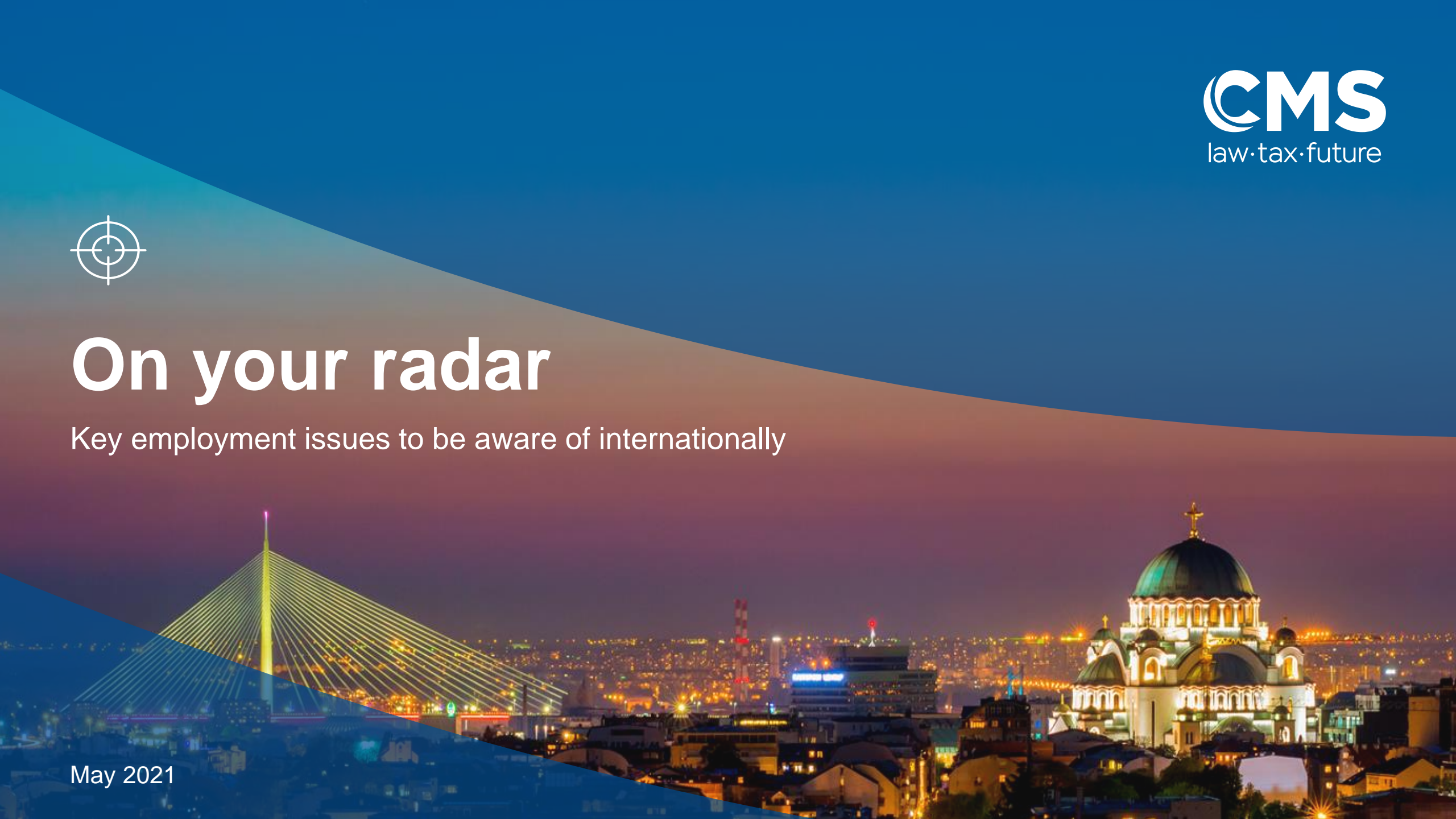




On your radar

Key employment issues to be aware of internationally

May 2021





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Welcome to the latest edition of CMS On your radar

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 information set out is correct at the time of writing in early May 2021.

The CMS employment team



Austria

On your radar



Development and date

Working from home

New legislation was introduced on working from home (WFH).

Following the strong preference for WFH during the COVID-19 pandemic and the corresponding lockdown, this legislation provides some clarity on WFH.

The Labour Law legislation on WFH came into force on 1 April 2021. The legislation on WFH tax benefits came into force retrospectively, e.g. 1 January 2021.

Description

WFH requires an agreement between the employer and the employee. The agreement should be concluded in writing in order to evidence this.

The employer must provide digital work equipment for employees who regularly WFH or bear the reasonable costs of the digital work equipment provided by the employee. In that case, an agreement for a lump sum compensation is possible, and is tax free up to EUR 3 per day, for 100 days per year.

A WFH Agreement may be terminated by either party for good cause with a notice period of one month to the end of each month. A works council agreement on WFH may be concluded, covering regulations on the provision of work equipment and private use, and regulations on returning to work premises and/or the regulations on allowances for a home office.

Work Accident Insurance will continue to cover work accidents at the home.

The Employee Liability Act which limits employee liability for damages done to the employer, now to some extent covers damages caused by people living in the same household as the employee WFH.

Impact and risk

The new WFH legislation provides clarity on key issues when WFH. Most notably, an employer must provide digital work equipment (laptops, mobile phones, internet access) or bear the costs of the digital work equipment.

The provision of digital work equipment and the allowance for covering the costs of digital work equipment where employees are WFH are partly tax free, if the employer can prove there is a WFH scheme as well as the number of days worked from home.

Employees may claim expenses for their non-digital home office equipment.

WFH legislation does not cover mobile work, but working from the employee's (or his or her partner's/close relative's) home.

