

Your World First

C/M/S/
Law . Tax

On your radar

Key employment issues across Europe and beyond
April 2018



On your radar | April 2018

Welcome to our 5th edition of CMS On your radar

Welcome to our latest edition of our quarterly newsletter giving you access to the key international employment law developments at your fingertips.

If you want to get in touch to find out more about a development in a particular country please do speak to your usual contact within CMS or alternatively email employment@cmslegal.com.

The CMS employment team



On your radar

| Key employment issues across Europe and beyond

Belgium	Development	Description	Effective date	Impact and risk	Future actions
	 The Belgian government is trying to encourage greater mobility by providing attractive alternatives to a company car. These alternatives should be cost neutral for both the employer and the employee. Approved by the federal Parliament on 15 March 2018, the so-called “Cash for Car” measure is now in the final stage of the legislative process. On 16 March 2018 the government also reached an agreement on the so-called “Mobility Allowance”.	 The “Cash for Car” measure means that the employee can choose to trade in their company car for some extra salary, which will be subject to a more favourable tax regime. The purpose of this measure is to convince employees, who already have a company car, to give it back. The “Mobility Allowance” is meant to give employers the possibility to offer their employees some alternatives to a company car, such as a company bicycle or a subscription to public transport. A smaller car, combined with a bike and/or public transport, would also be possible.	 Cash for Car: presumably 1 January 2018, with retrospective effect Mobility Allowance: ongoing	 Details of both measures still have to be worked out	 Once the details of both measures have been worked out, employers should examine whether or not the “Cash of Car” or the “Mobility Allowance” would indeed be a more advantageous alternative for their employees than the traditional (and polluting) company car.

On your radar

| Key employment issues across Europe and beyond

Bulgaria	Development	Description	Effective date	Impact and risk	Future actions
	 Relaxation in the procedures for employing workers from third countries	 At a meeting of the National Council for Trilateral Cooperation (i.e. the state, the trade unions and the employers) held in January 2018, business representatives requested the removal or the relaxation of the requirement that the number of third-country workers in certain companies shall not exceed 10% of the total number of all employees.	 Ongoing. The request is related to Directive (EU) 2016/801, which must be implemented no later than 23 May 2018.	 The changes have been proposed by employer representatives in order to compensate for the shortage of workers in many economic sectors. In contrast, the representatives of the trade unions claim that deletion/reduction of the existing requirements would lead to "social dumping."	 The proposal is still subject to discussion. Changes are expected in the Bulgarian Labour Migration and Labour Mobility Act with respect to third-country nationals' access to the labour market.
	A Consultation has opened to discuss a draft new Ordinance on the Type and Requirements for Creating and Maintaining of Electronic Documents in Employee Records (the "Ordinance")	This is the first time that this type of legislation has been introduced in Bulgaria. It's purpose is to stipulate the terms and conditions for moving from employee paper files to electronic records. The adoption of the Ordinance should reduce the administrative burden on employers	Pending. The deadline for submission of opinions and comments is 23 March 2018.	It is intended to resolve the duplication where employers maintain employee paper files and, at the same time, have all their HR processes completely automated. Employers will not be obliged to keep electronic employee records but will have the option to choose between electronic or paper files.	Employers may face additional costs for new or upgraded IT systems, qualified electronic signatures for employees and any electronic registered delivery service. Furthermore, due to the novelty of the regulation, the practice of the labour control authorities may be controversial in the beginning.

On your radar

| Key employment issues across Europe and beyond

Chile	Development	Description	Effective date	Impact and risk	Future actions
	 Labour regulations have been updated regarding the employment of disabled individuals in companies with over 100 employees. The new obligations provide that: - At least 1% of the workforce must be disabled or should be receiving a pension for disability. - The disability must be certified. - Companies that cannot hire disabled individuals due to the special nature of their services, should consider alternative measures.	 The aim is to increase the employment of disabled individuals in medium to large sized companies. There are several practical problems regarding the enforceability of the new measure with further government guidance expected.	 Came into force on 1 April 2018 However, for companies that have between 100 and 199 employees, the law will come into force on 1st April 2019	 At least 1% of the personnel in medium to large companies, will have to be disabled or be receiving a pension for any type of disability. Employers may have to adapt their workplaces/working practices to accommodate their disabled employees. Disabled employees also have an additional legal protection against dismissal. Article 161 of the Labour Code states that if an employee is dismissed due to his/her disability, the employer will have to pay compensation, in addition to any normal severance payments. Some aspects of the new law are not clear, particularly the uncertainty around how the alternative measures provision will operate.	 Companies that already have disabled employees, must register and upload details of their disabled workforce to an online site created by the Labour Board, within six months following the enforcement date. Companies that have between 100 and 199 employees, will have to comply with the law in April 2019. If the nature of the services of the Company does not allow the employer to hire disabled staff then the Company must evaluate the alternative options although as we have indicated further details on this are awaited.

