On your radar

Key employment issues to be aware of internationally

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 third week of May 2023.

The CMS Employment team

Index of countries in this edition

Please click on the country below to take you to that section

Belgium

Development and date

Implementation of the EU Whistleblower Directive

The EU Whistleblower Directive was introduced in the private sector in Belgium by an Act of 28 November 2022 ("the Act"). The Act entered into force on 15 February 2023.

An employee who becomes sick during their holiday will no longer lose their holidays

A Royal Decree amended a previous Decree relating to holidays for salaried workers. The change will allow an employee who becomes sick during their holiday to report their holiday at a later date. The new rules will apply for the first time to holidays taken in 2024 based on the benefits of the 2023 holiday year.

Description

The Act requires private sector companies (with at least 50 employees) to establish an internal reporting channel where individuals can report breaches involving certain areas of law and provides protection to those who report the breaches. Companies with more than 250 employees should have a procedure for reporting breaches anonymously.

Under the current system, if an employee falls ill during their holiday, they cannot reschedule their annual leave.
From 2024 onwards, an employee who is ill during their holiday will be able to reschedule those days in which they were sick to a different time. If the employee could not take all their legal holidays before the end of the holiday year because of illness the employee will be able to reschedule the affected days up to 24 months after the end of the holiday year. These days will not be lost at the end of the holiday year.

Impact and risk

Companies with more than 250 employees must have set up their internal reporting channel by 15 February 2023. Companies with 50 to 249 employees have until 17 December 2023 to do so. Most companies with fewer than 50 employees are not required to set up an internal reporting channel. Failure to comply with the provisions of Chapter 3 of the Act (establishing an internal reporting channel and the follow-up of reports) is punishable by a Level 4 sanction in the Social Penal Code. This means either a prison sentence of 6 months to 3 years and/or a criminal fine of between EUR 4,800 up to EUR 48,000 or an administrative fine of between EUR 2,400 up to EUR 24,000.

The employer will not be able to refuse to allow the employee to postpone/reschedule their holidays and will have to report the days taken as sick days. Employers must also pay the guaranteed salary to the employee, in the same way that they would with normal sickness absence. The employer will have to let the employee postpone these holidays up to 24 months after the end of the holiday year.

Future actions

Before implementing the reporting channel, employers should consult the social partners within the company. The company has two options when implementing the reporting channel: (i) this can be done internally, by appointing an impartial reporting manager, or (ii) the company could outsource this and arrange for an external third party to provide and manage the reporting channel. If an employer chooses to use the internal reporting channel, there will need to be suitable training for the reporting manager.

The employee is not automatically authorised to postpone the particular days that they are sick during a holiday. They must explicitly request it.

The employee should also submit the appropriate medical certificate.

If the employee falls ill during their holiday and requests their holiday period to be rescheduled, the employer has the option of asking the company doctor to assess the employee's incapacity.

Chile

Development and date

Reduction in weekly working hours

On 11 April of 2023, the Chilean Congress approved the bill that changes the weekly limit on working hours.

This bill has been discussed since 2017 and makes substantial changes to the regulation of working hours and the Chilean Labour Code.

Description

The main change that this bill establishes is the reduction in the limit of weekly working hours, from 45 to 40 hours per week. This can be distributed over 4 to 6 days per week, or by using weekly averages over a period of up to 4 weeks.

If the employee is unionised, the employer will need prior agreement from the union in order to apply the option of using weekly averages.

This bill will come into effect in a staged and progressive manner, reducing the weekly working hours to 44 after the first year of publication, 42 hours after the third year and 40 hours per week 5 years after the bill's publication.

Another important change is related to article 22, second paragraph of the Labour Code, regarding the list of employees who are excluded from the weekly limit. The bill reduces the type of employees to which this exclusion can apply and gives the Labour Board the power to determine if the exclusion can be applied or not.

For parents with children under 12 years old, this law also incorporates the right to anticipate or delay the start of their working day up to one hour.

Impact and risk

The reduction in the limit of working hours per week may signify a challenge for companies and their employees to comply with the work in less time than normal. Employees will need to settle to the new working schedule and avoid working overtime if this is not necessary.

The Labour Board's new power to determine the types of employees that are excluded will be a risk for companies. This is particularly the case since the categories of employees that are excluded have been reduced.

Also, given that home workers have now been removed from the category of employees that can be excluded, (and therefore the weekly working hours limit will apply to them), this will prompt changes in the way that companies structure working from home.

Future actions

This new law will prompt changes to working hours and weekly schedules that must be reflected in employment contracts.

The changes affecting the category of excluded employees will also have an impact. companies will need to audit and identify the different employees that are affected and determine if a change to their working schedule will be required.

China

Development and date

The reduction in contribution rates for unemployment and work-related injury insurance until the end of 2024

On 29 March 2023, the PRC Ministry of Human Resource and Social Security, the Ministry of Finance and the State Taxation Administration jointly issued the *Notice Regarding Issues in Relation to Temporary Reduction of Contribution Rates of Unemployment and Work-related Injury Insurance*. According to this notice, China will continue reducing the contribution rates of unemployment and work-related injury insurance until the end of 2024.

Description

In China, the employer must provide the unemployment insurance and work-related injury insurance for the employees. Normally, the contribution rate of unemployment insurance applicable to the employer is 1.5% to 2% of an employee's salary while the rate applicable to employees is 1% of the salary. As for work-related injury insurance, only the employer shall contribute to the fund. The contribution rate applicable to the employer, depending on the industry the employer engages in, is 0.2% to 1.9% of the employee's salary

In 2016 in order to reduce labour costs for employers, the Chinese Government implemented the policy of temporarily reducing the contribution rates of unemployment insurance and work-related injury insurance. That policy has a limited period of validity, and its extension is dependent on the government's decision. Now, the state government has decided to extend the policy until the end of 2024. According to the policy, the total contribution rates of unemployment insurance for both the employer and employee shall be 1% and the rate applicable to the employee shall not be higher than that applicable to the employer. As for the contribution rate of the work-related injury insurance, it can be reduced by 20% to 50% subject to the financial status of the local work-related injury insurance fund.

Impact and risk

In China, the exact contribution rates of insurance is decided by the local governments at provincial level. Based on this policy, in most provinces, the contribution rate of unemployment insurance currently applicable to both the employer and employees is 0.5% of the employees' salary. As for the contribution rate of the work-related injury insurance, the range of reduction differs in different locations depending on their financial situations.

Although the extension of the policy is good news for companies experiencing a difficult economic situation, however, the effect on reducing labour costs is not that significant. In contrast to the contribution rates of other kinds of social insurance such as pension and medical insurance, the contribution rates for unemployment and work-related injury insurances are only a small portion of these other types of social insurance.

Future actions

Companies do not need to make any application or take any action in order to enjoy the favourable policy. The reduced contribution rates will be automatically applied to all companies.

So far, it is not clear whether the validity period of the policy will be extended for a further period after 2024.

Colombia

Development and date

Labour reform

In March, a new employment law reform bill was published that will amend several articles of the Colombian Labour Statute. The changes will affect certain types of employment contracts, increase the rates for night time and Sunday work, changes to the rules on severance pay, changes to agreements regulating collective bargaining and to the right to unionise.

Additionally, the bill seeks to create a new regulation in relation to those working for digital platforms, agricultural employees and restrictions to outsourcing.

Pension reform

Also in March, a bill was published to reform the current pension system, turning it into a more inclusive and sustainable system.

The proposal seeks to change the name of the existing regimes and to limit the authority that Private Administrators have to recognise and pay pensions. To this end, it proposes to implement a pillar system that classifies people according to their monthly income, which will involve significant economic challenges.

This law will apply from 1 January 2025, and will apply to those people who have less than 1000 weeks of pension contributions on that date.

Description

The main changes proposed in the labour reform include:

- Additional rates will be paid for night work between 6:00 p.m. and 6:00 a.m.
- Rates of pay for Sunday working will increase to 100% of the hourly salary.
- As a general rule, all employees should be hired using indefinite duration contracts.
- Paternity leave will be increased to 12 weeks in 2025.
- Employees who earn a salary higher than the minimum wage would have an automatic legal yearly increase equivalent to ICP. (Index of Consumer Prices)
- The statute of limitation for employment claims would increase to 5 years.

