1. Do you have a plant closing law in your jurisdiction and if so, what does it require? (For U.S. jurisdictions, please answer: Is there a Baby WARN Act in your state and if so, what does it require?)

Plant closing is not specifically covered under any statute in Sri Lanka. However, the termination and retrenchment of employees is covered by the Termination of Employment of Workmen (Special Provisions) Act No.45 of 1975 (as amended) (‘the termination of Employees Act’), this Act does not apply to employers who employ less than fifteen (15) employees on average during the period of six (6) months preceding the month on which the employer seeks to terminate the employment of any employee. In terms of Section 2 thereof no employer shall terminate the employment of any employee unless with the prior written approval of the Commissioner General of Labour (‘CGL’) or the prior written consent of the employee except for misconduct.

Therefore in a closure, usually the employer obtains the resignation of the employees by offering a Voluntary Retirement Scheme higher than the statutory minimum. If the employees do not voluntarily resign approval for termination should be obtained by the CGL. Such approval may take several months.

The minimum payment is on the following formula:

COMPENSATION FORMULA
TERMINATION OF EMPLOYMENT OF WORKMEN (SPECIAL PROVISIONS) ACT No.45 OF 1971 (AS AMENDED
<table>
<thead>
<tr>
<th>Number of Years of Service Completed at the Date Of Termination</th>
<th>Number of Months Salary to be Paid as Compensation for each year of service</th>
<th>Maximum Compensation (Cumulative)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 5</td>
<td>2.5</td>
<td>12.5 months</td>
</tr>
<tr>
<td>6 to 14</td>
<td>2.0</td>
<td>30.5 months</td>
</tr>
<tr>
<td>15 to 19</td>
<td>1.5</td>
<td>30 months</td>
</tr>
<tr>
<td>20 to 24</td>
<td>1.0</td>
<td>43 months</td>
</tr>
<tr>
<td>25 to 34</td>
<td>0.5</td>
<td>40 months</td>
</tr>
</tbody>
</table>

a) If at a time of the termination of his/her services, an employee has less than four (4) years left of his/her services, he/she shall be paid either the aggregate salary for the period of denied service or compensation computed according to the above formula, whichever is less, and if the period of denied service is more than four (4) years, compensation shall be computed according to the above formula.
b) No amount in excess of Rs. 1,250,000/- shall be paid to any employee as compensation computed according to the above formula.
c) ‘Salary’ shall include the basic salary or wages plus cost of living allowances or any other similar allowance.
d) Year shall mean a completed period of twelve (12) months and in relation to the first year of employment, includes 180 days of service.

2. Are there special rules on releases/waivers in your jurisdiction?

No. However, releases and waivers by employees of statutory dues such as gratuity and provident fund is not enforceable in law.

3. What are the equal employment opportunity/ non-discrimination categories in your jurisdiction (For U.S. jurisdictions, please answer: Are there protected categories beyond Title VII in your state?)

The relevant laws contain provisions relating to the employment of Females and children.

The Shop and Office Employment Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended) (‘the Shop and Office Act’) specifies several restrictions and special benefits to be given to female employees employed in shops or offices as follows.
Section 10 of the Shop and Office Act stipulates that no female employee who has attained the age of fourteen (14) years shall not be employed in any shop or an office before 6.00 am and after 6.00pm. However employment of females is allowed in following instances:

a) female employee who has attained the age of eighteen (18) years may be employed in or about the business of a hotel or a restaurant for the period or for any part of the period, between 6.00pm and 10.00pm;
b) any female employee who has attained the age of eighteen (18) years may be employed in or about any prescribed work in a residential hotel before 6.00am or after 6.00 pm on any day.

Further, Section 16 of the provides that seating arrangement behind a counter should be provided to female employees employed in serving customers of shops. Such seating shall be suitable for such purpose and shall be at the rate of at least one (1) seat for every three (3) female persons in the same room.

In terms of Part IV of the Shop and Office Act female employees are entitled to maternity leave of eighty four (84) working days on full pay after the birth of the first or second child. The 84 days leave referred to must be counted only against the working days and therefore all holidays are excluded. The quantum of leave for a subsequent child is forty two (42) working days.

Such employee should not be given work which would be injurious to her condition both three months before confinement and three months after confinement.

