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 May 2022.

The CMS Employment team

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Belgium

Development and date	Description	Impact and risk	Future actions
Simplified temporary unemployment procedure On 14 March 2022, the Federal Government extended the simplified temporary unemployment procedure for the period from 1 April 2022 to 30 June 2022. This applies to both temporary unemployment resulting from the Covid-19 pandemic and to temporary unemployment related to the conflict between Russia and Ukraine.	An employer may only place their employees on temporary unemployment in certain situations. This decision of the Government broadens one of the grounds for temporary unemployment, namely the “force majeure” ground. Force majeure has a very strict definition. With this decision, however, the Government accepts that the entire temporary unemployment due to (i) the Covid-19 pandemic or (ii) the conflict in Ukraine (also if it occurs before 1 April 2022) can be considered as temporary unemployment due to force majeure up to and including 30 June 2022. Doing so the Government introduced an exception to the strict definition of force majeure, and temporarily broadens the term.	This means that an employer can put their workers on temporary unemployment: – in the event of a complete suspension of t he performance of the employment contract (e.g. due to a compulsory quarantine of a worker who is not ill or due to a total shortage of raw materials as a result of an imposed trade embargo);or – when there is a partial suspension (the worker can still work some days per week) of the performance of the employment contract (e.g. due to the loss of a part of the sales market or reduced production due to high energy prices).	The employer is no longer obliged to notify the NEO (National Employment Office), about temporary unemployment due to force majeure related to Covid-19 or Ukraine. Instead, on a monthly basis they should submit the electronic declaration of social risk (DRS scenario 5) on the portal in the social security website. In this declaration the employer must declare the number of days during which the worker has been temporarily unemployed during the previous month.
Access to the labour market for Ukrainian refugees Ukrainian refugees who arrive in Belgium can apply for temporary protection, which will allow them to stay in the country and work for a year starting from the 4th of March 2022. The sectors and companies facing staff shortages, that are seeking jobseekers will therefore be able to employ those refugees.	Ukranian refugees that arrive in Belgium will be able to apply for temporary protection at the registration centre in Brussels. Once they have applied for and obtained temporary protection, they will be able to go to the town hall of the municipality where they are staying to apply for an identity card A. This will allow them to work within the Belgian labour market.	Employers should keep in mind that the employment of Ukrainian refugees without a work permit is illegal and subject to severe penalties. Therefore, before hiring a Ukrainian refugee, employers should always verify that they have registered at a registration centre and applied for an identity card A at the municipality.	The identity card A will give them unlimited access to the Belgian labour market for one year. Unlimited access to the labour market means that the person can work for any employer without restrictions. The employer does not need to undertake anything, as soon as the Ukrainian refugee has applied for their identity card A, and in the meantime has received an annex 15 from the municipality, the employer can employ the individual.

Bulgaria

Development and date

Amendments in the social security laws
The Bulgarian Parliament has successfully approved, among other changes, the following:

- an increase in the minimum salary in the country;
- an increase in the social security contribution ceiling;
- a recognition of up to 90 days of unpaid leave for 2022 as a work and social security benefit in comparison to the previous entitlement which was up to 30 days per year;
- lower weekend taxes from 10% to 3%, which concerns employees and business owners who use company vehicles and accessories during the weekend.

These changes are part of the financial framework of the 2022 State Budget. They are envisaged to become effective on 1 April 2022.

Description

Following the 2022 State Budget, the minimum monthly wage will increase from BGN 650 to BGN 710, while the social security contributions ceiling will increase from BGN 3,000 to BGN 3,400.

The newly approved increased social security contributions ceiling is perhaps the most important change of all. It will affect highly paid employees, who work mostly in the IT, consulting, finance, and healthcare sectors.

The increase of the threshold to BGN 3,400 means that the cost of social security contributions will increase by BGN 130 per person per month to a total of BGN 1,112 per month.

Impact and risk

The new minimum salary of BGN 710 marks an increase of 9.2% compared to 2021 with a minimum hourly wage of BGN 4,29, while the social security contributions ceiling will increase by 13.3%.

Setting a new minimum salary appears to rely more on the desirable outcomes, namely, to fight poverty and improve the overall well-being rather than the actual present circumstances (what businesses can afford to pay). It may be challenging for businesses in small towns to pay the increased salary to their employees.

In addition, the increase in the social security contribution ceiling will be a burden to both employers and high earners, mainly those in the IT, healthcare, consulting and financial sectors, as it will increase the costs for social security contributions.

Future actions

The employer's payroll department will need to introduce the system changes to reflect the increase in the minimum salary (if there are any employees receiving minimum salary) as well as the increase in the social security contribution ceiling.