The main aspects of the pension reform are the following:

- All people who contribute to the Pension System must be affiliated to the Public Pension Fund administrated by Colpensiones.
- Employees and self-employed workers with income above 3 minimum legal monthly salaries must affiliate and contribute the excess of these salaries to a private pension administrator.
- People who fulfill the requirements for retirement will be entitled to a Single Integral Pension consisting of: (i) the single pension calculated by Colpensiones, or (ii) the sum of the pension calculated by Colpensiones plus the one calculated by the Private Fund.

Impact and risk

If this bill becomes law implementing the changes is likely to result in a significant increase in an employer`s costs. This could lead to employers introducing cost cutting measures including redundancies. The changes will mostly affect small and medium companies.

Also, in addition to the increase in the remuneration costs, the fact that there are restrictions related to the possibility to dismiss some employees and limitations to outsourcing certain activities, would generate a discouragement for possible investors interested in starting new companies that would generate new jobs.

If the pension reform is approved, this will change who is covered, and who will have an income during their old age; a situation that will involve a significant economic challenge for the sustainability of the system.

Finally, this reform could affect the constitutional right to freely choose a pension scheme, which had recently been occupying an important place in the pension scenario.

Future actions

At the moment the bill is currently being discussed at the Congress. It is particularly relevant that during these discussions, the Congress takes into consideration the impact that some of the proposed changes would have on companies, especially for small and medium enterprises that are the main source of jobs in Colombia, and who could be at risk of facing financial crisis if the bill is approved in its current format.

Also, it is necessary to consider the current economic and social landscape where there are new ways of work, including jobs in the gig economy (for example, digital platforms).

In May 2023 the Congress is discussing this Project. It is important that during these discussions that the parts that are not clear are addressed such as the requirements of the transition regime and the way in which the pillar system will be financed.

These issues are important to understand how the new Pension System will work in the future and how the challenges will have to be assumed by the following governments.

Czech Republic

Development and date

Changes to the employer‘s information duty

The legislative process to amend the Labour Code is under way. The amendment will finally implement the EU Directive on transparent and predictable working conditions into national law.

Among other things, we expect to see a significant change in an employer's obligation to provide employees with information on the terms and conditions of employment.

The new law expands the list of information that must be provided and shortens the information period. In summary, employers will have to provide more information in a shorter period of time. Employers will also have to provide information to employees who work on the basis of agreements to perform work outside the employment relationship.

In addition, the obligation to provide information to posted employees will differ depending on whether the employee is posted to the EU or to a third country.

The amendment to the Labour Code is expected to come into force later this year. However, the exact date will depend on the progress of the legislative process.

Description

According to the current wording of the Labour Code, the employer must inform the employee in writing within one month of the terms and conditions of employment not included in the employment contract and any changes to them. An exception to this obligation applies to employment contracts with a duration of less than one month.

According to the latest version of the amendment:

- in addition to the current information, the employer will have to provide employees with other information relevant to them (e.g. on career development),
- the notification period will be only seven days from the start of the employment relationship,
- employees must be informed in advance of any changes in the terms and conditions of employment, at the latest on the date on which they come into force,
- the exception for the employment relationships for less than one month will be removed,
- It will be possible to provide information by electronic means and the obligation to provide information to employees working on the basis of agreements to perform work outside the employment relationship.

The obligation to provide information to posted workers will be a completely new section of the Labour Code and the content of the information will depend on the country of posting.

Impact and risk

Fulfilment of the information obligation is an essential part of the employer's compliance with the law.

Failure to comply with these information obligations may constitute an offence for which the Labour Inspectorate may impose a fine of up to EUR 85,240 (CZK 2,000,000).

Future actions

Employers must provide the extended information to current employees only if they submit a written request, and must do so within 7 days.

If the new law comes into force during the previous one-month notification period and the employer has not yet provided the information, the employer must provide the new information but within the original period.

The employer will have to fulfil the new obligations towards the newcomers, which will also apply to a similar extent to employees working on the basis of agreements to perform work outside the employment relationship.

For this purpose, employers must decide in which form they will provide the information - in physical copies or electronically. In electronic form, the information must be available to employees in a way that allows them to print or save it, and the employer must keep a record that it has actually provided the information.

It is even more convenient for employers to provide the information as a stand-alone document, as this leaves room for future changes, provided that many of the terms and conditions of employment can be unilaterally changed by the employer if they are not included in the employment contract (e.g. holiday entitlement, professional development, etc.).

Back to index of countries →

France

Development and date

Pension reform

In April the new pension reform measures were approved with the exception of six measures:

- The transfer of the collection of so-called Agirc-Arrco contributions (i.e. supplementary pension scheme) to the Urssaf (national social security authorities);
- New reporting obligations (so-called senior index) to measure the involvement of large companies (300+ employees) in the training, retention and recruitment of senior employees;
- The indefinite term contracts for senior employees;
- Measures to accompany contractual employees who have been confirmed in their function for public service;
- Provisions related to medical examinations for employees exposed to certain risk factors; and
- The introduction of an information system for the insured about the retirement system by repartition.

As a result, the law enacting the pension reform was published on 15 April 2023.

Description

The legal retirement age, currently set at 62, is gradually being increased from 1 September 2023, to reach 64 in 2030.

The timetable for increasing the length of contributions required to receive a full pension is accelerated to reach 43 years from 2027.

The early retirement scheme for employees with a long career is maintained for employees who started working before the age of 16, 18 or 20. It is extended to employees who started working before the age of 21.

The early retirement age is :

- maintained at 55 for disabled workers;
- maintained at 50 years old for asbestos workers;
- maintained at 60 years old for permanently disabled employees; and
- maintained at 62 years for employees in situations where there is incapacity.

Finally, the law provides for the closure of certain special retirement schemes for new entrants as of 1 September 2023.

Impact and risk

To accompany the new system, measures of solidarity and prevention of work-related stress have been put in place:

- The government is authorised to take measures by decree to raise the amount of small pensions to 85% of the net minimum wage for employees who retire from 1 September 2023;
- For employees who have already retired, the decree will set the amount of the increase that will depend on the number of quarters contributed;
- The cumulative employment-retirement scheme will now allow retirees who take up a new activity to benefit from new pension rights;
- Access to phased retirement can only be refused by the employer if the requested duration is incompatible with the company's activity. The duration of work in this context can now be less than 24 hours; and
- The personal prevention account for employees exposed to certain occupational risks has been modified: the number of points that can be acquired is no longer capped, certain exposure thresholds have been lowered and the account can be used to finance professional retraining projects.

Future actions

A bill in favor of full employment should soon be presented by the government.

This bill should include some of the measures overruled by the Constitutional Council, notably the senior index and the indefinite term contract for seniors.

It is expected that additional decrees will cover the way in which the law is implemented.

Germany

Development and date

Obligation to record working hours

Following a recent judgement of the Federal Labor Court (*Bundesarbeitsgericht*) dated 13 September 2022, there is now an explicit legal obligation in Germany for employers to record the total working hours of their employees.

As a response to this recent judgement, the Federal Ministry of Labour has announced a timely reform of the Working Hours Act (*Arbeitszeitgesetz*) in 2023 and has just presented a first draft of the corresponding bill.

The legislative development is related to the ruling of the European Court of Justice (ECJ) of 14 May 2019, which concerned the interpretation of the Working Time Directive. The ECJ ruled that member states must oblige employers to establish an objective, reliable and accessible system by which the daily hours worked by each employee can be measured.

Description

Under the future law, employers are obliged to transparently record the working time, i.e. the beginning, end and the specific duration of the daily working time of each employee.

Until now, there was no general legal obligation for employers in Germany to record working time, but it was only regulated for certain circumstances in various laws (e.g. working hours on Sundays and public holidays and working hours of marginally employed ("minijobbers“)).

According to the draft bill, records must also be kept electronically on the day the work is performed. Records in other forms, such as time sheets, are now only permitted in exceptional cases. The obligation to retain records is, in principle, two years.

Employers can delegate the recording to their employees or to third parties (e.g. supervisors). However, even in the case of delegation, employers remain responsible for proper recording and must, if necessary, train and instruct their employees to keep proper records.

Impact and risk

In the future "trust-based working time" ("*Vertrauensarbeitszeit*") or the free allocation of working time by employees remain possible under specific circumstances. However, employers must now ensure that employees record these working hours.

