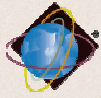


# A GUIDE FOR AMEA EMPLOYERS DURING THE 2010 WORLD CUP



EMPLOYMENT LAW ALLIANCE®  
Helping Employers Worldwide®

Prepared by the Employment Law Alliance

The euphoria surrounding the [FIFA World Cup](#), with the opening match scheduled to kick off in Johannesburg on Friday, 11 June 2010, has gripped the world. For the first time ever, one of the world's largest sporting events will take place on African soil. Clear communication should be made to all staff about their conduct and the employer's expectations, especially between the key dates of 11 June and 11 July. Despite all the hype surrounding the World Cup, employers in all jurisdictions are encouraged to take time out to think about the ways in which this international sporting event will affect their employees and, in turn, their businesses.

## The following are some examples of problems that may present themselves during this period:

### ABSENTEEISM

How can the company react to unjustified or short-term absences or to a fraudulent medical certificate?

### WORK TIME ORGANISATION

Are there ways of organizing work time so that the employees can follow matches?

### PERSONAL USE OF COMPANY'S IT SYSTEMS

May a company filter internet use or e-mails? On what conditions, if any?

### INTOXICATION WHILST ON DUTY

Can breathalysers be administered in the workplace?

### FOOTBALL HOOLIGANISM

How does an employer address off duty misconduct?

### GAMBLING AND OFFICE POOLS: ARE THEY PERMITTED?

Is it lawful for employees to conduct office pools at the workplace in which money is contributed for the chance to win the entire pot?



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When formulating strategies to manage the infectious adrenalin created by this event, employers are encouraged, where possible, to accommodate the needs of its business and the passion of the soccer fans amongst their workforce.

## ABSENTEEISM

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How can the company react to unjustified or short-term absences or to a fraudulent medical certificate?

### ALGERIA

In dealing with an unjustified or short-term absence, or the submission of a fraudulent medical certificate, an employer's qualification of such behaviour is important. The employer should take into consideration the seriousness of the misconduct, the circumstances under which these actions were committed, the prejudice caused, and the conduct of the employee before taking action. Depending on the seriousness of the misconduct, such behaviour can lead to a dismissal.

### EGYPT

Any absence must be justified by the employee (e.g., by submitting a medical certificate). An unjustified absence may be regarded as a form of misconduct and may lead to disciplinary action being taken, including suspension or dismissal. Pay for the days not worked may also be deducted from the employee's salary. It is considered a serious misconduct if an employee is absent without a valid reason for more than 20 days per year or for more than 10 consecutive days, provided that the employee is first warned in writing by the employer after 10 days' absence in the former case and after 5 days' absence in the latter case. Before imposing a sanction of dismissal, the employer must submit a request to do so to a committee.

The employer must agree to any absence, even if it is short-term. If the employer does not agree to such an absence, and if such absences are frequent enough, such behaviour can lead to disciplinary action.

Submitting a fraudulent medical certificate to an employer may be qualified as misconduct and may justify disciplinary action.

### HONG KONG

Whether an unjustified absence from work is sufficiently serious to warrant summary dismissal is a question of act and degree, and is dependent on the circumstances of each case. If unjustified absences are frequent, such behaviour may amount to serious misconduct for which the employee may be summarily dismissed.

With regard to short-term absences, the employer's reaction depends on the reason why the employee is absent. Under the Employment Ordinance, the employer is obliged to pay an employee sick leave for up to a maximum of 120 days.

If an employee submits a fraudulent medical certificate, he/she is guilty of fraud and/or dishonesty, and the employer may summarily dismiss the employee.

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## INDIA

An employee is required to obtain the employer's permission before taking leave.

Indian courts have held that the habitual unauthorised absenteeism of an employee may amount to misconduct, and thus the employee's employment may be terminated without notice or payment in lieu of notice. However, the misconduct should be clearly proven in a disciplinary proceeding held in accordance with the law and the principles of natural justice.

It is important that the employer incorporates in its employment policy the procedure for granting leave and the consequences of unauthorised absence.

Taking leave on the basis of a fraudulent medical certificate may amount to misconduct and may be a ground for termination of the employment relationship.

## INDONESIA

Employers typically regulate unjustified absences in the company regulations or in a collective labour agreement ("CLA") where there is a union. If the company regulations or the CLA is silent on unjustified absences, an employer may issue a management directive on the issue, as well as an explanation of the consequences flowing from such conduct. Usually, unjustified absences will constitute a violation of company regulations, and such conduct may result in the issuing of warning letters and/or termination. Under the Manpower Law, absence without authorisation for 5 consecutive working days will be deemed a resignation, provided the employer has summoned the employee twice in writing during the 5-day period.

Falsifying medical certificates can constitute a criminal act under Indonesian law. Typically, this act is regulated in company regulations or a CLA as serious misconduct subject to immediate termination by the employer.

## ISRAEL

An employer can deduct pay from the employee's salary for unjustified or short-term absences of an employee. If the employer can prove that a medical certificate submitted by an employee is fraudulent, this may be grounds for termination of employment.

## JAPAN

Employers may take disciplinary action for the unjustified or short-term absences of an employee if so provided by the rules of employment, which stipulate the disciplinary action that may be taken, including reprimand, reduction of pay, suspension, demotion and dismissal.

If an employee is absent without permission, or for an unreasonable reason, he/she may be subject to disciplinary action.

If an employee submits a fraudulent medical certificate, the employer may take reasonable disciplinary action as stipulated in the rules of employment.

## KENYA

Under the Employment Act, 2007 (the “EA”), an employer must have in place disciplinary procedures that are communicated to employees. The normal procedure is usually to issue warning letters and then to dismiss the employee summarily if the employee’s conduct does not improve after one or two warnings. Section 44 of the EA provides that absence from the employee’s place of work without leave or other lawful cause is a justifiable ground for summary dismissal.

Short-term absences can be taken as leave from the employer in line with the leave-taking procedures of the employer. Absence from the workplace without leave is a ground for summary termination under section 44 of the EA.