Future actions

Employers should conclude clear WFH arrangements or formalise informal WFH agreements in order to be compliant with the new legislation.

Employers should also consider the Agreement on the provision of digital work equipment and/or allowances for work equipment.

Belgium

On your radar



Development and date

Teleworking

On 27 March 2021, the Ministerial Decree of 26 March 2021 entered into force, introducing an obligation on employers to declare monthly the number of employees who cannot telework.

On 27 March 2021, the NSSO launched a declaration form and registration system for the non-teleworkable functions, which will remain in force for an indefinite period of time. It is expected that this will apply in the future even when the need to telework is reduced.

Testing

On 19 March 2021 the Concertation Committee announced that companies would soon be able to take quick tests (on a repetitive basis) in the workplace to control the spread of the coronavirus. Meanwhile, the FPS Employment and Social Dialogue has developed a framework within which these quick tests can be used in the workplace. This new framework for the use of quick tests was developed on the basis of the Royal Decree of 5 January 2021. It is not clear how long this Royal Decree will remain in force.



Description

Teleworking

Starting from April, each month, every employer must report to the NSSO:

- The number of workers employed on the first working day of the month; and
- The number of workers employed on the first working day of the month who exercise a non-teleworkable function.

If a company has several establishment units, it must report the numbers for each establishment unit.

Testing

According to the new framework, quick tests can be used by the prevention advisor/occupational physician in two ways: within the framework of cluster management or outside the framework of cluster management (under certain conditions). In addition, the social inspectorate can also request the prevention advisor/occupational physician to organise repetitive tests for individuals present at the workplace during a period determined by the inspectorate. In the event of a positive test result, the worker will have to go into quarantine.



Impact and risk

Teleworking

The social inspectorates will use this data as a reference point when controlling compliance with the obligation to telework. Those who have a teleworkable function but are still present at the workplace will need to justify their presence. Failure to comply with the obligation to telework could be punished by a criminal fine, an administrative fine or even compulsory closure of the company. Sanctions, such as fines, will also be imposed in the event of non-compliance with the declaration obligation.

Testing

The following should be kept in mind:

- The workers must give their consent to be tested, and it must be given voluntarily;
- This involves the processing of health data. Test results must not under any circumstances be disclosed to the employer; and
- Test kits for testing workers can only be requested by occupational physicians and must also be delivered directly to occupational physicians. Under no circumstances may they be delivered directly to employers.



Future actions

Teleworking

Employers will have to determine very clearly which functions are or are not teleworkable within their company.

The declaration must be made monthly, online, at the latest by the 6th calendar day of the month, on the following website https://www.socialsecurity.be/site_nl/employer/applics/coronavirus/index.htm.

If the situation changes during the month, the employer will be able to modify the declaration.

Testing

The occupational physician/prevention advisor will have to determine whether or not quick tests should be used, for which workers, how frequently and for how long. If required, he/she will have to order them. If the use of quick tests is not necessary in the context of cluster management (because there is no indication of an actual outbreak), he/she will decide whether or not to use quick tests, in agreement with the employer and with due regard for social dialogue, by making a risk assessment (taking into account the profile of the company and the nature of the activities).

Chile

On your radar



Development and date

Vaccinations

On 3 February 2021, a successful COVID-19 vaccination process started in Chile. This procedure is voluntary and started with high-risk groups (based on age and chronic diseases) and essential employees in the public and private sector.



Description

The COVID-19 vaccination, in terms of speed, has been more effective than expected. This is evidenced by the fact that significant progress has been made with the vaccination programme.

This unexpected progress carries a series of challenges to the labour market, its laws and stakeholders, especially employers who will have to readjust their processes earlier than expected, in order to return to the labour dynamics that existed before the pandemic, which also entails significant risks.



Impact and risk

One of the things that will undoubtedly be impacted by the rapid vaccination of the labour force, is the maintenance or not of teleworking in companies, as well as the labour flexibility that has spread enormously in the last year.

Another issue that will have to be clarified is the impact on companies of what to do or not to do with employees who do not want to be vaccinated. These questions will surely have legal consequences if they are not carried out properly, given the possible infringement of the fundamental rights of the employees to whom measures are applied.

Finally, many employers have ongoing employment relationships with employees who have not worked and have been suspended for health reasons. Nevertheless, once the health measures are lifted, those employers will be faced with the situation of having to provide work and pay these employees, in circumstances where their economic situation has deteriorated, running the risk of having to terminate these employment contracts, which may result in litigation.



Future actions

It is essential for employers to adequately anticipate and prepare for this early return to the workplace.

On the other hand, employers, should be very careful when updating the health and safety measures to be followed by employees regarding their vaccination procedure. The primary duty should be to ensure the well-being of the company as a whole, and for those special cases of non-vaccinated persons, it should be ensured that they still provide services but with as little contact as possible with the rest of the staff.

Once hygiene measures are lifted and employees return to company's facilities, if the economic situation means job losses need to be considered, the employer must establish termination plans for the affected employees, in order to avoid litigation.

China

On your radar



Development and date

Social insurance reforms

On 5 March 2021 during the Fourth Session of the 13th National People's Congress of PRC, the Premier of the State Council, Mr. Li Keqiang published the Government Work Report. This included reforms to the social insurance system in 2021.

On 25 March 2021, the State Council published the Opinion on the Implementation of Divisions of Key Tasks under the Government Work Report ("Implementation Opinions"). The Implementation Opinions set out the timelines for the social insurance reforms.



Description

Some of the key points of the reforms which relate to business include the following:

- Carrying forward nationwide planning of basic pension insurance (this reform will continue during the year 2021);
- Developing personal commercial pension insurance (relevant policies to be issued before the end of September 2021);
- Removing the restriction of household registration on freelancers for social insurance participation (relevant policies to be issued before the end of September 2021); and
- Updating the occupational injury insurance system for workers in the gig economy (relevant policies to be issued before the end of June 2021).



