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On your radar

Key employment issues across Europe and beyond

On Your Radar | November 2019

Welcome to our latest edition of CMS On your radar

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The CMS employment team

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Belgium

Development

In this case the Belgian court was asked to determine where an airline employee “usually performs his work” for the purpose of bringing a claim.

When this dispute was brought before the Labour Court of Mons, it drew up an analysis grid identifying where (i) the worker receives his instructions; organises his work; (ii) the work tools are located; (iii) the worker returns after his assignment; (iv) the transport was mainly carried out; (v) the goods were unloaded.

On the basis of the various criteria relating to Belgium, the Labour Court of Mons declared itself competent (14th of June 2019).

Description

Labour relations in the air navigation sector often involve many foreign elements. In this case, it concerns an employee who brought an action before the Belgian courts against his employer; an airline based in Ireland whose contract, drafted in English, specifies that the services would be provided in Ireland. Finally, the contract stated that the law applicable to the employment relationship was Irish law and that the competent courts were those of Ireland. In view of these foreign elements, the Mons Labour Court referred to the CJEU for a preliminary ruling a question concerning the interpretation to be given to Article 19, 2° (a) of the Brussels I Regulation (*) on the "determination of the State competent (and therefore within its jurisdiction) to hear a dispute on the territory of which the worker has usually performed his work" (CJEU 14 September 2017).

Effective date

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Impact and risk

An employer whose registered office is located in the territory of a Member State may, at the employee's choice, be sued, in the courts of the Member State in which

- the employer has his registered office, or

- the employee "usually performs his work" or, failing that,

- is the address of the company where the employee physically works.

Finally, when an employee carries out his activities in several Member States, the determination of the competent court will be based on a set of concrete indications as to the exercise of the services provided.

Future actions

Insofar as the clauses conferring jurisdiction included in the employment contracts (i.e. before the dispute arises) are without effect, it will be necessary to pay attention to the main place from which the employee will provide his services. Thus, to try to avoid being sued in a "foreign" court, the contract could provide an article relating to the place where the services will usually be provided, however this place must be real and effective.

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Bulgaria

Development	Description	Effective date	Impact and risk	Future actions
The two leading trade unions in Bulgaria have started a national campaign among employees in all sectors under the slogan "Together to protect our labour".	Trade unions are demanding revision of the labour law due to multiple signals from employees for unregulated overtime. The proposed changes concern: - irregular working hours; - additional pay for night work, overtime, etc.; and - the mandatory rest periods.	Ongoing	More than 50% of the violations that the Labour Inspectorate has sanctioned in recent years are linked to working time. Among the demands are higher wages for work during weekends, official holidays, and for overtime work. The trade unions also insist on a significant increase in the night work pay, which has been approx. EUR 0.13 per hour and has not changed since 2007.	If the proposed changes take place, employers' salary costs will increase.
There are public consultations pending on a draft new Ordinance on Labour Books and Work Experience (the "Ordinance") that will replace the Ordinance with the same title currently in force.	Each employee in Bulgaria should have a hard copy labour book which is an official document evidencing the employee's employment history. The template currently in use in Bulgaria has not been changed since 1996 and is therefore outdated. The Ordinance proposes, among others, a new format and content of the template to address the current legislative and practical needs.	Pending. The deadline for submission of opinions and comments is 24 October 2019.	Although some improvements have been made with respect to the content of the information subject to recording in the labour books, the Ordinance does not substantially change the applicable rules currently in force. The Ordinance envisages a grace period for switching entirely to the new template. Thus, some confusion can be expected in the interim period when both templates will continue to co-exist.	Although the Ordinance is aimed at reducing the administrative burden on employers, it does not seem to do this in practice. The Ordinance does not take into account the overall trend to shift from hard copy to electronic employee files. It can be expected that the business will push further towards simplifying HR paper work rather than introducing new hard copy documents, considered by many to be obsolete.

