



Resolving Workplace Disputes Around the World

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Introduction

- Commonality and diversity
- A thematic look across the globe, focusing on Brazil, China, France, Germany, South Africa, Spain and the United Kingdom
- Practical issues, trends and surprises



Q1: Where are workplace disputes settled?

- In specialist employment courts (other than China – at least for now)
- Mediation is mandatory in China and Spain
- Conciliation is the starting block in South Africa
- Arbitration forbidden in France, Germany, UK (save for limited exceptions)
- Settlement is always an option

Q2: Specialist Employment Courts

- There are specialist labor courts in most jurisdictions – composition and jurisdictions vary from one country to another
- European model of balanced lay members, e.g., one from industry and one from the union movement
- No specialist labor courts at present in China – this may change as the number of cases surge



Q3: What are the key procedural steps in a typical employment dispute?

- In China, France, Germany, South Africa and Spain the first stage of statutory dispute resolution is conciliation
- If the dispute remains unresolved, the matter is referred for a further hearing
- In the UK the key stages are submission of a claim and a defence, production of documents, exchange of witness statements, trial and judgment



Q4: How extensive are disclosure/discovery requirements?

- In France, Germany and Spain – no formal discovery requirements
- Brazil and China – no formal requirements but judges take active role in requiring production of documents from parties
- South Africa – in the CCMA, discovery is informal
- In the UK, both parties may disclose documents on which they rely, which are adverse and support the other party's case

Q5: What rights of appeal exist?

- Generally two degrees:
 - Courts of appeal which review matters on fact and law (except Spain, where courts rule only on law)
 - Supreme Courts which generally rule on law only
- Common to stretch the concept of “facts”
- Arbitration awards in South Africa are final and binding – only review procedural irregularities
- In China there is a right to a retrial



Q6: How long does a typical case take to resolve? Are there time limits for issuing claims?

	Prescription Periods (from dismissal)	Time to resolve (approximately)
Brazil	2 years	3 to 4 years
France	5 years (exceptions)	6 to 24 months
Germany	3 weeks	2 to 6 months
South Africa	30 days	CCMA: 1-3 months Labor Court: 6-12 months
Spain	20 days	7.5 months
United Kingdom	3 months	8-12 months



Q7: What is the basis for assessing damages? Are punitive damages available?

- In most jurisdictions damages are based on financial loss (although dismissal formulas also can depend on facts such as age and length of service)
- Punitive damages – generally not awarded (save for Brazil)
- In France, Germany and Spain dismissal can be deemed null and void, and compensation can include payment of full salary going back to purported dismissal



Q8: Can you recover your legal costs in relation to a workplace dispute?

- Attorneys' fees in China typically are shouldered by the parties themselves
- In Germany, the financial risk of litigation can be estimated in advance – albeit court fees are paid by losing party and parties pay their own legal fees
- Costs generally are only awarded in CCMA proceedings in South Africa if a party has acted frivolously or vexatiously
- Employees rarely face adverse costs awards in Spain
- Costs generally “follow the event” in the UK but NOT in Employment Tribunals

Q9: What trends are emerging in relation to the resolution of workplace disputes?

- The volume of labor disputes lodged in all jurisdictions has increased in the past two years
- This is generally perceived as a combination of the economy, increased legislation and an increasing culture of litigation
- Mediation is becoming increasingly the norm
- Specialist employment courts are becoming increasingly technical – moving away from their origins as informal forums for dispute resolution



Q10: What other matters may take us businesses by surprise?

- Labor law is highly protective of employees in Brazil
- Split decisions are common in France, as employer and employee representatives who sit as judges have conflicting views
- In South Africa, no legal representation is permitted in conciliation processes or arbitrations relating to dismissals for conduct or capacity
- In the UK prepare to use a barrister

Global dispute resolution – At a glance

	Brazil	China	France	Germany	South Africa	Spain	United Kingdom
Specialist employment courts?	✓	✗	✓	✓	✓	✓	✓
Settled by arbitration?	✗	✓	✗	✗	✓	✗ not for indiv. disputes	✗
Mediation common?	✗	✓	✓	✗	✗	✓	✓
Discovery requirements?	✓ judge led	✓ judge led	✗	✗	✓ CCMA - informal	✗	✓
Punitive damages awarded?	✓	✗	✗	✗	✗	✗	✗
Recover legal costs?	✗	✗	✓	✗	in some cases	✗	in some cases
Disputes on the increase?	✓	✓	✓	✓	✓	✓	✓

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- Ying Li is a Partner in the Hong Kong office and a member of the Corporate Department. Having been based in China and Hong Kong for over 17 years at leading international law firms, Ying's practice focuses on China-related cross-border mergers and acquisitions, private equity, overseas public and private financing, and outbound investments of PRC enterprises. He covers a wide variety of industries, such as IT, telecommunications, media, entertainment, infrastructure, energy and clean technology, natural resources, banking and finance.
- Ying regularly counsels multinational companies on entering the China market. He structures complex investments and acquisitions in China involving joint ventures, wholly foreign-owned enterprises, and partnerships and licensing. His recent experience includes representing:
 - NBA in the creation of joint ventures and operating arenas in China
 - A group of international companies in disposing of their interests in a Shanghai property development company with landmark shopping malls, office buildings, condominiums and service apartments in Shanghai valued at approximately \$750 million, the largest private equity real estate deal in China for 2007
 - H&Q, a leading private equity firm, in connection with a sale to Starbucks of its controlling interest in an operator of over 60 Starbucks retail stores in Beijing and Tianjin
 - Huaxia Bank, a PRC-listed commercial bank, on introducing Deutsche Bank as the strategic investor by way of private bidding
 - Fairmont Raffles, Four Seasons, Jumeirah and Starwood in connection with their hotel management agreements in China
- Formerly a law professor at a leading law school in Beijing and a visiting scholar at Harvard Law School, Ying is a frequent speaker on legal and regulatory developments related to mergers and acquisitions and corporate finance in China and is quoted extensively by the Chinese press.