Impact and risk

- Basic pension insurance policies at different locations will be gradually unified nation wide. In the future, employees will not have concerns about receiving different pension benefits because of different contribution locations;
- The personal commercial pension insurance allows employees to take out commercial pension insurance with a part of their salary before paying individual income tax, where the tax payments can be delayed until the employees receive benefits from the insurance. The trial implementation started in 2018 in Shanghai, Fujian and Suzhou Special Industrial Park;
- In the past, freelancers can only participate in the social insurance scheme at the place where their household is registered. In the future, they can also participate in the social insurance scheme in their work location. This will facilitate the mobility of talent over the country; and
- Currently at a state level, gig workers are not able to participate in occupational injury insurance. This brings occupational safety risks to both the gig workers and platforms. The implementation of the reforms will release the concerns of both gig workers and platform in this regard.



Future actions

The detail including the policies which support the reforms has not been published yet.

Companies may wish to pay close attention to the follow-up policies when they are published.

Colombia

On your radar



Development and date

New statute of protection for Venezuelans

Through Decree 216 of 1 March 2021, the Government created a special statute for Venezuelans which brings new migratory facilities for Venezuelans in Colombia.

Formal regulation of the home office

Because of the pandemic and the emergency situation it was necessary to regulate the "home office" expressly, therefore Law 2088 of 2021 was issued.

Supreme Court ruling regarding work stability

In case study SL711 of 24 February 2021 the Supreme Court of Justice established the principles to determine whether an employee is entitled to have work stability if they have a special health condition, in which case, a dismissal would not be considered a discriminatory measure.



Description

New statute of protection for Venezuelans

The Statute of Protection for Venezuelans created a registry of Venezuelan migrants that allows a record to be kept for statistical purposes. It also created a new type of work permit that will be valid for the same period as the statute of protection (10 years).

Formal regulation of the home office

The new law allows for "exceptional, and temporary" measures to be implemented in special situations. It establishes that home workers will have certain guarantees, such as a specific work schedule that has to be respected by the employer, in order to guarantee the employee's rest time. It also allows for a connectivity allowance to be paid for employees who work at home and earn less than twice the rate of the minimum wage.

Supreme Court ruling

The Supreme Court of Justice stated that in order to determine if an employee has work stability for health issues, he/she must be qualified with a loss of work capacity higher than 15%. Also, it established that in those cases where the termination is based on an objective cause (fair cause, expiration date) it will not be considered as a discriminatory measure.



Impact and risk

New statute of protection for Venezuelans

This new Statute makes the hiring of Venezuelan migrants easier, given the fact that this permit will allow them to work, so they don't have to request a special work visa. Also this permit will be taken into account when counting the length of time required to ask for a resident visa.

Formal regulation of the home office

The fact that the home office is regulated as something that is temporary, could be risky, because the current situation has shown some employers that the home office can be a beneficial type of work for both the Company and the employee. As such it may be necessary in the future that this regulation will need to be updated according to the reality and needs of the citizens.

Supreme Court ruling

This case study helps employers by providing guidance when determining if it is possible to terminate the contract of an employee who has a special health condition.



Future actions

New statute of protection for Venezuelans

Employers who are interested in hiring Venezuelan employees, will be able to employ people who have this permit, without having to ask for a specific work visa. However, in cases where they work in regulated professions (such as engineering) they have to request for an authorisation granted by professional boards.

Formal regulation of the home office

Given the fact that this is a new regulation, employers will have to review

- how this can be applied in practice; and
- whether their home workers are benefitting from the terms that they are now entitled to.

Supreme Court ruling

Employers must take this decision into account at the moment of determining the validity of a termination, but also, they have to take into account the decision of the Constitutional Court, which is more protective of the employee, therefore, each specific case must be studied carefully according to the health conditions of each employee and the reasons for the termination.

Czech Republic

On your radar



Development and date

Working from home

The draft of a new amendment to the Czech Labour Code has been submitted to the Czech Parliament and is being debated in the regular legislative process.

The new law should finally provide a more comprehensive regulation of working from home and deals with most of the legal issues employers are currently experiencing.

Due to the COVID-19 pandemic, many employers have been forced to implement home working for their employees. However, the Czech Labour Code does not currently provide a comprehensive regulation of working from home. Currently, working from home is possible based only on a mutual agreement between the employer and the employee. This is not practical as the employer is actually unable to unilaterally order home working. This could change if the new amendment to the Labour Code is adopted.

Although the new law is in the early stages of the legislative process and may be subject to further changes, it is planned to become effective as soon as 1 July 2021.



Description

The new amendment to the Labour Code contains additional measures expressly regulating working from home, in particular:

- Under specific circumstances, employers will be able to order home working unilaterally.
- Certain groups of employees (e.g. pregnant employees and employees caring for a child under 15 years of age) can request home working and the employer must comply, up to a minimum of 50% of weekly working hours.
- The employer will be obliged to pay the costs incurred by the employee when working from home. A monthly lump sum is possible, unless working from home is an exceptional occurrence.
- The employer is obliged to provide the necessary equipment (PC, software etc.)



Impact and risk

The new amendment to the Labour Code will be greatly appreciated by employers, since it will clarify many home working-related issues. The most important points of the new amendment are: i) the possibility for the employer to order home working unilaterally; and ii) the costs may be paid monthly as a lump sum. Both points were (and still are) subject to much debate.

An agreement between the employer and employee about home working is still the preferable option. An employer ordering working from home unilaterally will be possible, but only under certain circumstances and as such it may become a subject of dispute.

Regarding the reimbursement of the costs incurred by the employee, the new law does not address any tax related aspects. Therefore, this will most likely continue to be a hot topic and will cause many legal and tax uncertainties.