On your radar

| Key employment issues across Europe and beyond

China	Development	Description	Effective date	Impact and risk	Future actions
	 In order to attract high-level talent from foreign countries, the Chinese government has adopted a new type of visa, an R visa, for foreign scientists, technological leaders, international entrepreneurs or people with extraordinary abilities who are in short supply and urgently needed for Chinese economic and social development. By holding an R visa, the foreigner can enjoy a more convenient and longer stay in China.	 A foreigner who is (i) an elected candidate for China's talent introduction program, or (ii) an individual who meets internationally recognised standards of professional achievements; or (iii) a foreign professional meeting the demand for market-oriented jobs encouraged by Chinese government; (iv) an innovation entrepreneurial talent; (v) an excellent youth talent; or (vi) a professional talent meeting other criteria as defined by the Chinese government, can apply for an R visa with the Chinese embassies or consulates in the country where he/she resides by holding a so-called Confirmation Letter for High Level Talents issued by the competent Chinese Administration of Foreign Experts Affairs.	 28 November 2017	 An applicant can enjoy an express service for the visa application without paying any visa application fees. An R visa holder will be granted a visa that has a validity period of 5 to 10 years with multiple entries and can stay in China for a period of up to 6 months for each entry. The visa extends to their spouse and under-aged children. An R visa holder can apply for a work permit directly in China with less application documents and a shorter approval period.	 The new R visa policies will bring a number of advantages to high-talents who need to visit China very frequently. In the past, they had to repeatedly apply for a business visa which has limitations on the validity period and times of entry. Further, if these foreign talents intend/need to work in China later, they can more easily obtain work permits.

On your radar

| Key employment issues across Europe and beyond

Colombia	Development	Description	Effective date	Impact and risk	Future actions
	 Measures to respond to the migration of significant numbers of Venezuelan nationals to Colombia. This includes the impact on Colombian industry and the challenge for Colombian employers regarding the observance of migratory and employment regulations.	 The Colombian Government is directly concerned with the security and physical well-being of Venezuelan nationals, therefore relevant migratory measures were implemented: • The Mobility Border Card granted for up to 6 months which allows the permanent mobility across the borders and neighbouring municipalities. • The Special Permission of Permanence (PEP) granted for up to 6 months and automatically extended by up to 2 years which allows the holder to work and access health services.	 Ongoing	 Some sectors are concerned about the over-population as well as the over-supply of services, but most concerns relate to the impact of the employment and migratory regulations when hiring new workers. Special attention should be paid to : (a) the validity of the immigration documents of the holder; (b) the maximum time they are allowed to stay in the country; and (c) the type of services to be provided. Otherwise, fines and sanctions may be imposed by the Colombian authorities (Special Unit of Migration Colombia – Colombian Ministry of Labour).	 We recommend Colombian employers take steps to understand and follow labour and social security regulations when hiring foreign employees. The assessment of immigration status is required before the recruitment process at the level of the Company. On the other side, there are various options that Venezuelan nationals living in Colombia may explore to secure their immigration status: this includes being granted a PEP or a Colombian Visa with the required legal status, a Migrant (M) or Resident (R) as set out in the Colombian migratory provisions (Resolution 6045 of 2017 and Resolution 740 of 2018).

