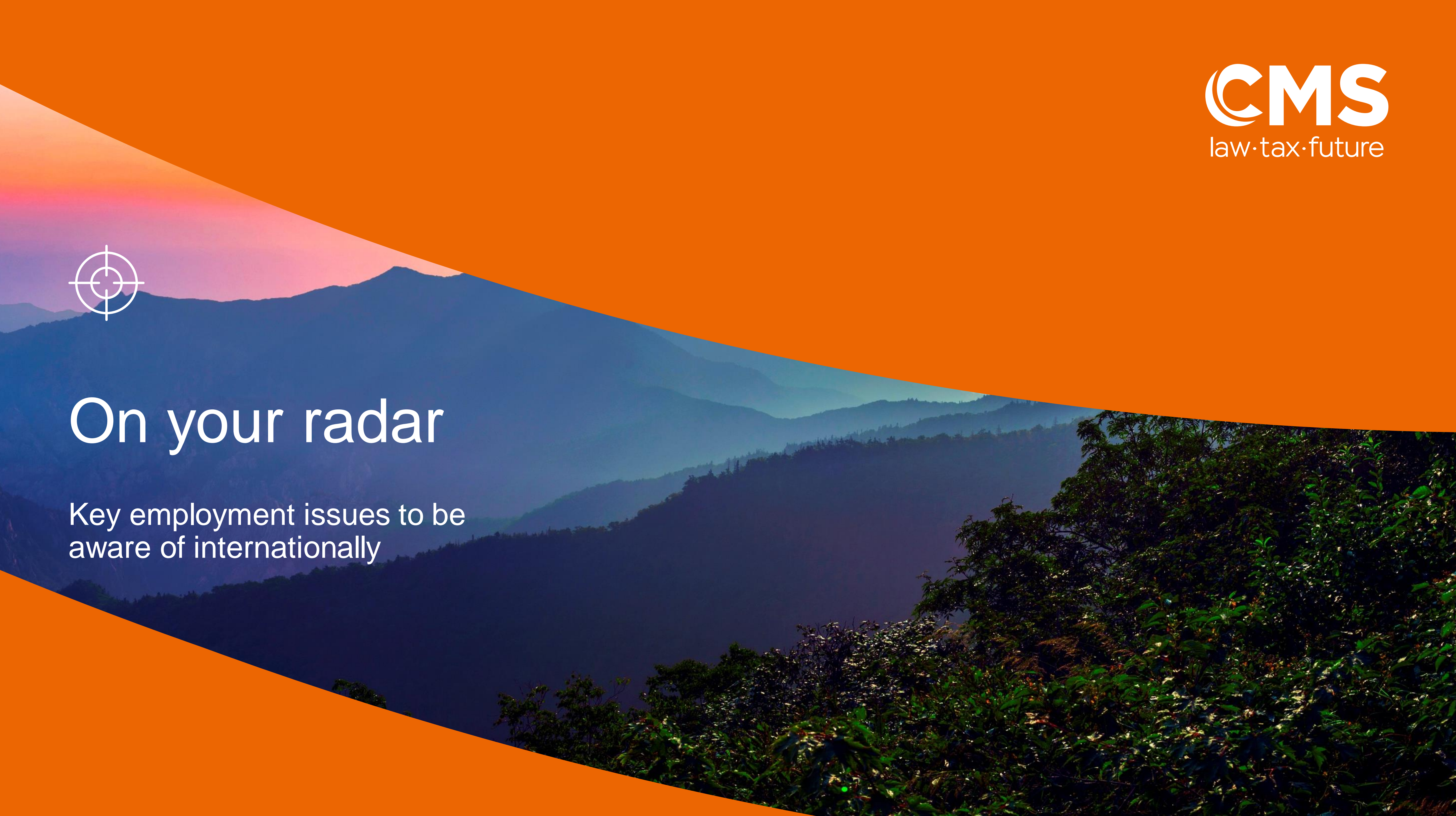
CMS
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On your radar
Key employment issues to be aware of internationally

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 September 2023.

The CMS Employment team

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Belgium

Development and date

New anti-discrimination rules

On 7 April 2023, legislation was passed which changed the law regarding welfare at work and three laws against discrimination. The law changed the protection against retaliation in matters of discrimination and violence, moral or sexual harassment at work and came into force on 1 June 2023.

This law extends the system of protection against retaliation. Individuals who express their support for a person who has filed a complaint or taken legal action concerning discrimination will also benefit from protection against prejudicial measures.

Description

The law contains three major amendments:

1. The protection against who is in scope to claim "adverse action" has been extended to the following categories:
   - An individual filling a report, complaint or legal action;
   - An individual acting as a witness;
   - An individual who has made a report or complaint for the benefit of the individual to whom the alleged breach relates (and the person for whose benefit such act(s) is alleged); and
   - An individual who has alleged a breach of discrimination laws.
2. An employee whose employment contract is terminated, or who has their working conditions changed as a result of retaliation, has a right to compensation even if they have not requested to be reinstated (in the case of a dismissal).
3. Compensation for discrimination, or for damages due to bullying, violence or unwanted sexual behaviour (up to 6 months' remuneration) can be in addition to compensation for retaliation because these do not cover the same damages (6 months' remuneration).

Impact and risk

From an employment point of view, employees were previously only protected against dismissal (as opposed to the newly introduced "adverse action") following a report, complaint, legal action and only if the employee was an official witness (who could produce a signed and dated document related to their testimony).

Employers can expect more compensation claims from employees who suffer "adverse actions" related to discrimination.

Employers must be able to prove that an adverse action is unrelated to both the report, complaint, legal action or request, and to facts that can be inferred from the content of this report, complain, legal action or request.

Future actions

Employers should take care to avoid adverse actions against employees related to discrimination.

Employers should ensure that their HR department is aware of the scope of the changes.

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Brazil

Development and date

Wage equality and pay transparency

On 3 July 2023 new equal pay legislation was approved.

The main points of the new legislation are:

- Companies will be obliged to be more transparent about the pay of their employees;
- Companies must produce a half yearly report containing remuneration details, while ensuring that the data is anonymised;
- Companies must have an effective complaints channel;
- Any remuneration policy must be adapted to ensure equal pay for men and women; and
- Those who fail to comply with the rules and guarantees of the legislation will be subject to a fine.

The new law aims to prevent discrimination against women in the labour market, as well as encouraging good labour practices to mitigate wage inequality.

Description

The new law introduces four specific points:

1. Maintenance of wage equality requirements as set out in labour law. These rules are determined based on various criteria, such as length of service, length of employment relationship, location, and others.
2. New measures to ensure equal pay for women and men, namely:
   - Establishing mechanisms for pay transparency and remuneration criteria;
   - Increased enforcement against discrimination in pay and remuneration criteria between women and men;
   - Providing specific complaints channels for reporting pay discrimination;
   - Promotion and implementation of diversity and inclusion programs in the workplace that cover the training of managers, leaders, and other employees on the subject of gender equity in the labour market, with measurement of results; and
   - Fostering the training and education of women to enter, remain and progress in the labour market on equal terms with men.
3. Companies with over 100 employees are required to publish reports every 6 months that include salary data and criteria for remuneration while ensuring data protection.
4. There will be an increase in inspections on the subject, as well as an increase in the number of fines to be applied.

