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On your radar

Key employment issues across Europe and beyond

On Your Radar | August 2019

Welcome to our latest edition of CMS On your radar

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The CMS employment team

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Austria

Development

Fathers in Austria now have a legal right to one month's leave following the birth of their child.

The so-called "daddy-month" is not a paternity leave in the strict sense, but a right to unpaid leave if father and child share a common household.

Description

The expectant father must inform his employer of his wish to make use of his entitlement at least three months before the expected date of birth. He must also announce the expected start of his leave, which is to be taken within eight weeks following the birth of the child.

If notification deadlines are not met, the leave may still be agreed with the employee.

Once the child is born, the employee must immediately inform the employer and then - no later than one week after the birth – announce the exact date of the start of his leave.

Effective date

The law enters into force on 1 September 2019 and applies to births after 1 December 2019.

Impact and risk

The employee is entitled to a special protection against dismissal once he has announced that he will make use of his entitlement to unpaid leave, but no more than four months before the expected date of birth. This protection applies until four weeks after the end of the unpaid leave.

Statutory, collective or individual rights of exemption based on birth remain intact.

Future actions

Employees may make use of their entitlement to "daddy-months" unilaterally, and without the consent of the employer.

They are also only required to announce the expected date of their leave, until the actual birth of the child.

While the "daddy-month" does not lead to any additional costs for the employer, it requires organisational flexibility, regardless of the size of the enterprise.

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Belgium

Development

Various business sectors were supposed to enter into collective labour agreements by 1 January 2019 at the latest to ensure that they had put in place a termination package for employees dismissed with at least 30 weeks' notice, or severance pay in lieu of 30 weeks' notice.

The Single Employment Act states that the termination package must consist of: one-third of employability enhancing measures and a notice period or severance pay in lieu corresponding to two-thirds of the termination package.

Description

Due to the lack of clarity of this new regulation, the social partners therefore agreed in the IPA 2019-2020 to conclude an alternative interprofessional arrangement by 30 September 2019 at the latest. However, the date can be postponed again to 1 January 2021 by a royal decree.

Effective date

These amendments came into force by the law implementing the draft of the interprofessional agreement 2019-2019 published in the Belgian Official Gazette on 17 June 2019.

Impact and risk

This postponement obviously has consequences on the sanction that is applicable when the employee works the full notice period or receives the full severance pay in lieu. The sanction may be applied at the earliest after 30 September 2019.

The sanction consists of a special social security contribution of 1% by the employee and 3% by the employer. In both cases, this percentage is calculated on the remuneration paid during the part of the notice period representing one third of the termination package and exceeds in any case 26 weeks or the corresponding amount of compensation.

Future actions

If it is not possible to conclude a collective labour agreement within the sector, the dismissal of an employee will be more expensive.

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Chile

Development

The House of Representatives approved a project to reduce the maximum weekly working hours from 45 to 40.

The project will be discussed further in the National Congress and may be subject to amendments. The final approval of the Congress is not guaranteed, as the government does not support this initiative.

Description

The approval of the House of Representatives to reduce the maximum weekly working hours has been discussed over the last two years and was finally approved in July 2019. Further discussions are needed in the National Congress to approve this initiative.

The current government has opposed this legislative project.

Effective date

Ongoing.

Impact and risk

Employers in Chile and the government are concerned about the impact this will have on unemployment rates and the economy.

Sectors that depend heavily on shift work are concerned about the economic impact of this measure, as it will be necessary to hire more employees.

Companies are trying to automate their processes in advance.

Future actions

We recommend that Chilean companies stay alert about the progress of the legislative discussion.

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China

Development

Chinese central government adjusted the social insurance policies on 1 April 2019 by issuing the Comprehensive Scheme on Reducing Social Insurance Contribution Rates (the "Comprehensive Scheme")

Description

The central government requires local governments to adjust the social insurance policies. Below are the key points:

- The contribution rate to the pension fund payable by the employer for employees shall be reduced/adjusted to 16%;
- For the locations which adopted the reduced contribution rate of 1% to the unemployment insurance and the reduced contribution rate to the work-related injury insurance, these rates shall be applied until 30 April 2020; and
- The calculation basis of social insurance contribution shall be weighted by the average salary of employees from both privately-owned business units and non-privately-owned business units at the provincial level.

Effective date

1 May 2019.

Impact and risk

Since 2018, Chinese central government has made continuous efforts to reduce the labour costs of companies. The adjustment of social insurance policies is one of these actions.

However, in China, the exact social insurance contribution rates and calculation basis applicable at specific locations are decided and implemented by local governments. After the introduction of the Comprehensive Scheme, the local governments at all the locations adjusted the social insurance contribution rates and calculation basis one after another. Ironically, in the locations where privately-owned business develops faster such as Shanghai, after the adjustment, the calculation basis is not reduced but contrarily increased slightly because in these locations, the average salaries of the employees at the privately-owned business units are higher than the employees of non-privately-owned business units.