Employers will also have to consider whether they will solely bear the increased cost for social security contributions in order to keep their employees happy. If not, the employees are expected to earn approximately BGN 56 less per month.

Chile

Development and date

New regulation of platform work
On 11 March 2022, a new law was published regulating “platform work”.

This new law adds a chapter to the Chilean Labour Code, which regulates the rights to which workers on digital platforms are entitled.

Chile is one of the first countries to regulate this matter. Before this law, the matter was not settled by the Courts, there were rulings that declared that such personnel should be considered as employees regulated under the Labour Code, while there were other rulings stating that they should be considered as independent contractors.

Description

The law creates a special regime for platform work. First, it establishes special protection for this type of work. Second, it extends the protection granted by the general provisions of the Labour Code in matters such as working hours and remuneration.

The law contains a definition of a “Digital Service Platform Company”, which is broad in terms of types of service, including the delivery of goods and small passenger transport. However, platforms that act as digital marketplaces are excluded, limiting the application of the rules only to on-demand service applications.

The law distinguishes between two types of platform workers: dependent digital platform employees and independent platform workers. To distinguish between the two, the law resorts to the general principles established in articles 7 and 8 of the Labour Code, that is, the existence of subordinate, dependent and employed work.

Impact and risk

The establishment of standards in areas such as remuneration, working hours and health and safety measures are improvements for a sector of the economy where the lack of regulation allowed, in some cases, precarious working conditions.

However, the wording contained in the law is not clear, so the interpretation of the Courts to distinguish between the two categories of workers is not clear. This creates uncertainty.

Future actions

Digital platforms must formalise their relationships with their service providers, who will be ruled by the Labour Code.

China

Development and date	Description	Impact and risk	Future actions
Impact of Covid-19 (Omicron) From February 2022, the spread of Omicron has forced several cities, including Changchun, Jilin, Shenyang and Shanghai to take control and prevention measures. These measures have had a significant impact on the day-to-day operations of the companies located there.	The control and prevention measures vary from location to location, mainly involving lockdown and the restriction of gatherings of people such as crowds. In Changchun and Jilin, the entire cities went into lockdown on 11 March. So did Shanghai from 28 March. People are not allowed to go out and are forbidden from gathering. All companies in these cities except for those involved in public services have been ordered to suspend operations. A few companies who have special permission can arrange for some employees to attend work if they can work in isolation without coming into contact with other people.	Due to the control and prevention measures, employees are not able to go to their workplace. Some companies are temporarily closed due to local policies or because of the nature of the business.	According to the current policies, during the lockdown period, companies must pay employees full salary, but can arrange for employees to work from home. For those who are not able to do so, employees may take annual leave and/or other types of leave. After taking relevant leave entitlement, companies may arrange for employees to be suspended from their work. For the first month of suspension from work, employees shall be paid normally. For the period exceeding one month, companies can pay employees the living allowance according to local policies, which is 70% to 100% of the minimum wage according to the location. In Shanghai, the living allowance can be decided by the employer upon consultation with employees at the minimum RMB 2,072 (around GBP 250). The control and prevention measures are expected to evolve according to the development of the pandemic subject to the decisions of local government. Companies may wish to keep a close eye on government notices.
New Social Insurance Fund Administrative Management Measures The amended Social Insurance Fund Administrative Supervision Measures were published on 9 February 2022 and took effect on 18 March 2022.	The amended Measures specify the situations where a company or an individual is deemed as obtaining social insurance benefits by cheating, such as participating in a social insurance scheme using fake personal information or based on a fake labour relationship, applying for pension benefits with fake personal files, or applying for work-related injury benefits with false work-related injury accident or fake supporting documents, etc.	The newly amended Measures outline the legal consequences of obtaining social insurance benefits by cheating. The relevant company or individual will be ordered to refund all the social insurance fund gained by cheating. A penalty amounting to 2-5 times the social insurance fund gained by cheating will be imposed. Where a crime has been committed criminal liability shall be pursued according to law.	Companies should carefully follow the statutory laws and regulations when participating in a social insurance scheme and social insurance benefits. The new Measures specifically pay attention to the risks of providing social insurance to employees at locations where companies do not have a registered office.

Colombia

Development and date

Right to disconnect
On 6 January 2022, a new law was published requiring employers to guarantee the right to disconnect for those employees who work remotely or at home. Employers must introduce an internal policy to regulate the right to disconnect and develop internal procedures to enable employees to report a breach of this right.