Impact and risk

In cases of non-compliance with the rules on the equality of pay between men and women, the legislation provides for the payment of a fine corresponding to ten times the amount of the new salary due by the employer to the discriminated employee, without prejudice to other legal measures.

If the report is not published or contains irregularities, there may be fines of up to 3% of the payroll amount. However, these fines are limited to 100 times the minimum wage.

Additionally, if any irregularities are found in a company's remuneration system, they must provide an action plan that includes specific targets and deadlines for addressing the issue.

Future actions

To properly chart the organisation and address any potential issues, it is crucial for the legal and human resources departments to work together in a joint effort.

In order to address potential labour risks, it is important to establish and execute an action plan aimed at reducing inequality, utilising specific and measurable salary standards.

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China

Development and date

Tianjin updates local regulations on implementing the PRC Labour Contract Law

On 29 July 2023, the Human Resource and Social Security Bureau of Tianjin, one of the municipal cities in China, issued the newly amended *Detailed Rules for Implementation of Several Issues of the Labour Contract Law* ("Detailed Rules"). The Detailed Rules are the local policy on implementing the PRC Labour Contract Law in the location of Tianjin.

The Detailed Rules came into force on 1 August 2023.

Description

The Detailed Rules state that an employer and an employee may agree on the overtime payment calculation terms in the employment contract. The agreed method of calculation should not be less than the pay which the employee is entitled to, but such pay does not include the payments which are paid to the employee irregularly or with a payment cycle of more than 1 month.

According to the Detailed Rules, if an employer intends to dismiss an employee due to their misconduct, it should make the decision to dismiss within a 6-month period of becoming aware (or where they should have become aware) of the misconduct.

The Detailed Rules also say that if an employer wants to dismiss the employee because the employee has committed a serious breach of company rules and regulations, the employer must have valid company rules and regulations which clearly define the circumstances of what amounts to a serious breach and that the behaviour of the employee meets these requirements.

Impact and risk

Based on these Detailed Rules, Tianjin local regulations have become even stricter than before. In the past, there were no rules governing the minimum overtime payment calculation method in Tianjin. There was also no time limit on the employer's decision to dismiss following misconduct.

In practice, it is unlikely that the company rules and regulations will cover all kinds of misconduct that an employee may commit. So, any decision to dismiss an employee due to their misconduct will become more difficult in Tianjin.

Future actions

Employers may wish to check whether the calculation basis of overtime payment currently applying to the employees complies with the Detailed Rules. If necessary, the employer may change the calculation basis of overtime payments to comply with the Detailed Rules.

Employers should also review their company rules and regulations taking into consideration how their business operates. The document should be updated to cover as much as possible the circumstances which may amount to a serious breach of company rules and regulations.

If it is discovered that an employee has committed an act of misconduct, employers should be aware of the time limits if they want to dismiss the employee.

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Colombia

Development and date	Description	Impact and risk	Future actions
Extension in rest time for employees who are breastfeeding On 31 July the Congress issued Law 2306 extending the rest period for employees who are breastfeeding.	Article 238 of the Colombian Labour Statute established the obligation on employers to grant two daily periods of rest of 30 minutes to employees who are breastfeeding until the baby is 6 months old. Law 2306 extends this existing provision. During the time the employee`s child is between 6 months and 2 years old, the employer must grant one period of rest time equivalent to 30 minutes per day for breastfeeding (as long as there is continuity on the breastfeeding)	These changes have brought two important questions to employers: 1. Will employers need to verify that the employee is still breastfeeding after the baby has turned 6 months old, since the original Law does not require evidence? 2. Will this extension in the breastfeeding rest time generate an extension in the special protection granted for maternity (which mentions that dismissals based on pregnancy or “breastfeeding”) are forbidden?	On the one hand, it is necessary that additional regulations are issued in order to clarify the questions that have arisen in relation to the practical appliance of these new rules. On the other hand, until additional regulations are provided, employers should review whether they have employees who have children between 6 months and 2 years old, to determine if adjustments need to be made to their schedules, in order to comply with this new obligation to provide 30 minutes of paid rest time per day for breastfeeding purposes.
Colombia’s pension reform: legislative process and key aspects On 20 July the Congress started a new legislature term, in which Act No. 293 of 2023 is expected to be discussed now that it has entered its legislative phase. This act aims to regulate Colombia’s Comprehensive Social Protection System covering pensions for retirement, disability, and death.	In order for the Pension Reform Bill to become a Law of the Republic, it will be necessary to complete the remaining three debates in Congress and subsequently obtain presidential approval.	The significant changes introduced in the pension reform includes: 1. To be eligible for the transition regime, women must have a minimum of 750 weeks of contributions, and men must have a minimum of 900 weeks of contributions by 1 January 2025. 2. Affiliates who fulfill these criteria will be subjected to the provisions of Law 100 of 1993 (which is the current Social Security Statute) and its subsequent amendments, rather than the new reform.	It is expected that the pension reform will complete the legislative process in the Congress of the Republic during this new legislature period.

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Czech Republic

Development and date

Electronic conclusion and delivery of documents

The long-awaited amendment to the Labour Code aims to simplify, among other things, electronic conclusion of all types of employment agreements and electronic delivery of important unilateral employment documents.

Until now, it has not been possible to conclude employment agreements electronically, meaning only paper form and wet ink signatures comply with the law.

Previously, the electronic delivery of important unilateral employment documents was complicated as it required a qualified electronic signature of both the employer and the employee.

The main issue was that many employees did not have this type of signature. This resulted in the delivery of documents being obstructed as a qualified electronic signature was the only way to confirm receipt. This meant the process was rarely used due to being impractical.

However, it is expected that this will change when the new rules come into force this autumn.

Description

The amendment to the Labour Code responds to the development of new technologies and the impact of IT on our daily lives. It makes it possible to conclude employment agreements, agreements to complete a job, agreements to perform work, amendments to these agreements and termination agreements electronically. The employees will not need a qualified electronic signature.

The employer will always have to send a copy to the employee's private e-mail address. Within 7 days of receiving the documents, the employee will have the right to withdraw from the agreements if they have not yet started work. Of course, this possibility does not apply to termination agreements.

New, less stringent requirements will also apply

to the electronic delivery of important unilateral documents, including unilateral notices of termination. Employees will not have to confirm delivery with a qualified electronic signature, and after 15 days, delivery will be deemed to apply.

However, the electronic delivery of documents will only be possible with the employee's prior consent in a separate written statement, in which the employee discloses their private e-mail address, provided that the employer has duly informed the employee in writing about the conditions and consequences of the electronic delivery.

Impact and risk

Electronic conclusion of contracts and faster and less complicated rules for electronic delivery of unilateral documents are seen as a desirable change to the current old-fashioned rules.

It is expected that the change will improve the employment process by making the crucial steps faster and more efficient for both employers and employees.

However, if the employer does not comply with the statutory rules, the delivery might not be effective, which could lead to a range of problems, including invalid termination of employment.

In addition, the possibility to deliver documents electronically depends only on the employee as they will be able to withdraw their consent anytime.

Future actions

Employers should consider implementing systems to conclude and deliver employment documents electronically. For this purpose, they can prepare a template of the employees' consent to electronic delivery of documents and written information about the delivery rules.