Currently, there is no threat of legal fines for violations of the general obligation to record working time. According to the draft bill, this is now to change. In the future, it will be a regulatory offence for employers to intentionally or negligently fail to keep records of working hours or to do so correctly, completely, in the prescribed manner or in a timely manner. The administrative offence can be punished with a fine of up to EUR 30,000.

Future actions

If the draft bill becomes law, all employers (with the exception of small businesses) will have to deal with the introduction or adaptation of a system for electronic time recording. Further, they must be prepared to ensure that their employees use these systems and also to monitor this (at least on a random basis).

At this point in time, it is open whether the current draft bill will actually become law. Employers are therefore advised to follow further developments attentively.

Back to index of countries →

Hong Kong SAR

Development and date

Standby day is not a day off

A recent appeal case in November 2022 made it clear to employers in Hong Kong that it is not a rest day if the employee is on standby.

In *Breton Jean v 香港麗翔公務航空有限公司(HK Bellawings Jet Limited) 2022* , the Court of Appeal upheld the District Court ruling that if the employee was put on standby, regardless of whether the employee had in fact been called upon to work by the end of the day, the employee was not being provided a rest day.

Description

Following the employee's summary dismissal, he commenced proceedings in the Labour Tribunal against the employer to recover payment for the untaken rest days during the period of his employment under his employment contract.

The employee a pilot, claimed that except when he was on flight duty or annual leave, he would be placed on "standby duty" which required him to answer his employer's call within 1 hour, refrain from drinking alcohol and remain mentally ready to report for flying duties within a short period of time and was not entitled to abstain from working for the employer.

In the employer's Operation Manual (which was incorporated as part of the employment contract), it was stated that any period of time that the employee was designated to standby duty would constitute a "Duty Period". As a matter of ordinary language, a person should be not regarded as being on a "day off" if he is on "duty".

The court found that the construction of the expression "day off" in the employment contract is also consistent with and reinforced by the interpretation of "rest day" in the Employment Ordinance (Cap. 57) ("EO"), which means "a continuous period of not less than 24 hours during which an employee is entitled to … abstain from working for his employer".

Impact and risk

Under the EO, employers must provide employees with a continuous contract with at least 1 rest day in every period of 7 days.

Employers should pay extra attention to ensure that they have provided sufficient days off to their employees as per the EO and the employment contract. If employees have been asked to work on a rest day by reason of an unforeseen emergency of any nature, employers shall substitute for that rest day some other rest day within the period of 30 days next following, notice of which shall be given to the employee within 48 hours after the employee is so required to work on that rest day.

While the expression "day off" in an employment contract does not necessarily have to bear the same meaning as "rest day" in the EO, in the absence of any clear indication to the contrary, it will generally be interpreted that the parties intended for the two concepts to bear the same meaning to ensure consistency and coherence of their rights and obligations under their employment contract and the EO. If employers grant their employees days off in addition to the statutory requirement, the standard under the EO for rest day will presumably be followed. If this is not the intention, a distinction should be clearly reflected in the employment contract.

Future actions

To avoid potential disputes on interpretation, clear definitions should be adopted and properly documented in writing.

For industries or companies where employees are commonly put on standby, employers should consider whether existing arrangements, internal policies and employment contracts comply with the EO. If not, changes should be made promptly to ensure compliance.

Conversely, if employers are granting their employees any contractual days off in addition to the statutory requirement, employers may consider drawing clear distinctions between the two to have greater flexibility in asking their employees to be on standby or work on an emergency basis.

Back to index of countries →

Hungary

Development and date

Cost cutting in the Hungarian labour market

Many employers in Hungary are adopting cost-cutting measures including large scale restructuring/redundancy exercises and hiring freezes.

As a result, there is an expectation that employers will face an increase in employment litigation associated with these measures.

Description

Due to the current economic hardships regarding the war in Ukraine, employers are streamlining their business activities which may result in reducing the headcount and applying a hiring freeze.

Organisational restructurings aim to make companies operate in a more efficient way.

Due to the high number of dismissal cases and mass redundancies, an increase in employment related litigation is also expected in the near future.

Impact and risk

Companies may face long-lasting legal disputes with former employees.

Companies may also experience substantial costs related to the redundancies as well as legal costs of litigation.

If employers do not follow the correct process for making redundancies and face legal challenges then the litigation that follows may also result in reputational risks.

Future actions

Companies should consider offering proper severance packages to departing employees, thereby helping to avoid future labour law litigation.

Italy

Development and date

Fixed term contracts

On 15 April 2023 the Italian government announced some important changes to the rules governing fixed-term contracts.

Description

As a reminder, prior to this amendment, a fixed term contract of up to 12 months could be issued without requiring any justification.

If an employer wanted to issue a fixed term contract in excess of 12 months it was necessary to indicate one of the reasons provided by law (e.g., an unforeseeable increase in activity).

After the amendments, three new reasons will now become available to companies:

- "specific needs provided for by a collective agreement";
- "specific needs of a technical, organisational and productive nature"; and
- the "need to replace other workers."

Impact and risk

In Italy, in the last few years the most popular employment contract has been the fixed-term contract.

In 2021, 7.7 million (69% of the total) were issued, which became 8.5 million in 2022. In the third quarter of last year, more than 31% of the fixed-term contracts signed had a maximum duration of one month and 46.5% did not exceed 90 days

Even if the employer relies on the three new reasons for using a fixed term contract, the fixed term contract cannot exceed 24 months, otherwise the employment contract will be converted to an indefinite term

Additionally, if an employer provides an incorrect reason in the fixed term contract, e.g. one that does not correspond to reality, this could lead to a judicial order to establish an open-ended employment relationship with the employee.

Future actions

Companies will have to update their models and, above all, monitor the way in which collective bargaining operates in their sector in relation to these new rules around fixed term contracts.

Kenya (1/2)

Development and date

Employee's right to disconnect

A bill has been introduced in the Kenyan Parliament to have the Employment Act 2007 amended to recognise the right of employees to disconnect from work during out of office hours.

The bill proposes, among other things, that an employee shall not be obliged to respond to work-related communications out of office hours. Employees will therefore not be reprimanded or subjected to disciplinary action by an employer in the event they do not deal with work related matters outside office hours.

The employees right to disconnect shall, however, not be absolute. The amendment proposes that the right may be limited in emergency situations.

The employee can also waive their right to disconnect out of office hours. If there is a waiver, the employee shall have an entitlement to compensation.

Description

Following the onset of Covid-19 in 2020 and even after the lockdowns across the country, there was a change in the working situation of many employees.

A lot of employees found themselves having to work from home and with this came the blurring of lines about when employers could contact their employees on work related issues.

This bill seeks to set guidelines on when employees can be engaged by their employer especially in situations where they have left the office or are working from home.

The amendment proposes that the employer needs to develop a policy to guide both the employer and employee to observe the disconnection hours. The policy should regulate the 3 areas below:

- Circumstances under which an employer may contact an employee out of office hours;
- The use of electronic or digital communications during out of office hours; and
- Circumstances under which the right to disconnect may be waived.

The amendment proposes that the policy ought to be developed in consultation with the employees and trade union (where applicable).

Impact and risk

The purpose of the proposed amendment is to ensure that employees have a work-life balance and also ensure that their personal time (outside the office) is not interfered with.

The bill has proposed some punitive measures against those employers that violate and/or infringe an employee's right to disconnect during out of work hours, as follows:

- A fine not exceeding KShs. 500,000 (USD 3,700) or,
- Imprisonment for a term not exceeding 1 years or,
- Both the above.

Future actions

Employers should embark on developing a robust and fair "right to disconnect" policy to ensure they do not run foul of the provisions in the bill if and when it is passed as law.

Back to index of countries →

Kenya (2/2)

Development and date

Laws and proposed laws to impact on employees' salaries by way of increasing their statutory deductions/taxes

The Finance Bill 2023 proposes to introduce various tax measures that will see the amendment of the Income Tax Act.

It proposes a new income tax band with a tax rate of 35% on employment gross income above KShs. 6,000,000 per annum (KShs. 500,000 per month).

The Bill also proposes to amend the Employment Act so as to introduce a mandatory contribution to the National Housing Development Fund. The contribution will be two fold: 3% of the employee's basic salary to be paid by the employee and 3% of the employee's basic salary to be paid by the employer. The contribution should however, not exceed KShs. 5,000 (circa USD 40).

Amendments have been made to the National Social Security Act which will also affect pension contributions.

