
4. The National Business Association of Colombia – ANDI
5. Union of Metal Industries and Trades – UIMM
6. The Confederation of German Employers' Associations – BDA
7. The Irish Business and Employers' Confederation – IBEC
8. The Japan Business Federation – Nippon Keidanren
9. The Mexican Employers' Confederation – COPARMEX
10. EMA Legal – The labour law service of Business New Zealand
11. The Federation of Swaziland Employers and Chamber of Commerce – FSE&CC
12. The Federation of Uganda Employers – FUE

Case 1

Inter-Enterprise Group of Cameroon – GICAM

1. Introduction

The Inter-Enterprise Group of Cameroon (GICAM) was formed in 1992 out of its preceding organization which had been operating since 1957. It represents businesses of all sizes and from all sectors of the national economy. There are currently 213 members, of which 201 are companies and 12 are professional associations. Unionization of these enterprises is deemed low and further decreasing. At regional and international levels GICAM is a founder member of the Central African Employers' Union (UNIPACE) and a member of the Pan-African Employers' Confederation (PEC) and the IOE. It also participates in the ILO International Labour Conference every year as an employers' representative.

Industrial relations and workers' conditions of employment and pay in Cameroon are governed by a Labour Code introduced in 1992, and its implementing regulations. There are also a number of collective agreements for each of the main sectors, including commerce, insurance, industry, banks and financial institutions, agriculture and related activities. The draft OHBLA Uniform Act on Labour Law which is under discussion will, when adopted, have implications for labour law in Cameroon.

The key areas of labour law in Cameroon presently are:

- Employment contracts which can be either open-ended or fixed-term
- Working time which outlines regulation for hours of work, over time and leave
- Minimum wage
- Collective agreements, which bind the employer in respect of all employees regardless of whether or not they belong to the unions that signed it.
- Company agreements adapt the implementation of collective agreements to the individual situation of companies; they may be concluded between an employer or group of employers and the most representative trade union(s) within a company or companies.

The major labour law institutions in Cameroon are:

- The **National Employment Advisory Committee**, which studies problems relating to, among others, conditions of employment, vocational guidance and training, social welfare, and also issues opinions and formulates proposals on future labour regulation.
- The **National Occupational Health and Safety Committee**, which examines problems relating to occupational health and safety, makes proposals for future regulation and recommendations for improving health protection for workers.
- The **Shop Stewards** whose essential task it is to monitor the application of labour regulation and collective agreements, and to raise any problems in this regard with the employer and the Labour Inspectorate.

2. Structure of labour law service

Labour law issues are at the heart of GICAM's concerns and activities. Within GICAM, the internal Legal Service and the Social Committee¹ is in charge.

The Legal Service is part of the Executive Secretariat and does not have a separate budget. This means that it does not have its own funding for carrying out its work, which is seen as part of the work of the Executive Secretariat. The Legal Service closely cooperates with other GICAM Services, e.g. those on communication and marketing. The Legal Service has two managers, both of them trained lawyers, who examine requests from members on labour law issues and, if necessary, involve the Social Committee in finding answers to those requests.

The Social Committee, with support from the Legal Service, discusses, analyses, makes proposals, studies problems, and drafts GICAM's official positions. The Social Committee is neither a management body nor an executive structure, but a discussion group comprising of members. All GICAM members are entitled to take part in the work of the Committee and if they wish to do so must appoint a representative, usually their HR manager. The Social Committee is also a forum for members to share experiences and particularly for HR managers to talk about the problems they face in dealing with employment and labour law issues. The Committee is an analysis centre for companies' employment policies. More specifically it:

- Helps to inform members about regulation, including labour law
- Helps to resolve employment-related problems within businesses
- Ensures that measures requiring the involvement of government, employers and workers are genuinely tripartite
- Promotes bipartism with the trade unions
- Helps to prepare and defend GICAM's positions in bodies dealing with employment issues, particularly the National Employment Advisory Committee and the National Occupational Health and Safety Committee.

Information of relevance for the provision of the labour law service is obtained mainly from: the Ministry of Labour, members, trade unions and the Internet (ILO, IOE). GICAM has also subscribed to a quarterly law review which includes labour law issues.

While GICAM labour law services do not face real competition, companies do exist that provide commercial labour law services to clients. Larger companies also usually have their own department responsible for employment and labour law issues.

3. Themes and issues covered by labour law services

■ Collective labour law

GICAM, through its Legal Service and Social Committee, is currently conducting work on issues of collective labour law. In October 2007, GICAM signed a Bipartite Joint Policy Declaration with all of Cameroon's trade union federations on collective labour law issues. The aim of the Declaration is to formalize the existing relationship between GICAM and the trade unions and to coordinate the respective positions on issues of common interest such as collective agreements, employment contracts, job classification, social security, management of the National Social Welfare Fund (CNPS) and training. Much work is still needed, however, to build a consensus on what the common interests are.

¹ There are six committees within GICAM (economy and business; social; legal and fiscal; communication and media; environment; and external relations), as well as a working group on competitiveness and governance.

■ Social Security

The current social security reforms in Cameroon have been and still are a particular focus of attention for GICAM's Legal Service and Social Committee.

4. Activities and working methods for labour law services

GICAM basically provides labour law services in the form of lobbying, information/advice and representation. For the time being, it does not issue labour law publications and there are no labour law training services. In essence, services are provided on the basis of member requests, but there is also an annual action plan (adopted by the Social Committee) that guides the provision of labour law services.

■ Lobbying

As an employers' organization GICAM conducts lobbying activities on behalf of members. As part of this, the Legal Service and the Social Committee prepare draft GICAM positions on issues to do with labour law. Currently GICAM is examining the social security reforms, an issue on which it has regularly stated its opinion and recently in a press briefing given by its President. GICAM's positions on these reforms are as follows: (i) management of the National Social Welfare Fund should be improved by having its Director-General appointed by the social partners, (ii) the maximum basis for calculating social contributions should be increased, particularly for the old-age pension, (iii) the costs for businesses that might result from extending social security should not be increased unilaterally.

In connection with its lobbying activities, GICAM maintains close relations with the trade unions with the aim of agreeing coordinated joint positions on issues affecting both employers and workers. The Bipartite agreement is an example of this work.

One important activity that should be highlighted is the recent negotiations for determining the new minimum guaranteed inter-professional wage (SMIG). On the basis of studies and simulations conducted by the Legal Service, GICAM has successfully argued that the SMIG should not be increased beyond a certain threshold in order to take account of the particular situation of the agricultural sector which, while paying the lowest wages, offers workers other advantages. These negotiations were conducted on a tripartite basis and the outcome is considered a success.

■ Information

Whereas lobbying is conducted every time GICAM feels concerned about issues affecting businesses and which fall within its remit, informing members is an ongoing task, keeping members well-informed is an ongoing task. GICAM provides information/advice to members on various matters, including labour law, by email, circulars, newsletters, website, telephone and meetings. This info/advice is mainly addressed to general managers and HR managers. If any member – large or small – asks for GICAM's help on a specific problem, GICAM will respond to it individually.

■ Representation

GICAM is a member of the board of directors of the National Social Welfare Fund (CNPS), on which it has four representatives. The board is considering proposals on updating legislation on occupational accidents and illnesses and on financial coverage by the CNPS for workers who suffer accidents at work. GICAM is also a member of tripartite cooperation structures such as the National Employment Advisory Committee and the National Occupational Health and Safety Committee. The Legal Service and the Social Committee prepare GICAM's positions in connection with the work of these two national committees.

GICAM represents Cameroon's employers in dealings with the public authorities, trade unions, local chambers of commerce, foreign employers' organizations, international economic, financial and social organizations, civil society and, more generally, wherever representation is needed. GICAM also represents individual members at their request.

5. Outlook for the future

With the draft OHBLA Uniform Act on Labour Law under discussion, a number of labour law issues have a particular priority for the immediate future, these include:

- Unfair dismissal and the compensation subsequently paid to the worker concerned (GICAM: a ceiling for compensation should be retained)
- Individual labour disputes and prior conciliation (GICAM: compulsory conciliation before the Labour Inspector should be retained)
- Issues relating to certain powers (interim relief; legal remedies) of the labour court judges (GICAM: this will create extra risks for firms)
- arbitration as a method of settling collective labour disputes (GICAM: support, as this provides more option for alternative ways of settling disputes).

Social security, which is currently being reformed, is another subject that is increasing in importance and the question of pay is one concern likely to become increasingly important in future, given that collective agreements usually require wages to be reviewed periodically.

GICAM presently does not consider necessary changes in its provision of labour law services in future. It sees its major strengths in the ability to react timely and adequately to upcoming new labour law issues.

Case 2

The Employers' Federation of Ceylon – EFC

1. Introduction

The EFC is the only employers' organization in Sri Lanka. It has a membership of 528 covering more than 450,000 employees. The membership comprises manufacturing, banking, import/export, sales/marketing and plantations. The 22 regional plantation companies are a unique part of the EFC membership and have around 250,000 employees. The EFC membership includes unionized and non-unionized companies. Currently more than 50 per cent of the membership is non-unionized.

In addition, EFC maintains the Affiliated Associations Group of the EFC which serves as a platform for different business organizations to discuss employment related issues and to facilitate an exchange of info and views. Many of the leading chambers of commerce and trade associations in Sri Lanka are members of this Group.

The EFC offers a variety of professional services to members including advice, representation and collective bargaining. Their comprehensive labour law services are intended to help members to avoid difficulties by adopting best practice policies and strategies.

Context and evolution of labour law services in EFC

The legal framework of industrial relations in Sri Lanka can be broadly categorized into five areas:

- Laws relating to industrial dispute settlement and adjudication
- Laws relating to terms and conditions of employment
- Laws relating to collective bargaining and trade union recognition
- Laws relating to termination of employment, both disciplinary and non-disciplinary
- Judicial decisions given by superior courts in relation to employment related matters, which are not specifically governed by statute.

The Sri Lankan labour law system is challenging for business because the emphasis is on law rather than relations and the focus is almost entirely on worker protection. Originally EFC labour law activities focused on defending employers when complaints were made against them. However, as time went by, the EFC developed a comprehensive range of labour law services in terms of advice, representation and publications, as well as making proposals to Government for labour law changes.

There is no other organization of repute which can be identified as a “rival”. However, the law firms in Sri Lanka also provide labour law advice and representation in the course of providing general legal services. Even though some Sri Lankan companies have their own legal departments, which consist of professional attorneys-at-law, they still prefer to retain external counsel and therefore, in the area of labour law, opt to retain the EFC instead of their internal lawyers.

2. Structure of labour law service

Within the EFC structure, the labour law service is part of the overall labour relations services. Out of the 23 members of the professional staff, 20 are attorneys-at-law who regularly provide advisory and/or representation services to members. Around 16

attorneys-at-law regularly go to labour courts. There is no separate department handling labour law services, neither is there a separate budget for labour law services as it is part and parcel of the entire organization.

Especially in view of the 22 regional plantation companies and some other member companies, stationed out of Colombo, EFC has engaged regional representatives who are not employees of the EFC but representatives of the EFC in the regions. Almost all of them are practicing lawyers familiar with the laws relating to employment in Sri Lanka. Members in the outstations contact these representatives for day to day advice, as well as to represent them in a Labour Tribunal or before labour authorities. These regional representatives are paid a monthly retainer for their advisory services.

Income from labour law services has constituted a significant part of EFC's overall earnings in recent years. This concerns in particular legal appearance fees which represent 12 per cent of EFC's total income. The legal appearance fee is a fee that the member pays the EFC for representation before labour authorities, labour courts and arbitrators. The appearance fee charged is much less than the normal market rates because members already pay an annual subscription for membership. The subscription fee covers advisory services, including labour law advice and preparation/drafting of documents for members.