The EA provides for entitlement to sick leave provided that the employee submits a certificate signed by a duly qualified medical practitioner. If an employee submits a fraudulent medical certificate, this can be dealt with under the employer’s disciplinary procedures. It would also constitute leave without lawful cause, which is a ground for summary termination under the EA.

## KOREA

Employers with 10 or more employees have Rules of Employment (commonly referred to as the “employee handbook”), which regulate the working conditions affecting the employees (e.g., working hours, holidays, wages, absence, leaves, wages, code of conducts, as well as disciplinary action). Based on the Rules of Employment, the employer can take disciplinary action against employees who violate provisions of the Rules of Employment regarding absences, leave, working hours, etc. However, in practice, employees who act in minor violation of the Rules of Employment are subject to personnel evaluation, and not to disciplinary action. Nevertheless, an employee who repeats the same mistakes (e.g., frequent unjustified absences) by not abiding by warnings issued by their employer may be subject to disciplinary action.

## LIBYA

Being absent from work without a valid reason for more than 20 days in one year, or more than 10 consecutive days may be considered as a form of serious misconduct, which may lead to a dismissal without indemnities and notice. Short-term absences depend on the internal regulations of the employer. If too frequent, however, they may be considered as a fair ground of dismissal. If the submission of a fraudulent medical certificate to an employer is proven, it may be viewed as a fair ground of dismissal or as serious misconduct that may lead to disciplinary action, including a warning or suspension.

## MAURITANIA

The law establishes when an absence is considered justified (e.g., sickness, public holidays, personal circumstances, marriage, etc.). An unjustified absence may be regarded as misconduct and may lead to disciplinary action being taken, including dismissal. Pay for the days not worked may also be deducted from the employee’s salary.

Any absence, even one that is short-term, must be agreed to by the employer. Any disciplinary action depends on internal company regulations, and, for short term absences, employees may face disciplinary action if such is warranted by the company's regulations.

In cases where an employee has taken sick leave, an employee must prove the sickness by submitting a medical certificate. If the employer suspects that the medical certificate presented by the employee is fraudulent, the employer has the right to ask for a medical control by the company's doctor.

## MAURITIUS

Depending on the reason, both unjustified and short-term absences can be excused by the employer; otherwise, the employee may be warned verbally and, if the absenteeism persists, the employee may be given a written warning and finally disciplined for his/her absenteeism. The disciplinary action may lead to termination of employment.

## MOROCCO

Unjustified absenteeism is considered as a form of misconduct and may lead to disciplinary action being taken, including suspension. Pay for the days the employee did not work may be deducted from employee's salary.

The absence of an employee for more than 4 full days or 8 half-days may be viewed as serious misconduct, and may lead to disciplinary action being taken, including suspension and dismissal without notice.

Submitting a fraudulent medical certificate may be viewed as a breach of trust and a serious form of misconduct, which may warrant suspension and/or dismissal. A second medical examination of the employee may be conducted by the employer, if the medical team suspects that the employee was not sick.

## NEW ZEALAND

If an employee is absent for an extended period of time without good cause, the employer may determine that he/she has abandoned his/her employment. However, before an employer can treat the employment relationship as terminated, it must make reasonable effort to contact the employee and discover the reason for the absence. Only then can disciplinary action be taken.

Falsifying a medical certificate may be treated as misconduct or even serious misconduct by the employer. If treated as misconduct, the falsification may result in disciplinary action such as a formal warning. If treated as serious misconduct, it may result in the employee being dismissed from his/her position.

## NIGERIA

An unjustified absence from work may be viewed as a form of misconduct sufficient to justify dismissal. Accordingly, where an employee stays away from work for a considerable length of time without the employer's consent, such action may be viewed as misconduct for which the employee may be penalised in accordance with the terms of his/her contract of employment.

The consequences of an unauthorised short-term absence for an employee depend on the terms of the employee's contract of employment. Within the context of the World Cup where, for instance, an employee might be absent for a few hours to watch a match, such absence, if unauthorised, could lead to sanctions depending on the contract of employment.

The employer's course of action where an employee submits a fraudulent medical certificate depends on the terms of the contract of employment between the employer and the employee. An established principle of Nigerian labour law is that an employer may terminate the contract of employment of an employee for good reason, bad reason, or no reason at all. Accordingly, even if not expressly provided in the contract of employment, the employer may choose to terminate the contract of employment of an employee who submits a fraudulent certificate in order to justify his/her absence from work. Our usual advice to clients is that the employer simply informs the employee that his/her services are no longer required and that the employer should observe the applicable notice period. The employer need not give any reason for terminating the employee's contract of employment.

## OMAN

Article 40 (4) of the Omani Labour Law permits an employer to dismiss an employee if he/she is absent from work without reasonable cause for more than 10 days during a one-year period, provided that written notice is served on the employee after the 5th day of the employee's absenteeism advising the employee that in the event that he does not return to work after the 10<sup>th</sup> day of his absence, he will be dismissed. In addition, an employer can dismiss an employee, who is absent from work for a period of 7 consecutive days, without notice.

Article 66 of the Omani Labour Law requires an employee to prove his/her sickness by submitting a medical certificate. In the case of a dispute, i.e., if the employer suspects that a fraudulent medical certificate has been provided, the matter will be referred to a Medical Commission for decision, which decision will be final.

## SAUDI ARABIA

Pursuant to Article 80/7 of the Labour Law, an employer may terminate an employment contract without an award, advance notice, or indemnity if "the worker is absent without valid reason for more than twenty days in one year or for more than ten consecutive days, provided that the dismissal be preceded by a written warning from the employer to the worker if the latter is absent for ten days in the first case and for five days in the second". The employer must provide the employee with an opportunity to state his/her reasons for objecting to the termination.

Article 80/7 of the Labour Law may also apply to short-term absences.

Submitting a fraudulent medical certificate is considered a form of misconduct; therefore, employers can terminate the employee's contract pursuant to Article 80/3 "if it is established that the worker has committed a misconduct or an act infringing on honesty or integrity".