The employers will have to ensure that they collect only private e-mail addresses of their employees. This operation will therefore also have privacy (GDPR) related aspects.

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France

Development and date

New measures on value sharing

The government has intervened on several occasions in recent years to simplify, modernise and improve the attractiveness of company saving schemes for all companies.

The government wants to go further by inviting the social partners, at national interprofessional level, to develop value-sharing tools.

On 10 February 2023, social partners signed a national agreement about value sharing within companies aimed at suggesting ways to improve and develop value-sharing mechanisms.

The bill transposing the agreement in value sharing was submitted to the French National Assembly on 24 May 2023.

Description

Value-sharing scheme: From 1 January 2024, companies employing 11-49 employees must set up a value-sharing scheme (profit-sharing, matching contribution to an employee savings plan, value-sharing bonus) when their net taxable profit equals at least 1% of annual turnover for 3 consecutive financial years.

Companies with at least 50 employees shall add to the negotiations of incentive plans or profit-sharing schemes a special negotiation on the definition of an exceptional increase in profit and the resulting value-sharing procedures.

This exceptional profit shall take into account: company size, sector, previous years' profits or exceptional events external to the company that occurred before the profit was made.

Statutory profit-sharing : The principle of not substituting profit-sharing payments with salary is enshrined in the French Labour Code.

Companies with less than 50 employees may set up a profit-sharing scheme that includes a less favourable calculation formula than the statutory one, provided it is allowed by an industry-wide agreement or, in the company, by a profit-sharing agreement.

Optional profit-sharing (incentive scheme): the calculation formula may take into account performance criteria related to the company's social and environmental responsibility into account.

Impact and risk

New rules will be introduced allowing the early release of money in profit sharing plans and company saving plans where the reason is to provide caring or for certain environmental reasons.

The social and tax regime applicable to the value-sharing bonus paid to employees whose gross annual remuneration is less than three times the annual value of the French minimum wage, initially applicable until 31 December 2023, has been extended for the period from 1 January 2024 to 31 December 2026.

A new article would require unions to evaluate the outcome of their actions promoting and improving job diversity, accompanied by proposals for actions aiming in particular, to improve assistance to companies in achieving this objective, before 31 December 2024.

Future actions

On 29 June 2023, the French National Assembly adopted the bill on value sharing, which transposes the national multi-employer agreement signed on 10 February.

The text must now be examined by the Senate, at an undetermined future date.

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Germany

Development and date

Case law on the accrual of holiday entitlement

The Federal Labour Court has recently issued several decisions relating to German holiday entitlement.

In December 2022 the Federal Labour Court implemented the case law of the European Court of Justice (ECJ) on the loss and limitation of holiday entitlements. These decisions are of particular importance for employees on long-term sick leave, whose leave entitlements have until now expired 15 months after the end of the leave year.

The Federal Labour Court has explored this line of argument in more detail in a decision dated 31 January 2023.

Description

As a general rule, holidays must be granted and taken in the current calendar year. In exceptional cases, holidays may be carried over to the following calendar year, in which case it is lost by 31 March of the following year. According to case law by the ECJ and the Federal Labour Court, holidays only expire at the end of the calendar year/end of the carryover period if the employer has asked the employee to take the leave and informed them clearly and in good time that untaken leave will be lost.

In their recent decisions of 2022, the ECJ and the Federal Labour Court has clarified that in the event of a breach of the employer's obligation to notify, holiday entitlements also do not expire within the statutory limitation period of three years.

Where an employee is sick for the entire year, the employer has no obligation to inform the employee of leave entitlements for this year – holiday entitlements will automatically be lost 15 months after the end of the holiday year.

However, the Federal Labour Court is of the opinion that during the year in which the incapacity for work occurred, holiday entitlements can only be lost if the employer has previously complied with its duty of notification. An exception applies if the employee becomes sick a short time after the holiday entitlement has arisen, meaning the employer was unable to comply with his obligation to notify.

Impact and risk

If employers do not comply with their obligations to notify, the holidays are not lost and are not subject to the statute of limitations but continue to accumulate over a period of years. This includes "regular" employees and employees on long-term sick leave, who become incapacitated for work during the year.

Consequently, where the employment relationship continues an employee can claim that they have accrued the holidays years later. If the relationship is terminated there is the risk that this accrued leave will accumulate and amount to a significant cost in relation to outstanding holiday pay.

Future actions

To prevent holiday leave and pay from accumulating over a period of years, employers should inform their employees, especially those on long-term sick leave, in good time (at best six working days after the holiday entitlement arises), individually, precisely (with the specific indication of the days) about the possible expiry of their holidays and request them to take the holiday.

The employee should be given sufficient opportunity to take the holiday until the end of the year.

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Hong Kong

Development and date

Changes to the pension regime: Mandatory Provident Fund

On 9 June 2022, the Legislative Council of the Government of the Hong Kong Special Administrative Region ("HKSAR") passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 to abolish the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund ("MPF") System to offset severance payment ("SP") and long service payment ("LSP") (i.e. the MPF offsetting arrangement).

In April 2023, the HKSAR Government has announced that the abolition of the MPF offsetting arrangement will take effect on 1 May 2025.

Description

From a policy perspective, the abolition of the MPF offsetting arrangement would help preserve the accrued benefits in employees' Mandatory Provident Fund (MPF) accounts for meeting their retirement needs. In turn, this will help strengthen the MPF System as one of the pillars of Hong Kong's retirement protection system. However, such changes will result in additional costs for employers.

Impact and risk

From the implementation date of the abolition, employers can no longer use the accrued benefits derived from employers' mandatory MPF contributions to offset an employee's SP or LSP. However, accrued benefits derived from employers' voluntary MPF contributions as well as gratuities based on length of service can continue to be used to offset SP or LSP.

For employees who are already in employment before the transition date, their SP or LSP will be divided into pre-transition portion (i.e. for the employment period before the transition date) and post-transition portion (i.e. for the employment period starting from the transition date).

The maximum amount of SP or LSP (i.e. the sum of pre-transition and post-transition portions of SP or LSP) is still capped at HKD 390,000. If an employee's total SP or LSP exceeds HKD 390,000, the amount in excess of the cap will be deducted from the post-transition portion.

Employers can continue to use the accrued benefits derived from their MPF contributions (irrespective of whether the contributions are made before, on or after the transition date, and irrespective of whether the contributions are mandatory or voluntary) to offset the pre-transition portion (but not the post-transition portion) of SP or LSP.

Future actions

The HKSAR Government has indicated that it intends to introduce a 25-year subsidy scheme totalling HKD 33.2 billion with a view to support employers, particularly the micro, small and medium-sized enterprises, and assist them with adapting to the changes.

Furthermore, the HKSAR Government plans to introduce a Designated Savings Accounts Scheme where employers will be mandated to save up in order to meet their future SP or LSP liabilities after the abolition of the offsetting arrangement.

Employers should be mindful of when the abolition will take effect and take steps to ensure that it complies with the new regime. Meanwhile, employers are recommended to monitor the developments in this area and maintain a dialogue with its employees to avoid disputes.