3. Themes, activities and working methods of the labour law service

3.1 Lobbying/advocacy role

EFC is recognized by key stakeholders as the leading organization in Sri Lanka with expertise in the field of labour law and industrial relations, promoting the interests of employers. EFC believes that the current labour law structures have proved to be an obstacle to productivity and a disincentive to employment generation. Against this background, the EFC has for many years made representations in various ways promoting changes in labour laws to suit business needs.

The EFC Director General holds key representative positions on both the National Labour Advisory Council and its Labour Law Reform subcommittee, which gives EFC both access and influence to lobby on the most important labour law developments.

3.2 Advisory services

Twenty of the professional staff at EFC are attorneys-at-law who provide regular advice to members on any employment related matter. This service is provided free of charge to all members. This is an attraction to many corporate members as the alternative would be to consult a practicing lawyer and pay the commercial rate.

Advice is sought by members on issues such as discipline, legal obligations arising from collective agreements, statutes and also in relation to industrial relations practices.

EFC checklist – Giving Advice on Disciplinary issues

1. What are the facts? Are all the relevant facts available? If a preliminary investigation was done, examine statements.
2. Is there further investigation which you would recommend?
3. Are you immediately biased? If so, identify why and explain to client what the reaction of a third party is likely to be.
4. What are the offences which could be identified?
5. Is there clear evidence of the culprit? If not, is the evidence circumstantial?

6. Is it a case which would have wider implications – Does it interfere with an established principle or deal with a general dispute or is it a possible flash point for confrontation with employees in general or a Trade Union – If so, make management aware of possible implications.

3.3. Representation

3.3.1 Representation before the Commissioner of Labour

There are many disputes that arise between employers and workers that are inquired into by the Commissioner of Labour² or one of his officers in the Department of Labour. The EFC, through its professional staff, represents members at these inquiries and also gives them the necessary advice and guidance. The types of inquiry for which services are requested are as follows:

- Complaints made by unions or employees regarding dismissal or other individual grievances
- Complaints made by unions or employees regarding alleged violations of statutory payments such as wages, superannuation benefits, minimum terms granted by Wages Boards, Shop and Office Act
- Inquiries initiated by the Commissioner of Labour or one of his officers after inspection on the grounds of breach of statutory obligations
- Inquiries under the Termination of Employment of Workmen (Special Provisions) Act on applications made by employers, or on complaints investigated under section 6 of the Act
- Conciliation proceedings where demands have been made by unions. These are usually preceded by direct negotiations which have become deadlocked. The request for the decision can be for the employers as well as for the trade union.
- Inquiries regarding an alleged breach of the collective agreement
- When a member company is on strike, a conference would be called on a request by the employers, the union or the initiative of the Commissioner of Labour.

3.3.2 Representation before labour tribunals/arbitrators/industrial courts

Ever since the enactment of the Industrial Disputes Act in Sri Lanka, the need for representation for workers and employers alike became important. Labour Tribunals were set up in 1959 and there was a massive influx of dismissal cases for which members needed representation services. Labour tribunal cases arise mainly as a result of direct applications by Unions or employees, in very few cases also as a consequence of a reference by the Minister of Labour. EFC handles cases for members at all stages, commencing from the advisory and preparatory stages to the preparation of requisite documents to the Labour Tribunal, to the actual conducting of the case on behalf of the member and finally to making written submissions to the Labour Tribunal. Arbitration requires the same type of preparation as appearances before Labour Tribunals.

3.4 Information

Information is transmitted to members through regular circulars containing explanations on changes in labour law, proposals for changes, as well as advice to members on specific matters. Information is also provided through a quarterly newsletter which captures, for example, labour market trends, labour court decisions, collective agreements, disputes, (how they are being handled and how they were settled), activities of the EFC and foreign events which may be of interest to members.

² In Sri Lanka, the Commissioner of Labour has been assigned by law to administer the labour laws of the country. He has wide powers under the various labour statutes, including the Industrial Disputes Act.

3.5 Research and publications

Research results and other information are found in EFC's publications on various labour law and industrial relations subjects. One of the more significant publications in recent times is a Digest of more than 1,000 case decisions in labour law, which is regularly revised and published. Currently a "Guide to retrenchment in Sri Lanka" is being finalized.

Publications also add approximately 2 per cent to EFC earnings. They are available for both members and non-members but members get at a discounted rate.

The EFC publications, apart from constituting guidance to members and being a source of income, are used in EFC's training programmes and add to the positive image of the organization.

3.6 Training

The training function of the EFC is a significant component of the direct services offered to members. During the financial year ending on 31 March 2009, a total of 66 training programmes were conducted by the EFC, 27 of which were on labour law and industrial relations. The 27 programmes trained a total of 803 participants. Ten per cent of the profits earned from training income each year is distributed among the professional staff, who are involved in training as resource persons. On a few occasions, for highly specialized topics, the EFC has outsourced resource persons, both from within and outside the country.

4. Assessment of achievements and outlook for the future

EFC's greatest success has been building its strong reputation in the field of labour law and labour relations issues in Sri Lanka. Much of this success is put down to;

- The quality of the staff
- Quick response to legal queries from members
- Time management
- Ability to communicate (in writing, face to face, in presentations, on the telephone or electronically)

It is significant to note that the EFC always strives to provide members with service in keeping with its vision, which is "to promote social harmony through productive employment." This has been the striking feature of the quality of service the EFC has provided over the years to employers. It has also enabled the EFC to maintain its credibility with the social partners. It is hoped to build on this success in the future.

The EFC is conscious of the country's need to meet the challenges of the global recession and globalization. Looking to the immediate future one major area of concern is the need for a flexible labour regulatory framework, so this will continue to be a priority for EFC. Aligned to this and, as a result of continuous representations and submissions made by the EFC for changes in the labour laws, the Minister of Labour Relations and Manpower has set up a Labour Law Reforms Committee as an initial step to review the current labour legislation. This is considered a major breakthrough and it is hoped that it will help deliver the much needed changes.

The EFC will continue to lobby for a better labour relations regulatory system that is underpinned by supportive laws. It is expected that the labour law service will continue to be important and valued highly by members in the future.

Case 3

The Production and Trade Confederation of Chile – CPC

1. Introduction

The Production and Trade Confederation of Chile (CPC) was founded in 1933 as the umbrella organization for Chilean employers. CPC membership is made up of six affiliate national branch organizations (Branches)³, whose members are individual private companies. CPC's objective is to represent business interests nationally and internationally; to influence Chilean legislation and policy and to support and strengthen the development of ethical enterprise and trade.

3.4 Context and evolution of labour law service

Labour regulation in Chile covers a broad field of laws and administrative acts. A central role in the preparation and enforcement of labour regulation is played by the Ministry of Labour and Social Welfare. In addition, labour rules are also contained in company collective agreements.

The CPC labour law service is focused on influencing labour regulation in Chile to create a favorable atmosphere for business. While CPC has enjoyed some success in its lobbying efforts with the government and the National Congress - examples include the conclusion of the National Tripartite Agreement for employment (see also section 5 below) and the finalization of new unemployment insurance legislation, labour regulation that is complex and difficult to apply for companies continues to exist.

CPC's labour law service does not address individual company queries as this is done by the Branches. The labour law services of CPC and its Branches in this way complement each other and create synergies.

While there are trade organizations that also render labour advisory services to their members and institutes and educational centre's that generate opinion on labour matters, the CPC as the leading voice of enterprise has no direct competition in his role.

2. Structure of labour law service

2.1 Components

CPC's labour law service works mainly through its Commission of Labour, Training and Employment (Labour Commission). This Commission is an advisory body to the Presidency and Executive Committee that facilitates the periodical meeting of prominent branch representatives, specialists in labour relations and labour market to the potential impact of new labour regulations for trade and enterprise. In addition to this Commission, the main structures of the labour law service comprise:

- Ad hoc work commissions or advisory bodies, created upon request of CPC's Chairman and/or Executive Committee. They gather a group of renowned specialists in labour relations and labour market to work on a particular topic of priority.

³ Representing the country's main productive and commercial activities: agriculture; commerce, services and tourism; mining; industry; construction; and bank and finance.

- CPC's legal counsel who is a member of the permanent professional team. He acts as Secretary-General of the Labour Commission and coordinates the work of the ad hoc commissions.
- A legislative follow-up service rendered by an external company which addresses requests and acts upon instructions from the General Management and the CPC's legal counsel.

2.2 Budget and Staff

The CPC is exclusively financed by the contributions of its Branches. The labour law service does not represent any significant cost to the Confederation because the labour experts that participate in the Labour Commission, ad hoc and external work commissions, provide their services on a pro bono basis and, generally, they also participate in internal work and advisory groups in CPC's Branches on this same basis. Accordingly, the service's highest fixed costs are the remunerations of the General Manager and the multi-disciplinary professional team working at CPC (including the legal counsel). One further fixed cost is the weekly legislative information provided by an external company, which informs CPC's legal advisor about the legislative status and priorities being discussed in the National Congress.

The Labour Commission currently has about twenty members, while the number of members in ad hoc work commissions fluctuates between six and ten. Members of the commissions are generally professionals with expertise in labour matters, who advise Branch member companies or are in charge of labour matters in their corresponding trade or business organizations.

Sources of labour law information for CPC include minutes and reports of internal meetings, meetings of the Branches' labour and/or human resources commissions and meetings with governments and/or workers. In addition CPC obtains information from the external legislative service (see above), relevant labour law websites, labour tribunals and the media.

3. Themes and issues covered by labour law services

The main topics for CPC lobbying in individual labour law are, for instance the reduction of dismissals costs and more flexible work contracts, In collective labour law, the respective main topics are strengthening the position of trade unions vis-à-vis organization or action of workers' groups outside trade unions, the extension of the agenda for collective bargaining, and setting limits to the abuse of trade union privileges.

In recent years, Chile has enacted labour laws modifying the way in which labour relations take place. The most important individual laws include the reform of the retirement system, sub-contracting law and the overall labour process. In the area of collective labour law, there is a national plan for employment protection, born from an agreement between the CPC and labour unions, which has set forth temporary measures to counter the effects of the current global crisis. In several of these laws, the CPC participates in tripartite follow-up committees to monitor outcomes and improve regulation to meet the desired objectives.

In addition to this domestic activity, the CPC's labour law service monitors emerging international topics that may be highlighted by organizations like the ILO.

4. Activities and working methods for labour law services

In broad terms CPC's labour law service comprises the following activities:

- Analysing (including technical analysis with position papers etc.) the effects of labour laws on business activities and evaluating the potential impact of draft laws before Congress which are of interest to business

- Carrying out lobbying actions, participating in hearings called by the National Congress to hear industry's opinions and contributions regarding labour law drafts being discussed
- Participating in (bipartite or tripartite) working committees with the Government to examine the impact of prospective labour laws on business or to monitor the enforcement of these laws
- Answering information requests from the ILO and other international bodies
- Participating in national and international forums and seminars
- Representing business in the media
- Publishing the CPC opinion in the organizations' bulletin

5. Assessment of achievements and outlook for the future

The CPC considers the recent conclusion of a National Employment Agreement to be a major success. This Agreement, now expressed through a labour law, temporarily establishes flexible alternatives which enable workers and entrepreneurs to jointly get around the effects of the global economic crisis, through voluntary agreements favoring labour training and retention of workers by the company. The Agreement was agreed upon by the whole Chilean business sector, as it aims at generating alternatives to job losses.

Looking to the future, the CPC expect that, reflecting the challenges of globalization, Chilean labour law will continue to aim to find a better balance between worker protection and the business need for flexibility. It is also likely that there will be a move towards achieving greater consensus between business and labour reflecting shared interest in jobs and economic growth.