Maternity Benefits Ordinance No. 32 of 1939 (as amended) which covers female employees employed in trades, provides additional benefits such as two (2) nursing intervals for any female employee who is nursing a child under one (1) year of age. Further the said Ordinance provides that crèches be established and maintained within the premises.

Further the Employment of Women and Young Persons Act restricts the employment of women and young persons in the hours between 10.00pm and 5.00pm in any factory and industrial undertakings without the approval of the CGL and imposes restrictions on the hours of overtime and restrictions on requiring pregnant or nursing mothers or women who delivered an unborn child to be engaged in overtime work.

4. What are the minimum wage and overtime rules (and exemptions) in your jurisdiction?

Minimum wages and overtime differs according to the type of employees in Sri Lanka.

In terms of the Shop and Office Act, the normal working hours of employees shall not exceed, eight (8) hours in any one day and forty five (45) hours in any one week. Such hours shall not include any interval allowed for rest or for meal.

The regulations issued under the Shop and Office Act stipulates that the maximum number of hours an employee may be required to overtime shall not exceed twelve (12) hours in any one
week. Payment of overtime in excess of the 45 hour week is 1.5 times the daily wage of the employee.

A minimum salary is not applicable to employees covered under the Shop and Office Act and therefore can be decided by the employer and the employee.

Wages Boards have been established for over 43 trades such as manufacturers of tea, rubber, garments etc and the minimum wages payable and conditions of employment applicable to those trades are published in the Government Gazette.

5. **Is there employment-at-will, or some other rule, in your jurisdiction? What are the exceptions?**

The right to hire and fire employees are not available in Sri Lanka. Termination of employment is possible only with the consent of the employee or the Commissioner General of Labour (CGL), unless the termination is for misconduct.

In terms of Sections 3 and 31B respectively of the Industrial Disputes Act No. 43 of 1950 (as amended) any termination in contravention of the above provisions can be challenged by the employee or the trade union in which the employee is a member by making an application to the CGL or by making an application to the Labour Tribunal within a period of six (6) months from the date of termination of employment.

The CGL is required under the IDA to settle such an application in respect of such dispute by conciliation, or by referring the same to an officer for conciliation or by arbitration or by a settlement in terms of any Collective Agreement between the employer and the employee, if any.

Generally the CGL is required to follow the principles of natural justice such as giving a fair hearing to both parties for settlement of any of such dispute and may generally take a long time if a settlement cannot be achieved between the parties to the dispute.

Tribunals established under the IDA have wide discretion to decide as to what is just and fair and are permitted to disregard written contracts and if such tribunal is of the view that the termination was not justified, it can order reinstatement, with back wages with or without compensation.

6. **What are the legal obligations upon terminating an employee in your jurisdiction?**

An employer has several obligations under several enactments upon termination of an employee. Please refer to our answer to query 1 for more details.

In terms of the Termination of Employment Act, the CGL shall decide the compensation to be paid to an employee instead of reinstatement for any termination of employment in contravention of the Act.
The regulations issued under the Act stipulate the compensation formula according to which the said Commissioner shall decide the compensation which has been set out in answer 1.

In addition to compensation, under the Payment of Gratuity Act No. 12 of 1983 (as amended) every employer who employs or has employed fifteen (15) or more employees on any day during the period of twelve (12) months immediately preceding the termination of the services of an employee shall, on termination of the services, of an employee who has a period of service of not less than five (5) completed years under that employer, pay within a period of thirty (30) days of such termination to that workman in respect of such services, and where the termination is by the death of that workman, to his heirs, a gratuity computed as follows:

Such an employee is entitled to receive as gratuity, a sum equivalent to:

a) half (1/2) months salary for each year of completed service computed at the rate of wage or salary last drawn by the employee, in the case of a monthly rated employee; and
b) in the case of any other employee, fourteen (14) days’ wage or salary for each year of completed service computed at the rate of wage or salary last drawn by that employee.

“Completed Service” shall mean uninterrupted service and includes service which is interrupted by approved leave on any ground whatsoever, a strike or lock out or cessation of work not due to any fault of the employee concerned.

The above provisions shall, inter alia, not apply to or in relation to a workman entitled to a pension under any non-contributory pension scheme.

Apart from the above, necessary documents maintained by the employer in terms of Provident Fund Act No. 15 of 1958 (as amended) and the Employees’ Trust Fund Act No. 46 of 1980 (as amended) shall also be handed over to the employee upon the termination of employment.