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Italy

Development and date

Remote monitoring of employees

A recent case decided by the Italian Privacy Authority showed that the installation of remote surveillance systems based on fingerprints, cameras and geolocation of employees was deemed unlawful.

The decision was announced on 26 July 2023.

The case stems from an inspection by the Italian Privacy Authority which found that a company alarm system whose activation and deactivation was based on the use of fingerprints, and a video surveillance system and an application which tracked the geolocation of some workers.

These employer initiatives had taken place without complying with the guarantee procedure contained in the Workers' Statute and the Privacy Code, which are essential requirements for the fairness of processing of workers' personal data.

Therefore, no union agreement had been reached, nor had permission from the Labour Inspectorate been sought. With regard to video surveillance, the absence of on-site information signs was also noted.

Description

In relation to the video surveillance system, inspectors found that in addition to filming live images, the system was also capable of capturing sounds and making recordings.

The system allowed the user to verbally admonish those involved, through the system's speakers. They had access, through a smartphone, to the legal representative of the company and the family.

The inspection also revealed that the company was using an application that, when in use, continuously tracked, via GPS, the employee's position in the course of his or her work, as well as the date and time of the tracking, thus resulting in the unlawful monitoring of the employee.

In addition, with the aim of reinforcing security measures at the company premises, the Company had also installed an alarm system whose activation and deactivation was based on the processing of biometric data (fingerprints) of 21 individuals, including employees.

Impact and risk

The processing of data by means of the video surveillance system and the tracking system had been carried out without the workers having received adequate information and the guarantee procedures provided for in the Workers' Statute having been followed.

Therefore, no union agreement had been reached, nor had permission from the Labour Inspectorate been sought. With regard to video surveillance, the absence of on-site information signs was also noted.

Additionally, the employer used the alarm system based on the processing of biometric data, which as a rule is prohibited as data falling under the so-called special category data (Article 9 GDPR), and is permitted only if one of the conditions provided for in paragraph 2 of Article 9 of the GDPR is met.

As for processing carried out in the context of the employment relationship, it is permitted only when the processing is necessary to fulfill the obligations and exercise the rights of the data controller or the data subject and is provided for by a regulatory provision, circumstances not found in the present case.

In addition to the payment of the fine of EUR 20,000, the Italian Privacy Authority ordered a ban on the processing of data collected through the video surveillance system and continuous monitoring of the worker's position.

Future actions

If an employer plans to use remote systems which may also control employees' employers should follow the procedures for informing trade unions required by Italian law.

In lieu of the trade union information procedure, a procedure can be initiated at the request of the Italian Ministry of Labour.

In any case, employers should always consider and respect the privacy of employees and the instructions dictated by the Italian Privacy Authority

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Luxembourg

Development and date

Changes to the social security thresholds of teleworkers

On 30 June 2023, as a result of the end of the transition period following the pandemic, the traditional social security thresholds for teleworking were reapplied to cross-border teleworkers.

However, cross-border teleworkers have seen their rights to telework increase as a result of the European Framework Agreement which came into force on 1 July 2023 in Luxembourg (the "Framework Agreement").

In addition to Luxembourg, the signatories of the Framework Agreement include all border countries i.e., France, Belgium and Germany.

The Framework Agreement is of particular interest to teleworkers who do not reside in the member state of their employer, as this is the case for a large number of employees in Luxembourg.

The Framework Agreement was concluded for an initial period of five years and may be renewed.

Description

The Framework Agreement now allows in-scope employees to telework from their country of residence while remaining affiliated to the Luxembourg social security system (the new threshold allows up to 49% of the employee's total time to be teleworked from their country of residence, as opposed to 25% previously).

The Framework Agreement is only applicable if the following conditions are met:

– The country in which the employer has its registered office is a signatory of the Framework Agreement;
– The employee's country of residence must also be a signatory of the Framework Agreement;
– The teleworking activity in the country of residence must be between 25% and less than 50% of the employee's total working time (if the activity is below 25%, the former provisions on social security coordination will apply);
– Connection to the employer's IT infrastructure must be possible in order to guarantee the performance of the work to be carried out; and
– The employee concerned must not be carrying out another activity in their country of residence or in any other country.

Impact and risk

The employer will also have to declare to the Joint Social Security Centre (known as CCSS) any teleworking activity carried out regularly by a cross-border worker.

In this context, the risk arises if the maximum 49% threshold is exceeded.

In this case, cross-border teleworkers will be affiliated to the social security system of their country of residence rather than to the Luxembourg social security system.

In addition, if the cross-border worker is affiliated to the social security system of his country of residence, their employer will have to pay the social security contributions directly to the social security system of that country.

Future actions

Employers with cross-border teleworkers must ensure that their employees comply with the social security thresholds and declare the number of telework days for these employees to the CCSS.

It is also recommended that employers put in place teleworking policies that specifically address the conditions of application of the Framework Agreement.

Also, it seems essential that employers put in place appropriate monitoring systems and mechanisms to be able to determine the number of days teleworked by cross-border workers.

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Mexico

Development and date

Remote working regulations

On 8 June 2023, the Ministry for Work and Pensions published the latest regulation on telework, NOM 37.

NOM 37 follows the reform to the Federal Labour Law of January 2021 which incorporated the rules on remote work.

The purpose of NOM 37 is to establish the health and safety conditions applicable to employees who work under remote work schemes, in order to prevent accidents and illnesses.

NOM 37 applies to all workplaces and employers that have employees who work more than 40% of their time at a location other than the workplace.

NOM 37 will come into force six months from its publication in the Official Gazette (8 December 2023).

Description

NOM 37 establishes obligations on employers and employees who are remote workers.

Some of the main obligations for employers are:

- Implement and maintain a remote working policy.
- Have a list of health and safety conditions for remote working.
- Have an updated list of people who are remote working.
- Provide training for people who are remote working.

Some of the obligations for employees who work remotely are:

- Allow the employer to physically verify the health and safety conditions of their working location, both before and during their remote work.
- Comply with the remote working policy.
- Safeguard and maintain equipment in good condition.
- Inform the employer in writing of any permanent or temporary change of address.
- Notify the employer of any accidents they suffer.

Impact and risk

Employers will have to assess their current remote working policies and ensure employees are complying with them.

Companies that decide to keep or implement a remote work scheme will have to assume the cost of the implementation of NOM 37.

Companies must ensure compliance with NOM 37 in order to avoid sanctions.

Failure to comply with the obligations of NOM 37 could result in fines ranging between USD 300 to USD 30,600.

Future actions

Employers should take positive steps to ensure they are aware of their obligations under NOM 37 including updating their list of employees who are working remotely and make sure there is an updated remote working policy which employees are aware of.

NOM 37 includes examples of such policies, and these could be used by employers as a guide. The examples are informative only and not obligatory.

Training on health and safety should be provided to workers at least once a year and employers should ensure systems are in place to provide the required training.

Employers should consider whether they wish to contract the services of Inspection Units to evaluate their compliance with NOM 37.

Employers shall provide employees with the necessary resources to carry out their activities in remote working, implement occupational health and safety measures, provide information on occupational risks and generate an internal communication program.

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Monaco

Development and date

Mutually agreed termination of employment

The Monaco Parliament has recently published a draft bill aimed at providing a legal framework for the termination of an employment contract by mutual agreement.