Description

The Finance Bill proposes to raise funds through various tax initiatives in order to finance the various projects that the Kenyan Government wishes to undertake.

The amendment to the NSSF Act is also geared towards increasing the fund available for use by Government.

Earlier in the year, the Court of Appeal upheld an amendment to the National Social Security Act, 2013.

Before its implementation, the contributions to the social security fund (intended to safeguard an employee in her retirement) were capped at KShs. 400 – employees made contributions of KShs. 200 per month and the employer matched this with a contribution of KShs. 200 per month.

Now, the Act increase employee pension contributions to 12% of an employee's basic salary. The employee is expected to contribute 6% and the employer another 6%. The maximum amount is limited to KShs. 2,880 (USD 22) per month.

Impact and risk

As stated, the purpose of the introduction of new tax regimes and tax brackets, is for the Kenyan Government to raise sufficient capital to finance their intended national projects.

The contribution to the Housing Fund is aimed at achieving the government's commitment to affordable housing under the Big Four Agenda.

However, the proposed laws and the amendments to the NSSF Act have caused a lot of uproar amongst a majority of employers and employees who are of the view Government is overtaxing them in a situation where a majority of Kenyans are struggling to make ends meet.

Future actions

There is a very high likelihood that Kenyans (whether through employee unions or through the employer federation) will seek to have some of the proposals in the Finance Bill not passed into law.

If passed to law, we anticipate a lot of litigation on the issues.

Mexico

Development and date

Increase in holidays entitlement and proposal to reduce working hours

On 1 January 2023 the reform to increase holidays in Mexico became effective.

The amendments apply to individual or collective labour contracts, regardless of their form or grade level, provided that they are more favourable to employees' rights.

Although this is a legal reform it is important that companies analyse the impact it will have internally from a social security, accounting and talent approach.

This change has also prompted the proposal to reduce daily working hours. On 25 April 2023 the Chamber of Deputies started to discuss the reduction of the working day, but the proposal was postponed and will be discussed again in the next session in September.

Description

Employees with more than 1 year of service shall enjoy an annual period of paid holidays, which in no case may be less than 12 working days, and which shall increase by 2 working days, until reaching 20, for each subsequent year of service. From the sixth year onwards, the holiday period shall increase by 2 days for every 5 years of service. The employees will have the choice to decide whether to take their holidays continuously or fragmented.

The ability of employees to take holidays in a continuous block is not new; however, it is something that is not common in practice since generally employees take days off in an interrupted manner. Even so, it is important to mention that the labour authorities will pay special attention to this provision because of its association with the right to disconnect from work.

In addition, the reform to reduce working hours aims to amend Article 69 of the Federal Labor Law, which states that for every six days of work, employees will have at least one full day of rest. Therefore, the reform aims to reduce the 48-hour work week to 40 hours and to provide two full paid days of rest for every five days worked.

According to the OECD, under this legal framework, Mexican employees work the longest hours, although this is not accompanied by higher productivity.

Impact and risk

The increase in holiday entitlement also includes holiday pay. The rate for holiday pay cannot be less than 25% of the amount of the salary.

Holiday pay is one of the benefits considered to be part of the salary for severance payments, and under the terms of the Social Security Law, also for the employees' contribution base salary and, therefore, in the payment of legal worker-employer contributions. Since it is a payment arising from the labour relationship, it has an impact on local payroll taxes.

Additionally, the World Health Organisation (WHO) has pointed out in an analysis that long working hours can affect physical and mental health, as well as the safety and well-being of workers, while the employer also suffers as a result of employees not having sufficient rest days. This can include interruption of production due to accidents, damage to equipment and materials, reduction in the quality of the product or service, and reduction in the productivity of the affected workers.

Future actions

Employers with a presence in Mexico should be aware of recent amendments in Mexican employment law. Effective from 1 January 2023, employees in Mexico will be entitled to an increased holiday entitlement.

This new reform will require employers to review employment agreements, offer letters, and internal policies, including internal work regulations.

Any dismissals carried out after 1 January 2023, should include new accrued holiday premium payments.

It is expected that the proposal to reduce the working day in Mexico will be accompanied by a review of the productivity established in the Federal Labor Law.

Back to index of countries →

Monaco

Development and date

Recent case law on redeployment

By way of background, the law states that when an employee is declared by the occupational health doctor as definitively unfit to carry out their role the employer must redeploy them to another position or adapt their current work conditions, taking into account the medical recommendations. If there is no suitable alternative role the employer may dismiss the employee in accordance with a specific procedure. Failing to demonstrate that the Company has sought a redeployment opportunity may lead to the dismissal being ruled abusive.

The Courts in Monaco have applied the same reasoning as French Courts, requiring that the employer provides evidence of a search for a new position, including when the employee is declared as being definitively unfit to carry out any role within the Company.

When the medical opinion (that the employer must comply with) explicitly states that the employee is unfit for all positions within the Company, it may seem unnecessary to look for a redeployment opportunity within the Company as it would contradict the occupational health medical opinion. However, in such a case, Courts would deem that (i) this behaviour is abusive and (ii) that the employer should have asked the Labour doctor for clarifications.

Description

French case law still holds this same position. However, French law has a better balance because it allows occupational health doctors to exempt the employer from carrying out a search for redeployment opportunities, if they deem the employee to be unfit for any work or that redeployment may seriously compromise the employee's health.

Monegasque law does not allow occupational health doctors to provide an exemption, but recent rulings would indicate that the case law is moving towards a more pragmatic position.

In the first case, the court ruled that the employer had complied with its duties by demonstrating through a simple organisational chart that there was no position available within the Company. It also added that although the employer could be bound to provide its employee with training to help with a redeployment opportunity, it could not be expected that the training would require a 5-year program.

In the second case where the employee was declared medically unfit for "*all positions in the Company or elsewhere*", instead of requiring the employer to ask the occupational health doctor to clarify the position, it ruled that the Company had complied with its duties without further developments.

Impact and risk

At this stage, it is too early to say that an "employer friendly" position is now being held by the Monaco Courts.

If an employee is declared medically unfit for any work in the Company, we do not consider that the recent cases mean that the employer is exempt from the obligation to search for redeployment opportunities.

However, it seems that the Court, in those two rulings placed a lower burden of proof on the Company.

The risk of a dismissal being ruled abusive in its implementation and even, consequently on its merits, leading to significant damages, should encourage employers to remain cautious, in the absence of a clearer favourable Court ruling.

Future actions

Employers should adopt a cautious position and comply with the various procedural steps around redeployment as set out in the case law.

Although it may seem pointless to look for redeployment opportunities when the occupational health opinion is that the employee's health prevents them from working in any position for the Company, we would still recommend that employers follow the steps established by past case law, and to keep written evidence of each one of them.

Adopting a cautious approach will enable employers to mitigate risk, until a clear Court ruling or new legislative provision is introduced. Currently there are no discussions about this issue between the Government and the legislator.

However, it is hoped that in the future, French law is followed on this subject, which would enable the occupational doctor to exempt the Company from carrying out a redeployment search where redeployment is not possible because of the employee's health.

Back to index of countries →

The Netherlands

Development and date

New criteria for the self-employed

On 24 March 2023 the Supreme Court ruled in the long awaited appeal case against Deliveroo. The case was initiated by the largest trade union in the Netherlands. At stake was the position of riders of Deliveroo and whether the riders were self-employed or employees.

In all instances the courts have ruled that the agreement between Deliveroo and the riders qualifies as an employment agreement. The decision of the Supreme Court has shed new light on the criteria that determine whether an agreement with self-employed individuals qualifies as an employment agreement or not.

Legislation about the position of self-employed and platform workers is long announced and although there is an enforcement moratorium until 2025 from the Dutch authorities, this decision should be a call to action for all companies that have contracts with self-employed individuals.

Description

The decision shows the emphasis on the presence of entrepreneurship as an important indication that an employment contract can exist. For example, whether the self-employed person behaves or can behave as an entrepreneur in economic transactions, independently from the contractual relationship in question. Other circumstances are how the contract between the parties was established, the level of and how the remuneration is determined and paid and whether the person performing the work incurs commercial risk in doing so. Also relevant is whether the self-employed person presents themselves externally as an entrepreneur. Therefore, circumstances which are separate from the specific contractual relationship becomes part of the assessment of whether that individual relationship is an employment contract or a self-employment relationship.