Ministry of Labour guidelines on the vaccination and management of employees with symptoms of Covid-19
On January 2022, the Ministry of Labour issued the following external guidelines:

a) External Circular 003 of 14 January 2022 states that employers can demand evidence of vaccination for employees who work in places open to the general public, or those who provide services of a public nature.
b) External Circular 004 of 13 January 2022 issued jointly with the Ministry of Health contains recommendations to deal with the fourth peak of the Covid-19 pandemic.

Description

The new law states that employers must respect the employee´s resting time and right to disconnect, and therefore, they are not allowed to make demands or requests outside their working hours, unless exceptional circumstances apply. These include urgent situations that require immediate action to avoid possible damages, or where the employees (because of their position perform a management, direction and trust role) are not subject to the regulations on maximum work.

According to these guidelines, even though vaccination is still voluntary, due to constitutional requirements employers are able to demand evidence of vaccination from employees who provide services to the public (such as receptionists, security guards, delivery and couriers) or those who work in places open to the general public (like cinemas, restaurants and clubs). Additionally for those with symptoms the Ministry recommends that doctors should investigate whether an employee could perform the activities remotely, and therefore in those cases, it would not be necessary to provide a sick leave certificate, due to the fact that the employee can work from home until the symptoms stop and while the covid test results are ready.

Impact and risk

This new obligation means that employers will need to be more careful managing their employee´s time when they are providing services remotely. Once the work schedule has finished, the employer should not contact the employee during their resting time, unless an urgent and unexpected situation transpires. It is important to highlight that non-compliance with this obligation could be considered harassment at work, potentially generating a possible investigation by the Ministry of Labour.

The guidelines say that if an employer has asked for evidence of vaccination from the employees who work with the public (listed in the circular), and they refuse to be vaccinated, then employers are able to discipline them. On the other hand, the guidelines on symptoms, sick leave and the possibility of working from home explain that where an employee is not given a sick leave certificate from the doctor and cannot work from home because of their role, then in these cases employers should consider alternatives such as holidays or agreeing unpaid leave.

Future actions

Employers must start by taking the following actions:

a) Design an internal right to disconnect policy and communicate this to all employees. Make special emphasis of its content to employees who manage teams, in order for them to avoid contacting employees outside working hours.

b) Define which employees are labelled as management, direction and trust roles in order to clarify to them that this law does not apply to them.

It is expected that the ability to demand a vaccination card could be extended to other types of employees in addition to the ones who provide services to the public and work in public places.
It is expected that in the future,-the guidelines will be changed for employees who have symptoms and do not have a sick leave certificate.
For employees who cannot work remotely because of their specific job functions, it is expected the guidelines will say the doctor should provide a sick leave certificate during the time the employee must isolate.

Czech Republic

Development and date

Employment of Ukrainian refugees
As a reaction to the war and humanitarian crisis in Ukraine, the Czech Republic introduced a set of laws (lex Ukraine) which came into effect on 21 March 2022.

The law makes the arrival of Ukrainian refugees more efficient and facilitates their inclusion in the economy by granting them a special position in the field of employment as well as self-employment. According to the law, Ukrainians residing in Ukraine prior to the war, and their family members and other individuals with permanent residence in Ukraine prior to the war are entitled to temporary protection in the Czech Republic. Once they are granted temporary protection, they have the same legal position as foreigners with permanent residence in the Czech Republic for the purpose of employment and self-employment.

Individuals who obtained a special long-term visa as Ukrainian refugees, from when the war started in February until 21 March 2022, (who did not leave the Czech Republic) are automatically considered as temporary protection holders.

Currently, the laws falling under the lex Ukraine package are to be in force until 31 March 2023.

Description

Prior to the war, Ukrainians who wanted to move to the Czech Republic for employment had to apply for the relevant residence permit.-The procedure was lengthy and cumbersome. After the war started, Ukrainian refugees were granted a special type of visa enabling them to work in the Czech Republic if they obtained a work permit, however, they did not have any additional rights and protections in employment law.

The new legislation, however, enables Ukrainian refugees who have temporary protection to work in the Czech Republic without the need for any special permit. In addition, the temporary protection status allows them to enjoy additional rights and protections in employment law.
For example, they can officially register as jobseekers with the Labour Office.

Employers do not have to notify the Labour Office of job vacancies to employ Ukrainians with temporary protection. This change accelerates the hiring process and removes any limitations on the range of positions for which Ukrainians can apply.

That said, employers still have an obligation to inform the Labour Office about the employment of a foreigner worker.

Impact and risk

The most recent changes simplify the process of integration of Ukrainian refugees in the Czech labour market.