Future actions

With the new amendment, an agreement on working from home will not be strictly necessary in certain situations anymore. However, as mentioned, it would still be the preferred option.

If the bill is approved, it would solve many problems that arise with the implementation of home working. However, the current bill would probably not suffice.

Once the new law is adopted and effective, when ordering working from home unilaterally, employers should pay particular attention to the statutory conditions regarding the possibility of such a unilateral order.

In addition, employers should seek tax advice regarding the reimbursement of costs incurred by the employees.



Development and date

Gender equality index

The law of 5 September 2018 “*for the freedom to choose one’s professional future*” introduces the obligation on companies with at least 50 employees to publish each year a gender equality index (no later than 1 March of the following year on their website.)

The score of the equality index is based on 4 or 5 indicators – depending on the company headcount, such as salary gaps, difference between men and women’s rates of individual salary raises, difference between women and men’s promotion rate, percentage of women who received a salary increase in the year following their return from maternity leave and the percentage of female employees amongst the 10 highest salary levels, which each represent a different number of points for an overall result noted out of 100 points.

Companies must reach a minimum score of 75 points each year. If a company does not obtain at least 75 out of 100 points, corrective actions and potential wage catch-up measures must be implemented to eliminate gender pay gaps.

New measures modify the publication rules and create new obligations for companies who have received financial aid from France’s recovery plan.

Description

From 1 March 2021, in scope companies must publish the results of each indicator and the global score obtained in a visible and readable way on their website. If there is no website, the index must be brought to the attention of employees by any means.

For 2021, the implementation date of this new obligation is delayed to 1 June 2021.

Over a reference period ending no later than 31 December 2021 companies who have received financial aid from France’s recovery plan have also to publish:

- By 1 March 2022, the result of each indicator on the website of the Ministry of Labour;
- By 1 May 2022, if the score is below 75 points, publish improvement targets for each of these indicators for which the maximum score has not been reached; and
- By 1 May 2022, if the score is below 75 points, corrective measures and potential wage catch-up measures defined by agreement or set unilaterally by the employer after consultation with the works council.

Impact and risk

The following may be subject to a financial penalty of up to 1% of the total wage bill:

- Companies who have not published the equality index;
- Companies who have not obtained the minimum score of 75 and have not defined with the unions during the mandatory negotiations regarding gender equality in the workplace or, in the absence of an agreement, have not set unilaterally after consultation of the works council, corrective actions and potential wage catch-up measures;
- Companies who have failed to reach a score at least equal to 75 points at the end of a 3-year period; and
- Companies who have received financial aid from France’s recovery plan and have not complied with their new obligations.

Future actions

Equality between men and women has been declared in France a “great national cause” of Emmanuel Macron’s Presidency.

A Bill to “accelerate economic and professional equality” should be examined by French parliament from May 2021. This text contains an obligation on companies with over 1,000 employees to publish each year a gendered snapshot of the top 10% of positions with a higher level responsibility. The aim is to achieve a minimum proportion of representation of one gender among these positions of 30% within 5 years and 40% within 8 years.

Germany

On your radar



Development and date

COVID-19 testing

Federal regulation on employers to make COVID-19 tests available to employees.

Amendment to the German SARS-CoV-2-Occupational Health and Safety Ordinance ("SARS-CoV-2-Arbeitsschutzverordnung") – new Section 5.

The regulation is to enter into effect within days after its publishing – i.e. in April 2021.



Description

To minimise the risk of COVID-19 at company premises, employers have to make available COVID-19 tests for each employee not working at his/her home.

The offer has to be made once or twice per week depending on the employees' actual working situation: communal accommodation, closed rooms with adverse climate conditions, services with direct physical contact, or high frequency of personal contacts trigger the employee's right to be tested twice a week.

Employees are free to make use of the offer or not. The regulation does not compel employees to be tested.



Impact and risk

The Federal Government argues that a self-commitment by companies is not sufficient since until March 2021 only 60% of employees have received an offer to be tested by their employer.



Future actions

Many employers have already organised for testing opportunities organised by the company medical officer or simply by sending self-testing kits to their employees.



Development and date

Social safety nets

Employers who suspend or reduce work activity due to events attributable to the COVID-19 emergency may make a submission to the National Institute of Social Insurance for wage supplements.

Dismissals

Collective and individual dismissals for objective reasons are suspended, except in specific cases, e.g., dismissals within the framework of trade union agreements aimed at encouraging the termination of employment.

Fixed-term contracts

Until 31 December 2021 fixed-term employment contracts can be extended to a maximum period of 24 months, without any justification.

Vaccination

Vaccination for health workers is compulsory, while for other employees it is optional and can be administered in the workplace under certain conditions.



Description

Social safety nets

Employers can apply to receive the ordinary wage supplement treatment (for up to 13 weeks between 1 April and 30 June 2021) or for the ordinary allowance and the wage guarantee fund in derogation (for up to 28 weeks between 1 April and 31 December 2021).

Dismissals

The ban on dismissals applies to all companies until 30 June 2021.

For some companies, depending on the field of activity, this prohibition is extended until 31 October 2021. During this time, employers are entitled to the ordinary allowance and the wage guarantee fund in derogation.

Vaccination

Employers must assign unvaccinated healthcare workers to tasks that do not involve interpersonal contact or risk spreading the infection.

For other unvaccinated employees, the employer may use, where possible, remote working, social safety nets, and extraordinary organisational solutions to contain the spread of the virus.



Impact and risk

Dismissals

Employees dismissed during the ban shall be reinstated to their job and the employer shall be ordered to pay wages and contributions from the date of dismissal until reinstatement. Employees may opt for an indemnity of 15 months' pay instead of reinstatement.

Vaccination

In cases where there is an unjustified refusal to be vaccinated by health workers, the employer may suspend the employee without pay if it is not possible to assign them to other tasks.