CPC will continue improving the efficiency of its labour law services; however, major modifications are not foreseen.

Case 4

The National Business Association of Colombia – ANDI

1. Introduction

The National Business Association of Colombia (ANDI) is a non-profit organization founded in 1944. It is the most important private sector association in Colombia with more than 1,100 members from different sectors of the economy including manufacturing, finance, mining and agriculture.

The Association has its headquarters in Medellin and branch offices in other cities across the country. ANDI represents private sector business interests before national and international institutions, dealing with economic, legal, social, environmental and business issues.

1.1 General context and evolution of labour law services

Labour law services were developed by ANDI to give guidance and meet the information needs of member companies. There is a high level of demand for this service from members who consider ANDI to be the experts in the area.

ANDI considers that labour law in Colombia still reflects past tendencies that inspired most of Latin America's labour codes to protect workers as individuals with little focus on employment or enterprise sustainability. However, the experience of recent positive reforms in Colombian labour legislation has confirmed the importance of having a strong coherent voice representing the views and needs of business. Overall ANDI has achieved good results on behalf of employers and the business position has been acknowledged and taken into consideration by Government when making changes or introducing new labour regulation.

The labour law service is part of ANDI's overall operation and therefore fully integrated with all activities. For example, ANDI's regional offices in different Colombian cities act as a link between the labour law service and members, receiving enquiries from the company locally and feeding it into the service centrally. They also deliver any general information received from the labour law service to all member companies. Also ANDI's Labour Law unit and the Centre of Economic Studies work together to make inter-disciplinary analyses on the impact of labour regulations and prepare documents supporting lobbying actions.

ANDI has no real competition in the labour law area. Their activity complements those of law firms and frequently ANDI works with many of the law firms in relation to their work.

Member companies are the largest users of labour law services. However, the Government also requests ANDI's opinion in labour law matters and often the Courts of Justice invite ANDI to express its opinion in trials where a labour regulations' constitutionality is being discussed. Universities and trade unions also invite ANDI to participate in forums on labour matters.

2. Structure of labour law service

Labour law services are a central part of ANDI's Legal and Social Affairs department. The department is headed by the Vice-Presidency of Legal and Social Affairs, who is responsible

for all social and legal matters. ANDI's legal department integrates labour law, tax law and trade law services.

The personnel delivering the labour law services comprise of the Vice-President of Legal and Social Affairs, the Deputy Labour Lawyer and a Junior Lawyer. In addition, it includes lawyers in charge of lobbying and a legal assistant.

There is a budget for the department of Legal and Social Affairs and resources are distributed among the different areas according to need. Traditionally, the labour law area receives a larger portion of the budget because it is the area of highest demand from member companies. Actual percentages, however, are not predetermined. The largest percentage of the budget is allocated to the department's operating expenses, including:

- Salaries of lawyers and support staff
- National travelling expenses
- Computer and mobile communication equipment
- Subscriptions to legal publications

The main sources for legal information include the Ministry of Labour (for both formal and informal information) and information from the law courts at all levels. ANDI has a number of subscriptions to important legal publications.

3. Themes and issues covered by labour law service

The labour law unit within ANDI is most frequently consulted by member companies for information, advice and guidance on the following topics:

3.1 Individual employment rights

This includes particularly contracts of employment and their application, termination of employment, terms and conditions and atypical forms of contracts.

3.2 Collective labour law

These queries relate mainly to legal aspects of collective bargaining which is mainly of relevance to big enterprises in the cement, textile oil, food and finance sector. While ANDI's lawyers do not directly participate in the negotiation of collective agreements, they provide to member companies backup advice and information regarding:

- Clarification of concerns regarding legal terms in negotiation and steps to be followed for the negotiation to be valid
- Support in the preparation of specific clauses the employer wants to propose in the negotiations
- Legal interpretation of conventional clauses

3.3 Social security

A growing area for queries is social security particularly relating to clarification of practical concerns on the compliance with social security obligations, but also inquiries related to pensions, health insurance and professional risks.

3.4 International labour law and comparative law

International labour standards have become very important in Colombia particularly relating to labour law. Trade unions in Colombia are active in making complaints against the

Government before the ILO Governing Body's Committee on Freedom of Association (CFA). Many of these complaints involve Colombian private sector companies and the findings have an important influence on labour law and regulation. ANDI provides comprehensive support to employers who have complaints against them before the Committee. They also give advice regarding the legal actions presented in Colombia and derived from the recommendations of the CFA.

Recently, Colombian trade unions made a complaint to the ILO Governing Body Committee on Freedom of Association (CFA) regarding the alleged violation by Colombia of Conventions No. 87 and 98. This case involved a major bank in Colombia which was listed at the New York Stock Exchange and was also a founding member of ANDI. ANDI informed the bank about the CFA procedures, guided it in its correspondence with the government and helped find an understanding with the trade union. Finally, the complaint was withdrawn by the trade unions.

Many Colombian companies with operations abroad turn to ANDI for information on other countries' labour legislation. For this, the labour law area makes the necessary contacts with foreign employers' organizations and with the assistance of organizations like the IOE and the ILO give the appropriate advice.

4. Activities and working methods of labour law service

4.1 Lobbying and representation

When labour legislation is being drafted or amended by Parliament, ANDI makes submissions to argue for business interests to be considered in making the reform. The submissions always express the legal, political or economic reasoning behind the business view. ANDI participates in public hearings that are organized by the Government or Senate to discuss the draft regulation.

ANDI also represents its members before international, national and local agencies. The Association communicates member's opinions and proposals at all times representing the interests of the business sector. At all the different levels, ANDI listens, analyses, transmits and looks for solutions for the private sector's needs.

In the area of collective bargaining, ANDI serves as a liaison for member enterprises with the Ministry of Social protection as the latter is responsible for supervising and declaring the conclusion of collective negotiations.

4.2 Information and advice

Member companies frequently contact the labour law area for information and advice. Such inquiries may come the company's HR department or from their advisory lawyer. Generally they are looking to clarify technical information or to get information about how other companies have dealt with a particular issue. These inquiries are usually settled by e-mail or telephone and, in more comprehensive cases, by meeting the companies' lawyers.

The Labour Law area has a comprehensive library and information database with labour law information and a compilation of labour judgments and legal concepts. This is available to members to assist with their queries.

Members also receive a monthly emailed newsletter containing labour law news. This information is highly valued and generally acts as base for subsequent inquiries made by member companies.

Currently ANDI's website design is being revamped and will include easy access to labour law information submitted to member companies.

4.3 Training

A company or group of companies within the same region of the country may request, through ANDI's offices, training in specific labour law topics. Companies choose the topics they are interested in and the ANDI lawyers prepare a training workshop.

5. Outlook for the future

In recent years ANDI's membership base has grown, strengthening the organization's position in society. It is expected that the labour law inquiry service will continue to be the most important service of ANDI with members requiring more assistance in new areas, such as social security.

A very important issue for employers is the recent focus on labour issues in Colombia arising from the negotiations on Free Trade Agreements (FTA) with the United States and the European Union. In this context, the implementation of ILO Conventions has gained relevance and, as a consequence of this, it is expected that ANDI's Labour Law Area will need to be further strengthened.

The largest challenge faced by Colombian employers and ANDI is to highlight to the international community the legislative and social dialogue progress attained in Colombia in recent years and also to promote the achievements of the Tripartite Agreement on the Right of Association signed during the ILO's 95th International Labour Conference (2006) and ILO's Technical Cooperation program in Colombia. The success of ILO's Technical Cooperation Program in Colombia has generated growth in training activities for employers on international labour standards, collective negotiation and social dialogue and this presents an opportunity for ANDI.

The main improvements that ANDI hope to achieve include:

- Continuing training programs for labour law service lawyers, particularly on International Labour Standards and Constitutional Law
- Increasing staff of the labour law service (second Junior Labour Relations lawyer) to better cover labour law service requests
- Making increased use of the website to provide labour law services more efficiently
- Extending training actions in labour law and international labour standards to lawyers employed by member companies.

Case 5

Union of Metal Industries and Trades – UIMM

1. Introduction

A law on freedom of association, passed in France in March 1884, led to the formation of the first trade unions. The first regional employers' federations in the metallurgy sector were set up at the end of the 19th century. From the outset their role has been to negotiate collective labour agreements at regional level. In 1900, these regional employers' federations decided to set up the Union des Industries et Métiers de la Métallurgie (UIMM) with a view to representation at the national level.

There are two types of employer structures in the metallurgy sector in France:

- Structures which attend only to the **industrial relations** ("social") field: These are the regional employers' federations mentioned above, which negotiate the collective agreements for the metalworking industry and specialize in labour law, and
- Structures which attend only to **technical** fields: These are organizations known as "economic" employers' unions, which unite the firms belonging to one of the branches of the metalworking industry, such as mechanical engineering industries, electrical engineering industries, aeronautical industries and iron and steel industries.

Each firm can become affiliated to two structures. Since 1900 the UIMM has been the federation of employers' associations, which brings together the ("social") regional employers' unions and the ("technical") economic employers' unions at national level. A total of 80 per cent of firms in the metalworking industry are affiliated to the 85 UIMM regional employers' federations.

3.4 Context and evolution of labour law services

The regional employers' federations in the metallurgy sector play two essential roles:

- The **private role** of defending the collective interests of the membership (promotion of undertakings, lawsuits, lobbying, etc.)
- The **institutional role** of negotiating and concluding collective agreements

The development of labour law services was a natural move for the employers' regional organizations in the metallurgy sector. The professional staff was lawyers who had specialized in labour law and had drawn up collective agreements and they were obviously well equipped to help firms apply these agreements and to resolve any disputes that might ensue. More generally, the fact that these lawyers had specialized in the field, and were involved in the development, of an employer policy geared to promoting and defending the industry made them effective advisers for firms on all labour law issues.

For labour law services, the employers' organizations of the metalworking industry in France intervene at both regional and national level. The services have developed over time reflecting changes in domestic labour law and regulation. In particular, law reforms relating to collective bargaining in 1950, 1968 and 1982 gradually led to an extension of UIMM's role and mandate in the field of labour law services.

UIMM considers that, whereas it is for laws to lay down the rules governing (general and social) public order, it should be left entirely and exclusively to the social partners to define the other rules governing industrial relations through collective agreement. In view of the

French legislator's tendency to intervene in every field of labour law, UIMM action aims to limit legislative intervention so as to be able to negotiate with the trade union organizations.

All members have free access to the labour law services provided by the regional employers' federation, irrespective of size. Furthermore, where complex issues are concerned, the regional employers' unions in turn have free access to the labour law services provided by the various specialized departments which the UIMM has set up at the national level. Legal services in major enterprises also have direct access to these various specialized services within the UIMM.

Legal practices are often considered to be competitors for labour law services in employers' organizations, but this is not the case in France. The respective roles played by both are essentially complementary and the relations between the two are considered satisfactory. French law grants employers' organizations and trade unions the overriding authority to create collective standards by means of collective agreements. Lawyers cannot replace employers' organizations in this respect. Conversely, whereas the French law allows employers' organizations and trade unions to assist their members before labour tribunals, this is very rare.

The clients of the labour law services are firms in the metalworking industry, that is to say, firms whose main activity is included in the economic activities listed in the collective agreements for that sector, and which are members of the regional employers' federation in the geographical area in which they are established.

2. Structure of the labour law service

Employers' organizations in the metalworking industry do not have a general legal department similar to the legal departments found in other organizations. The labour law services provided in the regional employers' federations in the metalworking industry, and in the UIMM itself, constitute the principal activity of the organization. Hence, there is neither a share of the operating budget allocated specifically to providing labour law services.