To date, employers and their employees can agree to the termination of an employment contract to which they are bound.

However, mutually agreed terminations are rare in practice. In contrast, in France, their use has been increasing year after year.

The two main reasons are :

- the termination agreement does not protect the employer from any claim related to the validity of the termination or to the performance of the contract
- employees entering these termination agreements are not entitled to unemployment benefits.

The bill aims at resolving those two flaws, (i) limiting the parties' ability to challenge the validity of the termination and (ii) providing a legal framework which should allow Monaco authorities to negotiate with the French unemployment agency regarding the coverage of Monaco employees entering into a termination agreement.

Description

In short, the mutually agreed termination, as set out in the draft bill requires the parties to:

- Agree in principle to the mutual termination after at least one preliminary meeting during which the employee has the right to be accompanied.
- Sign a mutual termination agreement containing some statutory provisions defined by the bill as well as the conditions of the termination, notably the termination date and the employee's indemnification.

In that respect, as is the case in France, a minimum indemnification must be provided in most cases, with reference being made to the indemnity owed in cases of dismissal notified without expressed grounds ("indemnité de licenciement") or half of that indemnity when the request for the negotiation came from the employee.

Once signed, the parties will benefit from a 15 calendar days withdrawal timeframe. It is then subject to the Labour inspectorate's approval, who has 15 working days to ensure the termination is legally compliant and the consent of the parties was not vitiated.

Investigation measures may be implemented, some of which are mandatory where an employee benefits from legal protection. The 15 working days' timeframe is then suspended for the length of those measures.

Impact and risk

Some professionals in the sector are concerned that introducing a mutual termination scheme will threaten the existence of the so-called "article 6 dismissal" (at-will dismissal), which is sometimes used to compensate for the absence of a proper mutual termination scheme entitling the employee to unemployment benefits.

It is necessary that the validity of an "article 6 dismissal" will be preserved as its flexibility has proven to be key to the health of the Monegasque employment sector.

An "Article 6 dismissal" is by its nature a unilateral termination of the contract and serves a different purpose to the mutual termination agreement.

It is expected that the introduction of the mutual termination agreement will mean that an article 6 dismissal is no longer used when the parties actually agree in terminating the contract and use the dismissal to remedy the absence of a mutual termination scheme entitling the employee to draw unemployment benefits.

However, it may be the case that the previously mentioned informal mutual termination agreements will no longer be used. Their validity might even be jeopardised if the Courts determine that any mutual termination agreement now needs to comply with the formal legal process.

Future actions

This draft bill will now be submitted to Monaco government's review, and we can expect that some changes will be suggested.

We can expect changes and further debate relating to:

- The absence of a minimum indemnity for an employee who (i) has less than 2 years' service, and (ii) is not covered by an individual or collective agreement providing this indemnity. Especially considering that in such cases, an employee would have obtained a dismissal indemnity where there has been a dismissal without grounds ("article 6")
- The statute of limitation to challenge the validity of this termination, is currently set at 6 months, which might be deemed to be insufficient for employees compared to the common law 5 years' statute of limitation.
- The need for one party to formalise their intent to initiate negotiations on the termination: we expect that neither party will want to formalise their intent, nor would they be advised to do so. More generally, employers will need to take great care when entering into these negotiations. We anticipate that employers may be at risk if they were to consider triggering an article 6 dismissal following the failure of any discussions related to a mutually agreed termination.

The Netherlands

Development and date

Multiple employment law developments

There are multiple developments to keep an eye on. In some cases, employers must start preparations in the last quarter of 2023.

The developments vary from new to pending legislation, up to plans announced by the Ministry of Social Affairs.

Bear in mind that the Dutch government changed on 7 July this year and that after the elections on 22 November 2023 it may take some time to establish a new government. This will cause a delay to plans which have been announced or are pending.

The changes include:

- From 1 January 2024 new legislation is expected on the registration of CO2 emissions for work-related travel;
- Pending legislation regarding the right to work from home which is scheduled for a vote on 12 September 2023;
- From 17 December obligations for certain employers regarding whistleblowers;
- Possible changes to non-compete clauses.

Description

CO2 emission registration

Large employers (100 or more employees) will have to register and report their CO2 emissions from work-related travel annually. The report must include the total kilometres travelled for work, the transport means, and fuel types used as well as the employee commuting patterns. The government has provided tools to support employers in the preparation and registration.

Right to work from home

Currently there is no right for employees to work from home. Legislation which is pending will enable employees to work from home. An employer can only refuse the request based on the principles of reasonableness and fairness and by weighing all of the interests.

Internal reporting system whistleblowers

The whistleblower legislation came into effect on 18 February 2023. However, employers with 50-249 employees were given a delay in implementing an internal notification system until 17 December 2023.

Possible changes to non-compete clauses

New limitations to non-compete clauses may be introduced such as a limitation in (geographical) scope and the obligation to pay compensation depending on the last salary of the employee.

Impact and risk

CO2 emission registration

To limit the CO2 emission from work-related travel, employers must promote less impactful travelling to work. Each year on 30 June, the employer must submit the registration of the previous calendar year.

Right to work from home

If the legislation is adopted, employers must be prepared and re-think which roles under what circumstances can or cannot work from home. Unprepared employers can be confronted with employees that can successfully claim remote working from home.

Internal reporting system whistleblowers

Employers failing to timely implement an internal reporting system can be faced with claims from people are protected under the new whistleblowers legislation. There is also a risk of reputational damage as whistleblowers may opt to report with an external regulator rather than making an internal report first.

Possible changes to non-compete clauses

It is too soon to identify possible risks but if legislation based on the plans is implemented employers will need to give non-compete clauses a second thought.

Future actions

CO2 emission registration

It is recommended that employers review the tools and guidelines and start collecting data on work-related travel within their organisation.

Right to work from home

Assuming the legislation will be adopted, employers should review their remote working policies and identify roles that can or cannot work from home.

Internal notification system whistleblowers

Employers should develop an internal reporting system, making use of the experience other employers have gained since 18 February 2023 and ensure that the works council is asked for consent prior to implementation.

Possible changes to non-compete clauses

Keep an eye on possible new legislation. No concrete action is advised at this stage.

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Norway

Development and date

Assignment of personnel from staffing agencies

On 25 May 2023, the Norwegian government adopted new rules mandating staffing agencies operating in Norway to be approved by the Norwegian Labour Inspection Authority. Under current legislation, there is only a requirement of registration. The new rules will apply in full from 1 January 2024. The adoption is aimed at combating social dumping and ensuring there are serious providers of personnel services.

The rules are part of the recent transformation of the legislation on assignment of personnel from staffing agencies, whereby the room for such assignments have been significantly reduced. In essence, from 1 July 2023, such assignments are only permitted under one of the three following scenarios:

- For temping work (i.e. to cover sick leave, parental leave etc.)
- Where the entity the employees are assigned to is bound by a collective wage agreement with a labour union with more than 10 000 members, and the entity has entered into an agreement with the relevant local employee representatives on temporary assignment of personnel.
- The assignment concerns employees with special skills who are performing advisory and consulting services in clearly defined projects

Description

All staffing agencies operating in Norway will need to apply for approval to the Labour Inspection Authority. Assignments to/from staffing agencies that are not approved, will be prohibited.