For other workers, if the employer assigns employees to different tasks in order to reduce the risk of infection, the employees could claim assignment to tasks related to their contractual level, as established by the NCBA.



Future actions

Vaccination in the workplace

Employers may indicate their willingness to implement company plans by providing workplace vaccination points for employees who have voluntarily requested them.

The cost of the implementation and management of the business plans are borne by the employers, while the supply of vaccines, vaccination equipment, training tools and the recording of the vaccinations is borne by the regional health service.

The procedures for collecting the consent of employees interested in the administration of the vaccine must be carried out in full compliance with the provisions on privacy, avoiding discrimination against the employees involved.

Alternatively, employers may also conclude a specific agreement with external organisations, at their own expense.



Development and date

Deductions from wages

As a result of last year's pandemic, many employers were left with difficult decisions with what to do with their employees.

While some easily and quickly adopted "work from home" policies others had to take more drastic measures. From redundancies to closure of work premises; those who wanted to stay afloat considered the reduction of salaries through pay-cuts. To date, as COVID-19 is now in its 3rd wave, employers have not experienced a reprieve especially in the hospitality, education and manufacturing industries. The result: more reduced salaries and more hours of work as most employers have kept a lean team of staff.

In May 2020, one of the Commercial Food and Allied Workers Union in Kenya sued a leading chain of supermarkets seeking a release of the withheld pay deductions which were introduced as a result of the adverse effects of the pandemic. (*Kenya Union of Commercial Food and Allied Workers v Tusker Mattresses Ltd*).



Description

The case involved the refund of wages that had been deducted by their employer because of the pandemic.

The Respondent argued that due to the drop in sales and projected poor performance, it needed to take quick remedial measures to cushion itself against an economic crisis. In weighing whether to close some of its branches and to declare some employees redundant it communicated its decision to effect pay cuts to all its employees.

In partially allowing the Claimant's application and granting the order for the release of the deducted wages; the Court acknowledged that there was no force majeure clause in the CBA between the Respondent and the Claimant which would have been the basis of this defence.

Secondly, the requirement to negotiate and consult was both a contractual and a statutory requirement.

Thirdly, the Kenyan Employment Act 2007 is expressly clear that for the reduction of wages/salary, an employer must consult the employee before doing so. This was not done in this case.



Impact and risk

In the past there has been no qualification of what constitutes consultation between parties to an employment contract.

What has been clear is that an employer cannot unilaterally notify their employee of such a decision and must have engaged in some sort of communication prior to effecting this reduction. Many employers have, as a result of this, communicated this decision to employees either through email, internal memos and notice-board circulars; without necessarily engaging in communication and/or negotiations with their employees.

There is a possibility that employees (either unionised or non-unionised) may take up this issue in line with this decision and seek a refund for the many months of pay-cuts where there was no consultation by the employer together with a subsequent agreement by the employee.

With many employers still dealing with the effects of last year's pandemic and with the potential adverse effects of the 3rd wave, employers who will find themselves liable in the context of unilaterally withholding certain percentages of salaries may be forced to pay out the same in retrospect.



Future actions

In light of the fact that this ruling seeks to introduce a new element in addition to the consultative aspect which is an agreement mechanism; it will be key for employers to come up with these agreement mechanisms at the earliest opportunity.

This will limit their exposure to legal risk in the event that they are faced with such a case. Also, it will offer evidential support on what steps the employer took in complying with both the statutory and contractual provisions on the issue of reduced pay.



Development and date

Workplace health and safety

The announcement of the end of the strict lockdown in France from May 2021 should lead to a gradual return of cross-border teleworkers in Monegasque companies.

This gradual return to work in companies while the health risk remains, raises the question of the scope of the employer's safety obligation towards their employees.



Description

Even if telework does continue to be encouraged by the Monegasque Government, the end of the strict lockdown in France will increase the flow of workers in Monegasque companies, while the health risk is still present.

Yet, the employer is legally responsible for the safety of their employees in the workplace.

In this context, employers will be confronted with the double obligation i) to provide work to their employees, and ii) to ensure their safety in the workplace, which includes their obligations towards other employees.



Impact and risk

Employers are likely to be facing two new issues:

- Disciplinary action against employees who fail to comply with the company's health protocol or put the health and safety of other employees at risk; and
- Management of symptomatic employees or "contact cases" involving employees who refuse to be tested and to whom the employer may want to deny access to the company to protect the other ones. To date, Monegasque law does not allow the employer to impose any medical test on its employees before entering the company, even in a case of suspected infection. In addition, the employer is responsible for providing work to its employees: any unjustified suspension of work could be qualified as a wrongful disciplinary sanction.



Future actions

Employers must anticipate these new risks by:

- Formally notifying employees of i) the health protocols in force in the company, and ii) the sanctions that may be implemented in case of non-compliance; and
- Working closely with the Office of Occupational Medicine, which will be essential to manage contact cases or symptomatic employees, notably by issuing a work stoppage notice when appropriate.

Morocco

On your radar



Development and date

Employing foreign workers

An Executive Order of the Minister of Labour and Professional Insertion No. 1356-19 of 19 April 2019, established a new template for employment contracts reserved for foreigners.

Military service

Articles 32 and 256 of the Moroccan Labour Code have been amended and supplemented in accordance with Article 1 of Law No. 02.21 published on 5 February 2021.



Description

Employing foreign workers

Unlike the old model of employment contract reserved for foreigners called in French "CTE", the new model of the CTE established by the decree of 19 April 2019, provides foreign employees with the same treatment as Moroccan employees, insofar as it allows foreign employees to conclude a contract of open-ended duration, and who can therefore benefit from dismissal allowances in cases where there has been a wrongful termination of their employment.

Military service

Article 32 now provides for compulsory military service as one of the reasons for suspending the contract of employment.