There are 750 employees assigned to the labour law departments in the employers' organizations in the metalworking industry. 50 of these are employed by UIMM and the remainder by the regional organizations. This figure comprises the following three categories of staff:

- i. Staff (mainly lawyers) employed in the regional employers' federations in the metalworking sector, who are in charge of drafting collective agreements and providing direct assistance for the membership in all fields of labour law
- ii. Staff employed in the training facilities in the sector, who are in charge of assisting and advising firms directly in their vocational training choices
- iii. Staff employed by UIMM who are in charge of drawing up the national agreements for the metalworking sector and providing specialized assistance for the regional employers' associations and the legal departments of major enterprises in all fields of labour law

Being an affiliate to two national inter-trade employers' organizations, that is the Mouvement des Entreprises de France, MEDEF ('French enterprise movement') and the Confédération Générale des Petites et Moyennes Entreprises, CGPME ('general confederation of small and medium-sized enterprises'), the UIMM receives the documentation published by these two organizations as well as the information they provide orally at technical meetings.

From this and other information sources the UIMM has a large library of documents consisting of about 100 periodicals from employer, trade union and government bodies and from research institutes and other international organizations.

Finally, the UIMM lawyers attend seminars and colloquiums on their respective specialities, which are organized by universities or by public or private bodies specializing in labour law.

3. Themes and issues covered by labour law service

The main themes covered by UIMM labour law service are as follows:

3.4 Individual industrial relations

- Employment contracts, regular, fixed-term and atypical contracts (conclusion, implementation, suspension and termination)
- Hours of work and pay
- Transfers of undertakings
- Managerial control and discipline
- Health and safety
- Labour courts
- Vocational training law

3.5 Collective industrial relations

- Trade union law
- Institutions representing the workforce and trade unions
- Collective-bargaining law and practice
- Conclusion, amendment and termination of collective agreements
- Articulation of the various bargaining levels (inter-trade, sectoral, company, plant, group)
- Collective industrial disputes

3.6 Social security law

- Social insurances (sickness, maternity, disability, old age)
- Prevention of industrial accidents and occupational diseases
- Supplementary pension schemes and supplementary provident funds
- International law
- Application of international standards in domestic law
- Secondment of French employees to other countries
- Employment of foreign workers in France
- Comparative law and labour legislation in other countries
- European Community labour law

4. Activities and working methods for labour law services

4.1 Lobbying

The UIMM is often consulted by the public authorities (as are the trade unions) on bills and legislative proposals and on draft regulations and circulars on labour law at both the national and the community level.

4.2 Information and advice

The information and advice provided for affiliates by telephone, e-mail or special meetings is a major component of UIMM activities involving both the lawyers in the regional employers' federations and those employed in the UIMM. An average of 20-30 telephone consultations is conducted per lawyer per day. Consultation in writing is still the means most frequently used in the case of questions of principle. Information and advice is also provided on a daily basis through circulars or e-mails and on the member's area of UIMM's website.

4.3 Representation before the labour courts

Although French law allows both permanent and non-permanent delegates of employer and trade union organizations to attend or represent their members before labour courts, this opportunity is rarely used by the regional employers' federations in the metalworking industry. The UIMM does not use it at all.

4.4 Publications

The UIMM publishes the following documents on labour law:

- **Bulletin:** A weekly publication intended for the regional employers' unions on current events in the legal and legislative field (laws, regulations, circulars, case law, extensions of collective agreements, etc.).
- **Informations sociales:** Intended for both employers' unions and firms, this publication provides practical and detailed explanations on the content and rules for applying all new labour law arrangements deriving from laws, regulations or collective agreements.
- **Jurisprudence sociale:** Monthly bulletin for both regional employers' unions and firms, which presents and comments on case law in the labour law field from the point of view of policy. Jurisprudence sociale is also circulated to universities and law professionals.
- **Social international and Europe en bref:** Monthly bulletins intended for both regional employers' unions and firms with news on current events in other countries with regard to legislation; collective bargaining and collective agreements; working conditions and problems connected with employment and training, with special focus on the metalworking industries.
- **Other publications:** UIMM also publishes brochures and monographs on complex aspects of labour law requiring in-depth analysis.

4.5 Training in labour law

The UIMM regularly organizes one-day or half-day information or training sessions for the lawyers in the regional employers' associations on new or complex labour law issues. Similar meetings are held for company lawyers. Furthermore, the regional employers' federations frequently organize local one-day or half-day information/training sessions for their affiliates on current labour law issues or complex aspects of labour law, often calling in UIMM lawyers specializing in the subject concerned to conduct the sessions.

UIMM has also established the Institute of Higher Studies in Applied Labour and Social Security law (Institut des Hautes Etudes de Droit Social Appliqué, IHEDSA). The institute's mission is to run labour law training courses, which are designed by the UIMM, and for which fees are charged.

5. Outlook for the future

There are no immediate plans to extend the labour law services provided, however the focus is on improving the overall service in the following areas:

- To speed up and increase the publication of brief legal analyses of new provisions (laws, regulations, case law), as well as the number of publications containing in-depth legal analysis of complex legal instruments.
- To seek one single negotiating partner (as far as possible) for negotiating issues and create a “one-stop shop” for collective bargaining.

In order to achieve these objectives, UIMM restructured in 2009 to create five new directorates:

- International Directorate
- Legal Directorate for work training
- Directorate for labour law
- Directorate for social protection
- Directorate for the environment, working conditions and business law

The following are the main labour law areas in which the UIMM expects to be active in the immediate future:

- The respective roles of legislation and collective agreements in setting labour law standards
- Transnational company agreements and international standards
- Trade union legitimacy and representative capacity
- Flexibility (geographical and occupational mobility; worker adaptation to technological change)
- Labour costs
- Occupational balance of the social security systems
- Population trends (longer working life and pensions; balance of pay-as –you-go pension plans).

Case 6

The Confederation of German Employers' Associations – BDA

1. Introduction

The Confederation of German Employers' Associations (BDA) is the leading employer confederation in Germany. Through 54 sectoral and 14 regional member organizations, more than 1,000 independent employers' associations are affiliated to the BDA. The BDA and its member associations represent altogether around 2 million individual enterprises employing 80 per cent of the German labour force. The BDA is a non-profit organization and has to finance all its activities with membership fees.

The BDA provides labour law services, information and advice, to its member organizations that pass it on to their member-enterprises according to their specific needs in the different branches or sectors. The BDA has found that across their membership the need for labour law services is similar and that because of their lobbying activities and expertise, both nationally and internationally, they are well-positioned to provide it in a timely and comprehensive manner. Individual legal advice, as well as direct representation, is done by the sectoral or regional employers' organization which is a member of the BDA.

Labour law in Germany is heavily regulated and complicated and there are many aspects which cause legal uncertainty. The main motivation for setting up the service was to assure a full service in all labour law matters for BDA member associations and their members. Another important motivation was the coordination of bargaining policy and the negotiations of collective agreements by the member-organizations.

The main competitors of the BDA labour law services are management consultancies and law firms. BDA member associations or companies refer to them in particular when they need very individual and specialized support.

The main users of the services of the labour law department are the labour and personnel policy departments of the member associations, as well as some member companies of the member associations.

2. Structure of the labour law service

Within the BDA service structure, the labour law service is delivered by a distinct department which is, however, working closely with the other departments and hence is fully integrated into all BDA activities.

Like other BDA departments, the labour law department has its own annual budget. Cost distribution in the labour law department (approximately):

- personnel costs: 80%
- material expenses (legal periodicals, books, office equipment, telecommunications etc.): 10 %
- travelling expenses: 7 %
- academic advice (expertise and reports from labour law professors etc.): 3 %

There are usually seven lawyers and two assistants within the labour law department which is managed by a director and a deputy director. Tasks are distributed amongst professional

staff according to the structure of German labour law. Some specialize in individual labour law matters, others in collective labour law matters. Professional staff has to undergo regularly training on current developments in labour law and jurisprudence, as well as on public relations matters.

The key sources of information used by the labour law department are:

- Government/Ministry of Labour, labour courts, political parties, universities, media
- web-based information (e. g. the online database JURIS containing in particular labour court judgments) and periodicals

3. Themes and issues covered by labour law services

The most important issues for service provision in individual labour law relate to the following legal areas:

- the Dismissal Protection Act
- the Working Time Act
- the Part-Time and Fixed-Term Working Act
- the Anti-Discrimination Act
- the continued remuneration during sick leave
- the form of labour contracts

Other areas of activity include:

- collective labour law: interaction with trade unions and other forms of worker representation, dispute settlement, company restructuring and occupational safety and health
- international law, comparative law and relevant foreign labour law

The following labour law issues are likely to gain in importance in future:

- data protection in the employment relationship
- legal minimum wages
- legal framework for flexible employment relationships (Fixed-term, temporary and part-time and telework)
- the right to strike
- European labour law, including jurisprudence of the European Court of Justice.

4. Working methods and activities of the labour law service

4.1 General working methods

The labour law department has established several expert committees with a view to assessing members' needs in the field of labour law and advising the competent BDA bodies accordingly. In addition, BDA consults its members via circulars on all new draft laws.

The outcomes of the service and lobbying activities are also regularly assessed. BDA members can evaluate the quality of the information/advice provided. Furthermore, the public attention of BDA positions is assessed by collecting and analyzing reactions in the media.

The provision of the BDA labour law services has been influenced in recent years by the following major developments:

- The increasing importance of publicity and public relations: Every BDA opinion and position on labour law is now communicated via internet and press release in order to achieve the necessary level of public attention.
- The development of the electronic communication media: These media offer new varieties of service provision, e. g. quicker and more efficient communication (e-mail, internet and intranet-services) and setting up of databases (electronic document management system).
- Globalization and increased international competition: The focus of lobbying activities has shifted to the promotion of a flexible legal framework, in particular flexible forms of work (fixed-term, temporary agency and part-time work).

4.2 Lobbying activities

The labour law department prepares position papers on any relevant legal development concerning employment law. It participates in Parliamentary hearings and prepares press releases and press conferences on important legal policy development and decisions of the courts. In addition, the labour law department prepares political campaigns on current labour law matters (see below 5.)

The aim of BDA's lobbying activities is to achieve a modern, flexible labour law which provides a balance between workers' protection needs and business' competitiveness needs, and thus supports the creation of sustainable jobs. BDA also advocates a simplification of the labour law so that it can be understood and implemented without the assistance of labour law experts, as far as possible.

4.3 Information and advice

Direct information and advice to members is provided by e-mail, circulars, newsletters, website, telephone contact and meetings. The most popular of these is email and the web.

The labour law department provides information circulars on legal policy developments, new and draft law. There is also a circular to explain the decisions of the federal courts and the European Court of Justice. In addition, the labour law department issues a range of publications providing advice and guidelines for employers on the legal framework of employment including areas such as dismissals and working time.

Another service is an archive of collective labour agreements. If necessary the members can get copies of certain collective agreements that are relevant to their situation.

4.4 Representation

Lawyers from the BDA labour law department represent employers on the labour courts and at the federal labour court. They also represent BDA members internationally at the International Labour Conference, and on all relevant working groups of BusinessEurope. The BDA labour law department is also involved in the European social dialogue process and has been involved, for example, in the negotiations on the Framework Agreements on Telework and on Violence and Harassment at the workplace.

4.5 Publications and other information/guidance material

The labour law department edits many BDA and GDA publications⁴, including two labour periodicals, that is the Labour law journal (ZFA) and the Collection of labour law jurisdiction (SAE).

4.6 Training

The labour law department organizes three major conferences on labour law developments each year. In addition, there are symposia on special labour and employment law issues relevant at the time. The participants are labour law experts and executive directors from employers' organizations.