## SOUTH AFRICA

The employer should investigate the reasons why an employee has been absent from work, whether as a long-term absence or more frequent short-term absences. In the case of unjustified absences from work, employees may be disciplined for misconduct.

Where the employee alleges that he/she has been ill, the employee should be requested to provide the employer with a medical certificate. An employer is entitled to verify the authenticity of the medical certificate and, where such certificate is found to be fraudulent, the employee may be disciplined.

## THAILAND

An unjustified absence entitles the employer to withhold pay, and, if for 3 or more consecutive days, terminate the employee's employment without notice or compensation.

Unjustified, short-term absences would, in most instances, constitute a breach of the work rules, which would constitute a ground for terminating employment without notice or compensation if a written warning had been given and if the offence was repeated within 12 months. The law requires that the work rules be registered with authorities and posted at the workplace by any employer of 10 or more people.

Submission of a fraudulent medical certificate would constitute grounds for termination of employment without notice or compensation.

## TUNISIA

Unjustified absences are considered a form of misconduct and may lead to disciplinary action, such as dismissal without notice (Article 14–8 of the Labour Code). Frequent short-term absences are also considered a form of misconduct and may lead to disciplinary action including suspension and dismissal without prior notice.

Submitting a fraudulent medical certificate may be viewed as gross misconduct and may lead to a dismissal without notice.

## UGANDA

An employer's reaction to employee absences largely depends on the employer's policies and regulations. Both unjustified and short-term absences may be regarded as misconduct and may lead to disciplinary action including suspension (unjustified) or a warning or suspension (short-term).

The submission of a fraudulent medical certificate will be regarded as a form of misconduct and may also lead to disciplinary action including suspension and dismissal.



## WORK TIME ORGANISATION:

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Are there ways of organizing work time so that the employees can follow matches? If the employer adapts working time, what risks are incurred in respect to discrimination against those unmoved by football?

### ALGERIA

Yes, there are ways to organize work time so that employees can follow matches. Divided work shifts and continuous working hours, for example, would allow employees to follow matches. Adapting a continuous working shift is not an issue for employees unmoved by football because it is considered an advantage. However, all parties must agree before the work time is adjusted unless the contracts of employment allow the employer to change working hours without the consent of the employee.

### EGYPT

The working hours in Egypt are 8 hours per day, 6 days per week, with a maximum of 48 working hours per week and a minimum of 24 consecutive hours of rest in one week. During each working day, employees are entitled to a one-hour break at least, although the parties can agree on a different work time organization. Further, the employer can change employees' working hours without their consent if the contract of employment allows for this. If not, the employees' consent is required.

### HONG KONG

There are no laws in Hong Kong preventing employers from rescheduling working hours for their employees. However, employers should bear in mind that all employees are entitled to one rest day in every period of 7 days of work.

It is unlawful to discriminate directly or indirectly on the basis of gender, marital status, pregnancy, disability, race or family status. The biggest risk of adjusting working time is that it may be seen as indirect discrimination against women or employees of a particular race.

### INDIA

Certain local enactments regulate the working hours of establishments. However, the employer, in its discretion, may provide for flexible working hours/shifts. While certain employees may spend some time watching the matches, the employer should ensure that those employees still work the employer's normal working hours and not fewer than worked by other employees, who are not interested in football. While providing flexible working hours/shifts, the employer is still required to adhere to the local laws relating to working hours.

As set out above, the employer may be required to comply with local legislation that regulates working hours. An option may be provided for those interested in football to work from home so that the targets and deadlines are still met. This would ensure that individuals unmoved by football can work during the regular hours and are thus not adversely affected.

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## INDONESIA

Employers, in their discretion, may organize their working hours as needed, taking into account the mandatory working hours i.e., 8 hours per day and 40 hours per week. Special rules may apply to public service employees.

We would recommend that an adjustment of working hours by employers to accommodate the football should be optional for employees rather than mandatory to avoid claims for overtime pay by all employees if they are required to work special hours.

## ISRAEL

There is the possibility of organizing working hours to allow employees to follow the matches for those employees who are in positions that have flexible working hours. However, if an employer adapts working hours for a specific group of employees and/or in light of a special event, it may be asked to do the same for other events of interest to employees.

## JAPAN

An employer can (re)organize working hours as long as the employees agree or such organizing is prescribed in the rules of employment. Employers are legally prohibited from discriminatory treatment with respect to working hours by reason of nationality. Those unmoved by football might complain and demand similar treatment for other special events (e.g., Olympics).

## KENYA

Reorganizing work time depends on company policy. Flexible working hours are not an entitlement under Kenyan law unless there is a provision in the employees' contract to this effect. Employers, however, should be careful to ensure that flexible working hours do not appear discriminatory to employees who may not be interested in watching the matches. Caution should also be exercised to avoid setting a precedent for future sporting and other popular events.

The employer should be careful to ensure that adopting flexible hours caters to both the employees interested in matches and those who are not; otherwise, this may give rise to discrimination claims. The employer needs to consult with employees to work out a plan that is suitable for all employees, e.g., other employees are granted time off equivalent to the time off granted to football fans.

## KOREA

To enable employees to follow matches, an employer may consider adopting a "selective working hour system" according to Article 52 of the Labor Standards Act. Under the selective working hour system, an employee can choose his/her start and finish time at a workplace, as long as the employee works the contractually stipulated hours of work within a given period of time. An employer should be aware that issues may arise as to whether adopting the selective working hour system is an unfavorable change in working conditions, and if so, then employers would be required to obtain the consent from the employees' representatives (i.e., a majority of the employees as a group or the labor union representing a majority of employees).

## LIBYA

Organization of working hours depends on the employer. However, an employee may not be asked to work more than 8 hours per day, unless it is by means of agreed overtime, which may not exceed 4 hours per day and for which the employee must receive 50% more than his/her usual hourly wage. Each employee is entitled to a regular weekly day of rest and may not work more than 6 consecutive hours without a break. Employers have the right to determine their own working hours.

