

Orrick's Traditional Labor Law Experience Outside the U.S.



June 2012





Orrick's global employment law team represents many of the major multinational employers of the world across a broad array of employment law and human resource counseling matters in the U.S., Europe and Asia. Our lawyers provide strategic and results-oriented advice on all aspects of employment disputes and contentious matters before agencies, tribunals and in the courts, with special expertise on discrimination matters, wage-and-hour issues, cross-border trade secret protection and wrongful termination actions. Working with our global corporate solutions team, we also provide advice on data privacy and protection issues, employee benefits matters and global equity compensation programs. We have innovative single point of contact representations which allow companies with operations throughout the world to benefit from consistent and high quality advice delivered efficiently and economically.

Traditional Labor Law

Orrick's Global Employment Law Group represents a broad array of companies and institutions on the full range of traditional labor law matters. We are experienced in representing employers facing union organizing campaigns and unfair labor practice charges before the National Labor Relations Board (NLRB). For our many clients with established collective bargaining relationships, Orrick lawyers have acted as spokespersons in collective bargaining with unions or have otherwise assisted employers handling their own negotiations. We have also represented employers in arbitrations under collective bargaining agreements, actions to compel or stay arbitration, injunction proceedings, significant appellate work opposing enforcement efforts by the NLRB and virtually every other type of proceeding involving the collective bargaining process. We counsel numerous employers (and act as special counsel to other major law firms involved in corporate legal work) on labor relations issues arising out of mergers and acquisitions.

Europe Representation

Orrick offers both employment counseling and employment litigation representation throughout Europe on all aspects of employment, from director's and management service agreements, to options, pensions, and trade union negotiations, staff handbooks, severance agreements and exit procedures.

We regularly advise U.S.-origin international companies on compliance with, and reconciliation of, the complex EU and national laws and regulations concerning supervisory boards, workers councils and redundancy procedures. We appear before employment tribunals and courts, defending companies from claims by employees.

United Kingdom

We represent many of the most prestigious employers in the world across all sectors of industry, from the financial sector to producers of household products and both leaders and start-ups in the technology field, on all aspects of employment law, both contentious and non-contentious.

Our team advise clients on strategy, documentation and procedure for various collective consultation processes with trade unions and elected employee representative bodies in relation to "TUPE transfers", collective redundancies, relocations of the workplace and collective changes to terms and conditions of employment including "across the board" salary and benefits reductions.



We also advised clients on relations with trade unions and negotiated settlements with them during individual disciplinary proceedings; on potential changes to collective agreements with trade unions and related consultation process; and on election process and requirements and consultation issues in relation to local and European works councils.

France

The French employment practice assists companies with the setting up, development, functioning and communications with employee's representative institutions as well as in their relations with trade unions. The team is well-versed in the follow-up of required procedures to inform and consult with works councils. All our lawyers are competent in transactional work and as litigators handling all types of disputes that may arise: litigation over elections of representatives, disputes over trade union representative appointments, charges of "hindrance" to the mandatory bodies for employee's representation and their procedures, collective labor disputes, etc.

Works council is mandatory when a company has more than 50 employees for at least a year. It is a collegiate body composed not only of employee members elected by the workforce but also of the head of the enterprise (who chairs the council and takes part in certain votes) and of representatives appointed by the trade unions (who act in a purely consultative capacity).

The law invests it with consultative powers in regard to employer initiatives concerning the organization and management of the company. The works council must be consulted prior to implementing major plans or projects (such as sales incentive plan, profit sharing plan, reduction of the working force, whistleblowing procedure or data transfer, organization of the working hours etc.).

Consequently, works council is sometimes seen as an obstacle to the sole decision making of the employer. This being said, the works council is not necessarily to be feared given that most of them do not challenge the employer's decision or project when they are duly informed and provided with appropriate information. Furthermore, they have charge of company welfare and cultural facilities are a good channel to receive the employees' complaints or requests to enhance the working conditions and avoid litigation. In short, it is a counterweight to managerial prerogatives, yet also enables their exercise to be rationalized.

The trade unions are divided into a number of different confederations, competing for membership. The main confederations are the CGT, CFDT, FO, CFTC and CFE-CGC. But despite low membership in France (in 2011 only eight percent of French employees were in unions) and apparent division French trade unions have strong support in elections for employee representatives and are able to mobilise French workers to great effect.

Trade unions possess a formal bargaining power. In practice, the dividing line between consultation, which is the prerogative of the works council, and collective bargaining, which is the prerogative of the representative trade unions, is a very thin one especially in companies with less than 200 employees which can negotiate, under certain circumstances, with the staff representatives if they do not have a trade union representative.



Germany

Orrick's Germany lawyers are proud to have extensive experience negotiating with works councils and labor unions regarding all questions of labor law concerning collective bargaining agreements, co-determination rights or restructuring measures of entire businesses. We provide clients with comprehensive solutions for the development, implementation and processing of all labor law procedures. Our team of employment lawyers also assists clients with all matters of individual labor law, serving as strategic counsel to ensure compliance with the constantly changing requirements of the labor law regime.

Works councils and labor unions are an essential part of the day to day employment work in Germany. Nearly all important German companies have a works council. The employees of a company are free to establish a works council and the company cannot avoid it.

The level of employee representation depends on the **business area**. **The companies of the “old economy”** (manufacturing industry, etc.) usually have works councils and are bound by collective bargaining agreements. Media or internet companies mostly do not have any employee representation and operate without collective bargaining agreements.

German statutory law stipulates considerable codetermination rights of the works council. However, codetermination rights are limited to matters which directly affect the working conditions of the employees and their employment relationship and do to limit the entrepreneurial freedom of the company. For example, restructuring measures which affect the employees (RIF, business closure or transfer) have to be negotiated **with the works council and, sometimes**, labor unions in order to agree on measures to limit the financial **disadvantages for the employees**. However, the employee representatives cannot avoid such measures.

For the most part, the German system of employee participation works well and can even help companies to carry out measures effectively (e.g. instead of negotiating with hundreds or thousands of employees, it is possible to conclude agreements with the works council or the labor unions which are binding for all employees).

The level of cooperation or conflicts with the employee representatives strongly depends on the personality of the employee representatives (cooperative representatives or representatives who aim to cause problems for the employer).

Russia

Orrick's employment lawyers advise employers on virtually every aspect of the employment relationship from simple human resources legal advice to complex litigation. We assist clients in preparing the full document package (including written employment or independent contractor agreements, employee performance review regulations, regulations on the protection of employees' personal data, regulations on the protection of confidential information and other documents required in specific circumstances) that an employer is required to have under the new Russian Labor Code. We regularly advise foreign companies operating in Russia on all aspects of compliance with the Russian labor law, including the related tax issues.



Asia Representation

Orrick's Asia employment team has extensive experience in advising clients on all aspects of contentious and non-contentious employment and employment-related matters, with a particular emphasis on employment contracts, counseling and coordination of terminations and reductions in force and assistance with employment disputes. We have advised clients in the establishment of company trade unions in China and assisted or advised on the process for consultations with the union for major employment changes.

Orrick's Tokyo lawyers have advised international clients on all aspects of Japanese employment and labor law, including drafting employment law related agreements, such as confidentiality agreements and non-compete agreements; drafting work rules; legal advice on employment law issues, such as reduction in force, changing the working conditions, compensation and benefits of employees, unpaid overtime issues, voluntary or early retirement and union issues and have represented employers in related litigation matters.

For more information on Orrick's Global Employment Law practice, please contact department chair, Mike Delikat at 212-506-5230 or mdelikat@orrick.com.