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China

Development

The Chinese government issued the draft Measure on Security Assessment for Cross-border Transfer of Personal Information ("Measures") on 13 June 2019 seeking public opinions.

Description

The key content of the Measure is as follows:

- A network operator can only make a cross-border transfer of personal information after going through the security assessment at the competent cyberspace administration department at the provincial level;

- The network operator should sign a contract with the information recipient regarding the purpose of the transfer, the type, the retention period, liabilities towards the owner of the personal information;

- For the purpose of the security assessment, the network operator should provide a security assessment report; and

- The network operator should keep the cross-board transfer record for at least 5 years.

Effective date

Pending

Impact and risk

Under PRC law, network operators also refer to the ordinary manufacturing and trading companies including the foreign invested companies which have their own IT network or operate websites.

Companies may wish to pay attention to the progress of the draft Measure and its effectiveness.

Future actions

In the future, if the Measure becomes effective, and a foreign company wants to transfer the personal information of its employees or any other individuals to headquarters abroad, in addition to obtaining the consent of its employees which is required by the PRC Cyber Security Law, the company should get an approval from the competent cyberspace administration department at the provincial level following a security assessment.

A contract should also be signed between the company and the headquarters, and a security assessment report should be made by the company. Although only one approval is needed if the personal information is sent to the same recipient within 2 years if there is no change to the purpose, the type of information or the retention period, this will still bring a lot of additional work for the company.

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Colombia

Development

Act 1955 of 2019, includes a provision on the Social Protection Minimum for old-age saving benefits, insurance on labour hazards and subsidised health services for part-time workers and an invitation for companies and workers who belong to the gig economy to enter into these schemes of protection.

The fourth industrial revolution and its expansion in Colombia through the gig and shared economy with apps for deliveries, transportation, housing, among others, has brought a huge challenge for the Colombian Government Agencies on meeting the Sustainable Development Goal on Decent Work and Economic Growth (Goal Number 8 of the UN Sustainable Development Goals on the 2030 Agenda), especially since Colombia was one of the promoters of this goal.

Description

Workers employed by the industries in the shared and gig economy, often find themselves unprotected by Colombian social security and Colombian Labour Law, since their conditions do not match the requirements of a full-time dependent employee or a completely independent worker.

Therefore, special treatment is needed for these workers to be included on social protection schemes and minimum labour rights, for which the Act 1955 of 2019 represents an advance, but a fully specific regulation may be more beneficial. Furthermore, a specific regulation may provide better ground rules for start-ups and other enterprises to participate in the industry without engaging on legal risks.

Effective date

Ongoing.

Impact and risk

Even if the fourth industrial revolution represents a positive impact in the Colombian economy, the absence of minimum legal protections for workers in this industry may result in an increase on labour claims and international pressure on the fulfilment of the Colombian agreement to implement Decent Work as a Sustainable Development Goal.

A specific regulation that clarifies minimum labour rights and social protection for workers in the gig and shared economy, will provide better ground rules for organisations to operate and workers to be safe and have decent work conditions.

Future actions

Even if Act 1955 of 2019 includes specific rules on the Floor of Social Protection under Colombian Law, Congressman Rodrigo Lara presented on 12 September 2019 a Draft Law to properly regulate working conditions for workers linked to gig and shared economy apps. This includes the minimum social protection and conditions of unionisation of said workers. Nevertheless, a similar Draft presented in 2017(Draft Law No. 170-2019) by the same Congressman was filed in June of the current year.

For the present, we recommend that organisations verify the inclusion of workers in the gig economy to the social security system as being dependent or independent workers or to the Floor of Social Protection as part-time workers.

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France

Development

The French Cour de Cassation has ruled in an opinion, not a judgment that the scale of compensation for dismissal created by a Macron Ordinance was not incompatible with A.10 of the ILO (International Labour Organisation).The Cour de Cassation also ruled that a.24 of the European Social Chapter (the Chapter) has no direct effect, and therefore did not assist the legal challenge.

Description

One of the innovations of the Macron Ordinances has been the creation of this binding scale of compensation for dismissals without a real and serious cause.