7. Are there any family and/or medical leave laws in your jurisdiction, and if so, what do they require? (For U.S. jurisdictions, please answer: Are there family and/or medical leave laws in your state beyond FMLA and if so, what do they require?)

Shop and Office Act employees shall be entitled to take the following leave from the second year of employment and Annual Holiday:

- If the date of commencement of employment is between,
- January 1st to April 1st - 14 days
- April 1st to July 1st - 10 days
- July 1st to October - 7 days
- October onwards only - 4 days

Second year: 14 days and out of it seven (7) should be consecutive days. These holidays must be taken in the year immediately succeeding.
Before the date of termination of services any holiday not taken to which the employee was entitled shall be taken in the year during which the termination takes place:–

Where the period of work is less than ten (10) months - Seven (7) days
Where the period is more than ten (10) months - Fourteen (14) days

Further an employee is entitled for a total of seven (7) days which shall be at the rate of half (1/2) a day within the first year of employment to be taken on account of private business or ill health.

There is no specific medical leave stipulated by law.

In addition to the above, employees have to be given leave or payment in lieu of public holidays.

8. Please list any miscellaneous, interesting or oddball laws in your jurisdiction, and state under what circumstances they pertain.

The Budgetary Relief Allowance Act No.36 of 2005 (‘the Budgetary Relief Act’) is an important Act which does not fall under other questions of this survey applicable to low income earning employees.

In terms of section 3 of the Budgetary Relief Act, an employer is required to pay every employee employed by him a Budgetary Relief Allowance (“the Allowance”) computed on the following basis in respect of each month, with effect from 1st August 2005:

a) To every employee earning a monthly remuneration of Rupees Twenty Thousand (Rs. 20,000/-) or below, the allowance payable is up to a maximum of Rupees One thousand (Rs. 1000/-)
b) In the case of an employee paid a daily rate, the allowance shall be a sum of Rupees Forty (Rs.40/-) per day for each day he has worked during the month. However the total allowance payable should not exceed Rupees One Thousand (Rs.1000/-) per month.
c) In the case of an employee employed on a piece-rate basis, the allowance payable for a month should not be less than 10% of the monthly wage or salary paid to such employee. However the total allowance payable should not exceed Rupees One Thousand (Rs.1000/-)

An employee earning a monthly wage or salary exceeding Rupees Twenty Thousand (Rs.20,000/-) but less than Rupees Twenty Thousand (Rs.21,000/-) is entitled in respect of each month, the allowance equivalent to the difference between Rupees Twenty Thousand (Rs.20,000/-) and the monthly wage or salary drawn by such employee for that month.

It may be noted that under Section 3(3) of the Budgetary Relief Act, employees who have received a wage or salary increment on or after October 2004 are entitled to the allowance which shall be the difference between Rupees One Thousand (Rs.1000/-) and the amount of
the wage or salary increment. This entitlement however shall not extend to those employees who have received an increment of Rupees One Thousand (Rs.1000/-) or more.

9. **Does your jurisdiction have a law requiring employers to give employees access to, or a copy of, their personnel records?**

No such law exists in Sri Lanka. Such files are usually kept confidential.

10. **Does your jurisdiction outlaw or restrict drug tests, alcohol tests, genetic tests or any other kind of testing?**

The law doesn’t specifically provide for or prohibit such tests on the employees. It is common for employers to request employees to subject themselves for General Medical checks prior to commencing employment. Drug tests, alcohol tests and genetic tests are not usually carried out by employers in Sri Lanka.

11. **Does your jurisdiction have any special rules on the payment of sales commissions?**

There are no particular rules, and such commissions are common in certain trades, however, provident fund and tax may become payable on such commissions on the basis that such commissions add up to the total earnings of the employee.

12. **What are the basic rules on enforcing non-competes and related agreements in your jurisdiction?**

In the event that an employee or former employee breaches such agreement, enforcement will have to be through a court of law. When enforcing the same court will consider the reasonableness of the prohibition and generally lengthy and unreasonable non-competition clauses have been rejected by court on the basis that a person cannot be prohibited from carrying on his trade or an area in which has expertise in, unless the employer seeking to enforce the clause can prove that irreparable loss and harm will be caused to his business unless the clause is enforced, for example when the employee is privy to highly confidential information.