Impact and risk

Employing foreign workers

Foreigners employed in Morocco should enjoy the same rights as national employees, which places them in a more comfortable position, compared with the previous situation.

Consequently, the dismissal of a foreign employee must be carried out in compliance with the Labour Code and they should not be automatically considered as being employed under a fixed-term contract.



Future actions

Employing foreign workers

Both the employee and the employer are now required to use the new CTE template, allowing them to clearly define from the outset the fixed or indeterminate nature of the employment relationship.

Military service

According to the new 256th article of the Moroccan Labour Code, the employer now pays an employee who has been called up for military service and who has not taken the annual leave to which he or she was entitled as compensation for leave when he or she leaves the company.

Morocco (cont)

On your radar



Development and date

Fixed-term contracts

A decree No. 2.19.793 dated 23 July 2020, determines the sectors of activity and the exceptional cases in which a fixed-term contract may be concluded.



Description

This decree is adopted in accordance with the last paragraph of Article 16 of Law No. 65-99 forming the Labour Code and has been issued to determine the sectors of activity and the exceptional cases in which fixed-term contracts may be concluded.

There is now a list of circumstances where a fixed-term employment contract may be concluded. This includes:

- In cases of Article 189 of the Labour Code, which includes the collective interruption of work;
- To carry out the work indicated in Article 190 of the Labour Code, which involves employees carrying out intermittent work and other situations; and
- To carry out the work provided for in Article 192 of the Labour Code, this includes urgent work to prevent danger and other examples.



Impact and risk

Therefore a fixed-term contract can be concluded in all the cases indicated and also in the following exceptional cases:

- To carry out work of a temporary nature that does not fall within the normal activities of the establishment and that the employees of the establishment cannot carry out;
- To organise activities of a temporary nature such as public fairs or entertainment activities;
- To carry out projects not exceeding one year without exceeding 2 contracts with the same employer;
- To carry out projects or worksites not exceeding one year and not exceeding one contract with the same employer;
- To employ people who do not have the necessary points to receive a retirement pension. More specifically, this concerns people aged 58 and over who have lost their jobs without fulfilling the conditions for a CNSS pension. (Dahir n° 1.72.1844 on CNSS); and
- To replace an employee who has permanently left his or her position and while waiting for the new position to be filled, within the limit of a single contract not exceeding one year.



Future actions

The exceptional cases of concluding a fixed-term employment contract are limited to the cases set out here.

The purpose of the new decree is to fill the gap and legal uncertainty that surrounded.

The decree now specifies the list of sectors and assumptions in which it will be allowed to use a fixed-term employment contract.

Poland

On your radar



Development and date

Remote work regulations

Date to be announced.

COVID-19 vaccination in the workplace

Governmental guidelines.



Description

Remote working

The Polish Government is working on new provisions on remote working. The official bill has not yet been published. However, according to press information, the recent version of the bill provides that the employer must cover the direct costs of remote work (e.g. a lump sum in an agreed amount); if an employee uses their own equipment, the company will have to pay them a cash equivalent. The employer will have to compensate the employee for the cost of Internet access and increased electricity bills; the employee's consent to work remotely will be necessary, but the employer will be able to unilaterally order remote working in certain circumstances, e.g. in the case of a pandemic, or a natural disaster.

Vaccination

The Polish Government has published official guidelines for vaccination programmes in the workplace. An employer who wants to participate in the programme must gather at least 300 people ready to be vaccinated. The guidelines also indicate that an employer may decide to release an employee from work due to the COVID-19 vaccination. The employer has discretion whether or not to pay the employee for this period when the employee is released from their duties.



Impact and risk

Remote working

If and when the law comes into force, employers will have to review their current procedures regarding remote working and may be exposed to additional costs if the legislation contains provisions on the obligation to cover expenses (for example, for Internet or electricity bills).

Vaccination

Starting from 4 May 2021 employers will be able to register for the vaccination programme via an online registration form available on the Government Security Centre website. The starting date of the vaccination programme will depend on the availability of vaccines and the order in which registration forms are received. Not only employees, but also contractors and their family members will be able to participate in the vaccination programme. The guidelines also indicate basic obligations on the employer and the medical organisation which will coordinate the vaccination process in the company.



Future actions

Remote working

Employers should monitor the legislation and prepare for possible changes related to remote work.

Vaccination

We recommend that employers should consider if they want to join the vaccination programme and monitor developments in this respect.

Russia

On your radar



Development and date

Income tax

A progressive individual income tax rate is introduced from 1 January 2021.



Description

Starting from 1 January 2021, the tax rate of 13% will apply to the taxable individual income (including salaries) up to and including 5 mln RUB (approximately 54,000 EUR) per year.

The part of individual income exceeding 5 mln RUB (approximately 54,000 EUR) per year will be subject to a new 15% tax.



Impact and risk

This change will affect net income of those employees whose income exceeds 5 mln RUB per year.

Employees may request that their employer revise their gross salary amount to ensure that their annual net income stays at the previous level. Employers are not obliged to accept this request.



Future actions

Employers need to take this change into account when managing the staff and their salary expectations.

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Serbia

On your radar



Development and date

Health and safety at work

In 2019 an announcement was made that a new law on health and safety at work was being prepared.

On 2 December 2019, the draft of the Law (the “draft Law”) was put into the procedure of the Serbian parliament.

Due to the outbreak of COVID-19 in March of 2020 the Law was pulled from the enactment procedure and further amendments were planned in light of the new global situation.

In early April 2021 the revision of the draft Law was still ongoing and we do not have information when the new law may be adopted.



Description

The draft Law brings a large number of amendments.

Changes in the draft Law more closely define the rights and obligations of both the employer and the employee and include issues which were previously mentioned in other laws such as personal data protection.