## MAURITANIA

Employers in Mauritania are entitled to organise working hours as they wish as long as employees do not work more than 8 hours per day, unless it is by means of agreed overtime, which may not exceed 4 hours per day and for which the employee must receive 50% more than his/her usual hourly wage. Each employee is entitled to a regular weekly day of rest and may not work more than 6 consecutive hours without a break.

The parties may agree on a work time organisation so that that the employees can follow matches.

The employer can change working hours without the consent of the parties only if the contract of employment allows it to do so.

## MAURITIUS

For most service companies in Mauritius, reorganizing working hours is very difficult and therefore, not possible. Such employers need to cater to the needs of their clients and respect their professional commitments first.

## MOROCCO

Summer time hours and continuous working hours are possible ways of reorganising working hours to give employees the opportunity to watch almost 90% to 95% of the games. All of this work time organization, however, depends on agreement between the employer and the employees.

In Morocco, adapting a continuous working shift is not an issue because it is considered an advantage for all the employees -- women or men moved or unmoved by football. However, the employer and all the employees must agree before working hours are adjusted unless the employees' contracts of employment allow the employer to change working hours without the employees' prior consent.

## NEW ZEALAND

It may be possible for an employer to adjust working times provided work demands can accommodate this, and where there is sufficient flexibility in terms of the employment agreement.

Prohibited grounds for discrimination in New Zealand include gender, racial, ethnic or national origin. If an employer alters working times to accommodate matches, it would be difficult to establish that this comes within the prohibited grounds of discrimination.

## NIGERIA

Work time is as prescribed by the employees' respective contracts of employment and may be re-arranged to enable employees to follow matches, subject to the employer's discretion. It is not uncommon for employers to provide television sets in a common part of the office where employees can follow the progress of most matches, while being mindful of pending official assignments in the office.

Any adaptations to the working hours should apply to all employees, as doing otherwise could be regarded as being discriminatory. The constitutional protection from discrimination in the Nigerian constitution is to the effect that discrimination against anyone on the grounds of the community to which he/she belongs, ethnicity, place of origin, sex, religion, or political opinion is forbidden; as such, it is unclear whether this protection can be extended to enable employees that are unmoved by football to claim any relief due to an adaptation of working time to enable other employees follow matches.

## OMAN

There is nothing in Omani law that prevents an employer from reorganising working hours. In practice, most employment contracts will stipulate the employer's working hours. If the employer changes these hours so that a worker can follow matches, it should be at the discretion of the employee to adopt the revised working hours.

Article 11 of the Omani Labour Law states that employers must ensure the equality of all workers when the nature and conditions of their work are similar. Any discrimination in the workplace is condemned by the Courts.

## SAUDI ARABIA

Employers in Saudi Arabia have the discretion to organize work time as they deem fit as long as it does not violate the terms of the employees' work contracts.

An employer may not change the working hours of its employees if that results in substantial changes to employees' contracts of employment. Certain employees may challenge the change if the working hours are significantly different than the standard working hours. Similarly, Article 150 of the Labour Law stipulates certain requirements for the employment of women during the night, which may have an impact on an employer adapting work time to allow employees to follow matches.

## SOUTH AFRICA

Employers could consider offering flexible working hour arrangements to their workforce during the World Cup. Obviously, this arrangement should be introduced in accordance with a written policy, and it is advisable that employees' productivity be properly monitored to avoid abuse, and to ensure that such practices are not counterproductive.

To avoid the risk of unfair discrimination claims, it is important for employers to offer flexible working arrangements to both men and woman, as an example, and not to make assumptions that only males would be interested in watching and attending matches. Also, employers should be careful not to give preference to South African fans

over other nationalities. For example, in the event that an employer only allows employees to take leave on those days when the national team is playing matches, employees who are foreign nationals could allege that they have been discriminated against, and they could bring a claim under the provisions of the Employment Equity Act, 1998.

## THAILAND

Dispensations may be granted by an employer to particular employees, at their request, for specific time periods, with respect to their working hours. Temporary or periodic changes to working hours across the workplace, however, would require the consent of every employee.

## TUNISIA

Having continuous work shifts will allow employees to watch almost 90% of the matches and they will miss only the first game at 13h30. Adapting a continuous working shift is not an issue because it is considered as an advantage for all the employees -- women or men moved or unmoved by football. All parties must agree before the working hours are adjusted, unless the contracts of employment allow the employer to change working hours without the consent of the employees.

## UGANDA

Reorganising the working hours of employees depends on the employer's flexibility and the agreement of the parties. All parties must agree before working hours are adjusted unless the employees' contracts of employment allow the employer to change working hours without the consent of the employees.

## COMPANY IT TOOLS

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May a company filter internet use or e-mails ? On what conditions, if any?

### ALGERIA

Yes. A company can filter internet use and e-mails. However, it must first inform its employees that measures of control and filtering of the web and e-mail have been set up.

### EGYPT

A company can filter internet usage if such internet usage is on company property, but the employer cannot monitor or filter employees' personal emails since that is a violation of their privacy. Conditions for monitoring or filtering apply only to information for control on a company's server/computers.

### HONG KONG

The law allows employers the right to filter internet use and emails. The terms of restriction may be incorporated into the employment contract as part of the agreement.

The company may impose any condition - it is essentially a matter of agreement between the company and its employees

### INDIA

Yes. A company may filter internet use and emails of employees. The company may impose such conditions as it may deem fit, but should inform its employees about such a policy. The company should also ensure that such information/emails are kept confidential.

### INDONESIA

Yes. There is no prohibition on a company filtering internet use or email under current laws and regulations for equipment (including the system, hardware and software) owned by the company. Many employers in fact apply internet and email filtering.

The only condition for the filtering is that the equipment (including the system, hardware and software) is the property of the company.

### ISRAEL

Filtering to block access to certain internet sites is permitted in Israel, but employers may only look at employees' emails if the employee has consented in writing.

### JAPAN

Yes. A company may filter internet use and e-mails in Japan. The filtering of internet use and e-mails should be regulated by the rules of employment. However, the employees must be notified in advance. In addition, the manner of filtering needs to be reasonable.