The Macron scale has been challenged because it was considered that it would not provide for the "adequate" or "appropriate" compensation demanded by the ILO Convention and the Chapter.

Effective date

Decision of the social chamber of the Cour de cassation is hard to forecast since the Court of appeal of Reims' judgement is obiter dicta.

Impact and risk

One could have thought that the problem was definitely settled. It is clearly not the case.
Some Industrial Tribunals, arguing that the ruling of the Cour de cassation is an opinion and not a judgment, are refusing to apply it.

Second and worse, the Court of appeal of Reims has ruled, on 30 October 2019, that there are two kinds of conventional review:

- A so-called abstract review, which is the review that the Cour de cassation has exercised on the scale of compensation;

- And, in what might be termed a concrete review, even if the statute complies with the international conventions, the judge must check that the implementation of the law doesn't infringe upon the fundamental rights of the claimant. In other words, it means that the judge can set aside the law if he deems it necessary, in a purely subjective assessment, to respect the fundamental rights of the claimant.

Future actions

The decision from the Court of Appeal of Reims is, for the moment, unique. The ball is now in the hands of the Cour de cassation: will it confirm the exercise of this concrete review, which is contrary to all or legal traditions?

So far, contrary to the other civil chambers of the Cour de cassation, it has never implemented this concrete review.

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Germany

Development

To promote the professional education of employees, the German Qualification Opportunities Act has been passed and came into force at the beginning of this year.

In addition, against the background of the looming economic slowdown, the Minister of Labour is planning a "Work of Tomorrow Act" to expand these possibilities. A draft bill has not yet been presented, however.

Both measures are embedded in the National Continuing Education Strategy developed by the federal government, the federal states (Länder), economic and trade union representatives and the Federal Agency for Employment.

Description

The aim of the continuing education program is to enable workers whose professional work can be replaced by technology or who are otherwise affected by structural change and digitalisation to adapt and develop their professional skills in order to better meet these challenges.

The aim is to avoid redundancies for operational reasons and to counteract a shortage of skilled workers.

Effective date

1 January 2019, further litigation to come.

Impact and risk

Companies must bear the costs for these educational measures. However, they receive state subsidies as follows:

Depending on the size of the company, the Federal Agency for Employment bears:

- up to 100% of the costs for continuing education, and

- up to 75% of the employees' remuneration during continuing education (up to 100% for employees without a vocational qualification or with severe disabilities).

Please note: The continuing education program must be carried out by an accredited institution, comprise of at least 160 hours and impart skills, knowledge and abilities that go beyond mere job-related, short-term adaptation training courses.

Future actions

To prevent employees from leaving the company following a continuing education measure subsidised by the company, repayment clauses can be agreed on.

Case law imposes strict requirements on the wording of such clauses and the permissible duration of the commitment, so care is needed in this respect.

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Italy

Development

The posting of employees from an EU country to Italy must comply with Legislative Decree 136/2016 (which transposes into national law EU Directive 2014/67/EU on the posting of employees in the framework of the provision of services) to avoid being challenged by the National Labour Inspectorate.

Description

Should the posting be deemed irregular, the employees will be considered to all intents and purposes employed by the entity that used the service (with the consequent applicability of the minimum terms and conditions provided by the Italian legal framework for working time and salary).

Furthermore, both the posting and the receiving entities will be subject to an administrative fine (for an amount in any case not less than EUR 5,000 or more than EUR 50,000).

Effective date

Ongoing.

Impact and risk

The National Labour Inspectorate has specified (Note 5398 of 10 June 2019) that the production unit for posting can be considered an autonomous secondary office only if it is registered in the register of companies and has its own legal representative in Italy.

A representative office with merely promotional and advertising functions or that conducts information gathering, scientific or market research or preparatory activity for the opening of an operational branch, cannot be considered an autonomous secondary office. In the latter case, if the local unit belongs to the same business organisation, the fines for illegal secondment will be applied only to the foreign posting company.