Future actions

With the implementation of new social insurance policies, the companies' labour costs for social insurance will be reduced to some extent. However, with the increase in the statutory minimum wage and average monthly salary of employees every year, the actual labour costs might still increase. Therefore, companies should not rely on reducing labour costs by the adjustment of social insurance policies by governments.

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Colombia

Development

The gig economy in Colombia is concentrated in the public transportation and delivery industries, providing income for thousands of people in a country where 48.2% of employment is informal. The relationship between freelancer, platform and customer challenges the legal definition of an employment contract and creates important differences regarding salary, social security contributions (pension and health), labour risks insurance, among others.

These differences are paving the way for violent protests and the need for government intervention.

Description

Most freelancers who use these platforms are independent contractors, which allows them flexibility and independence but also involves the payment of social security contributions and labour risk insurance by themselves. In contrast, those hired through an employment agreement usually work exclusively for one employer, have employment benefits and subsidised social security and labour risks insurance.

Effective date

Ongoing.

Impact and risk

The gig economy has positively impacted the Colombian economy, creating new markets, products and services, which create competition in industries heavily concentrated in few companies. Not to mention, it has created opportunities for unemployed nationals and immigrants.

However, the labour disparities and the resistance led by traditional companies whose business have been disrupted by these platforms pose a threat to the continuing growth of the gig economy in Colombia.

Without appropriate government intervention, this new market may either generate general resistance from the population or erode the well-established labour protections and benefits.

Future actions

The current Colombian government openly supports innovation and is friendly with these new technologies. However, the Ministry of Employment acknowledged the limitations of the current labour regulations, which have not evolved with the consolidation of the gig economy and does not cover those freelancers properly.

Thus, the Ministry suggested a flexibilisation of certain labour regulations – such as contributions to the social security by hours, instead of weekly or monthly contributions – to adapt to the new platforms and provide basic coverage to those who need it the most. Nonetheless, these proposed changes are still under negotiation with the parties involved and independent efforts to regulate this have not passed through Congress.

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Croatia

Development

The Whistleblower Protection Act, the first ever to specifically regulate this matter, has been enacted.

Description

The Act aims to protect and encourage the reporting of irregularities within employers, primarily by imposing different obligations and strict fines to employers, both in the private and public sector.

The employers will, among other requirements, have to:

- Adopt a system of internal reporting;
- Appoint a reporting officer and his/her deputy;
- Protect sensitive data; and
- Introduce appropriate measures for elimination of irregularities.

Effective date

The Act entered into force on 1 July 2019; however, employers will have roughly 6 months to comply.

Impact and risk

Even although the Act concerns a significant number of employers (all employing 50 or more employees) and imposes many obligations, it also brings plenty of uncertainties and ambiguities.

The Act is not very clear on many subjects, including the appointment / revocation of a reporting officer and his/her work, correlation with existing whistleblower policies (especially within international group companies), the publication of potential irregularities in the media and publicity of related court proceedings – just to name a few.

Future actions

All employers employing 50 or more employees have to:

- Adopt a bylaw regulating the reporting of irregularities, by 1 January 2020; and
- Appoint a reporting officer and his/her deputy, by 1 April 2020.

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Czech Republic

Development

The Parliament of the Czech Republic approved an extensive amendment to the Act on Residence of Foreign Nationals (and other acts). The bill has already been signed by the president. It will then be published in the Collection of laws.

Description

The bill introduces the extraordinary working visa. The Government may in the event of extreme lack of workers through its decree lay down rules for bestowal of this visa (e.g. rules on who may apply for the visa, affected industrial branches, maximum number of applications etc.).

The bill furthermore empowers the Government to issue a decree regulating the number of applications for business and investing visas and employee cards which may be filed at particular Czech embassies.

Moreover, employees holding the employee card will in the event of a transition to a new employer or relocation be obliged only to announce the change to the Ministry which then confirms meeting relevant requirements instead of the Ministry having to approve such change.

Effective date

It is expected to become effective during the first week of August 2019 (except for certain changes effective from July 2020 and January.

Impact and risk

The use and impact of the extraordinary working visa may not be capable of prediction, and only time will tell whether the extraordinary visa will be used by the Government at all and if so, then to what extent.

The impact of regulating the quantity of applications may not be predicted either for the same reasons.

The amendment to the employee card will be a cosmetic change since the holder will have to wait for the Ministry to approve that the requirements for the transition and relocation laid down by laws will have been met.

The Government in the explanatory memorandum attached to the bill specifies that "*The introduction of the obligatory order is therefore envisaged only in those third countries where it is necessary. It is up to each embassy to choose in what manner they are going to receive orders, whether it will be an order through e-mail, through a phone call, personally …*"

Future actions

The regulation of extraordinary working visas and maximum number of relevant applications is solely at the Government's discretion, it may not be realistically anticipated.

The real risk lies in the option (that may, or may not happen) that the Government will restrict the number of accepted applications to a such a limited number that it may endanger functioning of certain international companies and even the labour market.

The regulation that the embassies are going to lay down may not be predicted either.