The approval, applications for and rejections of approval, will appear in a register. This register may be used by entities utilising personnel from staffing agencies to verify that contractors fulfil their duties in this regard.

In order to be approved, the staffing agency will need to document that a number of statutory obligations are fulfilled. This includes e.g. the requirement of written employment agreements, occupational injury insurance and routines ensuring the rules on equal treatment of wages and employment conditions are complied with. The agency will also need to document that it fulfils its registration duties with regards to the mandatory Norwegian official registers.

Upon approval, the staffing agency will be required to annually report to the Authority its continued compliance. Every third year, the staffing agencies will be required to submit updated documentation, substantiating that the agency still fills the requirements for approval.

Impact and risk

From 1 January 2024, assignments from staffing agencies will only be permitted when the staffing agency is approved by the Labour Inspection Authority. As a transitional arrangement, assignment from staffing agencies that have applied for approval is legal up to 1 March 2024.

If entities take on assignments from staffing agencies that are not approved by the Authority (or have applied for approval before 1 March 2024), the employee(s) may claim permanent employment with the entity as well as compensation. Non-compliance may also entail penalties for violations from the Authority and is a criminal offence which may be penalised.

Future actions

All entities defined as staffing agencies under Norwegian statutory law, supplying personnel to entities in Norway, need to apply for approval with the Authority, by 1 March 2024 at the latest. Routines for fulfilment of the requirements, including annual reporting and submission of documentation every third year, should be established and implemented.

For certain foreign staffing agencies, there are additional requirements that may require action, including appointing a Norwegian representative with the power of attorney to receive claims and perform legal actions on behalf of the staffing agency.

Entities utilising personnel from staffing agencies should ensure that all agencies used are approved by the Authority after 1 January 2024 (or have applied for such approval by 1 March 2024). Routines for verification of such approval at regular intervals should be adopted and implemented. Contracts on assignment of personnel from staffing agencies should reflect the continued duty of approval and corresponding indemnifications in case of non-compliance.

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Peru

Development and date

Two limitations on the outsourcing of employment have been declared illegal

On 23 July Peru's National Consumer Protection Authority (INDECOPI) published a resolution declaring that two prohibitions imposed by the Ministry of Labour regarding outsourcing constituted illegal bureaucratic barriers.

As a consequence, INDECOPI has ruled that these limitations are unlawful for all citizens and organisations that could be affected by those limitations.

Description

The provisions declared illegal are contained in a Supreme Decree. It prohibited the outsourcing of employment activities that are part of the core business of a company. It also provided that outsourcing is considered fake and false if the outsourcing company moves personnel to the facilities of the user company to carry out activities that are part of the core business of the user company.

INDECOPI's decision to declare these two prohibitions illegal is based on a law published in 2008, which regulates outsourcing. This law expressly allows a third party to take over a part of a company's production process without establishing any limitation in this regard. It also does not contain any prohibition to outsource the main activity of the business.

INDECOPI's resolution also invokes several decisions of the Supreme Court of Justice that have said that the Law allows outsourcing of the main activities of a company, and therefore, since the Ministry of Labour has established a limitation in this respect, the change introduced by the Supreme Decree is illegal because it contravenes the Law.

Impact and risk

During the time that the Supreme Decree that INDECOPI has declared lawful was in force (February 2022 to July 2023) the ability to outsource the main activity of a company was prohibited.

As a result of INDECOPI lifting this prohibition, employers will now have less restrictions placed on them when considering outsourcing.

The fact that the resolution has been published in the official gazette, despite being a first instance resolution, suggests that the Ministry of Labour has not appealed the resolution, so it would be final.

In any case, if it were to be reviewed by the INDECOPI Court or challenged before the Judiciary, the fact that the Supreme Court has ruled on several occasions in the same sense suggests that the decision will be maintained.

Future actions

The publication of this INDECOPI resolution was expected by a large number of private employers, since shortly after the original Supreme Decree was published, INDECOPI published precautionary measures temporarily suspending the ban on outsourcing the main activity of a company, while the merits of the discussion were analysed.

Employers now have some certainty around outsourcing without fear that the State will prevent the outsourcing.

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Poland

Development and date

Special protection for employees in litigation

The President has signed off an amendment to the Civil Procedure Code, granting employees additional rights in employment termination disputes. The law will come into force on 22 September 2023.

Description

Employees who have certain protections on termination of employment (e.g. trade union activists or pregnant employees) can make a request to the court, from the beginning of the court case, to grant them additional protection. They can ask to retain their employment despite the dismissal until the court case concludes. The court can only decline the request if the employee's claim lacks clear grounds.

Non-protected employees can enjoy this right at a later stage of the litigation. After winning a case in the first instance, employees can request to continue their employment, and the court must grant them this protection.

Impact and risk

In most cases, courts will automatically grant this protection upon the employee's request. As a result, employers may have to continue employing the dismissed employee during the court proceedings.

Future actions

Employers should consider compromise agreements instead of termination notices for protected employees if the case is weak.

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Serbia

Development and date

Amendments to the Law on Foreigners and to the Law on the Employment of Foreign Citizens

New amendments to the Law on Foreigners and to the Law on Employment of Foreign Citizens were adopted on 26 July 2023 by the National Assembly.

Description

The amendments were introduced to give Serbia a more competitive labour market, where employers can gain access to a simpler and faster procedure for engaging 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 permanent residence may be granted to a foreigner after three years of continuous residence instead of the current five years.

The amendments also enable foreigners with a single permit to change their employer or to work for several employers if the relevant employment service agrees.

Impact and risk

The integrated work permit will provide a much simpler and faster process, especially when the whole procedure will be conducted online. The whole process is expected to last only 15 days, while at the moment the two separate procedures take around 45-60 days.

The simplified procedure 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.

Future actions

The most relevant amendments will apply from 1 February 2024.

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Singapore

Development and date

Workplace Fairness Legislation

In March 2023, the Tripartite Committee on Workplace Fairness – comprising the Ministry of Manpower (MOM), the National Trades Union Congress (NTUC), and the Singapore National Employers Federation (SNEF) – released an interim report with their recommendations for the Workplace Fairness Legislation.

The legislation is anticipated to come into effect in the second half of 2024 and will address – among other things - existing measures taken by employers to tackle workplace discrimination, all stages of the employment process, as well as grievance handling policies.

Description

The Tripartite Committee's recommendations include measures to strengthen protections against workplace discrimination. The existing Tripartite Guidelines on Fair Employment Practices will be retained and enhanced to work in concert with the legislation. This will cover all stages of employment, from hiring to termination.

The report also contains provisions to support business/organisational needs and national objectives, such as allowing employers to consider a protected characteristic in employment decisions, exempting smaller firms from the legislation at the start of its implementation, as well as allowing religious organisations to hire in accordance with religious requirements.

The Committee recommends putting in place compulsory grievance handling processes, and requiring compulsory mediation for workplace discrimination claims before adjudication at the Employment Claims Tribunal (ECT). Unions will also play a constructive role in dispute resolution for workplace fairness. To ensure fair outcomes through redress for victims of workplace discrimination and more appropriate penalties for breaches, the Committee has suggested for parties to explore non-monetary remedies and to empower the ECT to strike out frivolous and vexatious claims, including by awarding costs against such claimants.