On your radar

| Key employment issues across Europe and beyond

Czech Republic	Development	Description	Effective date	Impact and risk	Future actions
 	 The amendment to the Act on Sickness Insurance introduces paternal leave into the Czech legal system.	 An employee who • is caring for a child of whom he is a father, or • takes care of a child on the basis of a court decision, if the child has not reached the age of 7 years is entitled to one week of paternal leave and the financial benefit of paternal postnatal care. The employee must use the leave no later than 6 weeks after the child's birth or from the day of taking the child into care.	 1 February 2018	 Paternal leave is a statutory entitlement granted to employees. An employer is therefore obliged to recognise the employee's absence from work. The introduction of paternal leave may lead to greater absence from work of male employees following child birth. Paternity benefit is a health insurance benefit paid by Czech Social Security Administration (CSSA). Therefore the employer does not bear the cost of this new benefit.	 • Employers should take the introduction of paternal leave into account as they are required to submit an application for paternal leave to the CSSA on behalf of the employee. • Training for those employees operating payroll schemes.

On your radar

| Key employment issues across Europe and beyond

France	Development	Description	Effective date	Impact and risk	Future actions
	 Company agreements now prevail over industry-wide and nation-wide agreements, except in a limited number of cases. This measure is part of the French Labour Law reform led by President Macron since September 2017. The ordinance divides topics subject to negotiation into three blocks. The first block indicates which provisions of industry-wide and nation-wide agreements cannot be modified by a company agreement unless the company agreement provides equivalent or better protection.	 The first block provisions include: minimum wages; working time; fixed-term contracts; equality measures and probationary periods. The second block comprises the areas in which an extended industry-wide or nation-wide agreement can provide that a company agreement concluded after the industry-wide agreement cannot include provisions that differ from those of the industry-wide agreement, unless the company agreement provides equivalent or better protection. In all other areas, the company agreement prevails over the industry-wide and nation-wide agreements, regardless of when it was concluded.	 As of 24 September 2017	 It has to be stressed that the new provisions also change the rules regarding the validity of company agreements as of 1 May 2018. From now on, to be valid, a company agreement will have to be signed by a trade union which has obtained the majority of the votes cast at the latest workplace elections. If an agreement is signed by a Union that has only obtained between 30% and 50% of the votes cast, the agreement's validity is subject to approval by the majority of the employees. During one month, signatory trade unions have the option to ask for such a consultation. After the expiration of this deadline, this prerogative switches to the employer.	 These measures widen the scope of company bargaining agreements, allowing companies to adapt most of French Labour Law to their needs. This is in line with new provisions allowing company agreements to adapt almost all rules governing the functioning of the new employee representatives: the Social and Economic Committee (which merges into one single body the 3 employee representatives bodies formerly known as works council, staff delegates and health, safety and hygiene committee).

On your radar

| Key employment issues across Europe and beyond

Germany	Development	Description	Effective date	Impact and risk	Future actions
	 The Act to Strengthen Company Pensions (<i>Betriebsrentenstärkungsgesetz</i>) will lead to major changes in the system regarding company pension schemes, for example, by introducing so-called "pure defined-contribution schemes". The change bearing the most imminent risks for employers is the introduction of a mandatory employer contribution within the context of deferred compensation (new Sec. 1a para. 1a Company Pension Act, <i>Betriebsrentengesetz</i>).	 The mandatory employer contribution concerns all employers whose employees exercise statutory entitlement to deferred compensation and with regard to whom compensation is deferred by way of • pension funds • retirement funds or • direct insurance. The employer must pay up to 15% of the deferred compensation amount as far as he saves social security contributions due to the conversion into deferred compensation. This employer contribution does not have to be paid if compensation is deferred by way of • benevolent fund or • direct pension commitment.	 Sec. 1a para. 1a Company Pension Act enters into force on 1 January 2019; A three-year transition period applies to deferred compensation agreements concluded before 1 January 2019.	 In practice, it may be difficult to determine the exact amount of social security contributions that are saved, resulting in the fact that calculating the employer contribution may involve considerable effort. It has not been determined whether or not and to what extent already promised employer contributions to deferred compensation can be deducted from the statutory contribution that will be mandatory in the future. Owing to the mandatory employer contribution with regards to deferred compensation, the legislation has further increased the complexity of company pension schemes and the burden for employers.	 Employers should familiarise themselves with the changes implemented by the Act to Strengthen Company Pensions in due time. For example, internal payroll processes must be adapted to the mandatory employer contributions to deferred compensation. It is necessary to check whether voluntary employer contributions are already being paid for deferred compensation and whether they should be credited against the mandatory contribution in future. Depending on the form of the regulations, contractual adjustments are to be made.