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## KENYA

Yes, provided that such monitoring is agreed to contractually. Taking such action would normally be provided in a company's policies. Kenya does not have privacy or data protection laws; however, to the extent that there is a right to privacy under the English common law, this would have application in Kenya. Therefore, an employer should inform its employees that it reserves the right to filter emails and internet use where the employer's equipment is being used.

The company's policies should be communicated to the employees and not applied arbitrarily. Normally, employers would provide in their policies that they have the right to restrict and monitor use of company equipment.

## KOREA

An employer, as an owner of the property, has a right to manage its facilities for its own purposes. Therefore, the company can block access to certain web-sites that are not work-related.

## LIBYA

Yes. A company can filter internet use, as the equipment is company property. No prior information or consent is required.

## MAURITANIA

Yes. A company can filter internet use if such activity is taking place using company property. Restriction is allowed without prior information.

## MAURITIUS

Yes, a company can filter internet usage in the workplace.

## MOROCCO

Yes. A company can filter internet use and e-mail, as it is company property. Company IT tools cannot be used for reasons other than work -- such as watching games -- since this could affect the employee's quality of work. A company can also restrict access to different non-professional, non-work-related websites.

## NEW ZEALAND

Yes. A company can filter internet use and email, provided it has a documented policy covering this.

A company can impose whatever reasonable restrictions it wants on the use of the internet and emails in the workplace. The policy, however, should be in writing. Most companies will have a documented internet policy to impose conditions on internet and email use that is readily available to employees.

As it is company property, there are no conditions, and obtaining employees' agreement or information is not required.

## NIGERIA

It is not uncommon in Nigeria for employers to restrict internet use during working hours. One of the major considerations for doing so is the limitation on the amount of available bandwidth. An employer's priority in this regard is to ensure that whatever internet capability is available can be deployed for official assignments. Thus, it may restrict internet downloads or access to social networking sites on the company's internet facility.

## OMAN

There is nothing in the Omani Labour Law that prevents or allows the employer to filter internet use and email. In practice, most employment contracts have a provision that states that all emails, etc. are the property of the employer. In addition, many employers block social internet sites for use by their employees.

## SAUDI ARABIA

This may be an issue for the employer to determine, as there is no law in Saudi Arabia stipulating such rights over the employee. Blocking certain websites that the employer considers unrelated to work and may have a negative effect on the employees' performance may fall under the employer's internal policies.

The employer may take such action if it believes it has adequate proof; however, it will be considered as infringing on the employee's personal rights if no proof or real suspicion exists.

## SOUTH AFRICA

While an employee does not lose the right to privacy upon entering the workplace, his or her privacy rights are to some extent reduced in the workplace. An employer may filter internet use and employees' e-mails subject to certain conditions.

The options available to an employer with regard to monitoring and intercepting internet usage and e-mails are largely dependent on whether or not the company has a provision in its contracts of employment with its employees and/or a written IT Policy advising employees that they have no expectation of privacy with regard to the company's office communication system, and that any electronic communications made on such system may be intercepted from time to time. Also any monitoring of an employee's internet usage, and interception of his or her e-mails, must be conducted in accordance with the provisions of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002.

## THAILAND

Internet use and emails may be filtered by the employer. There are no conditions in Thailand restricting this right of the employer.

## TUNISIA

Yes. A company can monitor and filter internet use and e-mail.



## UGANDA

Yes, if it is company property. A company may filter an employee's internet use and e-mail for information that is on the company's server/computers.

## INTOXICATION

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Can a company administer breathalysers in the workplace? What action, if any, can be taken against employees who report to work under the influence of alcohol?

### ALGERIA

It is prohibited by labour law to drink alcohol in the workplace. It is also a criminal offence. The consequence of being under the influence of alcohol in the workplace may be dismissal without any prior notice as this may be regarded as gross misconduct.

### EGYPT

Public drunkenness is forbidden in Egypt. An employee who comes to the workplace in a state of obvious drunkenness or under the influence of drugs during working hours is considered to be guilty of gross misconduct and this may lead to disciplinary action being taken against the employee, including dismissal.

### HONG KONG

Administering a breathalyser to employees is allowed only if the employees consent thereto.

Depending on the terms of the employment contract, disciplinary action may be imposed on an employee who reports to work under the influence of alcohol. The company should lay down clear ground rules to this effect. Depending on the circumstances, the employee may be summarily dismissed for engaging in this type of misconduct.

### INDIA

There is no legal prohibition on administering breathalysers in the workplace; thus companies can do this as they deem necessary. Courts in India have held that reporting to work in a state of drunkenness constitutes misconduct which may warrant dismissal.

### INDONESIA

Yes, a company may administer breathalysers in the workplace. Intoxication in the workplace is a serious violation of law in Indonesia.

Consuming or being under the influence of alcohol during working hours typically constitutes serious misconduct and may warrant immediate termination (subject to applicable laws and regulations). However, the situation depends on the company's regulations or CLA.

### ISREAL

An employer cannot force an employee to take a breathalyser test. If an employee comes to work under the influence of alcohol, it may be considered a breach of the employee's duties and may result in disciplinary action being taken against the employee.

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## JAPAN

An employer is allowed to administer a breathalyser if it deems it necessary and the test is carefully administered. The employer may take disciplinary action against the employee, depending on the situation, in accordance with the rules of employment.

## KENYA

The use of breathalysers is not regulated under Kenyan law; therefore it is not clear whether a company can use them in the workplace. However, if an employer suspects that an employee is intoxicated, administering a breathalyzer and getting a positive result would corroborate the employer's suspicion, but doing so is not legally required.

Section 44 of the Employment Act provides that incapacity to work during working hours due to intoxication is a justifiable ground for summary dismissal. Nevertheless, a company should follow progressive discipline when dealing with intoxication in the workplace, unless the disciplinary rules stipulate that intoxication will result in the summary termination of the employment relationship.