4.7 Web-based services

The BDA are developing all labour law services in web-based versions: The most important web-based service is currently a research database that members can access to research any topic of labour law. A new service of the labour law department is an 'early warning' interactive database where members will be able to fill in interesting decisions of the labour courts - especially any that may set a precedent - and comment on the detail. In addition, the BDA provides several useful labour law tools and forms online for members, e. g. concerning the Antidiscrimination Act.

5. Outlook for the future

German labour law can be highly complex and sometimes has a tendency to stifle individual initiative by imposing stringent requirements on employers. This is particularly challenging for small to medium-sized enterprises. The BDA has had some success in communicating their core message that better regulation can help to create more jobs and it is hoped that this will continue.

An example of this is the web-based campaign entitled, "BDA-pro-job.de". This initiative promotes a new and flexible framework for labour legislation by explaining the requirements of labour law and labour market reform needed to encourage job creation.

At times the business position may be unpopular politically and controversial publicly and this may make it difficult to deliver. The ongoing challenge for BDA is to convince decision-makers of the long term benefits deriving from the business position that they represent.

Looking to the future, developments in European social dialogue will continue to be important to the BDA. Social dialogue is considered to be an effective instrument for influencing and actively helping to shape European social policy for the benefit of business. The current debate on flexicurity is a good example of how this process works.

Developing the BDA online service offerings will create an opportunity for restructuring and refocusing services. This is currently a major focus of the BDA activity and it is likely to continue. Members can now download all information provided by the BDA in the members' area of the website via a password-login.

In addition, the BDA is developing a legislation data-base as a comprehensive information source that reflects the status of any relevant draft law, all the position papers, press communications and statements of the BDA related to that law.

⁴ GDA Publications is the Employers' Service and Marketing Association – a subsidiary of BDA
www.gda-online.de

Case 7

The Irish Business and Employers' Confederation – IBEC

1. Introduction

The Irish Business and Employers' Confederation (IBEC) was formed in 1993 as a result of a merger between the Confederation of Irish Industry (CII) and the Federation of Irish Employers (FIE). Today, IBEC is the national umbrella organization for business and employers in Ireland. There are currently over 7,500 companies in membership, in addition to more than 60 business associations.

1.1 Context and evolution of labour law services

The system of industrial relations in Ireland has been voluntary in nature and, for more than twenty years, it has been dominated by social dialogue between IBEC on behalf of employers, trade unions and the Government. The labour law structures have been heavily influenced by the EU and employment is highly regulated with more than 30 pieces of labour regulation covering the employment relationship.

The provision of labour law services is a core activity of IBEC, having been the central activity of the FIE. It is integrated into the industrial relations and human resources services and is regarded as being an important factor for many companies when they decide to become members. Labour law is high on the agenda of enterprise in Ireland as there has been an increasing focus on compliance and inspection with legislation pending on the issue.

IBEC's main competitors for labour law services are the national and international law and consultancy firms. The area of labour law has also attracted some specialist consultancy operators and there are a number operating specifically in this field.

2. Structure of labour law service

There are four divisions in IBEC and labour law services are located in the Industrial Relations and Human Resource Services (IR/HR) division. This division is made up of the following units/teams.

- Industrial relations teams
- Research and information
- Legal and equality unit
- Occupational safety and health (OSH)
- Training

Labour law services are fully integrated into the IR and research and information teams and these are supported by the legal and equality unit. There are also operational synergies with OSH and training.

Within the IR/HR division there is a team of sixteen IR advisors and every member has one specific advisor assigned to them. The advisors provide services in labour law in addition to direct representation in negotiations or at third party institutions and general advice on how to handle employee relations issues that arise. The division also has an employee relations

information unit and this team deals with information queries from members by phone or online. Labour law queries are the most frequent that arise from IBEC members.

Within the division there is a Legal and Equality unit with four specialist lawyers, who deal with the most complex legal queries, particularly those relating to topics such as transfer of a business, termination of a manager and difficult equality cases. They also provide an internal advice service to the advisers and information unit.

There is also a special unit dealing with OSH. While the advisers and information staff are familiar with the provisions of OSH law, the OSH unit will deal with the most specific and difficult OSH issues as well as providing consultancy services in this area. They also provide advice and guidance internally to advisers and information staff.

Labour law services are funded from membership income and there is no specified budget allocation.

IBEC acquires information from three main sources. Firstly, by virtue of their position in society, they have an 'inside track' to developments and access to many informal sources of information. Secondly, there is extensive formal information available either through social partnership structures or publicly from Government departments, courts, tribunals and other labour law institutions. Finally, IBEC subscribes to a range of periodicals and reports and also uses information from universities and professional bodies as appropriate. Much information is available online though some is sourced by attendance at important labour law conferences or seminars, for example, on EU issues.

3. Themes and issue covered by labour law services

Employment law has become increasingly complex in recent years and there are now over 30 pieces of major employment legislation in Ireland. The need for organizations to ensure compliance with this legislation is greater than ever, as the level of claims, inspections and fines increases each year. IBEC provides labour law services in relation to all labour law and the main headline topics are:

3.1 Individual labour law issues

This includes contracts of employment, work permits, recruitment, discipline and termination of employment, atypical work patterns, data protection, working hours, terms and conditions of employment and OSH.

3.2 Collective labour law issues

There is a body of trade union legislation regulating the operation of trade unions and outlining employer and employee obligations in dispute situations. Other collective issues can include redundancies, transfer of a business and organizational change.

4. Activities and working methods for labour law service

4.1 Lobbying

As the most important employers' representative organization in Ireland and as a social partner, IBEC is active in representing members' interests nationally and internationally. In the labour law area the focus is usually on proposals for new or amended labour regulation and the structures for enforcement. Current projects include lobbying on a new Employment Law Compliance Bill and the Industrial Relations (Amendment) Bill 2009. IBEC is also active at the EU level where many labour laws originate.

As the economic climate changes, so too does the agenda for lobbying. In recent years issues such as work permits and family-friendly work have been high on the agenda. More recently, the trade unions have made the issue of compliance their top priority and IBEC is working to ensure that the outcome of proposed compliance regulation does not stifle business and job creation.

IBEC holds key representative positions on all tripartite labour law institutions such as the Labour Court and the Employment Appeals Tribunal.

4.2 Information and advice

Labour law information and advice is the bedrock of IBEC's labour law service and it is provided to members by their IR advisor or by a member of the employee relations information unit. For highly complex or technical legal queries, for example, involving the transfer of a business or discipline of a senior manager, information and advice is provided by one of IBEC's labour lawyers. The labour lawyers also provide an internal service of advice and support to the research and information staff and the industrial relations advisors.

4.3 Representation

IBEC offers direct representation to members for appearance at the Labour Court, Labour Relations Commission (for conciliation or adjudications), Employment Tribunals and the Equality Tribunal. They also represent members at trade union negotiations. Direct representation is covered as part of the membership fee so there is no additional charge.

4.4 Publications

IBEC has a number of labour law publications that are popular with members:

- **The Human Resources Management Guide** – is a comprehensive Guide to employment law and personnel policies and procedures. It comes in a single easy-to-use ring-bound volume with website back-up. To keep it up-to-date there is a minimum of two updates provided each year (the ring-binder facilitates the additions and deletions when labour law is changed). It is available to members for a discounted fee.
- **The HR Link** – is a monthly on-line newsletter. It is circulated to all members and focuses on labour law developments in addition to any HRM news.
- **The Employment Law Wall Chart** – is a poster size summary of all key pieces of labour legislation presented in a colourful and easy to follow format. It is popular for labour law departments, personnel or HRM offices in member companies to display this poster on their wall.
- **The Occupational Health and Safety Chart** – this is also a poster sized summary of key legislation but this time under the topic of health and safety. Again, many health and safety specialists display this wall chart in their office.

4.5 Training

IBEC provides extensive training services. In the labour law area professional staff work with the training team to provide legal training and briefings on new or emerging legislation. As members place a high priority on the issue of compliance, labour law training is a very popular service.

4.6 The web

The website is a hugely important tool for IBEC to communicate to members and through which to provide services. Members have access to password protected areas in the IBEC

site which provide a comprehensive database on all labour law areas. In recent times IBEC launched a number of online audit tools. The audit helps the member company to assess the compliance of their policy documents, records and practices to all current labour laws. There is also an online employment contract available to members.

IBEC's newsletter (IBEC Agenda) went online in 2008. Through this initiative it is now possible for labour law specialists and HR managers in member companies to select the topics of interest to them for priority billing in the newsletter. Accordingly the newsletter that arrives through email is customized to reflect the interests of the recipient.

5. Outlook for the future

Looking to the future it is expected that the area of labour law and compliance will stay top of the agenda for IBEC member companies. The pressures of the global economic crisis and the particular economic challenges faced by Ireland mean that the need for labour flexibility is more important than ever. Through years of economic prosperity, much competitiveness has been lost and the process of change that is now necessary for many companies, and in particular for the public service, is painful.

For IBEC the development of the web as a vehicle for service provision has been very successful, though there is still a challenge to inform all members of the depth and breadth of information available to them through the website. The provision of online tools has been well received by members and IBEC will continue to explore ways of improving and expanding member services on line.

Case 8

The Japan Business Federation – Nippon Keidanren

1. Introduction

Nippon Keidanren is a comprehensive economic organization established in May 2002 by the amalgamation of Keidanren, which was the Japan Federation of Economic Organizations, and Nikkeiren, which was the Japan Federation of Employers' Associations. Nippon Keidanren is now the umbrella organization representing employers in Japan. The current membership of Nippon Keidanren is 1,609, which includes 1,295 companies, 129 industrial associations and 47 regional economic organizations.

Under Japanese law Nippon Keidanren, as a non-business organization, cannot engage in commercial business. They therefore established Nippon Keidanren Business Services (NKBS) as a commercial institution in 2007. NKBS, as a member of Nippon Keidanren group, works to raise awareness of Nippon Keidanren's recommendations, as well as to disseminate information via briefings and seminars and also by publishing books and relevant publications, including on matters related to labour law.

As a result of the general election held on 30th August 2009, a new coalition Government headed by the Democratic Party of Japan is now in power. This new administration has stated that they will pursue, as a priority, the following policies in the labour law area:

- Enhancing employment safety nets
- Expanding eligibility for employment insurance benefits
- Prohibiting, in principle, the use of dispatched workers for manufacturing floor jobs
- Raising the minimum wage
- Promoting the work-life balance and equal treatment of all workers

While these issues are expected to dominate the labour law agenda in the coming years, there are also two pieces of legislation actively under review:

- The Worker Dispatching Act, which stipulates the working conditions of temporary workers, and
- the Employment Insurance System. Work is underway to review the possibility of expanding eligibility for insurance to temporary workers working for less than six months.

On April 1, 2009, a revision of the Labour Standards Act, which in particular aimed at limiting overtime work, entered into effect.

2. Activities of the labour law service

2.1 Information and advice

Through the affiliated NKBS, the *Bulletin of Judicial Precedent in Labour and Economy* is issued to members on 10th, 20th, and 30th of each month. This publication gives an up-to-date outline on any important labour law case with commentary and explanations. To date, more than 2000 issues have been published, covering some 6.300 labour law cases.

The *Bulletin* is used as a reference, for example, by corporate executives, managers and officers in charge of general affairs, personnel and training managers.

NKBS, under the supervision of Nippon Keidanren, also issues the weekly *Nippon Keidanren Times* (published each Thursday) which, along with information on key economic issues and the latest news on management and human resource issues, also includes timely explanatory articles on particularly important labour law cases.

On a monthly basis, Nippon Keidanren publishes *Economic Trends* which covers important industrial and labour issues confronting the Japanese economy and presents policy recommendations and business opinion pieces. As part of its contents, this publication also deals with trends in labour law, for instance the September 2009 issue contained an article that analyzed the revision of the Labour Standards Act.