On your radar

| Key employment issues across Europe and beyond

Italy	Development	Description	Effective date	Impact and risk	Future actions
	 New measures relating to the use of camera surveillance and remote control tools.	 Under Italian Law, there is the possibility of using recording equipment and other surveillance exclusively for organisational needs, for job security and for the protection of company assets, provided that the employer signs a collective agreement with the internal Trade Union Representatives or seeks the authorisation from the Labour Inspectors' Office. In case of tools used by the worker for performing their duties (e.g. PCs, tablets, smartphones) there is no need for prior authorisation to use the information and data collected for "all purposes relating to the employment relationship" (including grievance procedures).	 The Italian National Labour Inspectorate (INL) issued circular no. 5 on the 19 February 2018, which relates to the installation and use of audio-visual devices (AV) and other tools, in accordance with Article 4, Law 300 of 1970 (Italian Worker's Statue of Rights), as most recently amended by the Italian Legislative Decree No. 151 of 2015.	 This has introduced the opportunity of implementing wider surveillance, including: - monitoring the employee if there is a reason connected to safety at work and safeguarding of the Company property; - the possibility not to indicate the exact position and number of the cameras installed; - traceability of access to the recorded images for 6 months; - installation of cameras in external areas (where there is no working activity) and activation of biometric recognition for safety reasons, without any prior authorisation.	 Care should be taken over time to ensure the employer's control does not become unlawful e.g. if it stops being closely related to the reasons and information provided in the application to obtain the above-mentioned authorisations. Where an inspection reveals a conflict between the use of surveillance in practice and the declared employer's organisational and production needs, the employer may be sanctioned with a fine.

On your radar

| Key employment issues across Europe and beyond

Monaco	Development	Description	Effective date	Impact and risk	Future actions
	 Recognition of the offence of harassment in the workplace	 Law n°1.457, 12th December 2017 establishes a specific offence for harassment in the workplace. It is defined as knowingly submitting (and by any means possible), in a work relationship a person to repeated actions or omissions which have the object or effect of degrading their working conditions, affecting the person's dignity or resulting in an alteration of his/her physical or mental health.	 12 December 2017	 The employer must take appropriate measures to prevent such acts. In firms employing more than 10 employees there must be nomination of an employee as being the point of contact to collect the alerts/complaints of the other employees. Criminal sanctions: six months to two years of imprisonment and/ or a fine of 18 000€ to 90 000 €. It is possible we will see an increase in litigation on these grounds, and/or settlements.	 Employers will need to ensure that management and their staff are aware of these protections, and to consider the implementation of preventives measures.

On your radar

| Key employment issues across Europe and beyond

Netherlands	Development	Description	Effective date	Impact and risk	Future actions
	 A recent case broadens the scope of the obligations on employers to reassign an employee to a suitable position (<i>herplaatsingsplicht</i>) before termination of employment. An employer that is part of an international group should offer suitable positions outside of the Netherlands as well	 An employer cannot terminate the employment of an employee if there is scope to reassign them to a suitable position, taking into account any additional training needs, including any positions within group companies. A suitable position is a position held by a temporary worker and other types of flexible staff which can be terminated by the company easily. It may also be a vacancy. Courts have ruled in favour of employees who claimed a position outside of the Netherlands which the employer had failed to offer.	 The relevant legislation has applied since 1 July 2015, with case law in 2017/2018	 An employer must ensure that in cases where there are vacancies or a suitable position held by flexible staff, employees holding a permanent position can claim such a position. Due to case law an employer must offer international positions as well. Oddly enough the employee is not obliged to accept the position outside of the Netherlands. The employer can face payment of damages if no such offer has been made. The court can also order the employer to offer the suitable position (usually domestic) or it can decide not to terminate the employment.	 Care must now be taken to consider alternative roles within a group prior to terminating employment.