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- Cécile Martin is an Associate in the Labor & Employment Law Department in the Paris office. She is a member of the International Labor & Employment Group and the Privacy & Data Security Group. Cécile has experience with all employment law aspects of corporate restructurings (including transfer of undertakings and due diligence), redundancy procedures, including dismissing protected employees, settlement negotiations, negotiations with employee representative bodies (personnel delegates, works councils, health and safety committees, and unions) and French Labor Authorities (Labor Inspector, Ministry of Employment).
- Cécile also has extensive experience in data privacy law and is generally responsible for cases involving privacy issues at the crossroads of employment law and the law of new technologies, particularly issues concerning the cyber-surveillance of employees and the dismissal of employees for abusing technologies at their disposal during work time.
- Prior to joining Proskauer, she served as in-house counsel for the legal department of the French Data Protection Agency (C.N.I.L.). She was a speaker, on several occasions, for the American Bar Association's Workplace Committee and at a Technology in Practice conference.

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- Ronald Meisburg is a Partner in the Labor & Employment Law Department and co-head of the Labor-Management Relations and Strategic Planning & Corporate Due Diligence Groups, resident in the Washington, D.C. office.
- Before joining Proskauer, Ronald served as General Counsel of the National Labor Relations Board for four and one-half years and as a Board Member for one year. He is one of only four people to have served as both a Board Member and as the General Counsel, and the only person to have received Presidential nominations for both offices.
- Prior to serving at the NLRB, Ronald was a management labor lawyer from 1980 through 2003. In private practice, he has advised management clients with respect to issues arising under federal labor and employment law and collective bargaining agreements; served as labor counsel in complex business transactions; assisted clients in collective bargaining and in grievance and arbitration cases; and represented clients in matters pending before federal labor and employment agencies, and in federal trial and appellate court litigation.
- Prior to entering private practice, Ronald spent six years as a litigator in the Office of the Solicitor, U.S. Department of Labor, in Washington, D.C., in the Divisions of Employee Benefits and of Mine Safety and Health. At the Labor Department he received a number of recognitions and awards, including as a member of the litigation team that won the Secretary of Labor's Distinguished Achievement Award in 1978.
- Ronald has served in various leadership roles, including President of the Energy and Mineral Law Foundation, and has taught business law as an award-winning Adjunct Professor at the University of Maryland's Smith School of Business. Ronald resides in Arlington, VA.



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- Daniel Ornstein is a Partner in the Labor & Employment Law Department, resident in the London office. He has more than ten years of experience dealing with a broad range of UK and international employment issues, including High Court litigation, collective labor law, large-scale redundancies, Employment Tribunal litigation and training.
- Dan has extensive experience in litigation involving team moves and restrictive covenants before the High Court, and has been involved in some of the most recent high-profile cases in the UK, including *UBS v. Vestra* and *Farr v. Thomas*. He also has an in-depth knowledge of Employment Tribunal litigation, including claims for discrimination, victimization, working time, and unfair/wrongful dismissal.
- In addition, Dan counsels employers on all aspects of trade union and collective labor law, including trade union recognition, international and domestic works councils and industrial action, and negotiating collective agreements, both on a freestanding basis and in connection with mergers and acquisitions. His experience also includes large scale redundancies, and often is consulted by his clients at the very early planning stages of the process, advising on the level of compensation to offer, managing the collective consultation process, and balancing the legal and commercial risks.
- Dan frequently provides training on a range of topics, including diversity, outsourcing, TUPE issues, and handling of disciplinary and grievance matters. He also regularly speaks at conferences and has published a number of articles.

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- Betsy Plevan is a Partner in the Labor & Employment Law Department, co-head of both the International Labor & Employment Group and Class/Collective Action Group, and a former member of the Firm's seven-person Executive Committee. She has built her practice handling all types of labor and employment litigation, as well as counseling clients in employment matters. In addition to maintaining her active practice, she recently completed a two-year term as President of the New York City Bar.
- Betsy's practice includes representing clients in such diverse industries as banking and finance, health care, entertainment, publishing and consumer products. She spends considerable time representing leading law firms in counseling and litigation assignments. She has handled both single plaintiff and class action lawsuits involving issues of discrimination, harassment and employee benefits matters. Betsy has successfully tried a number of jury and non-jury cases in New York and elsewhere in the U.S., and her trial work has been recognized by her induction as a Fellow of the American College of Trial Lawyers. She also has argued more than 50 appeals in state and federal courts, and she has been elected a member of the American Academy of Appellate Lawyers.
- Betsy has been involved in representing employers in sexual harassment matters for many years. Noteworthy cases include, among others, her retention by Meritor Savings Bank to handle the remand of the landmark Supreme Court case in this area. She also handled, on appeal, the landmark case in which the New York Court of Appeals reversed a \$4 million punitive damages award against the magazine *Penthouse* on the ground that no punitive damages are available under the State Human Rights Law.
- In the employee benefits area, Betsy has handled class action lawsuits involving alleged breaches of fiduciary duty, COBRA violations and termination of retiree benefits. She also has extensive experience counseling employers on litigation avoidance and sexual harassment investigations and training management employees in these areas.
- Betsy is quoted frequently in national newspapers, legal and other trade publications and has appeared on television to discuss employment issues, especially sexual harassment suits, about which she has lectured and written extensively.

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