Nippon Keidanren uses a group computer network to distribute *On Trends relating to Labour and Social Security*, a monthly report on the latest trends in legal frameworks governing labour and social security, to sixty national industrial associations in major industries and around fifty prefectural employers' organizations. Recent labour law issues covered include trends in legislation on working hours and the revision of the Child Care and Family Care Leave Act.

There is a process of annual (spring) labour negotiations in Japan to determine labour conditions for the coming year, in particular wages, but most recently also issues like working hours, HRD, OSH and work-life balance were discussed. Employers negotiate as individual employers rather than through their employers' organization or association. These negotiations are autonomous and the unions for their part present a unified set of demands to various industries. Nippon Keidanren compiles the stances and thinking of corporate management and publishes a compilation as a *position paper of its Committee on Management and Labour Policy* (issued in December or early January). In addition, a handbook that covers the annual spring labour negotiations and any other discussions between management and labour is published for members by Nippon Keidanren. This includes any information relevant to the negotiations, such as charts and data on Japan's economic situation, corporate management trends and.

Finally, Nippon Keidanren publishes via NKBS a range of labour law publications that are considered 'handy guides' for managers. They deal with new developments in labour legislation explain employer's obligations in a questions-and-answers format. The most recent Handy Guide published is on the Amended Labour Standards Act (July 2009).

2.2 Representation of members

Nippon Keidanren represents the employers on the Labour Policy Council which is an important body in Japan with respect to the crafting and revision of labour law. The Labour Policy Council is a tripartite organ comprising public administrators, trade unions and employers and it advises the Minister of Health, Labour and Welfare on labour law issues. It also has a number of important sub-committees on working conditions, employment security, equal employment, HR development, worker livelihood and safety and health. Employer positions for the Council are prepared in Nippon Keidanren's labour-related committees.

2.3 Cooperation with the Management Lawyers' Council

The Management Lawyers' Council is a nationwide organization of attorneys at law founded in 1969 to bring about closer cooperation among members and to contribute to the development of good relations between management and labour. Today some 500 lawyers are members of this Council, which carries out a range of activities, including:

(a) hosting study meetings to explore practical labour law and legal cases, as well as discussion sessions

- (b) researching and publishing reports on labour-related law and court cases
- (c) fielding queries from corporate managers and employers' organizations regarding labour issues.

Nippon Keidanren hosts conferences with the Management Lawyers' Council to provide a venue for exchange of views on changes in labour law and relevant cases. In 2008, these liaison conferences focused on systems to give workers time off to serve as lay judges and amendments to labour-related laws.

2.4 Labour law training

(a) Hosting of Labour Law Forums

Nippon Keidanren, with the Management Lawyers' Council, hosts Labour Law Forums each year. Here lawyers, corporate managers, human-resource and labour officers discuss contemporary labour issues from the legal perspective, with the goal of putting this knowledge to work in daily labour-management activities.

The 103rd Labour Law Forum took place in Tokyo on 2–3 July 2009. Its theme was “compliance with labour-related law in a time of economic crisis,” and discussion focused in particular on legal matters to note and practical measures to take for (a) appropriate human-resource management and (b) the use of outside labour (dispatched workers, subcontractors, etc.). There were a total of 337 participants: 166 attorneys from the Management Lawyers' Council and 171 managers and other corporate officers.

(b) Provision of lecturers

In response to new developments as amendments to labour-related laws, prefectural employers' organizations and industrial groups from among Nippon Keidanren's membership frequently hold lectures on the content and key points of legislation for corporate officers. Nippon Keidanren provides expert lecturers for these events when requested.

(c) Organisation of labour law seminars and training courses

The Tokyo Employers' Association, a member of Nippon Keidanren, hosts half-yearly labour law seminars (lasting two or three days) for human-resource, labour and other officers from its member companies. The lecturers are attorneys from the Management Lawyers Council. There are two types of seminar:

- for beginners to learn the basics of labour law
- for more experienced participants to gain more practical knowledge.

The Association also offers study courses (around 100 hours of classroom time over four months) for companies' human-resource, labour and general affairs officers. These courses are aimed at fostering the next generation of specialists through a broad-ranging curriculum covering systems for personnel management, wages and hiring, as well as labour management issues.

2.5 Other labour law supports

(a) Support for employer representatives on labour relations commissions

Various labour relations commissions have been established in Japan to achieve resolutions to organized disputes between trade unions and employers in private industry. These commissions, tasked with handling private labour disputes, are divided into two categories:

- the Central Labour Relations Commission, a national organ in Tokyo, and
- the Prefectural Labour Relations Commissions, located in each of Japan's 47 prefectures. These bodies include commissioners representing both employers and

workers, as well as public commissioners, with equal numbers coming from all three groups.

There is also a Nationwide Liaison Council of Labour Relations Commissions, whose membership consists of employer representatives participating in the national and prefectural commissions. The Liaison Council's aims are to promote on-going studies and specialized knowledge of the commissioners through training, information-sharing, and experience exchange; and to provide a forum for commissioners' research on and discussion of the commission system. The Council also aims to allow liaison, coordination, and decision-making on matters that need to be deliberated by employer representatives. Nippon Keidanren provides support to the commissioners by serving as the secretariat for the Liaison Council. In specific terms, the secretariat performs services including:

- organizing training sessions for employer representatives on the commissions and
- (ii) sharing information with the commissioners on the commissions themselves and on trends in legal revisions, through publishing the *Nationwide Labour Relations Commission News*, generally three times a year.

(b) Recommendation of employer candidates for Industrial Tribunal posts

Rapid and drastic shifts in the labour-relations landscape in Japan have led to rising numbers of individual disputes on, for example, termination and payment of wages. To resolve these disputes promptly and appropriately, an Industrial Tribunal system has been in place since 2006. In this system, a three-member tribunal is established in a district court consisting of a judge and a member from the management and labour sides. This tribunal holds an inquiry into the labour dispute and seeks to mediate a resolution.

Nippon Keidanren recommends candidates to serve as employer representatives on these tribunals once every two years, consulting with employers' organizations in each region.

Case 9

The Mexican Employers' Confederation – COPARMEX

1. Introduction

COPARMEX was established as umbrella employers' union in Mexico in 1929. It groups more than 36,000 employers who are members of 66 independent employers' unions which are geographically located in 84 offices throughout the country. In light of its union status, COPARMEX is the voice of employers' at all levels of Mexican society. It is financed from fees paid by the 66 affiliates.

While relations between employers and unions are generally constructive in Mexico and some commentators believe that the regulatory system of labour law is supportive of enterprise, there are very serious economic challenges facing the country. COPARMEX believe that, so far, the Government has failed to take the necessary steps to modernize regulation, boost the economy and encourage growth and recovery. The economy is shrinking at an alarming rate, there is a jobs crisis and the tax system is not business friendly with thousands of companies going out of business in 2009.

Employers are in great need of labour flexibility and in many instances actual labour practice in firms has moved ahead of regulation as companies devise work practices to meet their operational needs, either with the advice of lawyers or through collective bargaining with their trade union. Accordingly, rather than regulation supporting enterprise, enterprise is actively working to find legal ways around the law to create much needed flexibility.

The labour law service of COPARMEX was originally established in response to members' needs for advice, guidance and representation. The penalties for non-compliance with labour regulation are high and with changes and amendments being introduced constantly, companies - particularly SMEs - need the assistance of their employers' organization to guide them and to represent their interests.

While there are also other employers' organizations operating in Mexico, COPARMEX has a competitive edge and position in society making it the most important employers' representative body. In the area of labour law services, competitors include Government legal services, independent law firms and legal departments in major companies.

The main users of COPARMEX's labour law services are the large corporate employers and the 66 independent employer centres (or affiliates). COPARMEX is going through a strategic transformation project and, over the next eighteen months, it is planned to move to a franchising structure for the 66 independent employer centres. Under this arrangement, there will be a centralized call centre which will help improve and standardize the service provided to all companies through the COPARMEX structure.

2. Structure of the labour law service

2.1 General structure, staffing and budget

COPARMEX' labour law services are part of its broader legal department, which deals with a range of legal services for members, including labour law. Most services are conducted free of charge. The internal structure, which is the legal department itself, has an operational focus dealing with company problems and issues. In addition, there is a Labour Committee

which consists of 25 volunteers from affiliated companies, law firms and from the COPARMEX executive. The Labour Committee takes a strategic medium to long-term focus on all labour issues including labour law.

In the head office, the legal department, which provides labour law services, is headed by a legal director. In addition, there is a legal manager, two legal counselors and a shared assistant. All members of this team, except the assistant, are lawyers specialized in labour or social law. While they provide labour law services to the affiliates and to individual companies as required, they also support seven voluntary committees, including the Labour Committee, that fall under the heading of Social and Labour Committees.

In addition to the head office, there are 66 employers' centres, all of which provide labour law services to their members. The smallest ones use external legal firms to help provide this service. The employers' centres also maintain regular contact with the head office.

There is no separate budget for labour law services. The COPARMEX head office budget is around US\$2 million annually. The highest expenditure is on salary and fringe benefits followed by travel and office costs.

2.2 Sources of information

COPARMEX have access to privileged information by virtue of its position and contacts in society. Apart from this, regular sources of information include government and other public sources, web sites, publications and labour law periodicals. COPARMEX also contracts three media, legislative and labour law specialist offices to track and provide information on request. In addition information is available from international organizations, such as the ILO and the IOE.

3. Themes and issues covered by the labour law service

The labour law service covers all individual and collective labour law issues. For individual labour laws, members value the advice, analysis and interpretation on how to apply the law in the workplace. On trade union issues, the service provides advice and information on trends, practices and statistics both domestically and internationally. Much of the individual labour law services are provided by the employer centres directly to members. The larger, more complex issues are handled by the COPARMEX head office.

4. Activities and working methods of the labour law service

4.1 Lobbying

COPARMEX represents employers on all key labour law institutions, such as the Federal Conciliation and Arbitration Board, the Minimum Wage National Council and the National Committee for profit's distribution to workers.

COPARMEX is also active in lobbying Government for a better labour regulatory framework to support and encourage sustainable business growth and job creation.

4.2 Information and advice

The labour law service provides orientation and advice to members on daily operational labour issues by responding in a timely way to queries that arise. Many companies do not have the professional resources to follow an issue through the full judicial process. COPARMEX can assist them with this.

The labour law service also assists with the processing of legal documents such as labour contracts and agreements.

4.3 Representation

As need arises, COPARMEX can assist members either directly or through the network of affiliates with direct representation in dispute situations, at conciliation or at labour court hearings.

4.4 Publications

COPARMEX provide its members with a total of five formal publications, such as “Entorno” (monthly magazine), a Newsletter, and Legislative Info. While none of these are restricted to labour law topics, they all contain labour law contributions when topics of interest or relevance arise. Members have access to a virtual library and a virtual video library.

4.5 Training

The labour law service staff participates in labour law training or seminars for members. For instance, in 2009, two labour law seminars were organized.

5. Outlook for the future

COPARMEX is acknowledged as having been highly influential in pursuing a modern legal framework that will help the economy to grow and it is hoped that this reputation will continue. A particular success was registered when COPARMEX blocked a recent Federal Labour Law project that was considered to be disadvantageous to employers. The labour law service has also been successful in influencing the development of inappropriate health and safety regulation.

On the disappointing side, COPARMEX believes that having spent extensive time working with trade unions and the Government to try to modernize labour regulation and improve the country's productivity and competitiveness, the pace of labour law reform continues to be unacceptably slow.

The decision has been made to focus on promoting the most important ‘key’ changes in future and to aim for improvements in competitiveness one step at a time.

Labour law reform will continue to be the most important strategic priority in the immediate future. The labour law service and the labour committee will focus their efforts on intelligently promoting labour law changes that have been identified as being most important for improving the economy and employers' potential for growth.