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France

Development

The ordonnance dated 22 September 2017 (n°2017-1387) and the Law dated 29 March 2018 (n°2018-217) implemented a compensation scale for dismissal without real and serious cause (referred as the “Macron scale”) which sets a minimum and a maximum amount of damages that can be awarded to an employee in a claim for unfair dismissal.

This measure has been challenged by several first-degree jurisdictions which considered it to conflict with various international treaties such as the ILO Convention n°158.

Description

The Supreme Court ruled on 17 July 2019 that the Macron scale is consistent with European and international standards.

The Supreme Court has decided that, by capping the damages that can be awarded to an employee in cases of unfair dismissal, the French state acted within the assessment rights it has according to the ILO Convention n°158 (article 10) and which provides that civil jurisdiction shall be empowered to order “adequate payment” of “proper compensation”.

Effective date

The compensation scale is applicable to all dismissals notified as of 24 September 2017.

Impact and risk

This decision provides some certainty to employers who can more accurately predict the financial risks which may arise when terminating an employment contract.

Future actions

Employers must keep in mind that the Macron scale does not apply if the court holds the dismissal to be null and void, such as in a case of moral or sexual harassment, discrimination, violation of a fundamental right or in breach of the protection granted to pregnant women and employee representatives.

In such cases, the amount of damages awarded depends on the actual loss suffered by the employee, and cannot be less than 6 months of salary and is not capped by law.

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Germany

Development

According to a recent German Federal Labour Court ruling (19 February 2019 - 9 AZR 423/16), leave entitlements are forfeited only if the employer has encouraged the employee to take (residual) leave. In addition, the employer must inform the employee in due time and unambiguously of this possible forfeiture. The Cologne Regional Labour Court recently confirmed this case law and extended the employer's specific duty to apply to any leave entitlements from previous calendar years (9 April 2019 – 4 Sa 242/18).

Description

According to the German Federal Leave Entitlement Act, leave must generally be taken and granted in the current calendar year. It may be carried over to the following year only if necessary for urgent reasons. The leave then definitely has to be taken by 31 March at the latest; it is otherwise forfeited.

According to an earlier ruling by the Court of Justice of the European Union on 6 November 2018 (Case C-684/16), however, employers are required to ensure in a concrete and transparent manner that employees can actually take their leave by formally asking them to do so. The German Federal Labour Court implemented this case law in February.

Effective date

19 February 2019.

Impact and risk

If an employer does not inform the employee, untaken leave will be added to the leave entitlement accruing on 1 January of the following year.

If the employee can no longer take leave in whole or in part due to a termination of his employment, the employee is entitled to financial compensation.

Future actions

Employers should encourage their staff to take (residual) leave.

Such information should be provided in a way that the employer can prove this in the event of a dispute (text form, e.g. via email).

Information should be given in due time (if possible in January, but by the end of the third quarter at the latest).

Employers should communicate the number of days of leave and indicate that the request for leave must be made in due time.

Information about the consequences of forfeiture is required.

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Hungary

Development	Description	Effective date	Impact and risk	Future actions
Since the EU General Data Protection Regulation (GDPR) entered into force, Parliament has amended Hungarian laws relevant to the GDPR at the end of April 2019.	This led to the modification of more than 80 acts. Furthermore, the National Authority for Data Protection and the Freedom of Information (NAIH) has published numerous new decisions and guidelines. The provisions of the GDPR have been clarified and interpreted in these guidance documents, and also takes into account the various ways in which privacy practices of companies should be modified.	End of April 2019.	Due to the new data processing provisions of the Labour Code, the following provisions shall be modified: • Regulations concerning the monitoring of employees; • Regulations concerning the monitoring of employee car usage; • Regulations concerning the processing of personal data through the operation of a CCTV (video surveillance) system; • Regulations concerning the use of company laptops, IT devices, business email accounts, and company mobile phones; • Regulations concerning the medical and other examination of employees; and • Regulations concerning employees' certificate of criminal records or other criminal records.	N/A

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Italy

Development

The Court of Cassation decision on 3 July 2019 no. 117785 has confirmed the principle that if the transfer of a business has been declared null and void, and the employee has sent a formal notice to the transferor, the latter shall pay all the salary due even if the employee has not been reinstated to this role.

This is the effect of the formal notice sent by the employee; however, salary granted by third parties or by the transferee following the formal notice can no longer be offset.

Description

The Court of Cassation has changed its previous statement allowing the transferor, if the transfer of the business has been declared null and void, to offset compensation granted to the employee by third parties, nor the transferee.

Effective date

Ongoing.

Impact and risk

The new principle adopted has a relevant economic impact for employers when the transfer of business has been declared null and void pursuant to Italian law.

Future actions

Where there is a transfer of a business it is recommended that a careful check is made to determine the existence of criteria and consequences set by Italian case law following the declaration by Employment Court that the transfer of business is null and void.

The principle concerning the existing functional autonomy of the business to be transferred has also been recently highlighted by European Court of Justice with the decision on 13 June 2019 concerning the C-664/17.