The Supreme Court also ruled that terms in a contract that are not being applied in practice can have no importance in the assessment of the contract.

Impact and risk

Currently there is little to no enforcement regarding the position of the self-employed by the tax authorities. Therefore in the short term companies are unlikely to be challenged by the authorities when working with these types of contracts. However, if an agreement with a self-employed person is an employment agreement, the company can be held liable for payment such as wages, taxes, social security and pension premiums going back five years, in addition to interest and fines.

Deliveroo, having ended their activities in the Netherlands, has taken a provision of EUR 8 million to handle claims of individual riders which shows the potential financial impact of working with so-called self-employed on large scale.

Our assessment is that at this stage the highest risk as a result of this decision will be in industries with trade union involvement and/or where ‘regular’ employees fall under the scope of a collective bargaining agreement. As the financial impact can be significant, we recommend assessing current contracts with the self-employed and mitigate (future) risks.

Future actions

Review contracts with self-employed individuals and make an assessment in accordance with the criteria shared by the Supreme Court. Verify whether the self-employed person is an entrepreneur and assess whether changes to the contract can be made to mitigate the risk that the contract qualifies as an employment agreement.

There are more criteria to consider when making the assessment. CMS can help with the assessment and provide insights in the level of risk when working with self-employed persons.

Back to index of countries →

Peru

Development and date

Regulation of Telework Law

The Regulation of Telework Law was published on 26 February 2023 and will enter into force 60 days after this date.

This Regulation complements the provisions of the Telework Law that was published in September 2022, with the aim of regulating telework in the public and private sector.

The recently published Regulation basically governs the change from face-to-face to teleworking, the various alternatives for teleworking, the place where it can be carried out, the rights and obligations of the parties, the provision of digital equipment, internet access and the sharing of expenses, among other related matters.

Description

Among the new features introduced by the Regulation are the following:

1. The system of teleworking can be part time or total, permanent or temporary.
2. The change from face-to-face to telework and vice versa must be agreed by the parties.
3. The employer may decide to reverse the measure if they can objectively support this decision.
4. The place where the employee will provide their services may be their home or another place provided they inform the employer.
5. The agreement changing the system to telework (or the reverse) must set out the obligations and rights of the parties and several other aspects that are contained in the Regulation.
6. Failure to conclude the agreement or omitting some of the requirements in the Regulation may result in fines.

Impact and risk

The Regulation's requirement for agreements to cover a wide range of issues makes it more likely that employers will not be able to comply with all requirements, exposing them to fines from the labour authority, which may discourage telework.

For example, there are doubts about how employers will be able to comply with legal requirements on health and safety at work (when they are not in the workplace), especially in dealing with accidents. This potentially exposes employers to the risk of paying compensation in situations over which they have no control.

It also makes it more difficult for the employer to monitor how the employee complies with the working schedule, especially if the work is carried out in another country with a time difference.

Working abroad can also complicate the employee's medical care, since the insurance that must be legally provided covers treatment provided within Peru.

Future actions

The employer should take into consideration the following:

The employer may agree that the employee (and not the employer) provides the equipment and bears the cost of paying for the internet service and the electricity.

It should establish procedures to prevent the risks of accidents and determine measures for supervision and distribution of the work, respecting the employee's right to privacy and their right to disconnect outside working hours.

It should train staff on information security, occupational health and safety and prevention of sexual harassment.

Employees who have control over their working time – known as non-scheduled staff (such as management staff) are entitled to 12 hours of disconnection every 24 hours.

Poland

Development and date

Significant changes to the Polish Labour Code in April 2023

The first change remote work, results from the need for comprehensive regulation in this area. The second is a consequence of the implementation of two EU directives into Polish law: the directive on work-life balance and on transparent and predictable working conditions.

Remote work legislation
The changes regarding remote work came into force on 7 April 2023. They replaced the regulations previously in force related to telework that have not been widely used and those introduced during the covid pandemic. From now on, employers must pay remote work allowances to employees to cover electricity costs, and employees must accept that they may be subject to inspection at the remote workplace.

Work-life balance legislation
Changes implementing two EU directives will come into force on 26 April 2023. Poland is more than six months late in implementing these directives into the Labour Code. The main changes concern employment contracts and parental rights of employees.

Description

Remote work legislation
The changes mainly involve the implementation of 3 remote work models: (1) regular remote work (which may be full or hybrid), (2) remote work on the discretion of the employer due to exceptional situations (e.g. the pandemic) and (3) occasional remote work, which is 24 days per calendar year and to which all employees are theoretically entitled.

Telework will remain in force for a six-month period after the date the remote working legislation is brought into force.

Work-life balance legislation
Legislation related to two EU directives make changes to employment contracts, i.e. probationary periods, fixed-term contracts and the scope of information provided to the employee related to their employment.

In addition, it establishes two new types of time off from work: carer's leave and time off for reasons of force majeure. It also extends the duration of parental leave and introduces the possibility of flexible work arrangements for employees who are parents of children up to the age of eight, for whom the scope of the changes is even broader.

Impact and risk

Remote work legislation
So far, remote work has been left to the discretion of the employer and often informal arrangements with the employee. Now, employees will at least partly be able to request remote work. There will also be special categories of employees, e.g. parents of children up to the age of four and pregnant employees, for whom it will be very difficult to refuse remote working if an appropriate policy is put in place. It will be only possible due to the work organisation or type of work of the employee.

Employers should ensure that they do not breach the principle of equal treatment in employment when they allow some employees to work remotely and not others.

Work-life balance legislation
Employers will have to indicate the reason for the termination of a fixed-term contract, making it more difficult to dismiss an employee. The employment of a probationary employee will be conditional on the employer's willingness to hire the employee after the probationary period. Employers will have to provide employees with significantly expanded information on terms and conditions of employment.

Employees exercising parental rights will be protected against dismissal. An employer may face criminal liability in certain circumstances.

Future actions

Remote work legislation
If employers want to introduce regular remote work, they should introduce relevant policies which detail all aspects required by the Labour Code.

They should also start keeping documents on remote work in the employees' personal files.

Work-life balance legislation
Employers should review the various policies that are affected, for example parental leave.

They will also need to update template documents, e.g. fixed-term employment contracts, probationary periods or information on terms and conditions of employment.

Employers should prepare new internal procedures for dealing with requests for flexible working arrangements.

There is also a need to keep new documents as part of the employee documentation requirements.

Back to index of countries →

Portugal

Development and date

Amendments to the Labour Code and related legislation

On 3 April 2023, a new law was published, approving a set of amendments to the Portuguese Labour Code and related legislation.

The amendments cover topics such as the probationary period, remote work, parental leave regime, absences, overtime work, temporary work, collective bargaining, compensation for termination of employment contracts, outsourcing, among others.

Most of these changes came in force on 1 May 2023.

Description

One of the measures is a ban on employers using outsourcing services to satisfy resourcing needs which have previously been delivered by employees whose contracts have been terminated in the previous 12 months.

These measures forbid employers to subcontract services for activities previously carried out by employees of the company who have been dismissed as a result of collective or individual redundancy.

This rule applies not only to the employer, but also to all the companies in the same group.

Impact and risk

Failure to comply is a very serious administrative offence. It is the beneficiary of the services that is liable for the payment of a fine.

It is presently being discussed within the legal community whether these amendments are a measure of restriction on business freedom, as well as a restriction on the constitutionally guaranteed right of economic initiative freedom.

This measure implies that companies have to rethink strategies regarding an existing activity which they wish to outsource if the activity was previously provided in-house by their own employees where the employees were dismissed either by collective or individual redundancy during the previous 12 months.

Future actions

Employers will have to adapt to the fact that it will be impossible to outsource services for a 12 month period after a collective or individual redundancy. This may involve waiting more than 12 months after the termination of employment contracts or by relying on the Portuguese transfer of undertakings legislation, where the employees transfer to the outsourcing company.

Serbia

Development and date

New Occupational Health and Safety Law
On 28 April 2023 Parliament adopted the new Occupational Health and Safety Law because the old law was not detailed enough, particularly after the number of work-related deaths and wide spread of remote jobs.

Amendments to the Law on Foreigners
The proposal for Amendments to the Law on Foreigners was made on 31 March 2023.