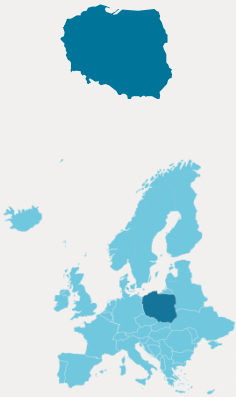
On your radar

| Key employment issues across Europe and beyond

Peru	Development	Description	Effective date	Impact and risk	Future actions
	 A law has been passed prohibiting pay discrimination between men and women. Employers must ensure that remuneration schemes do not lead to discrimination. Any wage gap must be justified by criteria such as performance, collective bargaining, shortage of skilled labour available for a given position, cost of living, work experience, academic or educational profile, performance, workplace, etc.	 This measure has been enacted by means of Law 30709 and its regulations approved by the D.S. 002-2018-TR. Employers are required to categorise jobs according to objective criteria, based on the tasks to be performed, the skills required to perform them and the job profile. Workers should be informed about the implemented salary policy and the criteria of performance evaluation or any other kind of evaluation which relates to their wages.	 Came into effect 28 December 2017. However, employers have until the end of 2018 to implement the measures. The Labour Authority will only start monitoring compliance on 1 January 2019.	 Employers will be required to invest resources in designing and implementing the categorisation of jobs within their organisation, clearly defining the functions to be performed, the salary bands and establishing a salary policy that does not create situations of discrimination. Employers must also design job category charts in accordance with the directives issued by the Labour Authority and communicate them to workers. Non-compliance with this obligation shall be sanctioned by the Labour Authority with fines. Employers are also subject to legal action by workers who consider they have been discriminated against.	 Every company should immediately begin to review its organisational structure in order to implement job categorisation, determine salary bands, develop a salary policy and inform all its employees under its management. Employers have until the end of 2018 to comply.

On your radar

| Key employment issues across Europe and beyond

Poland	Development	Description	Effective date	Impact and risk	Future actions
	 Trade ban on Sunday.	 The new legislation has introduced restrictions on trading on Sunday. As of March 2018 shops can open on two Sundays a month (the first and the last one). As of 2019 this ban will extend to three Sundays a month and starting from 2020 - shops will be open only on seven Sundays during a year. According to the new regulations, some categories of businesses are excluded - e.g. flower shops, bakeries, post offices, pharmacies, gas stations, gift shops, shops located in the same building as train stations, bus stations and airports, duty-free stores. An individual entrepreneur can decide to keep his shop open, provided that he works there himself.	 1 March 2018	 Numerous companies decided to extend their working hours, in particular on Fridays or Saturdays. In such cases, employers must ensure that they follow the applicable rights regarding uninterrupted daily rest periods. Employers who breach the trading restrictions may face a fine of up to 100,000 PLN.	 Companies from the trade sector, where working on a Sunday was a regular occurrence, must check whether they fall within one of the exclusions to the trade limitations. If not, they cannot continue to open their businesses for trade purposes on most Sundays. It may also be necessary to change the management strategy (e.g. in order to provide consumers with fresh and good-quality products).

On your radar

| Key employment issues across Europe and beyond

Portugal	Development	Description	Effective date	Impact and risk	Future actions
	 Amendments to the law relating to the transfer of undertakings, including changes which strengthen employee rights	 Restricts and clarifies the economic unit concept. The employee now has the right to oppose the transfer to a new role in the event of a transfer. Transfers may only take place 7 working days after the agreement or the end of the consultation period with the employees representatives (breach of this provision is a serious administrative offence); The measure reinforces the framework of penalties arising from non-compliance with the transfer of undertaking's legal regime. Strengthens the obligation to provide information before the competent department of the ministry responsible for the employment area.	 20 March 2018	 The employee's right to oppose the transfer in his employment contract in the event of a transfer means his contract remains with the transferor. The transfer can now be considered as a just cause in a dismissal in which case the employee will be entitled to compensation. The transferring employees maintain all the acquired rights within the employment contract granted by the previous CBA. The transferor shall be jointly liable for the costs arising from the employment contract, the purported breach or termination, as well as the social debts, due until the transfer date, during the two subsequent years (as of the transfer date).	 This regime strongly limits companies' freedom to contract by making it difficult for companies to avoid the protections around the transfer of undertakings, by strengthening the control mechanisms from the employees' representatives and the department of the Ministry responsible for labour matters, who now plays a significant role in the negotiations.