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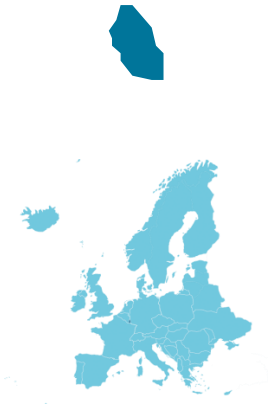
Luxembourg



Development

On 12 July 2019 the law amending article L.222-9 of the Labour Code implemented an increase in the minimum wage.

Description

The new provisions increase the minimum wage by 0.9% i.e. from EUR 2.071.10 gross to EUR 2,089.75 (index 814.40) for non-qualified workers.

This 0.9% comes on top of the 1.10% increase already achieved by the law from 21 December 2018 amending Article L. 222-9 of the Labour Code.
In parallel, it was decided - as part of the 2019 budget - to introduce a new specific tax credit called "tax credit on minimum social wage "(*Crédit d'Impôt Salaire Social Minimum - CISSM*), in order to achieve a net increase of EUR 100,00.- per month of the minimum social wage (with retrospective effect from 1st January 2019).

Effective date

Retrospective effect and application - from 1 January 2019.

Impact and risk

As the 0.9 % increase to the minimum wage applies retrospectively from 1 January 2019, several employees will earn an additional net amount of around EUR 600 on their July 2019 salaries.

Employers will bear around 1/3 of these measures' costs, and the remaining 2/3 will be supported through the minimum wage tax-credit system.

Future actions

In case of non-application of the new provisions by employers - i.e. if employers pay wages below the applicable rates – the employers could be liable for a fine from EUR 251 to EUR 25,000.

Following this, in the event of a repeated offence within two years, the fine may be increased to twice the maximum amount.

In addition, employers may be required to do payroll adjustments in order to fulfil the wage gap. It should be noted in this respect that action taken by an employee against their employer for payments of any kind are time-barred after 3 years only.

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Mexico

Development

On 1 May 2019, Mexico ratified reforms to the Federal Labour Law (the “Reforms”).

The key aspects of the Reforms are as follows:

1. Introduction of freedom of association and collective bargaining;
2. Democracy and transparency in union procedures and elections;
3. New system for adjudicating employment disputes; and
4. Additional anti-discrimination obligations on employers.

Description

- Employees may (but are not obliged to) choose their union representatives, who will be accountable to the union, for a definite term through free, direct and secret ballots;
- Unions must prove that they represent at least 30% of the workers covered by a collective bargaining agreement (CBA), demonstrated via a ‘Certificate of Representation’;
- Conciliation and Arbitration Boards will be replaced by independent federal/state labour courts; and
- Parties must attempt to resolve disputes through mediation prior to appearing before labour courts.

Effective date

May 2019, with implementation of the reforms to take place in phases over the coming years.

Impact and risk

The Reforms place significantly greater obligations on employers:

- Employers are prohibited from attempting to influence or control unions;
- Employers must deliver a hard copy of the CBA to every worker within 15 days following its execution and signing;
- Employers must deliver a notice of termination to the employee or via the labour authorities. Failure to do so will create the presumption of unjustified dismissal;
- Employment contracts must contain a designation of beneficiaries for payment of salaries and benefits in cases of death of the employee; and
- Employers must now publish workplace equality principles, implement a workplace anti-discrimination policy, and introduce measures to combat violence and sexual harassment.

Future actions

The additional requirements mean that employers should start putting together various materials to be distributed to existing and future employees, informing them of their rights under the Reforms. This includes the CBA, as well as salary statements (either hard copy or digital). In addition;

- If employment disputes are not resolved through mediation and reach the to-be-implemented Labour Courts, the burden of proof is on the employer at each stage of the judicial process; and
- Benefits for the dependents of deceased employees have been expanded. The spouse, children under 18, or over 18 with a disability, and children up to 25 studying in Mexico are presumed to be financially dependent on the employee.

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Monaco

Development

Law No. 1.471 of 2 July 2019, enacted on 5 July 2019 provides for substantial amendments to Law No. 822 on weekly rest.

Taking into consideration the social and economic developments in Europe, reforms in other countries, and changes in consumer practices, the legislator decided to add a new flexibility tool for employers, by facilitating the use of Sunday working.

Retail employers are offered a new additional scheme to derogate from the principle of Sunday rest.

Description

In terms of the scope of this new derogation, it is limited to retail businesses only.

The use of Sunday working is limited to 30 Sundays per year per employee.

Implementation is subject to employees' volunteering; both parties will have a right of withdrawal.

Employees will benefit from an attractive compensation (a daily salary increase equal to 100% or a compensatory rest within the month following the Sunday worked - in addition to their weekly day of rest).

Still, to facilitate the use of Sunday working, certain retail employers will be reimbursed for social security contributions, subject to the fulfilment of eligibility criteria.