Amendments to the Law on Employment of Foreign Citizens
On 31 March 2023 the Government made an official proposal to the Parliament on Amendments to the Law on Employment of Foreign Citizens as a way of promoting foreign investments and attracting an increase in the foreign work force.

Description

New Occupational Health and Safety Law
The law introduces for the first-time rules on health and safety in remote working. An employer must determine the conditions and the work processes to ensure that remote working is safe. There is also an obligation on the employee to inform their employer whether these conditions are fulfilled. The law also introduces new requirements for employees or external staff who are responsible for implementing and monitoring the work safety measures. Higher fines are introduced for employers and employees for not following the health and safety regulations, as well as stricter conditions for high-risk jobs.

Amendments to the Law on Foreigners
One of the most important changes is the integrated work permit, which will include a temporary residence permit and can be applied for electronically. Temporary residence will be extended to a period of three years, instead of one year, and the permanent residence may be granted to a foreigner after three years of continuous residence instead of the current five years.

Amendments to the Law on Employment of Foreign Citizens
In addition to the new integrated work permit, the amendments mean that the work permit can be issued for a certain job type, and it will be possible to change employers during the period the permit is valid.

Impact and risk

New Occupational Health and Safety Law
The rules on remote working are regulated in a general manner so we expect many uncertainties in practice. However, it is still a breakthrough, bearing in mind that this was never regulated before. The new Law is also expected to reduce work related accidents and deaths.

Amendments to the Law on Foreigners
The integrated work permit will provide a much simpler and faster process, especially when the whole procedure will be conducted online. This will also ease the restraints on the authorities issuing these permits. Easier procedures for obtaining permits, visas, asylum etc. is expected to encourage an increase in foreigners wanting to work in Republic of Serbia.

Amendments to the Law on Employment of Foreign Citizens
The biggest impact will be the increased efficiency and simplicity in the process around obtaining work permits. The Amendments will also provide the ability to hire experts with the required knowledge and skills that required in the Republic of Serbia. It is also expected that these amendments will reduce the possibility of abuse of rights of foreign workers.

Future actions

New Occupational Health and Safety Law
Employers now have two years to adjust their internal regulations and practices to the new rules.

Amendments to the Law on Foreigners
The adoption of this Amendment is expected by the end of Q2 of 2023, and the clauses on the integrated permit will apply from 1 February 2024.

Amendments to the Law on Employment of Foreign Citizens
The adoption of this Amendment is also expected by the end of Q2 of 2023, and the clauses on the integrated permit will apply from 1 February 2024.

Back to index of countries →

Singapore

Development and date

On 14 February 2023, in the FY2023 Budget, several employment initiatives were announced. We set out the key updates below.

Increase in parental leave
The government introduced Increased Paternity Leave and Unpaid Infant Care Leave to support marriage and parenthood in Singapore.

Flexible work arrangements
In addition, as part of ways to support work-life harmony, the push for flexible work arrangements would continue.

Changes in Central Provident Fund (CPF) contributions
The CPF is a mandatory social security savings scheme funded by contributions from employees who are Singapore citizens and Permanent Residents and their employers. The contributions are a percentage of the employee's salary and subject to salary ceilings. The government has now announced an increase in the CPF monthly salary ceiling, an increase in CPF contribution rates for senior workers, and extended the CPF scheme to platform workers.

Description

Increase in government-paid paternity leave (GPPL) Currently, eligible working fathers of Singaporean children are entitled to two weeks of fully paid paternity leave funded by the government (the reimbursement to employers is capped at S$2,500 per week or a total of $5,000). This will be increased to four weeks for fathers of Singaporean children born after 1 January 2024 on a voluntary basis to give employers time to adjust in light of tighter economic conditions.

Increase in unpaid infant care leave from the current 6 days a year to 12 days a year with effect from 1 January 2024 for all parents of Singaporean children under 2 years old who have worked with their employer for at least 3 months.

The **Tripartite guidelines on flexible work arrangements** will be implemented in 2024, requiring employers to consider staff requests for such arrangements fairly and properly.

The **CPF monthly salary ceiling** will be increased from S$6,000 to S$8,000 over 4 years until 1 January 2026. There will be no change to the CPF annual salary ceiling at S$102,000 (includes contributions from additional wages).

Impact and risk

The initiatives involving increased parental leave and flexible work arrangements are expected to provide working parents additional support with a view to encouraging marriage and parenthood in Singapore.

The increase in CPF contribution rates for workers aged 55 to 70 will result in increased business costs. To alleviate this, the government will introduce a one-year CPF Transition Offset, which will be equal to half of the 2024 increase in employer CPF contribution rates for every Singaporean and Permanent Resident worker aged 55-70. This offset will be provided automatically and there is no need to apply for it.

Currently, platform workers and platform companies are not required to make CPF contributions. The changes with the alignment of CPF contribution rates of platform companies and platform workers with those of employers and employees (phased-in over 5 years) means that lower income platform workers may experience a reduction in take home pay. To ease this impact, the government will introduce a CPF transition support scheme which will offset part of the platform worker's share of the year-on-year increase in the CPF contribution rates from years one to four.

Future actions

The government will review the GPPL and make the four-week GPPL mandatory in due course.

The CPF annual salary ceiling will be subject to review in the future to ensure it covers a broad base of CPF members.

Employers should take the necessary steps to implement the changes expected e.g. updating internal policies/ handbooks and making the necessary financial provisions.

Slovakia

Development and date

Employer's contribution to state-subsidised housing of an employee
From 1 January 2023 a new Act on State Subsidy of Rental Housing was put in place to amend the Slovak Labour Code and a new article on State-Subsidised Rental Allowance was introduced into employment legislation.

Agreement on work activity for the performance of seasonal work
A recent amendment to the Slovak Labour Code, a subtype of Work Activity Agreement, namely Agreement on work activity for the performance of seasonal work was implemented on 1 January 2023.
This type of agreement is part of a wider group of so-called *Agreements on Work outside Employment* which is an occasional activity defined by the type of work.

Description

The new measure enables an employer to offer an allowance towards the employee's state-subsidised housing. The employer may grant an employee a rental housing allowance of no more than EUR 4 per square metre of the floor area of the accommodation, provided that the total amount of the allowance does not exceed EUR 360 per calendar month.
Certain conditions exist before an employer can grant the allowance. These are: a) an employment relationship between the employer and the employee and b) the existence of a tenancy agreement in accordance with the Act on State Subsidy of Rental Housing.

Until 1 January 2023 the Labour Code said that a worker could only do 10 hours seasonal work activity per week. Based on the new provisions seasonal work may be carried out for a maximum of 520 hours per calendar year provided the appropriate agreement is in place. Seasonal work is defined as work activity that is dependent on the change of seasons, is recurrent each year and does not exceed eight months in a calendar year. The annex further lists areas of seasonal work, such as agriculture, tourism, food processing and forestry.

Impact and risk

The allowance is voluntary; the employer is not required to offer it to the employee. At the same time, an employee who applies for the allowance should not be placed at a disadvantage compared with an employee who has not. For example, an employer must not increase the amount of work given to the employee because the employee has been given the allowance.

The limit of the maximum of 520 hours per calendar year also includes work which the employee performs for the same employer under a different seasonal work agreement. The aim is to avoid the limit by concluding several consecutive agreements of the same type.
At the same time, the average weekly working hours must not exceed 40 hours a week during the 4-month period of the agreement.
There is a limit of 8 months on the duration of an agreement covering seasonal work activity.

Future actions

The employer's contribution to state-subsidised rental housing is an interesting new development that may prove to be an incentive for attracting new recruits or as part of the salary package for current employees. The allowance is also a tax-deductible up to EUR 360 per month.
The amendment to the Labour Code was effective from 1 January 2023, but the need to link the allowance to the network of state rental housing, which is not yet operational, may in practice limit or delay the ability of employers to provide the allowance.

Implementation of the Agreement on work activity for seasonal work has been a response to the longstanding demands of employers for legal regulation of seasonal work, and the shortage of seasonal workers in the labour market. Creation of the sub-type of Work Activity Agreement will simplify employment and reduce the employer's wage costs in connection with the employment of seasonal workers. This may help improve the economic and employment situation in sectors that have been worst affected by the pandemic, for example hospitality and tourism.