## KOREA

Generally, a company can require an employee to take a breathalyzer test in the workplace if he/she consents or if the individual employment contract or the Rules of Employment provide for the use of breathalyzers. A company can require such testing of employees whose jobs involve a high risk of injury to people and property, for example, bus drivers and heavy equipment operators.

Based on the Rules of Employment, a company can prohibit employees under the influence of alcohol from working, especially where their jobs carry a high risk of injury to people and property.

## LIBYA

Drinking alcohol is forbidden in Libya. Consequently, drinking in the workplace is also not allowed. Being found drunk in the workplace is a ground for dismissal that warrants immediate termination without compensation or notice.

## MAURITANIA

Public drunkenness is forbidden in Mauritania. Coming to work in a state of drunkenness is considered a form of gross misconduct and may lead to disciplinary action being taken against the employee, including suspension of employment or dismissal.

## MAURITIUS

Breathalysers may be used in the workplace to support evidence during an internal investigation that an employee is under the influence of alcohol while present on the office premises. Disciplinary action may be taken against employees who are under the influence of alcohol at the workplace, which may result in summary dismissal.

## MOROCCO

Yes. A company can administer breathalyzers, but it is not culturally well perceived since it is strictly forbidden to drink alcohol in a Moroccan company. The consequence of reporting for duty under the influence of alcohol is dismissal, without any notice, as this will be regarded as gross misconduct.

## NEW ZEALAND

A company can lawfully use breathalysers in the workplace only where it has an approved drug and alcohol policy and where the employer has reasonable cause to suspect the employee is under the influence of drugs or alcohol. Alternatively, breathalysers can be administered on a random basis without any warning if the policy provides for this and the employee works in a safety sensitive area.

An employer can commence a disciplinary process for employees who report to work under the influence of alcohol. Therefore, the situation of an employee who compromises the safety of others by being intoxicated is treated very seriously. Employers can require employees to attend rehabilitation services or ban them from the premises until they are no longer intoxicated. On occasions, this could be grounds for dismissal.

## NIGERIA

Generally, breathalysers are not used in Nigeria, but there is no regulation or law prohibiting employers from administering them in the workplace. Employers would be entitled to take any disciplinary action as may be provided in the contract of employment if an employee reports for duty under the influence of alcohol. Where an employee repeatedly reports to work under the influence of alcohol, the employer may choose to terminate his/her contract of employment without specifying any reason for doing so.

## OMAN

There is nothing in the Omani Labour Law that allows or prevents the use of breathalysers in the workplace. In practice, the use of a breathalyser may be difficult to implement. Nevertheless,

Article 40(7) of the Omani Labour Law permits an employer to dismiss an employee without notice and without payment of end of service benefits if he/she is found in a state of drunkenness at work.

## SAUDI ARABIA

The Saudi Labour Law does not address whether an employer can compel potential job applicants and current employees from undergoing drug tests. However, applicants can be requested to undergo pre-employment and post-offer drug tests. Article 63 of the Saudi Labour Law may be construed as providing an employer the right to request current employees to perform a drug test when there is reasonable suspicion and/or evidence suggesting drug use. They will be punished with a fine according to Article 236 for breach of Article 63.

## SOUTH AFRICA

Our courts have held that an employee is “under the influence of alcohol” if he/she is unable to perform tasks entrusted to him/her with the same skill expected from a sober person. Evidence of intoxication may be derived through tests such as a breathalyser. Where an employer has concluded contracts of employment with employees, the terms of which employees consent to random drug and alcohol testing, and where such testing will not infringe an employee’s right to privacy, such testing may be administered. This is a tricky area of the law, and therefore it would be best to seek legal advice prior to administering such tests in the workplace.

Intoxication whilst on duty is a form of misconduct, and an employee may be dismissed if he/she has consumed alcohol to the point where he/she is rendered unfit to perform the necessary duties of the job.

## THAILAND

Compulsory administration of a breathalyser is permissible only if it is provided for in the work regulations of the employer.

If reporting to work under the influence of alcohol is expressly prohibited in the work rules or in any other announcement or instruction of the employer, such behaviour may constitute a ground for termination of employment without notice or compensation, provided that a written warning had been given to the employee previously and the offence was repeated by the employee within 12 months. An employee who reports to work under the influence of alcohol and who causes loss or damage to the employer as a consequence of his or her condition could be terminated without the requirement of a prior written warning.

## TUNISIA

Yes. A company can use breathalyzers, as it is forbidden to drink alcohol in a workplace. The consequences are dismissal, without any prior notice as intoxication is regarded as gross misconduct. Article 14 – 8 of the Labour Code.

## UGANDA

Yes. The consequence of reporting for duty under the influence of alcohol is dismissal, including summary dismissal, as drinking alcohol at the workplace or coming to work intoxicated are both regarded as forms of gross misconduct.

## FOOTBALL HOOLIGANISM

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How does a company deal with off-duty misconduct, such as football hooliganism?

### ALGERIA

If it is off duty, the company has no legal basis to take disciplinary action against the employee.

### EGYPT

If it is off duty, the company is limited in what disciplinary measures it can impose on the employee.

### HONG KONG

Depending on the terms of the employment contract, disciplinary action may be imposed. If the employee engaged in off-duty misconduct of such a character as to make it unsafe for the company to retain the employee, then the employee may be summarily dismissed.

### INDIA

A company may reprimand the employee for indulging in hooliganism, even while off duty, if the employee is convicted for any offence involving moral turpitude or if such behavior results in tarnishing the image of the company.

### INDONESIA

Under Indonesian law the act of hooliganism is itself a form of misconduct if it is done during non-working hours and outside the workplace. If the act of hooliganism involves a criminal act that causes the employee to be detained, the employer has no obligation to pay the employee's wage but it must give aid to the employee's family (i.e., 25% of the wage if the employee has one child, 35% for two children, 45% for three children and 50% for four or more children).

### ISRAEL

Inappropriate behavior or football hooliganism is not the employer's business unless the behavior is related to work. If there is a serious criminal conviction, depending on the circumstances, it could result in a breach of the employment terms.