Effective date

5 July 2019.

Impact and risk

Employers:

- Must respect a specific procedure to implement Sunday working, including i) informing the staff representatives, the labour inspector and the employees; ii) formalising the agreement individually; and
- Cannot make employment conditional on an employee agreeing to work on Sundays, nor use disciplinary sanctions for refusing or ending Sunday working.

In case of non-compliance with such obligations, the employer will incur criminal sanctions and be exposed to civil claims.

Future actions

The law provides for a review clause by the end of a period of 3 years in order to review the implementation of this new derogation.

The maximum number of Sundays, during which an employee will be authorised to work, may therefore be amended.

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Netherlands

Development

Momentous changes to the Dutch pension system has been agreed by the Dutch government and representative organisations of employers and employees.

After more than nine years of consultations, investigations and negotiations, an agreement has been reached on a far-reaching overhaul of the legal and collective contractual arrangements in respect of pensions.

Description

Heads of Agreement have been reached in respect of a significant number of important topics, the most important being:

- A reduction of the proposed increase in the pensionable age for the state pension;
- More facilities in the tax legislation for early retirement;
- Mandatory participation of the self-employed in pension schemes; and
- Replacement of the defined benefit schemes of industry wide pension funds by pension schemes with age related benefit accruals.

Effective date

2022.

Impact and risk

The impact for employers of the new approach is relatively limited, since it is not intended to provide an increase in pension costs and might make it slightly easier to terminate the employment agreements with older employees.

An important exception to this is the impact on those employers who have been able to significantly reduce staff costs by making use of the self-employed, who are currently less expensive due to the absence of social security protection and costs. The costs for these self-employed are expected to rise, when they will also become part of the same framework as regards pensions and related arrangements.

Future actions

Further negotiations and consultations are to take place this year, with further preparatory work on legislation and collective agreements required in 2020 and (possibly) 2021.

Both due to the fact that a lot of details still need to be ironed out and also the possibility of significant political headwinds, with general elections to be held in March 2021 at the very latest, it is currently still uncertain whether this project will be completed in time, if at all.

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Peru

Development

As part of the Government Policy to protect women and prevent gender discrimination, it has issued the new Regulation of Sexual Harassment Prevention and Punishment Law (Supreme Decree Nº 014-2019-MIMP) that contains measures related to workplace sexual harassment.

Description

Within the main measures, the employer must:

- Conduct annual evaluations to identify manifestations of sexual harassment;
- Provide training to all staff at the beginning of the employment relationship and an annual training for HR or those responsible for investigating and dealing with this behaviour;
- Periodically provide information on sexual harassment behaviour, as well as the reporting channels, including the format for filing a complaint;
- Adopt protection measures before a complaint and provide the victim with information on access to medical and psychological care that is required; and
- Have an Inquiry Committee.

Effective date

23 July 2019.

Impact and risk

Adopting the new measures will mean employers will incur higher labour costs, since they will have to invest in delivering annual training, implementing channels to communicate information on sexual harassment, adopt protective measures for the victim, which may include paid leave, among others.

In addition, the employer must ensure the creation of an Inquiry Committee jointly formed by representatives of the employer and the workers, which includes the organisation of elections among workers to elect their representatives.

Future actions

As a result of these new obligations being imposed on the employer, the Labour Authority will intensify labour inspections on this issue, and exposes employers to the risk of fines in situations where they have not implemented the new measures within the period granted by the regulation.

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Poland

Development

The Polish parliament adopted changes to the Labour Code. Amendments concern the provisions on discrimination, mobbing and certificates of employment.

Description

The first change concerns the principle of equal treatment and from now on, every case of unequal treatment will be tantamount to discrimination. Until now, only unequal treatment for personal reasons (e.g. gender) has been treated in this way.
Another change concerns mobbing. (I.e. workplace harassment). From now on, an employee will be able to expect compensation for mobbing even if he/she has not terminated his/her employment contract. In the past, compensation was due only in the event of termination of the employment contract.
A change has also been introduced as regards certificates of employment. The new law, among other things, extends the deadline for requesting a rectification of the certificate of employment from 7 to 14 days.

Effective date

7 September 2019.

Impact and risk

The adopted changes are highly beneficial for employees. The main aim is to strengthen the protection of employees and to facilitate the execution of their rights.
Employers should review internal regulations regarding discrimination and internal anti-mobbing policies or workplace regulations. Internal training regarding the abovementioned issues may be valuable and useful.
HR and compliance departments should update the current templates of the certificates of employment and procedures for issuing them.

Future actions

The nature and scope of the changes introduced in relation to the principles of equal treatment and workplace mobbing indicate a high probability of an increase in the number of court proceedings in this area.

HR and compliance departments should prepare internal proceedings properly and adapt to the changes in advance.

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Portugal

Development

Following a Social Consultation Agreement between employer´s associations and UGT (trade unions) in 2018, a legislative process was initiated, before the Standing Committee on Social Concertation aimed at amending the labour legislation in force.