On your radar

| Key employment issues across Europe and beyond

Romania	Development	Description	Effective date	Impact and risk	Future actions
	 Fines for certain employment-related misconduct avoided if a remedy plan is implemented	 Under Romanian Government Decision No. 33/2018, fines were decreased to a written warning for more than 70 misdemeanours, including a number of employment related crimes, if a remedy plan is implemented upon an authority inspection, with an obligation on the offender to meet the terms of the plan, within up to 90 calendar days from inspection date.	 5 February 2018	 Among the misdemeanours listed in the Government Decision are the following - - Failure by a TUPE transferor, respectively transferee, to notify its employees' representatives (or its employees) of a TUPE transfer of employees; - Failure by a TUPE transferor, to notify the transferee, about the rights and obligations that will be transferred under a TUPE transfer of employees; - Failure by an employer to inform and consult with its employees' representatives on any significant changes in relation to the employer's activity or workforce (such as a share deal transaction occurred at employer level).	 Based on this more relaxed approach by the authorities, companies should focus on complying with applicable legislation, and remedies plan terms, given that: - If upon a second inspection the remedy plan was not accomplished, the offender will receive a fine, and - Offenders who receive a written warning in conjunction with a remedy plan but commit a similar misdemeanour within 3 years from the date of the written warning, will no longer be able to benefit from such remedy plan treatment.

On your radar

| Key employment issues across Europe and beyond

Singapore	Development	Description	Effective date	Impact and risk	Future actions
	 The Singapore Manpower Minister (i.e. the Minister in charge of employment matters) announced in parliament on 5 March 2018 that the government intends to introduce sweeping changes to Singapore's main labour law, the Employment Act ("EA").	 The changes will include the following:- • Widening the reach of the EA to cover higher-paid workers, including all professionals, managers and executives ("PMEs"); • Expanding the powers of the Employment Claims Tribunal (which presently only hears salary-related disputes) to include wrongful dismissal claims.	 The government intends to implement these changes to the EA by 1 April 2019	 Employers of PMEs in Singapore should take note of the following:- • The EA presently confers statutory protections to employees earning less than SGD 4,500. Once the new legislative changes come in to force, these statutory protections (i.e. minimum days of paid sick leave, notice periods before dismissal, etc.) will apply to all PMEs. • Contracts for all employees have to be reviewed and may have to be revised to comply with EA requirements before 1 April 2019.	 We recommend that organisations employing staff, including PMEs, in Singapore should approach legal counsel to review their present employment arrangements.

On your radar

| Key employment issues across Europe and beyond

Slovakia	Development	Description	Effective date	Impact and risk	Future actions
	 Parliament has adopted an amendment to the Labour Code	 The amendment increases: • surcharges for work on public holidays - from 50% to 100% of employee's average earnings; • surcharges for work at night – from 20% of minimal hourly wage for each hour of night work, to 40% of minimal hourly wage for each hour of night work (in case of employees performing risky work to 50%). The amendment introduces: • surcharges for work on Saturdays and Sundays in the amount of 50% of minimal hourly wage per each hour of work on Saturday and 100% of minimal hourly wage per each hour of work on Sunday.	 • Surcharges for work on public holidays: 1/5/2018 • Surcharges for work at night: 1/5/2018 – in the first step increase to 30% / 35% (risky work) 1/5/2019 – in the second step increase to 40% / 50% (risky work) • Surcharges for work on Saturday: 1/5/2018 - 25% 1/5/2019 - 50% • Surcharges for work on Sunday: 1/5/2018 - 50% 1/5/2019 - 100%	 The overall cost of work for the employer will increase. Employers will be motivated to change working conditions in order not to pay surcharges for the work at night, work on public holidays or during the weekend.	 Many employers have not budgeted for such expenses and will have to allocate their budgets to cover the new surcharges or increase of the existing surcharges. Employers may decide to cover this by increasing prices of their products, which may have negative impact on their clients and consumers.