### JAPAN

A company should consider if it can/should take disciplinary action. According to judicial precedents, an employee who engages in off-duty misconduct can be subject to disciplinary action if such conduct is likely to affect the smooth operation of the company or harm the company's reputation.

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## KENYA

Under the Employment Act, off-duty misconduct is not a justifiable ground for summary termination unless it leads to an employee being arrested for an offence punishable by imprisonment.

An employer, however, can provide in the employment contract that any act by the employee that puts the company into disrepute will invoke disciplinary action.

## KOREA

A company usually has Rules of Employment, which provide information on working hours, holidays, wages, absences, leave, wages, codes of conduct, as well as disciplinary action. Generally, a company's code of conduct regulates employees' behaviors such as gambling at the workplace and misconduct during employees' off-duty time. Based on the Rules of Employment, the company can take disciplinary action against employees who violate provisions regarding the company's codes of conduct. Basically, an employee's misconduct during his/her off-duty time falls within the employee's private life and cannot be subject to the company's disciplinary action. However, when the company's reputation is damaged due to an employee's immoral or illegal conduct, the company may take disciplinary action against the employee.

## LIBYA

If the employee's misconduct is off duty, no disciplinary action can be taken except if the employee has been convicted of a crime or misdemeanour involving dishonesty, infamy, or immorality, or has committed any act that causes serious material damage or loss to the employer.

## MAURITANIA

As the misconduct is off duty, the company cannot take any disciplinary action against the employee.

## MAURITIUS

Even if off duty, misconduct such as hooliganism still bears an effect on the reputation of the company. Depending on the circumstances after an investigation, the employee involved in such cases will be warned orally and, if his or her attitude does not change, he/she will face disciplinary action.

## MOROCCO

If the misconduct is off duty, the company has no legal basis to take any disciplinary action unless the company can prove that it has suffered as a result of the employee's private misbehaviour.

## NEW ZEALAND

Generally, an employee cannot be held accountable to his/her employer for conduct undertaken while not at work. However, there are situations where an employee's conduct will be treated as bringing the employer into disrepute and therefore form a ground for disciplinary action or dismissal. Usually, there needs to be either some

connection to the employer or criminal charges before the outside activities of an employee can be taken into account for this purpose.

## NIGERIA

An employer's authority over an employee is limited generally to the place of employment such that the employer cannot be held liable for any act done by its employees where an employee is neither in the place of employment nor acting in the course of his or her employment. Accordingly, where certain employees are involved in activities related to football hooliganism, the employer may be entitled to take action against the employee if the employer believes that such activities are harmful to its business or negatively affect the employee's ability to perform his or her duties in accordance with the terms of his or her employment. The course of action that may be taken by the employer would depend on the contract of employment.

## OMAN

Under Article 40 (6) of the Omani Labour Law, if a worker is found guilty of an offence (for example assault as a result of football hooliganism), the employer can dismiss him/her without notice and without payment of end of service benefits.

## SAUDI ARABIA

Pursuant to Article 70, "A worker may not be subjected to disciplinary penalty for an act committed outside the workplace unless such an act is related to the job, the employer or the manager in-charge."

## SOUTH AFRICA

Generally, what an employee does after work hours is of no concern to his or her employer. As a general rule, an employer has no right to institute disciplinary proceedings against an employee unless it can show that it has some interest in the conduct of the employee outside the workplace. An interest would normally exist where some nexus exists between the employee's conduct and the employer's business. In the absence of such nexus, the employee's conduct is likely to be non-work related conduct or, as it is sometimes termed, "off-the-job conduct". It has been accepted that, where an employee's misconduct occurs off an employer's premises but impacts the workplace, the employer is entitled to take disciplinary action against the employee. In these circumstances, the employer has to establish that it has a legitimate interest in the matter, for example, the misconduct impacts on the employer's business or affects the employer's reputation.

## THAILAND

Off duty misconduct in general has no employment law consequence.

## TUNISIA

If the misconduct is off duty, the employer cannot take disciplinary action against the employee unless it expressly prohibits the behavior or activity. All that may be given to the employee is a caution.

## UGANDA

If the misconduct is off duty, the company is limited in what disciplinary action it can impose unless company regulations expressly prohibit the behavior or activity. All that may be given to the employee is a caution.

## GAMBLING / OFFICE POOLS

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Is it lawful for employees to conduct office pools at the workplace in which money is contributed for the chance to win the entire pot? If office pools or gambling are prohibited, what steps should an employer take to prevent office pools from being conducted at the workplace?

### ALGERIA

Gambling in Algeria is prohibited. Employers should ensure that supervisors prevent the set up of any office pools.

### EGYPT

Gambling in Egypt is unlawful. Employers must communicate to employees that such behaviour is prohibited in the workplace. Thus, employers should make it clear to employees that office pools are prohibited and they should have supervisors in place to ensure that none are created.

### HONG KONG

According to the Gambling Ordinance, gambling (which includes office pools) on social occasions, not promoted by way of trade or business, is not unlawful. There is no statutory definition of 'social occasion'. However, in determining whether gambling has occurred on a social occasion, the court will look at the balance of the dual aims of the gambling the hope of winning money and recreation.

### INDIA

Conducting office pools amounts to gambling and is therefore illegal in India. Further, a company may be held accountable for encouraging and abetting gambling if the pools are held on office premises.

Moreover, certain state legislation sets out that gambling on office premises amounts to misconduct and is a valid ground for termination of employment.

The company may, by building into its employment policy and by other means, educate employees about the consequences of organising and participating in such pools.

### INDONESIA

Gambling is strictly prohibited under Indonesian Law. The act of contributing money to a pot constitutes gambling and as such is a criminal offence. Company regulations and CLAs typically characterize the act as a violation that is subject to various sanctions and ultimately termination.

An employer may remind all employees by written announcement that any act of gambling (relating to the World Cup or otherwise) is strictly prohibited and is subject to the provisions of the company regulation or CLA and the applicable laws and regulations.