Description

Some of the legislative changes presented include issues related to:

- Reduction of the maximum duration of fixed-term contracts and the elimination of the individual agreed hour bank with the employees;
- The extension of the trial period in long term contracts for employees seeking their first job and for long-term unemployed; and
- Professional internship time accounting for the purposes of the experimental period.

Effective date

Ongoing:

The amendments to the labour law proposed by the Government and the various political parties have been voted for since 11 June in the working group created within the scope of the parliamentary committee of the specialty and their final overall vote should take place on 19 July.

Impact and risk

The legislative amendment will have the following consequences:

1. The reduction of the maximum duration of fixed-term contracts from 3 to 2 years;
2. The reduction from 6 to 4 years of the maximum duration period for an uncertain term;
3. The end of the individually agreed hour bank with the employee, one year after the current revisions to the labour law are published; and
4. The extension of the trial period from 90 days to 180 days for employee's seeking their first job and for long-term unemployed.

Future actions

There is a current risk that these legislative changes will be driven by political intentions and not by structural reasons, and may have the opposite effect of the intended aims.

As such, while on one hand, these measures are aimed at reducing job insecurity, on the other hand, they may represent an obstacle to freedom of economic initiative, restricting the possibility of hiring, and thus seriously damaging employers and companies.

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Russia

Development

The Russian Ministry of Labour and Social Protection ("Ministry") is issuing an unofficial clarification on the procedure for payment of salary to employees.

Description

The Russian Labour Code provides that salary should be paid to employees not less than twice a month. The exact days for salary payment shall be established by employers in their internal labour regulations, employment agreements or collective bargaining agreements. The final payment for the reporting month is to be made not later than 15 calendar days after the end of the relevant month. The Russian Labour Code does not regulate the amount of compensation due to employees for the first half of the reporting month. But the Ministry insists that employees have the right to receive their salary for the first half of the reporting month prorated to the time actually worked by the employees in the relevant period.

Effective date

Ongoing.

Impact and risk

In practice most employers set a fixed compensation amount due to employees for the first half of the reporting month and then, with regard to the second payment to be made, calculate the final payment for the reporting month depending on the time actually worked by employees in the relevant period.

However, the Ministry now considers the above approach as being discriminatory and violating the rights of employees. In the opinion of the Ministry, employers should calculate employees' salary twice per month depending on the time actually worked by employees in each half of the month. This approach supported by the Ministry will significantly increase the workload for accounting departments and payroll providers. The Ministry is going to impose administrative liability upon those employers that do not change their salary payment practices as described above.

Future actions

We recommend checking the compliance of the salary payment procedure currently existing in the Russian subsidiaries with the approach declared by the Ministry and introducing the relevant changes both into internal documents and procedures.

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Singapore

Development

The Tripartite Alliance for Fair & Progressive Employment Practices (TAFEP) recently commissioned a survey (Survey) in partnership with Singapore's leading newspaper, The Straits Times, on work-life harmony and flexible work arrangements (FWAs).

This is the second such survey being conducted; the first survey was conducted in 2014

Description

Singapore is experiencing a changing workforce landscape due to the combination of a rapidly ageing population and workforce as well as couples having smaller families. This has shifted employers' perceptions towards work-life programmes as well as their role in facilitating employees' work-life harmony.

This Survey studies the evolution of work-life in Singapore in order to better align the interests of employers and employees in this rapidly transforming employment climate.

Effective date

Ongoing.

Impact and risk

A key shift revealed in the Survey results between 2014 and 2019 is the greater alignment between employers and employees that employees should have the flexibility to manage their time and schedule as long as they are able to meet work targets and deadlines.

The Survey also highlights a shift in motivating factors in the implementation of FWAs. While demand or feedback from staff previously drove the implementation of FWAs, the Survey indicates that direction from senior management to promote work-life harmony in the organisation is now a key factor in driving the implementation of FWAs.

Future actions

The Survey points towards work life harmony increasingly becoming embedded in an organisation's core values and culture.

The Survey suggests that organisations are now alive to the fact that FWAs no longer are a nice-to-have but a business imperative in order to attract and retain the best talent.

Organisations operating in Singapore can seek guidance from the Tripartite Advisory on Flexible Work Arrangements and the Tripartite Standards on Flexible Work Arrangements for guidance on implementing and managing FWAs.

On your radar | Key employment issues across Europe and beyond
Slovakia

Development

A further increase in surcharges for work (i) at night, (ii) on Saturday and (iii) Sunday, stipulated in the Labour Code, came to force.

Description

As of 1 May 2018, the Labour Code introduced the first phase of increase of certain surcharges.

As of 1 May 2019, the second phase of the increases became effective, with the impact on surcharges for night work and work during the weekend.

The surcharge for night work increased from 30% to 40% (risky work: from 35% to 50%).

The surcharge for work on Saturdays increased from 25% to 50%.

The surcharge for work on Sundays increased from 50% to 100%.

Effective date

1 May 2019.

Impact and risk

The overall cost of work increases.

Employers may be motivated to change working conditions or patterns so they do not have to pay surcharges for night or weekend work.