Impact and risk

The new Workplace Fairness Legislation aims to provide stronger protection against workplace discrimination and to support Singapore's key social and economic objectives and to promote greater participation in the workforce by mature workers, women, persons with disability and persons with mental health conditions.

The legislation will also act as a deterrent to unfair practices by incalcitrant employers. It also aims to level the playing field and provide fair opportunities for workers, and hopes to improve HR standards in Singapore and enhance workplace fairness for local professionals, managers and executives.

Future actions

Employers should start looking into their hiring processes to ensure that they are using fair recruitment practices, by considering a candidate's skills, experience and ability to perform the job rather than personal attributes that are irrelevant, such as race, age, gender, religion, marital status and family responsibilities or disability.

Employers who have yet to do so should consider putting in place grievance handling procedures to resolve grievances and disputes at the workplace.

In short, employers should start looking at their organisation's fair employment practices to begin rooting out discriminatory practices and policies.

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Slovakia

Development and date

Amendment to Whistleblower Protection Act

The National Council of the Slovak Republic has adopted an amendment to the Protection of Whistleblowers and on the amendment and supplementation of certain laws (the "Whistleblowers Protection Act").

Most of the provisions of the amendment came into force on 1 July 2023, while the rest of the amendment (provisions altering the rules for the internal whistleblowing system and fines) will come into force on 1 September 2023.

The amendment transposes the EU Directive on the protection of people who report breaches of Union law (the "Directive").

The regulatory framework prior to the amendment was not fully in conformity with the Directive, which placed Slovakia at risk of an infringement procedure, even though the legislator had already transposed large parts of the Directive.

Description

The amendment has expanded the scope of whistleblowers protected under the Whistleblowers Protection Act. The current definition, after the amendment, includes protection for whistleblowers working outside of standard employment relationships, such as members of a statutory body, self-employed individuals, trainees, volunteers or contractual partners.

In addition, whistleblowers will not be restricted by the protection of trade secrets. Reporting facts related to trade secrets will not be considered a violation of the trade secret anymore.

Similarly, the amendment also expands the protection against retaliation measures for people other than the whistleblower who are affected by the report. It also introduces a list of examples of forbidden retaliation measures from the side of the employer (for example, termination of employment or contract, reduction of wages, non prolongation of a contract concluded for definite time period etc.).

Further changes relate to the obligation to establish internal whistleblowing system and new administrative fines.

Impact and risk

The amendment significantly alters the personal scope of the Whistleblower Protection Act, awarding protection to a greater number of people, which potentially increases the number of reported incidents.

Furthermore, the periods for verification and informing the whistleblower about the outcome of the verification of the reported incident will be shortened to a total of 90 days, which can make it more challenging for the employer to timely verify reported incidents and notify the whistleblower.

An administrative fine with an upper limit of EUR 100,000 might be imposed on an employer who fails to implement an internal whistleblowing system or who takes a forbidden retaliation measure or employment action against a whistleblower or a protected person without the consent of the oversight authority.

Under the amended version, the obligation to introduce an internal whistleblowing system will extend to a new group of employees, such as employees rendering services in finance, transport safety, or environmental sectors, which was not the case before the amendment.

Future actions

Employers will be required to facilitate reporting to the extent and according to the restrictions introduced by the amendment. It can be surprising for employers that the whistleblower protections now applies not only to employees but also to self-employed individuals or contractors.

Employers who do not have an internal whistleblower protection system in place should reassess whether they are obliged to implement such a system after the amendment. Employers who already had an internal whistleblower protection system in place prior to the amendment should review to determine whether it is compliant with the amended Whistleblower Protection Act.

External outsourcing of the whistleblower protection system is permissible to a limited extent. In cases where private companies with fewer than 250 employees' contract with a third party to verify reports, they still need to have a designated person at their workplace responsible for verifying notifications and engaging in subsequent communications with the whistleblower.

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Slovenia

Development and date

Amendments to the Employment Relationship Act

On 23 June 2023, the Ministry of Labour, Family, Social Affairs and Equal Opportunities issued the draft Law on Amendments and Additions to the Employment Relationship Act.

The purpose of the amendments is to implement the EU Directive on transparent and predictable working conditions and work-life balance for parents and carers.

Additionally, some changes that are not related to the implementation of the Directives have also been proposed.

Description

Amendments related to the Directive on transparent and predictable working conditions include:

- additional obligations regarding providing information to the employees,
- right of the employee to suggest a change/ conclusion of a new employment contract;
- amendments to probationary work under a limited-term contract; and
- incorporation of education and training in working time.

Amendments related to Directive work-life balance for parents and carers include:

- additional measures related to part-time work;
- additional measures related to working from home and provisions that allow more flexible working time arrangements; and
- the introduction of a carer's leave.

Other amendments include:

- a change in regulation of agency work;
- a new definition of part-time work;
- an upgrade of the procedure for ordinary dismissal due to culpability reasons;
- a suspension of the effect of dismissal for workers' representatives;
- changes to weekly rest period;
- provisions on the protection of employees who are victims of domestic violence; and
- changes to judicial termination.

Impact and risk

The adoption of these changes will ensure that Slovenian employment law is in line with EU law. The legislation will provide employees with additional rights as well as safeguards in the employment relationship.

Future actions

Employers will need to ensure that they comply with the new legislation and adapt their internal rules to take account of the changes. The adoption of some of these amendments implies additional costs for employers in the future.

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Spain

Development and date

New rights to leave periods

A law passed on the 28 June 2023 modifies certain articles of the Workers' Statute and brings new employment measures into force.

This new regulation:

- strengthens the right to a work-life balance;
- creates a new right to parental leave; and
- extends certain paid leave and the right to adapt working hours.

The law came into force on 30 June 2023.

Description

Newly approved leave periods include the following:

- Marriage leave: Extended to long-term couples under 'common law partnerships'.
- 2 days' leave due to accident or serious illness, hospitalisation, or surgery: Extended to 5 days and, in addition, may be used to care for non-family members, such as cohabitants.
- Adaptation of working hours: Extended to employees who need to care for children over 12 years of age, as well as for other dependents when they live in the same home and cannot look after themselves.
- New paid leave of 4 days a year: Absence from work due to force majeure when necessary for urgent and unforeseeable family reasons.
- New parental leave of up to 8 weeks to care for a child: May be taken by employees (men and women) until the child reaches the age of 8, whether or not on a continuous basis, and on a full or part-time basis.
- Leave of absence and reduction of working hours: May also be requested to care for spouse or common-law partner, as well as blood relative of common-law partner.

Impact and risk

In order to give effect to these new rights, the law provides special protection to people who may suffer any sort of harm as a result of taking the leave.

For example, the dismissal of an employee who has taken an eight-week leave or the dismissal of employees who have opted to adapt their working hours may be declared null and void, unless the employer justifies the alleged cause for dismissal.

Future actions

As these regulations are already in force, two measures must be taken by employers:

They must prepare for their employees to ask for the leave periods.

They must take into account this new risk when evaluating the possible termination of an employee justifying in detail the cause that has been alleged for the dismissal, since otherwise the dismissal may be declared null and void.