The most significant changes were made in the field of licences for health and safety at work. A detailed procedure is laid out which encompasses the exam for the licence as well as the process and requirements for obtaining the licence. The classes of persons who can obtain the licence have been broadened as well.

The draft Law also raises the penalties for nearly all breaches of the law. The penalties for most breaches have been doubled and new penalties have been introduced.



Impact and risk

The draft Law includes many new features which companies should note, namely:

- New obligations and more detailed processes regarding existing rules;
- Obtaining licences for health & safety at work and the procedures involved; and
- New sums of breaches of the law and new actions which represent breaches.



Future actions

As the final draft of the Law is not yet ready, any future actions and requirements will largely depend on the exact provisions and the length of the given transitional period.

Singapore

On your radar



Development and date

Wage guidelines

On 30 March 2020, the National Wages Council (“NWC”) issued wage guidelines which cover the period from April 2020 to June 2021 (“Guidelines”).

NWC further issued the 2020/2021 Supplementary Guidelines to be applied from November 2020 to June 2021 (“Supplementary Guidelines”).



Description

The Guidelines seek to respond to the challenges posed to the economy by the COVID-19 crisis and provide employers with updated guidelines for sustaining businesses and saving jobs. In particular, it requires employers to consider the following measures:

- Reduce non-wage costs and manage excess manpower;
- Use Government support to offset business and wages costs, and press on with business and workforce transformation;
- Trim wage costs; and
- Ensure retrenchment (similar to redundancy) is a last resort and is carried out in a responsible manner.

The Supplementary Guidelines encourage employers to minimise retrenchments to the greatest extent possible by implementing temporary wage cuts.



Impact and risk

The Guidelines encourage employers to evaluate their existing business situation and outlook for their sector. Employers should carefully consider their business strategy moving forward in order to better position themselves in the post-COVID-19 economy.

In encouraging employers to develop future-facing business strategies, NWC has, in their updated Guidelines, emphasised the importance of the Flexible Wage System. The Flexible Wage System encourages employers to use the range of flexibility provided for in the variable components of the wage structure, so that retrenchment can be minimised where wage cuts can be implemented instead.

NWC believes that a flexible and competitive wage structure will enable employers to make quick adjustments amidst economic uncertainty and ultimately lead to greater job security.



Future actions

As companies around the world review and reorganise their business models for the post-COVID-19 economy, there will be a stronger push by NWC for businesses in Singapore to implement the Flexible Wage System.

Employers who have not implemented the Flexible Wage System are strongly encouraged to do so. Employers who require advice and support in implementing the Flexible Wage System may approach the National Trades Union Congress (NTUC) and its affiliated unions and the Singapore National Employer Federation (SNEF) for assistance.

NWC will reconvene to review the wage guidelines as and when necessary in light of the rapid changes in the economic situation.

Slovakia

On your radar



Development and date

Labour law changes

Amendment to the Slovak Labour Code – effective from 1 March 2021.



Description

The amendment to the Slovak Labour Code brought the following changes:

- New regulation on remote working models and home office work;
- New “right to disconnect” for employees;
- New obligation on employers to compensate employees for the increased costs of working at home;
- New reason for the dismissal of an employee (age/retirement) - the employee, who has reached the age of 65 and has also reached the age to receive a retirement pension can be dismissed;
- Meal allowance – employees now have the option to choose between a financial allowance on food or a meal voucher; the meal vouchers must be in electronic form from 1 January 2023;
- Stricter conditions for trade unions to operate at workplaces;
- Cancellation of the extension of sector wide collective agreements; and
- Easier temporary assignments of employees within a group.



Impact and risk

Increased costs for employers and risk of claims from employees demanding compliance with new rules on remote working and meal allowances.



Future actions

Employers should:

- Establish a process which will cover (i) when and how employees will make their choice between the meal voucher and the financial allowance and claim reimbursement of costs, and (ii) how to respond to the change in selection;
- Contact the accounting department and tax advisor regarding the financial meal allowances and reimbursement of costs;
- Update software solutions;
- Update employment contracts to comply with new requirements;
- Review home-office and meal voucher (catering) policies to be in line with the new/updated legal regulation; and
- Prepare an internal training or information document for home workers and those who occasionally work from home to comply with the information requirements.

Spain

On your radar



Development and date

Equal pay and gender pay gap

The Royal Decree 902/2020 on equal pay between women and men of 13 October contains specific measures in order to reduce the gender pay gap.

This regulation includes some tools in order to integrate and apply the remuneration transparency principle within companies, the most noteworthy of which are:

- A gender based-salary registry; and
- A gender based-salary audit.

This Royal Decree entered into force on 14 April 2021.



Description

(i) Gender based-salary registry:

All companies are obliged to have a remuneration register of the whole workforce.

This register shall include a break down of the average remuneration (both salary and compensatory payments), by (i) sex, (ii) professional groups, categories or employment positions, and (iii) the type of remuneration including base salary and each of the salary supplements (e.g. seniority, productivity, nightwork etc.).

(ii) Gender based-salary audit:

Companies which are obliged to produce an equality plan shall include in it a gender based-salary audit which involves the following obligations for the company:

- The completion of a diagnosis of the remuneration system of the company; and
- The establishment of an action plan in order to amend any remuneration inequalities.



Impact and risk

Fines up to EUR 6,250 could be imposed by the Labour Inspection for the lack of creation of a gender-based registry or for any infringements related to equality plans.



Future actions

Companies which are obliged to implement an equality plan shall take into account that the plan shall contain the gender based-salary audit:

- As of 7 March 2021, all companies with more than 100 and up to 150 employees should have implemented an equality plan; and
- As of 7 March 2022, all companies with between 50 and up to 100 employees shall have an equality plan.

Turkey

On your radar



Development and date

Remote working

Remote Working Regulation (the “Regulation”), published in the Official Gazette dated 10 March 2021 and numbered 31419.