Future actions

Due to constant increases in the cost of work in Slovakia, the country may become less attractive for foreign investors.

On your radar | Key employment issues across Europe and beyond
Slovenia

Development

Changes to the Employment Relationship Act due to the adoption of the new Trade Secrets Act.

Description

The Employment Relationship Act no longer defines a trade secret as data which would cause substantial damage if disclosed to an unauthorised person, but refers to the regulation in the Trade Secrets Act.

The Trade Secrets Act provides for a uniform regulation of trade secrets in a single act, and among other defines:

- A new concept of trade secrets;
- Distinguishes between lawful and unlawful acquisition, use, or disclosure;
- Regulates judicial protection); and
- Provides for exceptions where, in order to protect another legitimate interest, legal protection is denied to the proprietor of trade secrets.

Effective date

In force.

Impact and risk

There is a new statutory definition of trade secret that employers need to consider.

Future actions

We recommend employers follow the necessary steps for protecting information in accordance with the Trade Secret Act since this may affect their potential termination procedures due to the violation of the obligation to protect trade secrets.

On your radar | Key employment issues across Europe and beyond

Spain

Development

New employees' right to request adaptation of working time.

Description

Employees are now entitled to make a request to their employer to adapt their working time according to their personal needs.

This is not a right to adapt the working time, but a right to request such an adaptation.

Should no specific regulations exist in the applicable Collective Bargaining Agreement, the employer shall enter into a negotiation process (up to a maximum of one month duration) with the employee that has requested adaptation of their working time.

Effective date

Effective as from 13 March 2019.

Impact and risk

If the employer and employee could not reach an agreement, a claim can be brought before the Labour Courts.

This is a one-instance procedure, ie: except for cases with fundamental rights violations, no appeal is possible.

In any case, when dealing with a request, Labour Courts shall take into consideration, on the one hand, the employee's needs and personal situation, and, on the other hand, employers' own organisational and business needs.

Future actions

Several requests at one company may have a serious impact on the operation of the business.

Any request shall be analysed in depth to assess whether there may be grounds to accept or deny it.

As a new law, although there is no case law based on this new right yet, refusal of a request by an employer without the proper justification may be declared unfair by Labour Courts. In such a case, employers may be ordered to adapt the employee's working time as requested or as per his/her personal needs.

On your radar | Key employment issues across Europe and beyond
Switzerland

Development

Employers may not use private chat messages on a mobile device owned by an employer to justify issuing notice of termination with immediate effect.

Description

An employer terminated the employment relationship with their employee with immediate effect. The employer had found private chat messages by the employee on a mobile device owned by their employer, in which the employee insulted the CEO and acknowledged that she had pretended to be sick.
According to the Zurich High Court, the employer was not allowed to read the private messages on the company device and hence, the corresponding evidence was taken illegally.
In light of the fact that such evidence could not be used in court, the notice of termination was considered unjustified, and the employer had to pay financial compensation to the employee.

Effective date

Immediately.

Impact and risk

The employer may only process employee data to the extent necessary for the administration of the employment relationship.

Reviewing private messages of employee on a company device does not meet this requirement.

Future actions

Evidence obtained in violation of data protection regulations may not be used in court proceedings.

On your radar | Key employment issues across Europe and beyond

Turkey

Development

The latest decision of the Court of Appeals has removed the requirement to obtain a defence statement from the employee for a “just termination” of the employment, where there has been a prolonged absence due to an untreatable disease.

This binding decision of the Court of Appeals concluded that the Law cannot be interpreted in a way that obtaining a defence statement is a legal requirement in such a case, as (i) it is against the spirit of the Law and (ii) the preamble of Article 19 states "the employer is not expected to obtain a defence statement from the employee in the event of termination due to mental or physical incapacity of the employee”.

Description

A Court of Appeals decision of joint chambers has been published in the Official Gazette dated 9 May 2019 with respect to the controversial requirement to obtain a defence statement from the employee in the event of their absence for a long period of time due to an untreatable disease, which has been evidenced with a medical report.
Under Article 25 of the Labour Code No: 4857 (the “Law”), the employer can terminate the employment without giving any notice in the event that the employee has been absent from work for a period of more than 6 weeks of his/her notice period due to an untreatable disease which prevents the employee from working.
There have been conflicting court decisions and doctrinal opinions on whether it is required by law to obtain a defence statement of the employee in such a case, before terminating the employment.

Effective date

9 May 2019.

Impact and risk

Unlike other Court of Appeals decisions, the decision of joint chambers is a decision which creates a binding precedent in relation to future court rulings for the same subject matter.

The procedure of obtaining a defence statement requires the employer to extend an invitation to the employee for obtaining a defence statement verbally or in writing within a reasonable time.

Therefore, in line with this case law, employers are enabled to terminate employment for the reason of untreatable diseases of an employee affecting the work environment, without going through this procedure. However, for other types of termination due to valid reasons this procedure will continue to apply.

Future actions

Employers should be mindful of the required procedures on each termination and closely monitor case law such as this one in addition to legislative changes.