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## ISRAEL

Gambling is illegal irrespective of whether it is in the workplace or elsewhere. By way of a reminder, the employer may want to periodically send a notice to the employees notifying them that gambling is illegal and that they should not engage in it.

## JAPAN

Office pools constitute "gambling" and gambling is prohibited by the Criminal Code. The rules of employment should include a provision to the effect that an employee who conducts gambling in the workplace and/or commits a crime can be subject to disciplinary action. If such a provision is not yet included, an employer should change its rules of employment.

## KENYA

Office pools are not prohibited by law unless the employee's employment contract or company policy provides otherwise. If the company prohibits office pools, it should be clearly stated in the company's staff policies or contracts that engaging in such activity may lead to disciplinary action.

## KOREA

A company usually has Rules of Employment that provide information on working hours, holidays, wages, absences, leave, wages, codes of conduct, as well as disciplinary action. Generally, a company's code of conduct regulates employees' behaviours such as gambling at the workplace and misconduct during employees' off-duty time. Therefore, based on the Rules of Employment, the company can take disciplinary action against employees who violate provisions regarding codes of conduct.

## LIBYA

Gambling is unlawful in Libya. Employers must communicate to the employees that such behaviour is prohibited in the workplace. Employers should make it clear, for example, in their Internal Regulations, that office pools are prohibited. Employers should have supervisors in place to ensure that none are created.

## MAURITANIA

Gambling is unlawful in Mauritania. An employer must communicate to its employees that such behaviour is prohibited in the workplace. Employers should make it clear that office pools are also prohibited and they should have supervisors in place to ensure that none are created.

## MAURITIUS

It is unlawful in Mauritius for employees to conduct office pools at the work place. Employers should include such prohibitions clearly in the office manuals and clearly define the sanctions that will follow should an employee fail to abide by office regulations.

## MOROCCO

It is not authorized for a company in Morocco to conduct office pools. However employers should make it clear, with an internal notice for example, that office pools are prohibited and the company should have supervisors in place to ensure that none are created.

## NEW ZEALAND

Yes. It is lawful in New Zealand to conduct office pools at work without a license, provided the person running the pool does not deduct any remuneration or commission, the entire pot is given to the winner, and the gambling is primarily a social event. The prize money must also be less than NZ\$500, or NZ\$25,000 if conducted by an incorporated society.

## NIGERIA

Nigerian law prohibits the operation of or participation in any pools betting or undertaking and prescribes a punishment of imprisonment (6 months), a fine (200 Naira or 1.34 USD), or both for the violation of the law.

An employer could take any appropriate precautionary steps, such as express prohibition in the contract of employment, supervision and such other precautionary measures as may be necessary to prevent office pools from being carried out at the workplace. Under the Pools Betting & Casino Gaming (Prohibition) Act, where any pools betting activity is carried out in the workplace whether through the neglect, connivance, or consent of any agent, director, manager, secretary, or other employee of anybody corporate, such individuals would be subject to punishment as stated above. In addition, the body corporate would also be liable to a prescribed fine (5000 Naira or 34.00 USD).

## OMAN

Article 232 of the Omani Penal Code defines gambling as games that depend on chance rather than skill or intelligence. Running an office pool would be classified as a form of gambling. Article 233 of the Omani Penal Code states that anyone practising gambling will be sent to prison for a term of not fewer than 6 months and not exceeding 3 years and a fine not exceeding 500 Omani Rials.

In practice, however, it is advisable prior to the football tournament to inform the workers that office pools are prohibited in the workplace.

## SAUDI ARABIA

It is unlawful for a company's employees to conduct office pools at the workplace in which money is contributed because this is considered a form of gambling – and gambling in Saudi Arabia is prohibited by Shari'ah law (i.e., Islamic Law). Consequently, Article 4 of the Saudi Labour Law stipulates "When implementing the provisions of this Law, the employer and the worker shall adhere to the provisions of Shari'ah Law."

The employer can take steps when faced with an employee gambling or office pools, such as an initial written warning. Thereafter, the employer may terminate the employment of any employee who engages in gambling or office pools on the basis that

such behaviour results in misconduct and is contrary to Shari'ah Law. Furthermore, gambling or holding office pools may result in other acts of misconduct i.e., disagreements and disputes in the work force over the outcome, which in turn may provide the basis and impetus for prohibiting such activity, even where money is not involved.

## SOUTH AFRICA

An office pool is lawful if it falls within the ambit of a "private lottery," as defined in the Lotteries Act, 1997. The office pool must be (i) based on chance, and (ii) conducted, without remuneration, for and by employees who work on the same premises in South Africa. An employer is required to ensure, amongst other things, that tickets are advertised only in the office and sold only to employees, the ticket price does not exceed R10, and all proceeds are devoted to the provision of prizes (with proceeds and prizes not exceeding a total value of R10 000).

An employer must take all necessary steps to ensure that an office pool is conducted in accordance with the Act (i.e., by publishing the statutory requirements for a private lottery in the office or by requesting that the employees obtain the employer's consent before conducting an office pool). If an unlawful office pool is conducted by a company's employees, the employer must halt the sale of tickets in the office pool immediately (or be liable for a statutory penalty in terms of the Act). The employer can enforce the prohibition of unlawful office pools by implementing a disciplinary sanction for non-compliance.

## THAILAND

Gambling (including office pools) is illegal in Thailand, whether in or outside the workplace.

It is good employer practice for the employer to explicitly state in the work rules or in any other announcement or instruction that gambling in the workplace is expressly prohibited. This way, any violation would constitute a ground for termination of employment without notice or compensation, provided that a written warning had been given and the offence was repeated within 12 months.

## TUNISIA

Gambling is unlawful in Tunisia thus, a company cannot conduct office pools at work. The employer should have supervisors in place to ensure that no gambling takes place and that no office pools are created.

## UGANDA

It is lawful for employees to conduct office pools at the workplace unless the company's policies prohibit this type of activity. Employers that prohibit gambling and office pools should make this clear to their employees and have supervisors in place to ensure that none are created.

## CONTACT INFORMATION FOR PARTICIPATING JURISDICTIONS

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