Description

The Regulation covers a permanent remote working relationship between employers and remote workers. Additionally, the Regulation enables employers to switch from standard working to remote working in cases where there are compelling reasons.

The Regulation introduces the principle of a remote working agreement. Accordingly, a remote working agreement must involve the following: job description, working method, period and place of work, duration of work, wages and related provisions, equipment provided by the employer and their protection, supply of obligatory expenses, communication between the employer and the remote worker, description and scope of the data which needs to be protected during the work and finally general and special working provisions.

Additionally, there are several aspects which are required if they are appropriate, such as the adjustments to the working environment.



Impact and risk

It must be emphasised that there are two major liabilities imposed on employers.

First, employers are obliged to take the necessary measures regarding occupational health and safety.

Second, the employer is also required to inform the remote worker regarding the use and the transfer of data during work. The employer must take the necessary precautions and measures regarding this matter as well.



Future actions

The Regulation has not been applied widely yet due to its recent date of enactment.

Nevertheless, for workplaces where remote working shall be applied on a permanent basis, it is likely that a remote working agreement will need to be put in place.

Further practical consequences of the Regulation will become clearer once the implementation becomes more common and precedent is established by court decisions.

Ukraine

On your radar



Development and date

Remote working

Establishment of a regulatory framework for remote work (February 2021).



Description

In order to deal with the current employment-related challenges, a new law amends the current employment legislation and sets the mechanisms for remote work, namely:

- Recognition of a formal employment-related communication between employers and remote employees in an electronic form;
- Distinguishing between 'remote' and 'home' work;
- Requirements to introduce remote and home work;
- Establishing the remote employees' 'right to disconnect' when out of working hours;
- Transfer of remote employees' work safety obligations from employers to remote employees; and
- Introducing the full material liability of remote employees for the equipment provided by employers to perform their work.



Impact and risk

Overall, the impact of the amendments are definitely positive, as they adjust the outdated Ukrainian labour legislation to the actual needs of employees and employers.



Future actions

It is recommended that both employers and employees become familiar with the new developments and implement those.

Ukraine (cont)

On your radar



Development and date

Zero hours contracts

Ukrainian version of 'zero-hours contracts' (February 2021).

The Ukrainian Government submitted the Draft Law on the regulation of irregular forms of employment to the Parliament of Ukraine.



Description

The Draft Law proposes to introduce a new form of employment – an agreement with non-fixed working hours ('zero-hours contracts') in Ukraine.

The basic terms of this form of employment are as follows:

- 32 guaranteed paid hours per calendar month for an employee (regardless of actual performance of work by an employee);
- When duly notified, an employee must be ready to perform work at the employer's request during pre-agreed periods (in total, the number of expected work hours may not be more than 40 hours per week and the number of work days may not be more than 6 per week);
- In cases where an employee is not justified in refusing to perform work during the pre-agreed hours, he/she may be subject to disciplinary sanctions;
- The number of agreements which contain non-fixed working hours with one employer may not exceed 10% of the total number of employment agreements with that employer.



Impact and risk

The intention behind this Draft Law is to establish a regulatory framework for non-standard employment forms and protect the rights of these employees.

Nevertheless, the Draft Law itself does not provide employment rights, indicating that those should be separately provided by the Ukrainian Government. Also, the Draft Law allows employers to include additional grounds for the dismissal of employees to include agreements with non-fixed working hours.



Future actions

To monitor the further developments related to the Draft Law, as both employers and employees may benefit from its provisions.

United Kingdom

On your radar



Development and date

Equality training

A recent appeal case in February 2021 made it clear to employers in the UK that they need to regularly update their equality training.

In *Allay (UK) Limited v Gehlen*, the Employment Appeal Tribunal (EAT) ruled that employers who wish to rely on the reasonable steps defence in a discrimination or harassment claim must provide regular and updated equality training. Simply having an equality and diversity policy in place and providing recycled, general and untailored training will not be enough.

In the UK an employer is liable for the discriminatory actions of their employees unless it can demonstrate that it took “all reasonable steps” to prevent the employee from undertaking the acts in question.

There are relatively few reported cases explaining what steps are required before an employer can rely on the reasonable steps defence.



Description

Following the Claimant's dismissal for performance-based reasons he raised an internal complaint that a fellow employee had subjected him to a campaign of racial harassment.

An investigation established that his colleague had made racist comments.

The Claimant then brought an employment tribunal case against his employer for race discrimination and racial harassment.

In response, the employer sought to rely on the reasonable steps defence on the basis that by providing equality and diversity training to the alleged harasser, the employer had taken all reasonable steps to prevent the alleged harasser's actions.

Whilst the tribunal accepted that the Respondent did have an equality and diversity policy in place and that the alleged harasser had received equality and diversity training in 2015, it found that the training was “clearly stale” and was no longer effective to prevent the harassment.

The tribunal therefore did not accept that the employer had taken all reasonable steps to avoid discrimination in the workplace.



Impact and risk

It was critical in this case that the employer had failed to refresh or update the equality training. This meant they could not say that all reasonable steps that could have been taken were in fact carried out and the racial harassment claim was successful.

Previously employers may have considered that having a policy and carrying out training would be enough to avoid liability for an employee who harasses a colleague.

This case makes it more difficult for employers to rely on the reasonable steps defence and encourages employers to go further than taking a tick box approach to equality compliance.



Future actions

As a starting point, employers should ensure that all employees are aware of and understand any equality and diversity policies the organisation has in place, and have been provided with up to date and relevant equality and diversity training.

Employers should consider regularly updating equality training. We would suggest this means every one or two years.

Employers should also consider, how to make equality training relevant according to the nature of the role. For example, providing training to managers on their obligations to “set the tone” and to actively deal with potentially discriminatory treatment which they witness or are made aware of regardless of whether a formal complaint is made.



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