On your radar | Key employment issues across Europe and beyond

Ukraine

Development

New Procedure for inspecting an employers' compliance with the legislative requirements to protect disabled employees' rights ("Procedure").

Description

On 5 June 2019, the Cabinet of Ministers of Ukraine adopted Resolution No. 466, whereby it introduced substantial amendments to the Procedure.

Effective date

5 June 2019.

Impact and risk

The Procedure provides for both scheduled and unscheduled inspections, with a requirement to notify of a scheduled inspection at least 10 days before such an inspection.

The Procedure sets out an exhaustive list of grounds for non-admission of inspectors to conducting an inspection.

Future actions

Our recommendation to the Ukrainian employers is to comply with the statutory requirement for the employment of disabled persons.

On your radar | Key employment issues across Europe and beyond

United Arab Emirates

Development

On 30 May 2019, the Dubai International Financial Centre enacted a new DIFC Employment Law (Law No 2 of 2019) (the "New Law"), which repeals and replaces the previous DIFC Employment Law (Law No 3 of 2005).

The New Law contains a range of employment law changes affecting statutory and contractual rights.

In addition to the changes listed here, there has been an extension of the scope of the New Law to part-time and short-term employees, including secondees (in relation to certain provisions).

Description

The changes include:

Limiting the probation period to 6 months.

A 6 month limitation period for employment claims following termination.

The ability to recoup recruitment costs if the employee leaves within six months.

Reducing sick leave to 10 working days full pay, then half pay for 20 days, followed by 30 days which is unpaid.

5 days paid paternity leave.

Extension of adoptive leave for babies and children above 3 years.

Right for employees to carry forward 5 annual leave days.

Extension of discrimination rights to cover age, pregnancy and maternity.

Longer notice periods (above 3 months) may be agreed.

Settlement agreements are formally recognised provided there is independent advice.

New rules on end of service gratuity payments.

Effective date

28 August 2019.

Impact and risk

Employers will need to review their existing employment contracts, policies and procedures, and any settlement agreements entered into in the six months prior to 28 August 2019, to ensure these are compliant with the requirements under the New Law.

In respect of employees who were not previously captured, but may be captured under the New Law (e.g. secondees), an analysis will need to be done on the applicable provisions and further documentation may need to be entered into and working permits applied for.

Staff will need to be educated on the extension of the discrimination provisions to ensure discrimination is not taking place in practice.

Employers should note where employees have higher rights (e.g. in relation to sick leave) embedded in their employment contracts, which will continue to apply unless any amendment is expressly agreed with the employee.

Future actions

Employers may want to reconsider their approach towards end of service gratuity/pension arrangements. This is likely to be a developing area of regulation in light of the DIFC's proposals to overhaul the entire end of service gratuity regime and replace it with a DIFC employer workplace savings scheme. Employers may want to consider harmonising pension arrangements with overseas offices as an alternative to any end of service gratuity regime.

Employers should ensure that their policies and procedures are in compliance with the New Law to reduce the risk of any claims being brought in the future.

Employers should note they are required to keep employee records for six years following their termination.

On your radar | Key employment issues across Europe and beyond
United Kingdom

Development

Changes to the rules regarding who bears the responsibility for assessing the tax status of self-employed consultants who operate through an intermediary company. (Known as the “IR 35 rules”, or “off-payroll working”.)

These changes will only affect medium to large private sector companies.

The changes are being implemented because there is a perception that there is a high level of non-compliance with current rules. The UK tax authority, the HMRC believe many of these self employed contractors are really employees for tax purposes, and should not be taking advantage of a model intended for truly self-employed contractors.

Description

From April 2020 UK employers who hire self employed contractors through an intermediary company will be responsible for determining whether the IR35 rules apply to the arrangement (instead of the intermediary itself, as now, with contractors normally being paid gross).

If the rules do apply, the self employed contractor should be taxed via the payroll. This will result in income tax and employer National Insurance Contributions being deducted at source.

The risk of incorrect determinations, and in particular of tax/social security contributions not having been dealt with properly, will now sit with the paying entity, and ultimately in many cases with the client.

Effective date

6 April 2020.

Impact and risk

For those hiring employers who are in scope, the new rules are likely to:

- increase the costs of hiring contractors;
- require changes to payroll and hiring procedures;
- impact practical arrangements around contract assignments; and
- require changes to consultancy agreements/ agency terms/contractor documentation.

The changes may also result in more challenges to employment status i.e. if an individual is for the first time deemed to be an employee for tax purposes, they may also argue they should be classified as an employee for employment rights.

These changes have already been implemented in the public sector in the UK. It has resulted in a significant number of contactors moving onto the payroll.

Future actions

Affected employers need to audit their current arrangements understand risk, budget for changes, and determine future process. This is a large project for businesses with high contractor usage.

Early communication with affected contractors is also recommended. This change will affect multiple teams e.g. HR, supply chain, legal, operations, and any change in approach should involve dialogue internally.

Effective compliance will require training of those responsible for dealing with contractors/their arrangements.