Introduction

• Commonality and diversity

• A thematic look across the globe, focusing on Brazil, China, France, Germany, 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
- Arbitration forbidden in France, Germany, UK (save for limited exceptions)
- Settlement is always an option
Q2: Specialist Employment Courts and key procedural steps

- 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.

- In China, France, Germany 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 defense, production of documents, exchange of witness statements, trial and judgment.
Q3: 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

- In the UK, both parties must disclose documents on which they rely, which are adverse and support the other party's case
Q4: 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”
- In China there is a right to a retrial
Q5: How long does a typical case take to resolve? Are there time limits for issuing claims?

<table>
<thead>
<tr>
<th></th>
<th>Prescription Periods (from dismissal)</th>
<th>Time to resolve (approximately)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>2 years</td>
<td>3 to 4 years</td>
</tr>
<tr>
<td>France</td>
<td>5 years (exceptions)</td>
<td>6 to 24 months</td>
</tr>
<tr>
<td>Germany</td>
<td>3 weeks</td>
<td>2 to 6 months</td>
</tr>
<tr>
<td>Spain</td>
<td>20 days</td>
<td>7.5 months</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>3 months</td>
<td>8-12 months</td>
</tr>
</tbody>
</table>
Q6: 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
Q7: 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
- Employees rarely face adverse costs awards in Spain
- In the UK, costs generally “follow the event” but NOT in Employment Tribunals
Q8: What trends are emerging and what may take US businesses by surprise?

• The volume of labor disputes lodged in all jurisdictions has increased in the past two years due to the economic crisis and increase of legislation

• Specialist employment courts are becoming increasingly technical – moving away from their origins as informal forums for dispute resolution

• Labor law is highly protective of employees in Brazil

• In the UK prepare to use a barrister
# Global dispute resolution – At a glance

<table>
<thead>
<tr>
<th></th>
<th>Brazil</th>
<th>China</th>
<th>France</th>
<th>Germany</th>
<th>Spain</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialist employment courts?</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Settled by arbitration?</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X (not for indiv. disputes)</td>
</tr>
<tr>
<td>Mediation common?</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Discovery requirements?</td>
<td>✓ judge led</td>
<td>✓ judge led</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>Punitive damages awarded?</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Recover legal costs?</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X (in some cases)</td>
</tr>
<tr>
<td>Disputes on the increase?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
Betsy Plevan
Partner

- 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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Daniel Ornstein
International Partner

- 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 bargaining 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.
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.