On your radar

| Key employment issues across Europe and beyond

Spain	Development	Description	Effective date	Impact and risk	Future actions
	 Case law from the European Court of Human Rights reinforces the employee's right to privacy in the workplace	 A judgment of the European Court of Human Rights of 9 January 2018 has established that placing hidden cameras in the workplace breaches the employees' fundamental right to privacy. The employees were not properly warned of their installation, means and purpose. The Court understands that this information is required under Spanish Law, as Spanish data protection regulation establishes the need to expressly inform individuals in case their personal data is stored or processed.	 Ongoing	 Recent judgments of the Spanish Supreme and Constitutional Court allowed the placement of cameras at the workplace if the employer had a reasonable suspicion that an employee was committing a labour infringement, without the need to be expressly informed in the extensive terms of the Spanish data protection regulation. Therefore, the European Court of Human Rights judgment is likely to change domestic case law, which is more permissive with employees' information requirements.	 After the judgment from the European Court of Human Rights, it is advisable to inform employees of the placement and purpose of cameras, in the extensive terms of Spanish data protection law. Otherwise, in situations where there is a disciplinary or dismissal based on facts recorded with cameras, the dismissal may be declared unfair or even null and void.

On your radar

| Key employment issues across Europe and beyond

Turkey	Development	Description	Effective date	Impact and risk	Future actions
 	 The removal of the requirement to notify the relevant Social Security Institution upon the establishment of a company. Under the new provisions registration of the company to the trade registry shall be deemed to meet the requirement for notification to the Social Security Institution.	 The requirement that newly established companies notify the Social Security Institution and obtain a document evidencing such notification named a "workplace declaration" is removed. As of 10 March 2018, The registration of the company with the relevant trade registry will be sufficient notification and a workplace declaration will not be issued for such companies.	 10 March 2018	 With such an amendment, a procedural burden is removed from companies, and trade registries shall be required to make such notifications to the Social Security Institutions <i>ex officio</i>	 The companies should be aware of this procedural change.

On your radar

| Key employment issues across Europe and beyond

UK	Development	Description	Effective date	Impact and risk	Future actions
 	 Changes to the tax treatment of termination payments. The intention behind the changes was to simplify the tax regime, however a complex new formula has been introduced.	 New rules mean that ALL payments made to an employee in lieu of notice (PILONs) will become taxable as earnings. Currently if an employer wishes to rely on a PILON clause and make a payment then this is taxable as earnings. If there is no PILON in the contract then the payment is considered to be damages and may be paid as part of the termination payment provisions which allow a £30,000 exemption. Introduces a new concept of post employment notice pay – PENP which is the salary that would have been paid to an employee during any unworked period of notice, less anything paid as a contractual or discretionary PILON	 6 April 2018 According to current HMRC Guidance for the payment to be caught under the new rules, both the “termination” and the payment must be on or after 6 April 2018	 Most senior contracts of employment contain a PILON clause in order to preserve the position of post termination restrictions in the event of a lawful summary dismissal. However in some situations it may have been preferable not to have a PILON clause. There was the ability to take advantage of the £30,000 exemption. There was also scope to reduce the period of notice pay because an employee is under a duty to mitigate their loss where the payment is damages for breach of contract.	 Review any contracts that do not contain a PILON clause. There is now no benefit in omitting a PILON. Understand how to apply the PENP formula. Carefully consider the impact of the timing of settlement agreements.

On your radar

| Key employment issues across Europe and beyond

United Arab Emirates	Development	Description	Effective date	Impact and risk	Future actions
 	 New Employment Law proposed in the DIFC	 The DIFC has published its proposals for a new employment law. This seeks to bring the DIFC in line with other jurisdictions (particularly the UK) in light of the international nature of the business conducted in the DIFC. The Proposed Law includes provisions on: • The applicability of the law to certain groups of employees (e.g. part time and short term employment arrangements) • Maximum working hours • Paternity leave • Sickness pay • Discrimination • Termination for cause • Matters to be covered in the employment contract, among others.	 To be confirmed.	 Employers within the DIFC should pay close attention to the new requirements of the Proposed Law. When hiring, terminating, or amending the terms for current employees, it is worth considering whether this will be in compliance with the Proposed Law when it comes into force. In particular, employers should be aware of the extension of the existing discrimination provisions to age, pregnancy, indirect discrimination and discrimination against those seeking to assist others. Employers should also factor in the inclusion of paternity leave, and may want to start drafting paternity leave policies for their employees on this topic.	 The extent of the risk will depend on the final provisions of the Proposed Law. The consultation stage for the Proposed Law has now ended and is therefore likely to be subject to further review and reform before being published.



Law . Tax

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com



Law . Tax

Your expert legal publications online.

In-depth international legal research
and insights that can be personalised.

eguides.cmslegal.com

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Medellín, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Poznan, Prague, Reading, Riyadh, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law