Future actions

Foreign companies must duly check if the secondary office for posting employees is not an office with merely promotional and advertising functions/collecting market research or only carrying out preparatory activity to avoid the fine imposed by the National Labour Inspectorate.

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Mexico

Development

Following the Labour Reforms ratified on 1 May 2019, the Mexican Congress had until 1 November 2019 to create the Federal Law on Labour Conciliation and Registry Centres (the "Law").

This Law creates a Federal Labour Conciliation and Registry Centres that will attempt to resolve employment disputes through ADR (the "Centres").

If a solution cannot be reached, disputes will go to the newly created Labour Courts. The Labour Courts will replace the existing federal Conciliation and Arbitration Boards.

Description

There will be a Federal Centre alongside 32 state centres, one for each state in Mexico.

The Centres are intended to perform the following functions:

- Improve the conciliation procedure for individuals;

- Maintain a registry of collective labour agreements, internal work regulations, and trade union associations and their related administrative processes;

- Dispute resolution conciliation and mediation proceedings between employees and employers, and syndicates and employers;

- Disputes regarding discrimination, social security benefits, maternity leave, ownership of collective contracts, human rights and public liberties in labour issues will be part of the jurisdiction of Federal or Local courts.

Effective date

The Mexican Congress approved the new Law on 29 October and this will subsequently be published in the Official Daily Gazette.

Impact and risk

Employers must take note of the following obligations:

1. Employers must register a certified copy of their collective labour agreements to the Federal Centre in order to be valid and enforceable.
2. Employers must respect the new democratic processes established by the unions or syndicates and act according to their principles.
3. Employers should identify any processes currently ongoing through the previous Arbitration and Mediation meetings and ensure these are continued under the terms of the Law.

Future actions

The implementation of the Centres and the further obligations imply that employers must begin to prepare for any major changes in unions and syndicates.
Employers should familiarise themselves internally with the processes of the Centres and ensure they engage fully in related processes.
If employment disputes are not resolved through the Centres and reach the to-be-implemented Labour Courts, the burden of proof is on the employer at each stage of the judicial process.

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Monaco

Development

The Monaco Court of Appeal has clarified the regime for dismissals for incapacity where there is no redeployment.

The Court considers that even in cases of complete and definitive incapacity, the reason for dismissal may be recognised as invalid.

This decision rejects that made by the Labour Court, which considered that the dismissal was only abusive.

Description

The Court has ruled that the complete and definitive incapacity (even at any position within the company as in the present case) declared by the occupational doctor, does not constitute in itself a valid reason for dismissal insofar as an employee's state of health or disability is not a ground for termination of the employment contract.

Thus, the reason for the dismissal is not valid if it is not demonstrated i) by the recognition of the employee's definitive incapacity by the occupational doctor; ii) by the impossibility for the employer to proceed with his/her redeployment within the company, or the refusal of the employee to accept the proposed redeployment.

Effective date

Court of Appeal, 26 September 2019.

Impact and risk

The obligation of redeployment which is imposed on the employer and falls under an obligation of means, is now sanctioned on two counts.

Indeed, in the absence of a search for redeployment positions, the employer may be sentenced to pay (i) a higher severance payment in the absence of any valid reason; (ii) damages for unfair dismissal in its implementation.

Consequently, given the retroactive nature of case law, any dismissals made prior to that decision, which do not comply with the relevant procedure, may be considered invalid (in addition to being abusive).

Future actions

This decision confirms the current trend in case law, which is particularly protective of the interests of employees who are declared unfit.

We therefore encourage employers to be particularly vigilant about these decisions each one further specifying the outline of their obligations towards employees who are not well.

In any case, we recommend being particularly diligent in the search for redeployment before implementing a dismissal for incapacity and the impossibility of redeployment.

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Netherlands

Development

The Dutch Court has ruled that obliging employees to access the cash desk by use of their finger scan only, is in breach of GDPR. According to the Court, the finger scan was not necessary for authentication security purposes and it was not proportional.