Back to index of countries →

Slovenia

Development and date	Description	Impact and risk	Future actions
Amendments to the legislation on the employment of foreign nationals	**Amendments to the legislation on the employment of foreign nationals** In April 2023 amendments to the Foreigners Act and the Employment, Self-employment and Work of Foreigners Act were published in the Official Gazette of Republic of Slovenia. The purpose of the amendments is to remove administrative obstacles and to speed up the procedure for issuing residence permits. The Transnational Provision of Services Act mentioned in last edition of OYR was adopted as well.	**Amendments to the legislation on the employment of foreign nationals** The main changes to the legislation include: – foreign nationals will be able to change employer, change jobs with the same employer or work for more employers under a valid single residence & work permit if they obtain the consent of the Employment Service; – facilitating the employment of foreign nationals by public sector employers; – faster integration of foreign nationals into the labour market; and – measures to remove administrative obstacles, including extending or issuing new temporary residence permits.	**Amendments to the legislation on the employment of foreign nationals** Employers and foreign nationals working in Slovenia should make themselves aware of the changes which are aimed at making the process of working in Slovenia easier.
Whistleblower Act	**Whistleblower Act** The Whistleblower Act (Zakon o zaščiti prijaviteljev) entered into force on 22 February 2023. A transition period applies, for companies with 50 to 249 employees it is 17th December 2023, and for the companies with 250 employees and more it is three months from the date the Act entered into force.	**Whistleblower Act** The new Act defines who is entitled to protection and under which conditions, the requirements when setting up the internal reporting lines, the procedure and authorities in cases involving external reporting, measures for the protection of a whistleblower and fines where there has been a breach of the act.	**Whistleblower Act** Employers will need to review their processes and ensure that they implement the requirements under the new Act by the time the provisions come into force.
Changes to the recording of working time	**Changes to the recording of working time** On 21 April the Parliament adopted the Act on the Amendments and Additions to the Act on Labour and Social Security Records (ZEPDSV-A). The Act has not been published in the Official Gazette of Republic of Slovenia yet.	**Changes to the recording of working time** The main changes include: – an updated definition of who is a “worker”; – the harmonisation of the time limit for the transmission of data to the authorities; – a significant extension in the scope of data to be kept by the employer on a daily basis; – new obligations on employers to inform the workers about keeping records; – the introduction of an electronic method of keeping records of working time; and – the redefinition of offences and of fines.	**Changes to the recording of working time** Employers should ensure they are aware of the new requirements and ensure that they align their working time recording systems within six months after the new Act coming into force.

Back to index of countries →

South Africa

Development and date

Employment Equity Amendment Act 4 of 2022

On 14 April 2023 the Employment Equity Amendment Act 4, 2022 (EEA Amendment) came into effect, amending the Employment Equity Act 66 of 1998 (EEA).

Description

The amendments include the following:

- The definition of "designated employer" has been amended to mean "*an employer who employs more than 50 employees*" and does not take into account the annual turnover of a business.
- The definition of "people with disabilities" has been amended to include "*people with an intellectual impairment which may substantially limit their prospects of entry or advancement in employment*".
- Section 15A has been introduced into the EEA, enabling the Minister of Employment and Labour to identify national economic sectors.
- The Minister may also set numerical targets for any national economic sector identified.
- The powers of the labour inspector have also been widened to allow for a compliance order to be issued in the event that an employer has failed to prepare an employment equity plan.

Impact and risk

The amendments are by and large uncontroversial, save for the change to the definition of a designated employer and the introduction of national economic sectors.

It is likely that many employers will fall outside the current definition of a designated employer This may mean that these employers will no longer have a legal obligation under the EEA to promote affirmative action and to actively address any underrepresented designated groups.

However, it is likely that should the national economic sector codes come into effect, that this will see these employers, and many more, return to being designated employers.

It is advisable for employers who may fall outside the definition to consider remaining a designated employer by choice, and electing to subscribe to the same obligations until such time as the national economic sectors have been finalised.

Future actions

We will be awaiting the Minister of Employment and Labour's next move as he calls for consultation and seeks to publish the draft national economic sectors and their applicable targets.

Spain

Development and date

Paying above legal severance

A recent appeal before the Superior Court of Catalonia established a severance payment above the amount legally established in the Spanish Worker's Statute.

To date, severance payments have been calculated on the basis of the legal provisions, paying 33 days per year worked (capped at 24 months) in cases of unfair dismissal and 20 days per year worked (capped at 12 months) in cases of fair objective dismissals.

The claimant was dismissed during the Covid-19 crisis, which means that under the law in place at the time, the dismissal should have been declared unfair.

This is the first case in which a court established a severance payment above the legal amount established for unfair dismissals.

Description

The claimant was the only employee dismissed (unlike the rest of the workforce, who were furloughed) as her severance payment was significantly less due to the lower period of service with the company.

One of the goals of a severance payment is to act as a deterrent against dismissal (Convention No. 158 of the International Labour Organisation). Therefore, the Court understood that a small amount is not a deterrence and should be increased.

Therefore, the Court assessed the existence of damages.

Damages for pain and suffering could not be proven, but consequential damages were estimated, as the employee could have been eligible for Social Security benefits if she had been affected by furlough.

This benefit which had not been received was the amount "added" to the statutory compensation.

Impact and risk

It should be noted that this case is still subject to an appeal before the Supreme Court. Therefore the ruling could be reversed.

Despite the above, the Spanish business sector has shown its concern, since, if this judgement becomes established case law it would make it very difficult to estimate the cost of a dismissal.

Although it is unlikely that the Supreme Court will endorse this case without new legislation on severance payments.

Future actions

As a starting point, employers should asses this risk when estimating the costs of a dismissal. At least until the Supreme Court clarifies the approach on the calculation of statutory severance.

Switzerland

Development and date

Case law concerning abusive termination

A recent decision of the Swiss Federal Supreme Court reiterated the duties of an employer where there has been workplace harassment. It also outlined the principles in which a notice of termination because of a long-term absence of an employee is considered to be abusive in Swiss law, commonly referred to as being unfair in other jurisdictions.

Description

In the relevant case, an employee was harassed by a work colleague. Although the employee informed the employer about these incidents, the employer did not take any appropriate steps.

The employee became unwell as a result of the harassment. Under Swiss law, an employer may not validly terminate the employment relationship in a case involving the illness of the employee for a certain "blocking period". The duration of the "blocking period" depends on the years of service of the employee and is 30 days in the first, 90 days from the second and until the fifth, and 180 days as of the sixth year of service. In the case at hand, after the expiry of the applicable "blocking period", the employer dismissed the employee because of his long-term absence due to illness.

According to a recent decision of the Swiss Federal Supreme Court, the dismissal was deemed to be abusive. The failure to act and protect the employee meant that the employer had violated their duty of care and contributed to the illness of the employee.

The court ruled that dismissing the employee because of their illness was against good faith and resulted in the dismissal being determined as abusive.

The employer was ordered to pay an indemnity to the employee of five months' pay.

Impact and risk

It was critical that the employer had failed to take any appropriate steps following the employee reporting the harassment.

In Switzerland dismissing an employee because of long-term absence is generally possible and is not normally considered to be abusive.

A dismissal may be considered to be abusive if the employer contributed to the illness by its inaction and failure to protect the employee.

Future actions

Employers must ensure that they take appropriate steps where an employee reports harassment.

Back to index of countries →

Turkiye (1/2)

Development and date

Early retirement

The Amending Law published on 3 March 2023 also known as The Law on Early Retirement Despite Failing to Meet the Age Requirement ("EYT" — *Emeklilikte Yaşa Takılanlar* in Turkish), changes the conditions for retirement for individuals who started working before 9 September 1999.

Description

Under Turkish Social Security Legislation, employees are eligible for a pension if the following conditions are met:

- having paid a certain amount of premiums,
- reaching a certain age, and
- leaving the job due to retirement.

However, as a result of the changes introduced by the Amending Law, the age limit for retirement has been removed for employees who started working prior to 9 September 1999. Employees who were registered with the social security institution (SSI) prior to 9 September 1999 will be able to benefit from the EYT if:

(i) they have completed a 20 year social security period if female, or 25 years if male; and
(ii) they have paid between 5,000 and 5,975 days of statutory social insurance.

If eligible, employees will be able to "retire" without meeting any age requirement.