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Switzerland

Development and date

New Framework Agreement concerning the coordination of social security rules for remote workers

Switzerland and certain EU and EFTA countries have signed a new Framework Agreement on social security coordination rules to facilitate cross-border remote working.

This agreement has applied to Switzerland since 1 July 2023.

Description

Previously, the obligation to pay social security contributions will move to the country of residence if the employee's activity in the country (including remote working) exceeds 25%.

However, Switzerland and certain EU and EFTA countries have now signed a new Framework Agreement on social security coordination rules to facilitate cross-border remote working.

This Framework Agreement allows cross-border employees to work remotely for up to 49.9% of their working time in their country of residence, while remaining subject, for social security purposes, to the legislation of the country in which the employer has their registered office.

It should be noted that the Framework Agreement only applies in situations where the employee is linked to the employer by an electronic connection. Purely manual work does not qualify as remote work.

Impact and risk

Until now, Swiss employers commonly capped remote working for cross-border commuters at a maximum of 25% of their working time, in order to avoid the application of the social security system of the employee's country of residence.

The Framework Agreement now provides for more flexibility with regard to the social security aspects of cross-border remote working.

However, the rules of the Framework Agreement only apply to the countries that have signed it. Accordingly, since 1 July 2023 the rules apply to Switzerland's neighbouring countries Germany, France, Liechtenstein and Austria, but not yet in relation to Italy (where the 25% limit still applies).

Future actions

As a starting point, employers should be aware of the fact that the Framework Agreement may provide for more flexibility to allow cross-border remote working without falling out of the scope of the employer's social security system.

Nevertheless, in each case, employers will have to verify whether the Framework Agreement applies, both with regard to the country involved as well as with regard to its scope (limitation to electronic remote working).

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Türkiye

Development and date

Minimum wage increase

The Minister of Labour and Social Security has announced that the minimum wage will be increased by 34% in Türkiye. The new regulation will take effect from 1 July 2023.

Description

In the second half of 2023 the monthly gross minimum wage will be TRY 13,414 (EUR 454)*, with a net amount of TRY 11,402 (EUR 385)*.

Impact and risk

This change is expected to have direct and indirect implications. Employers and companies operating within Türkiye will be the most affected by this change.

1. Increased labour costs: Employers and companies will experience a direct impact in their labour costs. The latest increase will require them to allocate additional financial resources in order to meet the salary requirements of their employees.
2. Business operations and profitability: Certain industries, which often rely on a significant number of low-wage workers, may experience a more pronounced effect. Employers in these sectors should assess the potential impact and act accordingly. Employers may need to consider alternative measures to optimise operational efficiency.
3. Legal compliance: Companies must ensure compliance with the updated minimum wage regulations. It is crucial for them to review and revise their employment contracts, payroll systems, and relevant policies to reflect the new wage requirements and to avoid legal consequences.

Future actions

The increase in the minimum salary shows the government's dedication to controlling inflation and enhancing the financial situation of its workforce. Employers and businesses should carefully consider how this higher minimum wage will affect their operations, finances, and human resources while also getting professional advice to make sure they are complying with the new legislation.

* Calculated on 17 July 2023 at 15:30 according to the Indicative Exchange Rates determined by the Central Bank of the Republic of Türkiye.

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Ukraine

Development and date

Update on military accounting regulations in Ukraine

New rules improving the time limits for exempting employees from conscription during the period of mobilisation and martial law were adopted by the Ukrainian Government and entered into force on 02 May 2023.

The Ministry of Economy and the Ministry of Digital Transformation are developing an electronic review procedure relating to this process.

Update on state holidays

New laws were voted by the Parliament regarding changes to state holidays in May and June 2023.

Description

The following time limits are set for public authorities:

- 5 working days – for the review of the application by the competent central governance authority or local military administration;
- 10 working days – for the review and approval of the application by the General Staff of the Armed Forces;
- 5 working days – for making the decision by the Ministry of Economy; and
- 5 working days – for special military registration by local military commissariats.

This new mechanism will include an online procedure for submitting applications by employers to exempt employees from mobilisation. It will also introduce online communication with responsible authorities (avoiding paper exchange of documents).

Update on state holidays

The following days will be state holidays after the termination of the martial law regime:
8 May - The Day of Remembrance and Victory over Nazism in the Second World War of 1939-1945 (instead of 9 May);
15 July – The Day of Ukrainian Statehood (instead of 28 July);
1 October – The Day of Defenders of Ukraine (instead of 14 October); and
25 December – Christmas (instead of 7 January).

Impact and risk

The new amendments should create clear and predictable timelines for employers in relation to the procedure for exempting their employees.

Companies will be able to submit all the necessary documents to exempt their employees from conscription and receive answers through the online resources in a much faster process.

Update on state holidays

The new state holidays dates will need to be taken into account in the operational plans of businesses.

Future actions

In order to exempt their employees, eligible companies should complete and apply a specific application form.

The electronic review system is still in development, so a watching brief is recommended to keep up to date on developments.

We recommend that companies keep a record of all legislative changes, which will need to be followed once the martial law regime is cancelled.

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United Kingdom

Development and date

Reform of non-compete clauses in contracts of employment

The UK government has announced plans to introduce a three-month statutory limit on the duration of contractual post-termination non-compete restrictions.

No timeframe has been given for when the change will be introduced.

The announcement followed a consultation process which started in December 2020.

Other employment law reforms relating to changes to holiday pay and other minor matters were announced at the same time. For more information on these issues generally, see our LawNow: Government announces multiple post-Brexit employment law reforms

Description

The consultation which opened in December 2020, proposed two main options for reform: 1) mandatory compensation for non-compete clauses (noting that in the UK there is currently no requirement for someone to be paid in respect of any period where they cannot work due to a non-compete); and 2) an outright ban on non-compete clauses. The government rejected both of these options.

Instead, the government chose the three-month statutory limit, which was only briefly mentioned in the original consultation.

Non-competes are recognised as the most onerous restriction that can be put in place, given they limit what work can be done after employment ends. Other restrictive covenants, such as non-dealing and non-solicitation clauses, would not be affected by the proposed reform.

Non-compete clauses in other types of agreement beyond employment contracts, such as partnership agreements, Limited Liability Partnership (LLP) agreements and shareholder agreements, where the balance of bargaining power is more equal, are also not intended to be affected.

Impact and risk

Imposing a three-month limit in non-compete clauses is a significant development.

This will restrict an employer's ability to protect post-employment competitive activity.

This change will have the most significant impact where post termination restraints are commonly used: at senior levels, in sales and customer facing roles, and technical roles where employees are privy to trade secrets and confidential information.

There is a great deal of uncertainty around how this limit will operate in practice.

The information published so far does not address whether indirect restraints contained within deferred remuneration schemes, equity arrangements or long-term incentive plans, where a non-compete clause is frequently factored in to "good leaver" definitions, would be caught by the statutory limit.

Until the legislation is drafted, we do not know how the provisions will apply to existing clauses which exceed three months.

Future actions

In advance of this change coming into force employers should review their contractual arrangements to ensure there is sufficient protection in place when staff leave.

Employers should take advice regarding other/additional approaches to business protection. For example, they may want to include longer notice periods and/or garden leave periods. Or they may wish to impose additional requirements in their confidentiality or intellectual property provisions.

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