Description

A large retail company tried to limit the number of thefts and inconsistencies from their cash desks. Employees had access through a personal pin code and/or through a personalised key card. However, in case of theft of money, it was not always possible to fully determine who had accessed the cash desk.

Therefore, it was decided to introduce a system that would give 100% certainty as to who had accessed the cash desk. One employee challenged the validity of the use of finger scan access and claimed that the use thereof was an invasion of her privacy. The court ruled in favour of the employee.

Effective date

N/A

Impact and risk

The Dutch Data Protection Authority (Dutch DPA) has not (yet) responded to this individual case but raised a similar point recently about the use of finger scans as a means of access to sports facilities of two universities.

This case shows that the use of finger scan authentication requires a thorough assessment as to whether it is strictly necessary to oblige employees to share their biometric data for access and authentication purposes. In general, finger scan authentication remains possible, as long as the employer is able to substantiate that use of biometric data is necessary, proportionate and that adequate governance is in place.

Future actions

In cases where the use of biometric data is being considered in the future, assess whether the argumentation is solid and in accordance with the applicable data protection requirements in the Netherlands.

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Peru

Development

Recent publication of the new criteria of the Supreme Court of Justice contained in a Jurisdictional Plenary regarding trade union issues approved by the majority of the Judges of the Supreme Court of Labour specialty.

Description

The Supreme Court Judges have agreed to establish the following clarifications to the law:

Not only union leaders, but any union-affiliated worker enjoys protection against dismissal and changes in the workplace if they are made without justification.

It is not in accordance with the law to extend the effect of a collective agreement signed by a minority union to workers not affiliated with such an organisation, unless the agreement itself expressly allows it, or if the employer decides to include more favorable benefits for the worker.

Workers who could not join a union because the employer did not recognise the labour nature of their services, if the Judiciary declares an employment relationship, then they will be entitled to benefits of collective origin.

Effective date

5 October 2019, the date on which the Jurisdictional Plenary was published in the official newspaper.

Impact and risk

The first issue of this new regulation constitutes an interference from the authorities in the development of labour relations in the country, especially as it limits not only the dismissal of workers but also the possibility of changing them from jobs if the variation implies a change of work centre.

Future actions

We recommend that employers established in Peru be aware of this new limitation in relation to their workforce and take special care when dismissing union-affiliated workers.

In these type of dismissals it will be essential to have all the evidence to support the just cause of the dismissal.

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Poland

Development	Description	Effective date	Impact and risk	Future actions
There are two developments of interest in Poland. 1.Zero personal income tax (PIT) for employees under 26.	According to the new tax regulations, employees under 26 are exempted from a personal income tax up to PLN 85,528 gross per tax year. The exemption concerns employment and service contracts. It does not relate to sole traders.	1 August 2019	The adopted changes are financially beneficial for the employees. Due to the new tax rules, employees will receive higher salaries (net amounts).	The adopted changes impose new duties on HR and payroll departments.
2. Increase in the minimum wage in 2020.	In 2020, the minimum wage will increase significantly to PLN 2,600 gross and the minimum hourly rate will amount to PLN 17 gross.	1 January 2020	Higher minimum wage will affect all employees who currently earn less than PLN 2,600 gross. It will also affect the amount of other statutory benefits calculated in relation to the minimum wage, e.g. the night-time allowance or the maximum amount of statutory redundancy payment. As a result, the higher minimum wage will increase labour costs for the employers.	The companies must adapt payroll systems to new regulations so that they can correctly calculate PIT and other statutory payments and control employees' age.

On your radar | Key employment issues across Europe and beyond

Portugal

Development

Implementation of two Amendments to the Labour Code, and one Amendment to the contributory code which affect different types of contracts, for instance, fixed term and temporary contracts.