As part of a drive for labour justice, COPARMEX will be promoting a culture of compliance to labour law and supporting constructive enforcement.

From an organizational point of view the strategic changes planned for the next 18 months, which will improve coordination of labour law services and policy from head office throughout the independent employers' centres, will improve consistency in policy and standards in service to members. Along with this, COPARMEX plans initiatives to allow members evaluate labour law services, to implement a performance measurement system and, with the help of the ILO, to benchmark labour law services against world-class providers around the world.

Case 10

EMA Legal – The labour law service of Business New Zealand

1. Introduction

Business New Zealand Inc (Business NZ) is the recognized employer social partner in New Zealand. Business NZ is an incorporated society made up of major New Zealand companies and four regional employer associations:

- Employers and Manufacturers Association (Northern) Inc (“EMAN”)
- Employers and Manufacturers Association (Central) Inc (“EMAC”)
- Canterbury Employers Chamber of Commerce Inc (“CECC”)
- Otago Southland Employers Association Inc (“OSEA”)

EMA Legal is the legal services division of both EMAN and EMAC. It is run as a cooperative venture between these two employer organizations with a centralized professional management, training and development.

For professional regulatory reasons, EMA Legal can only provide its legal services to members of EMAN and EMAC. Both CECC and OSEA have employed lawyers with whom EMA Legal has an informal alliance and regular contact.

The main motivation for setting up the service was to provide members with access to specialist legal employment advice and representation at an affordable level, i.e. underwritten by their subscription levies. The cost of accessing lawyers in private practice when an employment problem arises is particularly challenging for many small businesses so EMA Legal offers an attractive alternative.

1.1 Context of the labour law service

The NZ legal system operates in the common law tradition, so employment law is made up of a combination of statute and precedent case law.

In EMA Legal's assessment labour regulation in NZ is

- not overly prescriptive as the primary focus is on building and maintaining productive employment relationships by promoting good faith.
- not as detailed or as complicated by comparison with European labour law. The Employment Relations Act 2000 (“ERA”) is the main legislation and, other than in the area of OSH, there are very few regulations operating alongside the ERA.
- slightly employee leaning as the ERA expressly states as one of its purposes to acknowledge and address inherent inequality of bargaining power between employers and employees
- contains some problematic areas for employers, in particular collective bargaining which is the most regulated aspect of NZ labour law; the legal test of justification for employer actions; and the calculation and regulation of holiday entitlements.

Union penetration in the NZ workforce is low. About 80 per cent of NZ employees are employed under individual employment agreements. The rest are employed under collective

employment agreements with various unions.

1.2 Evolution of EMA Legal

During the 1990s employment law changed in New Zealand and moved towards a contractual rights-based system. Trade union membership dropped off considerably at this time also. As the emphasis on contractual entitlements and legal interpretation grew, member need for labour law services increased too.

In 2003 an agreement was concluded between EMAN and EMAC to align their legal service offering. A managing solicitor was engaged and she formed EMA Legal which is now one of five different functional teams within EMAN and EMAC. The other teams are: health and safety advisors; HR advisors; employee relations advisors (who do collective bargaining) and trainers. EMA Legal works closely with the employment relations advisors on day-to-day advisory matters and collective bargaining conflict resolution. All the teams share the same back office membership, accounts and billing, reprographics and receptionist resources. Fees are billed by the associations and proceeds retained by the associations. Lawyers are paid a salary and bonus incentives. They do not retain the fees which go directly to EMAN and EMAC to fund EMA Legal.

In EMAN (which are based in Auckland, NZ's largest city), the members who use EMA Legal are mainly medium-sized private sector or global employers. The larger members tend to use law firms for their employment advice. In EMAC (with headquarters in the capital city Wellington), the same is true, although EMAC has a lot of charitable/Government agencies and not-for-profit members. It also has a number of smaller businesses in regional locations.

The main competitors of EMA Legal are:

- private law firms that can provide full legal services, including on labour law
- independent non-lawyer consultants
- smaller private companies, such as Employers Assistance Limited which model themselves on EMAN and EMAC and which offer employment law advice on a fee-paying basis
- The Government's Department of Labour advice-line and website which offers free impartial advice and information to the public.

EMA Legal sees for itself the following three competitive advantages:

- EMA Legal's business model as a not-for-profit-organization means that it can offer cheaper legal fees for members than equivalent experienced lawyers in private practice.
- It can offer inside access to the main political parties and lobbying services to government via its link with Business NZ.
- With EMA legal being the preferred supplier for Business NZ in employment law test cases it is often at the cutting edge of important case law developments..

2. Structure of the labour law service

The staff of EMA Legal comprises a team of 7 lawyers, one legal executive/secretary and one retained barrister who are based in five locations throughout the North Island and top of the South Island of New Zealand.

Office accommodation and back office systems are provided by the Associations themselves. EMA Legal is expected to make a contribution to these overheads by generating fees at the ratio of 1.8 times their remuneration. So, a lawyer earning \$100,000 would be expected to

generate fees of \$180,000 per annum. EMA Legal operates on budgeted annual fee revenue of \$1.1 million for EMAC and \$600,000 for EMAN.

The major expense item is lawyers' remuneration. Salaries account for approximately \$900,000. The next biggest expense item of around \$66,000 per annum is the renewal of subscriptions to technical legal resources, mainly on-line legal editions, but also some hard copy subscriptions. Main providers are Brookers (part of Thomsons Group) and Lexis Nexis.

The main sources of information used by EMA Legal are: Web-based information, periodicals, daily email alerts from Brookers on latest cases and proposed employment legislation introduced into Parliament; press releases and occasionally articles published by top law firms; and monthly employment law/HR focused periodicals.

In addition, sources like Government/Ministry of Labour, labour courts, political parties, and universities are used along with the crucially important inside information from Business NZ, which has fortnightly meetings with the Minister of Labour.

3. Themes and issues covered by labour law service

3.1 Individual labour law

Individual labour law covers areas such as labour contracts and related employer obligations, termination of employment and disciplinary measures. The bulk of EMA Legal advice and representation surrounds disciplinary and performance management, restructuring and regulatory compliance issues, termination of employment, and challenges by way of personal grievances for unjustified dismissal or unjustified disadvantage claims (on the rise). There are very few discrimination claims in New Zealand.

3.2 Collective labour law

Collective labour law involves interaction with trade unions and other forms of worker representation, dispute settlement, company restructuring and OSH. Some EMA lawyers also conduct collective bargaining advocacy on behalf of members. EMA Legal occasionally advises and represents members in industrial action situations – strikes, suspension of striking workers and lockouts. Occasionally they also defend employers in Department of Labour OSH prosecutions but this is not common.

3.3 International law, comparative law and relevant foreign labour law

EMA Legal gives advice to overseas companies that have businesses in New Zealand on NZ's employment law. There are very few instances of cross-border acquisitions or transfer of workers.

3.4 Restraints of trade

Enforcing non-competition and non-solicitation provisions in employment agreements.

4. Activities and working methods of the labour law service

4.1 Lobbying activities

Most of the regular political lobbying on behalf of employers generally, and members particularly, is carried out by Business NZ. However, EMA Legal generates submissions and

appears before Parliamentary select committees on proposed new employment legislation. They also issue press releases and engage in campaigns and conferences as appropriate.

4.2 Information and advice

Specific day to day advice on employment enquiries or documentation is mainly supplied via telephone and email. Face-to-face meetings occur less regularly and are mainly at the member's place of business, unless the matter is sensitive or highly confidential, in which case meetings are held at EMAC or EMAN offices. The EMAC and EMAN websites contain up-to-date general information and alerts. Quarterly legal update briefing meetings are held at various locations in each of EMAN and EMAC's territories.

4.3 Representation

EMA Legal lawyers regularly appear at mediations, Employment Relations Authority investigations and, to a lesser extent, in the Employment Court on behalf of members, in contentious employment disputes.

EMA Legal does not get involved in social security matters which are considered separate from employment matters in New Zealand.

4.4 Labour law publications and other info/guidance material

EMA Legal lawyers have a monthly column in three business magazines – one produced by EMAN and EMAC jointly, one is a regional newspaper's monthly business magazine, the other is a well-know employment law and practice periodical for employment advisor professionals.

Examples of articles include commentary on important case law as it affects employers, or "how to" articles on employer obligations in new or upcoming legislation – e.g. the legal implications for employers on the ban on using handheld cell phones in cars which came into effect on 1 November 2009.

4.5 Labour law training (e. g. for HR managers)

All EMA Legal lawyers participate in central member training events particularly on the technical legal aspects of training. EMA Legal also delivers free quarterly issues briefing seminars in a regional road show format on impending employment legislation and important case law developments.

5. Outlook for the future

EMA Legal has been successful in influencing emerging labour law by producing submissions on behalf of its members in parliamentary consultation processes for proposed new employment law legislation. For example, EMA Legal was instrumental in getting the Employment Relations Act 2000 provisions changed on employment protections on business transfers by successfully appearing in an Employment Court test case, which showed an error in the drafting of the legislation. They have become a recognized authority on the employers' side for employment law test cases.

A challenge for EMA Legal in the future is to gain the confidence of big corporate members who still tend to use employment lawyers in law firms. EMA Legal does not provide a full legal service, for examples company commercial taxation general litigation services, as do private practice law firms. Many big businesses that are members still use their company lawyer for their employment law advice. A further challenge is to build members awareness of EMA Legal and encourage their use of the services available to them.

A priority for the immediate future is to build a single EMA Legal brand in both EMAN and EMAC territories. In addition and on a continuous basis they are seeking to increase efficiency and effectiveness.

As part of this move towards common EMA Legal branding and enhanced service delivery, consideration is being given to establishing an EMA Legal franchise, which has the potential to be rolled out across New Zealand.

Case 11

The Federation of Swaziland Employers and Chamber of Commerce – FSE&CC

1. Introduction

The FSE&CC was founded in 2003 from the amalgamation of the then Swaziland Chamber of Commerce and Industry and the Federation of Swaziland Employers. The FSE&CC act as the umbrella body for all business in Swaziland working to promote their members interests and to promote and foster trade, commerce and industry inside and outside of Swaziland.

Membership is open to individuals in business, firms, registered companies, partnerships, corporations engaged in commerce and industry and non-government organizations (NGOs). Currently, FSE&CC have 378 members of various sizes and from various sectors. Members of the FSE&CC benefit from a wide range of services. These services are divided into two categories, namely “core services” and “user pay services”.

1.2 Context and evolution of labour law services

The Federation works closely with the Ministry of Labour and Social Security, which is the Ministry in charge of labour regulation in Swaziland. There is also a Labour Advisory Board which is a tripartite body that advises the Minister on any matter affecting employment, including proposals for new regulation or amendments to existing laws.

Swaziland's major labour laws are the Employment Act 1980 and the Industrial Relations Act 2000. The former covers individual labour law and the latter collective labour law. The Industrial Relations Act has undergone major amendments to comply with ILO Conventions in relation to collective bargaining.

The organization's main purpose is to advise employers on issues of labour law and/or industrial relations and to provide a forum for employers to influence policy in respect of labour/industrial relations issues. Members are also assisted in terms of representation at the Conciliation Mediation and Arbitration Commission (CMAC). The employer's organization provides legal representation at the Industrial Court of Swaziland in addition to the provision of general labour law services.

There are a number of competitors to FSE&CC who compete in the areas of training, advisory services and the drafting of contracts and HR manuals. These competitors also provide representation services (CMAC and Industrial Court) and as such pose a real challenge. Other competitors are law firms, IR and/or labour consultants which are sometimes members of the FSE&CC.

The major users of the labour law services are employers who do not have their own internal legal advisers, IR or HR officers. The other “bigger” employers occasionally utilize the services in the event for example, where it is sought to discipline a senior manager. Non-members can utilize the services for a premium fee.