Impact and risk

The EYT does not introduce any new requirements in relation to the payments of an employee on termination of employment. These will therefore be calculated and determined in the usual way. The employee would be entitled to the following:

1. Severance pay;
2. Accrued and unpaid salary;
3. Accrued contractual benefits (e.g., premium, bonus, commission, etc.);
4. Accrued and unused holiday pay;
5. Accrued and unpaid overtime pay; and
6. Accrued and unpaid wages for work carried out on national and public holidays or weekly holidays.

These amounts would need to be paid in full by the effective date of retirement, unless mutually agreed otherwise. In practice, it is possible to pay the amounts in the next available payroll. However, if the employer envisages making a deferred payment, the employer might face a claim for labour payments before Turkish courts. Therefore, we recommend that the company makes the necessary payment as soon as possible following the resignation.

Future actions

There is no legal requirement on an employer to re-hire employees who retire under the EYT. However, an employer may agree to re-hire an employee (which could be as soon as the day following the retirement date, but could be at any date in the future). Any decisions to rehire or not rehire should be based on objective business reasons, rather than subjective reasons. This will help avoid the risk of discrimination claims.

The employee can rehire an employee immediately following the termination date or can set the rehire date in the future. Please note that the confirmation of the relevant employee's removal from the SSI system should be received before they are rehired (i.e., a document confirming that their retirement application made for retirement on the E-government platform (*E-Devlet*) is successfully completed).

If the employer agrees to rehire the employee, it would be open to the employer to agree revised terms with the relevant employee (e.g., change in hours, duties etc.).
The employer should prepare a new set of employment documentation (including a new employment agreement) when rehiring the relevant individual.

Turkiye (2/2)

Development and date

Court of Appeal's decision on an "indefinite receivable claim" relating to salary payments

In its decision dated 27 December 2022 ("the Decision"), the 9th Civil Chamber of the Court of Appeals issued an important judgment by examining the existing high court opinions on an indefinite receivable claim (this is a claim where it is impossible to determine the exact amount of the claim at the time the claim is made.)

Description

An indefinite receivable claim can only be filed if it is impossible to determine the exact amount of the claim at the time the claim is filed, or if this cannot be expected from the plaintiff. Any other reason does not allow the filing of an indefinite receivable claim.

Although the 9th Civil Chamber of the Court of Appeals had rendered different decisions, the General Assembly of the Court of Appeals and the Constitutional Court were of the opinion that if labour receivables (e.g., salary, severance pay, notice pay, unused annual leave, overtime work pay and bonus/premium) are the subject of an indefinite receivable lawsuit even though the amount of the payment is certain or can be calculated over the given amounts and dates, the case should not be dismissed immediately by the court on the grounds of lack of procedure.

However, the 9th Civil Chamber of Court of Appeals has stated in the Decision that if it is possible to determine the exact amount of the claim at the time the claim is raised, or if this can be expected from the plaintiff, the indefinite receivable case should be rejected and the claimant (i.e., employee) cannot be given time to complete or fully determine the amount of the sum sued for.

Impact and risk

Employers can use this decision as a precedent in their defence when responding to a claim which does not specify an amount, if an employee files an indefinite receivable claim regarding their labour receivables although the amount of the labour receivables can be determined.

Future actions

The Decision provides guidance on the approach the labour courts should take in the event that an indefinite receivable claim is made.

However this Decision may be reversed on appeal. There is also scope to challenge whether a decision of the Constitutional Court is binding or not.

Back to index of countries →

Ukraine

Development and date

Update on military accounting regulations in Ukraine

New rules on exempting certain employees from conscription during the period of mobilisation and martial law were adopted by the Ukrainian Government and entered into force on 31 January 2023 (“Rules”).

Description

According to the Rules, employees of the following employers may be exempt from mobilisation:

- state and municipal authorities;
- entities with mobilisation tasks for army;
- entities producing goods / providing services to army; or
- entities that are critical to the functioning of the Ukraine economy and people’s livelihood (“Critical Entities”, which also include defined international organisations).

The company must meet three or more (two or more for enterprises of fuel and energy sector) of the below listed criteria to be recognised as the Critical Entity:

1. > EUR 1.5 million of the paid taxes and other duties (except for customs duties) for the reporting fiscal year;
2. > EUR 32 million of income in foreign currency (except for loans) for the reporting fiscal year;
3. Be included into the list of critical state enterprises;
4. Play an important role for the national economy or local territorial community;
5. No debt for the payment of a single social contribution payment;
6. The average salary amount of the employees within the company for the recent quarter is not lower than the average salary amount in the region for the 4th quarter of 2021;
7. Be the resident of Diia City (a special legal regime for IT-companies registered in Ukraine).

Impact and risk

For all categories of entities the maximum duration of the decision on exemption of their employees is 6 months, save for state and municipal authorities for which exemption is possible for the entire period of mobilisation and martial law.

Heads of state and municipal authorities, certain other high-rank state officials, CEOs and deputies of the eligible companies, employees of the enterprises of fuel and energy sector included into the list of the Ministry of Energy of Ukraine, and employees of defined international organisations may be exempt irrespective of their military rank, age or military-accounting specialty.

Future actions

In order to exempt employees, eligible companies should complete a specific application form and are responsible for the information about the employees indicated there.

However, not more than 50% of the conscripts in the company on the day of application may be exempted (in certain cases and subject to a justified need – the 50% threshold may be exceeded).

For (i) the enterprises of fuel and energy sector included into the list of the Ministry of Energy of Ukraine, and for (ii) defined international organisations there is no % limit.

Back to index of countries →

United Kingdom

Development and date

Voluntary ethnicity pay gap reporting

In April the government published Guidance on voluntary ethnicity pay reporting.

Despite previously committing to introduce mandatory reporting in this area, the government more recently announced that reporting would be optional for employers, supported by voluntary guidance.

According to a recent report 21% of UK employers are reporting their ethnicity pay gap on a voluntary basis. Current reports tend to use a single ethnicity pay gap figure; an approach that the Guidance strongly discourages if done in isolation, meaning this guidance will be relevant to those businesses newly interested in this area, and those already reporting, with a view to adapting their approach

Description

Ethnicity pay gap reporting is a complex area, and this newly published guidance will support businesses who wish to undertake reporting, or have a greater understanding of this.

Employers are advised to identify the appropriate ethnicity classification structure, review the data, look for explanations on pay disparities, produce a narrative and draft an action plan.

The Guidance lists a range of calculations around pay and bonus gaps, and also representation levels in the organisation (including understanding levels of employees who prefer not to say as part of any data gathering).

According to the Guidance the reason for using a range of measures, rather than one single measure is because of the complexity of the ethnicity pay gap (as compared to gender pay gap reporting).

One of the main challenges with ethnicity pay reporting is incomplete data and the impact this has on calculating a pay gap. The questions on representation are designed to contextualise the results of the other calculations.

Impact and risk

For employers who are familiar with UK gender pay gap legislation, some crossover can be seen. The impact will depend on whether organisations choose to engage with this where it is not a legal requirement.

There are also various unique factors around ethnicity reporting:

- Incomplete data on the ethnicity of the workforce can distort the average figure in a pay gap calculation.
- Employers should identify the right questions to ask in relation to ethnicity classification.
- Ethnicity data is special category data and therefore data protection considerations must be factored in to data capture.
- If an employer chooses to report their figures externally then they will need to consider minimum category sizes to avoid breaching employee confidentiality. The Guidance suggests a minimum category size of 50 is required for external reports.

There are many reasons why an employer may have an ethnicity pay gap, which the Guidance explains could include local demographics and different internal and external factors. The employer's explanations should be included within the narrative which accompanies the calculations.

The Guidance recommends that employers should develop and publish an action plan, and this will require careful thought.

Future actions

While the decision to collect ethnicity data and report an ethnicity gap is currently optional for UK employers, there may be other reasons why employers choose to report:

- It can be a tangible way to demonstrate their Social credentials as part of an ESG strategy (Environmental, Social and Governance).
- Diversity data forms a key aspect of an organisation's diversity and inclusion (D&I) strategy; and any commitment made towards progress on D&I starts with good quality data.
- It also seems probable that, in time, ethnicity pay gap reporting will become mandatory, and participating on a voluntary basis will allow time for organisations to build trust with employees, and therefore hopefully generate more responses so as to make the data more helpful.

As a first step, employers wishing to proceed should review their ethnicity data and method of classification to determine whether they need to improve their data. If the data is inadequate then employers should consider whether a diversity data capture project is required, applying this new Guidance and complying with their data protection obligations.

Back to index of countries →