Description

Some of the legislative changes presented include issues related to:

- Changes to justification of grounds for execution of fixed-term contracts;
- Reduction of the maximum duration of fixed-term contracts and changes to the renewal of such contracts;
- Implementation of a turnover fee for employers who make excessive use of fixed term contracts;
- Changes to temporary employment;
- Widening of rights for employee's with cancer;
- The extension of the trial period in permanent contracts;
- Modification in the way of executing bank hours agreements;
- Increase of training hours;
- Changes in collective bargaining agreement rules; and
- Changes in parenthood protection rules.

Effective date

1 October 2019 - general changes in the labour code.

Employment contracts executed until 30 September 2019, will be subject to the new rules with the exception of:

- Conditions of validity
- Effects regarding facts or situations prior to 1 October 2019
- Renewal of Temporary Employment Contract
- Fixed-term employment contracts

The turnover fee will be effective as of 1 January 2020.

Impact and risk

The legislative amendment will have the following consequences:

1. The reduction of the maximum duration of a fixed-term contract from 3 to 2 years;
2. The reduction from 6 to 4 years where the contract period is for an uncertain term;
3. Renewal of the fixed term contracts only for the same period;
4. The extension of the trial period from 90 days to 180 days;
5. Increasing the minimum activity period of intermittent employment contracts and the advance notice of the starting-day;
6. Employees hired under intermittent contracts will see their respective compensation reduced in proportion to other salaries they may receive;
7. Temporary employment: increase of the Temporary Work Utilisation Contract invalidity grounds and introduction of renewal limits; and
8. Mandatory referendum when approving group bank of hours.

Future actions

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

While on the one hand, these measures are aimed at reducing job insecurity, on the other hand, they may represent an obstacle to freedom of economic initiatives, restricting the possibility of hiring, and could seriously damage employers and companies.

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Russia

Development

The draft bill introducing electronic format of employees' workbooks (hereinafter referred to as the "Bill") has passed the first reading of the Russian State Duma.

Description

The Bill is aimed at finally cancelling hard copy workbooks that had to be maintained by all employers from the Soviet Union times.

Effective date

1 January 2020.

Impact and risk

If the Bill is adopted, starting from 1 January 2020 all employers will have to submit employment information related to their employees to the Russian Pension Fund in an electronic format. Employers will only have to maintain hard copy workbooks of those employees that express the relevant wish in writing by 1 January 2021. Otherwise, employers may return workbooks to employees and be released from any further responsibility for their storage.

Those employees that will be employed after 1 January 2021 for the first time will not have hard copy workbooks any more. Any employment information of these employees will only need to be kept in electronic format.

Future actions

In view of the above, in 2020 all employers will need to undertake the following:

1. to introduce the relevant changes to their local policies regulating maintenance of employees' workbooks;
2. to inform employees in writing on changes in the law related to their workbooks;
3. to ensure technical capacity for submission of employment information to the Russian Pension Fund in electronic format.

Further, employers should expect some initial technical problems with the electronic submissions of the employment information to the Russian Pension Fund.

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Slovakia

Development	Description	Effective date	Impact and risk	Future actions
Adoption of the new act on the protection of whistleblowers (Act No. 54/2019 Coll., “Act”).	If the employer employs at least 50 employees, it has to designate an organisational unit or a person responsible for the performance of their employer’s obligations under the Act. Amongst other obligations, in scope employers must: - issue an internal regulation governing various aspects of the internal system of whistleblowing (incl. confidentiality of identity of the whistleblower, processing of personal data included in the notification, etc); - maintain records of notifications (date and subject matter of notification, name and residence of whistleblower, result and end date of notification’s review) during at least 3 years from receiving the notification.	1 March 2019	An in scope employer with at least 50 employees who fails to fulfil the respective obligations under the Act may be sanctioned by a fine of up to EUR 20,000.	In scope employers should confirm with the person responsible for compliance that the rules under the Act are duly followed.

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Spain

Development

The Superior Court of Justice of Madrid has ruled in a decision dated 19 September 2019 that Glovo (a competitor of Deliveroo) riders do not have a labour relationship with the company and are, instead, self-employed.