2. Structure of the labour law service

There are two Directorates within the FSE&CC, namely the Industrial Relations and Social Policy Directorate and the Trade and Commerce Directorate. Labour law services fall within the first. The Industrial Relations and Social Policy Directorate is headed by a Director, who is

a lawyer and an Admitted Attorney of the High Court of Swaziland. In addition, there is an assistant, who has a Diploma in Law. The service is assisted by the Industrial Relations and Social Policy Committee which is chaired by the Vice President of the organization. The Committee is comprised of senior HR managers and IR and Labour Law specialists from member companies.

The labour law services provided to members are both core services and user pay services.

The **core** services include:

- Representation of members in the tripartite Labour Advisory Board
- Representation of members in various labour related statutory boards (e.g. CMAC)
- Advice on best employment practice, in line with International Labour Standards

The **user pay** services include:

- Training on a variety of labour related courses
- Drafting employment contracts
- Review of company policies, particularly HR manuals or Collective Agreements
- Chairing disciplinary hearings
- Representing members in conciliations and arbitration at CMAC
- Representing members at the Industrial Court

The current budget of the organization stands at slightly above US\$400,000 per annum. The bulk of the budgeted income comes from subscriptions (65%), training (7.82%) and consulting (9.12%). A large portion of expenditure goes to salaries and benefits (65%). The percentage allocated to labour law services is 18.5 per cent of the overall budget.

Information is sourced from various Government Ministries, such as the Ministry of Labour and Social Security and from the internet, including the ILO website. Other sources of information are the judgments of the Industrial Court and Awards of Arbitrators at CMAC, as well as relevant books, journals and periodicals (e. g. from Juta Law, a publishing company in South Africa).

3. Themes and issues covered by labour law service

3.1 Individual labour law

The major issues that the labour law service deals with relate to individual issues of discipline and employment contracts.

3.2 Collective labour law

The interaction between organized labour and organized business is, more often than not, characterized by a spirit of cooperation and much of the activity is conducted nationally through the Labour Advisory Board. Currently, the subject of discussion between organized labour and business is the deduction of severance allowance from retirement funds (pension/provident fund or gratuity of employees).

The labour law service also provides members with assistance when dispute situations arise.

In matters of company restructuring (retrenchments), the FSE&CC sometimes advises members on the legality, procedures and payment of the restructuring process.

The FSE&CC has a representative in the Tripartite Advisory Technical Committee instituted in terms of the Occupational Health and Safety Act 2001. This is a Committee of experts which deals with matters pertaining to OSH and then advises the Labour Advisory Board in the event any change in legislation or regulations is sought.

3.3 Social Security Law

Swaziland is on the verge of establishing a National Social Security Scheme. The FSE&CC is lobbying the Government on this issue to represent business concerns. For instance, the employers have expressed certain concerns regarding the manner in which scheme is sought to be introduced, such as inadequate stakeholder consultations and duplication with other schemes.

4. Activities and working method for labour law services

4.1 Lobbying

The main actors in labour law lobbying in FSE&CC are the members of the Industrial Relations and Social Policy Committee. Their expertise is used by the organization when policy issues are to be tabled before the Board of Directors. They also assist the Director to execute any resolutions taken by the Board.

The FSE&CC appears before Parliament's Portfolio Committees to present the employers' views on any proposed new labour law developments. For instance, FSE&CC has recently represented the employers' position at the Justice and Constitutional Affairs Committee regarding the new Electronic Records Evidence Bill.

There are many statutory boards which are tripartite in composition from which members are represented. These include the Labour Advisory Board, CMAC Governing Board, and the Swaziland National Provident Fund Board.

4.2 Information and advice

Information and advice is mainly provided to members via email or telephone contact. The web site is another useful source of information for members. If a more detailed consultation is required a meeting will be convened. There are also regular updates through a 'Newsflash', which is prepared as labour law issues arise and circulated to members by the research unit.

The labour law service includes furthermore assistance with contracts of employment and HR manuals, reviewing HR policies, assistance in calculating terminal benefits and general labour advice and information.

4.3 Representation

The members of FSE&CC can avail of direct representation by the Industrial Relations department for a fee. This representation extends to CMAC. Generally cost of litigation is high and as the fee charged by FSE&CC is nominal, this is a major attraction for companies to become members.

4.4 Labour Law Publications

The labour law service of FSE&CC issues labour law publications from time to time. A particularly successful publication in the past was a Compendium of Labour Laws. A disciplinary guide for employers has also been published.

4.5 Training

As part of the labour law service, FSE&CC has conducted many training courses over the years. The training is usually done by the Director, Industrial Relations; in other instances lawyers in private practice are engaged. One such training course offered was an "Overview of National Labour Laws Workshop" (100 participants over one year)

5. Outlook for the future

The labour law issues that will be most important in the immediate future relate to issues of severance allowance; the introduction of a national social security scheme and work permits, among others. Also, as a result of globalization, the question of the employment relationship will be brought into the spotlight as employers need greater flexibility to reflect the demands of their business.

In planning for the organization's future, the FSE&CC sees that having adequate resources and improving member services are priorities, which will provide the opportunity to expand the labour law services. In this regard, the following is considered: holding seminars on topical issues affecting employment; issuing practical employment guides, e. g. on termination of employment; and developing programs specifically for SMEs on compliance with labour laws.

Case 12

The Federation of Uganda Employers – FUE

1. Introduction

The Federation of Uganda Employers (FUE) was founded in 1958 as the representative body and voice of employers in Uganda. FUE has a direct membership of 400 enterprises and 20 sectoral associations. The latter cover another 4000 enterprises, in particular from construction, finance, fisheries, floriculture/horticulture and agriculture. The average size of member enterprises is 150-300 workers: Only about 20 per cent of the membership is unionized. Since the foundation of the FUE, the provision of labour law services has been a core function. Over the years, as the complexity of labour legislation has grown, the needs of members have increased and the labour law services have consequently been strengthened. FUE seeks to cater to the labour law needs of its members in a comprehensive way. In addition to lobbying for business-supportive regulation, it provides to its members advice, assistance, representation, education, support and access to legislation and documentation.

The regulatory environment for employment in Uganda is influenced strongly by the ILO Conventions which have been ratified by the Government. There are currently thirty ratified ILO Conventions. The rights and guarantees of these Conventions are partly set out in the 1995 Constitution and have been translated into ten major labour laws, such as the Employment Act No. 6/2006 and the Workers' Compensation Act No. 8/2000. The labour laws cover individual areas like employment and dismissals, minimum wage and OSH, as well as collective issues such as labour disputes and trade union recognition.

Employers find the regulatory environment in Uganda to be challenging. Particular concerns relate to legislation on dismissals and trade union recognition.

The main users of the FUE labour law service is the membership though non-members also use it from time to time.

The main competitors for labour law services are law firms. However, there are also civil society organizations like the Platform for Labour Action active in the area. Many members also have their own company lawyers. FUE considers that its labour law services are not very costly as compared to the competitors. Competition in the area of labour law services is increasing in Uganda.

2. Structure of labour law service

FUE labour law services fall under the Department of Employment Relations, Training and Consultancy (ERTC), headed by a Director who reports to the Executive Director.

There are four members of staff: One full-time position based at the FUE secretariat; one senior advocate on a retainer fee; and two legal officers on call. The two latter are legal practitioners who have specialized in labour law and are engaged on a part-time basis to assist with service provision. Staff qualifications are Master of Human Resource Management with a diploma in law or an Honors Degree in Law. The tasks are distributed according to the needs of the members and the action to be taken. Staff from other departments also supplements the team since they are also trained in labour law.

Resources are shared within the department and staff members in other departments are also trained to offer labour law services. The main budgetary outlays include monthly wages, telephone charges, internet services, transport costs, stationery and conference facilities. There is also the matter of legal fees which are paid by FUE to the advocate to represent members in the industrial court.

FUE source labour law information from the Government/Ministry of Labour (labour law and policies) the Labour Court (court rulings on labour law related issues) and members of parliament (position papers on labour law matters), universities (training materials on labour laws) and the ILO (web-based information like the database on minimum wages). Further sources are periodicals and press releases or newspaper articles on labour issues.

3. Themes and issues covered by the labour law service

The following are the most important labour law issues for the labour law service.

3.1 Individual labour law issues include:

- The employment contract, types of employment, probation period
- Termination of employment and dismissal; severance allowance (this was introduced by the Employment Act No. 6 / 2006)
- Terms and conditions of employment, including hours of work, annual leave, pay and deductions, disciplinary penalties
- OSH

3.2 Collective labour law issues include:

- Trade union issues, rights of association and recognition, immunities,
- industrial action, dispute settlement
- Company restructuring, collective dismissals
- OSH implementation
- The informal economy and unionizing foreign workers

3.3` Other important labour law topics

Other important topics include the liberalizing of social security law and the harmonizing of labour laws in the East African Community (EAC).

4. Activities and working methods of the labour law service

4.1 Lobbying

The FUE lobbies nationally and internationally for the development of a labour legislation regime which promotes competitiveness and flexibility to encourage and support business. Prior to any lobbying initiative members are consulted for their views, a common position is formulated and lobbying of the relevant ministries follows. FUE participates in hearings at all levels of Government. As part of the lobbying activity, position papers are prepared. Recent examples include social security reform, minimum wage and national health insurance. Other means of lobbying used are press releases and the holding of press conferences to

articulate the position of FUE on specific labour issues. Also campaigns have been held on some important labour laws.

The FUE is represented on the key national labour law bodies like the Minimum Wage Advisory Board and the Labour Advisory Board.

4.2 Information and advice

The FUE assist members in their day-to-day legislative issues, industrial relations and human resources management queries. Direct information and advice is provided to members through emails, telephone contact or meetings.

In some cases circulars are used to communicate general information on legal issues, a recent example being one on the contract of employment. FUE also issues weekly up-dates through which members are advised of any new labour law developments.

4.3 Direct representation

If a member has a problem with employees and has to attend a hearing of a labour officer to help find a solution, the FUE will participate in the hearing. Where a hearing has been referred to the Industrial Court or a case is being handled by a lawyer of the complainant, the FUE's legal officer participates in the hearings.

3.4 Publications

FUE labour law publications are popular among members. Some of the most successful are:

- Employers' Guide to the labour laws
- Employers' Guide on the worker's compensation Act 2000
- Terms and Conditions of Employment/ Service in Uganda 2008 mini report

4.5 Training

Labour law training is an important activity of the FUE. In 2009, FUE has conducted labour law sensitization workshops reaching out to 304 employers.

5. Outlook for the future

The FUE's major successes have been in promoting the liberalization of the social security sector, in lobbying for the development of a social protection policy and in the area of pensions` regulation. In addition to this, securing meetings with the Prime Minister and the President of Uganda to promote the business agenda was an important achievement. Finally, now in its eighth year, the FUE *employer of the year survey* has contributed to improved compliance with labour legislation and the promotion of the Human Resource function and profession.

On the disappointing side, however, work with the Government on completing an employment policy has not finalized yet despite lobbying from the FUE. Also despite FUE's representations on behalf of business, there has not yet been an amendment to the National Social Security Fund Act of 1985. Finally the FUE is unhappy with aspects of new labour laws passed dealing with employment, disputes resolution, trade unions and health and safety. So, work will continue in all of these areas.

The labour law areas likely to be most important for business in Uganda in the immediate future include:

- Termination of employment

- Harmonizing the East African Community labour laws following the signing of the common markets protocol and its coming into effect on 1st July 2010
- Social security – following cabinet approval to liberalize the sector
- Minimum wage – the Advisory Board on Minimum Wage has been established to progress this.
- Labour law in the informal economy.



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