Description

The Superior Court of Justice of Madrid understands that riders have a self-employed relationship based on the following:

- they are free to choose their working hours,
- they are free to accept and carry out orders as they wish and do not need to justify absences,
- they are free to choose the route,
- they do not supervise any workers,
- their remuneration is based on the number of deliveries,
- no full-commitment covenant,
- they are liable to the consumer of any damage that the product may suffer during transport,
- working tools are their own.

Effective date

N/A

Impact and risk

This decision feeds the existing case law on gig-economy business models. Although the circumstances of each specific case must be individually analysed, up to date there are already nine judgments from different Spanish Courts endorsing the self-employed working nature and nine judgements concluding that “riders” are not freelancers but employees.

Future actions

As other courts have ruled, in very similar cases, that “riders” have an employment relationship with this type of platform, it is most likely that this judgement will be appealed before the Supreme Court, aiming to unify case law on the nature of these relationships.

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Switzerland

Development	Description	Effective date	Impact and risk	Future actions
If the employer does not provide a permanent and suitable office, it has to contribute to the employee's home office costs.	Based on mandatory Swiss law, the employer has to bear the costs necessarily incurred in the performance of the employee's contractual duties. According to a recent decision of the Swiss Federal Supreme Court, if the employer does not provide a permanent and suitable office, the rule also applies to the costs of the employee's home office. The amount owed to the employee has to be determined based on the circumstances of the specific case; in this case, a monthly allowance of CHF 150 was deemed appropriate.	Immediate.	If the requirements outlined in the decision of the Swiss Federal Supreme Court are met, employees may claim a corresponding contribution for the future and for the past, provided that these claims are not yet time-barred.	If the employer does not provide a permanent and suitable office, the parties should agree on the specific cost contribution to be paid by the employer, in order to avoid corresponding uncertainty.

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Ukraine

Development

The Parliament of Ukraine has passed the draft law on reducing the fines imposed on employers for various violations of employment legislation.

Description

The draft law suggests applying written notices instead of fines for:

- the employment of an employee without an employment agreement;
- the part-time employment of an employee who in fact works full-time;
- and some other offences.

In addition, the draft law significantly reduces the amount of fines.

Effective date

Ongoing

Impact and risk

The draft law, if adopted, should make the respective risk level lower.

Future actions

To monitor the status, and in case of adoption, to reassess the risks.

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

Development

New statutory rules will affect the scope of the obligation to issue a "written statement of employment particulars" (currently only to employees where their contract of employment lasts for a month or more).

At the moment the statement should be issued within 2 months of starting employment.

There is also scope to cover some of the provisions in different documents e.g. a handbook.

Although the written statement is technically not the same as the contract of employment, many employers chose to adopt the terms of the written statement into their contracts of employment.

Description

For employees beginning employment on or after 6 April 2020:

the written statement must be issued to workers in addition to employees, and it must be issued on or before the start of employment.

Additional information will be required, including:

- whether there is a probationary period;
- more detail around hours and days of work and whether these may be variable;
- details of other paid leave (in addition to holidays);
- any training entitlement provided by the employer;
- benefits not covered elsewhere in the statement.

Effective date

6 April 2020

The Regulations also include a mechanism for employees employed before 6 April 2020 to request from their employer a statement that accords with the new rules.

Impact and risk

Employers have different ways of complying with the requirement to provide a written statement, but most will include the terms in their contract of employment.

Whatever method is used, employers should ensure that, going forward, the information is given:

- in one document;

- to all workers (as well as employees)

- is issued on or before the start of employment; and

- contains all the new information.

It should also be noted that changes are planned to the content of confidentiality clauses in the UK, although there is no date fixed for when these changes will come into place. Employers will be obliged to explain the limitations of a confidentiality clause in their contract of employment.

Future actions

Employers should plan ahead and update the required documentation in advance of 6 April 2020.

The change in timing of when the written statement should be issued may also require changes to your worker/employee onboarding process, so make sure this is addressed when implementing these changes.