Individuals who were granted temporary protection are also automatically covered by the Czech public health insurance system.

There are no material risks related to this matter. Nevertheless, due to the increase in refugees, the shorter and simpler process for employing Ukrainians, many of whom will struggle with language barriers as well as a lack of knowledge of employment law and standard terms of employment, might be easily exploited by Czech employers. The Labour Inspection will likely focus on employment of Ukrainian nationals in the upcoming year.

Future actions

Employers in the Czech Republic can, until 31 March 2023, employ Ukrainians more easily than ever before. Nonetheless, it is still necessary to ensure that all rules which remain in place are followed (such as informing the relevant authorities etc.)

France

Development and date

New gender equality measures
According to the High Council for Equality between Women and Men, in 2020, women represented only 21% of the senior executives and executive committees of SBF120 companies.

To remedy this situation, a law dated 24 December 2021 provides for new measures aimed at reinforcing professional and economic equality between women and men.

In particular, these measures strengthen the presence of women among senior executives and executive committees of companies.

These new provisions apply to companies employing at least 1,000 employees for 3 consecutive years. This will come into force progressively starting from 1 March 2022.

Description

From 1 March 2022 and on annual basis, companies must publish on their website the gaps of representation between women and men among senior executives and executive committees.

These gaps will also be published on the labour ministry official website from 1 March 2023.

From 1 March 2026, the minimum proportion of each sex among senior executives and executive committees will have to be a minimum of 30%. This proportion will be raised to 40% in 2029.

In addition, since 27 December 2021, companies with at least 50 employees with a works council, must disclose indicators related to the gaps in representation between men and women among senior executives and executive committees and this must be saved in their economic, social and environmental database.

Impact and risk

Companies that do not meet the target for each sex of 30% in 2026 and 40% in 2029 must provide for appropriate corrective measures in the collective agreement related to professional equality between women and men or, failing that, by a unilateral plan.

These measures must be presented to the internal committee responsible for thadministration or supervision of the company and to the works council.

Companies that do not reach the required proportion for each sex among the senior executives and executive committees have two years to comply with.

At the end of a one-year period, companies that fail to satisfy these requirements must publish the improvement targets and corrective measures adopted, in accordance with the procedures set by decree. If the results are still below the rate set at the end of a 2-year period, companies may be subject to a financial penalty, with the amount set by the labour administration, taking into account the reasons for the failure and the efforts made by the company.

The amount of the penalty may not exceed 1% of the total wage bill related to the calendar year preceding the expiration of the deadline. This provision comes into force on 1 March 2029.

Future actions

A decree authorises companies to publish their gaps in terms of representation between men and women, in a visible and understandable manner on their website by 1 September 2022.

Although the penalties for not respecting the proportion of each sex among senior executives and executive committees does not come into force immediately, companies must start taking appropriate measures now in order to be prepared to meet the relevant provisions of the law by 1 March 2029.

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Germany

Development and date

German Whistleblower Protection Act
In order to implement the EU Whistleblower-Directive into national law, the German Federal Ministry of Justice published a draft bill of the German Whistleblower Protection Act (*Hinweisgeberschutzgesetz*) on 13 April 2022.

Although changes to the draft bill are still possible until the legislative process is completed, it is expected that the new law will enter into force in the course of summer 2022. With regard to specific statutory obligations, a grace period is to apply to employers with fewer than 250 employees until 17 December 2023 – all other companies must comply with the new law with immediate effect.

Description

Whistleblowing and retaliatory behaviour is to be regulated in the future. The German draft bill stipulates that all public and private sector companies with more than 50 employees are obliged to set up internal secure whistleblowing channels so that whistleblowers can report criminal acts, certain administrative offenses and certain violations of Union law. Companies can also engage third parties, such as law firms, to perform the tasks of the "internal" whistleblowing channel.

The aim of the Whistleblower Protection Act is to strengthen the protection of whistleblowers and to ensure that they are not threatened with disadvantages in the workplace. In particular, "reprisals" directed against whistleblowers are to be prohibited. This includes, for example, dismissals, denial of a promotion, transfer of duties, issuing of a negative employment reference or the failure to extend a fixed-term employment contract.

Impact and risk

If companies do not set up or operate internal whistleblowing channels contrary to their obligations, they risk a fine of up to EUR 20,000. Reprisals against whistleblowers and obstruction of whistleblower reports can be punished with a fine against the company of up to EUR 1,000,000.

To avert these serious consequences at an early stage, companies are well advised to implement appropriate protection mechanisms for potential whistleblowers as soon as possible.

Future actions

Companies must be prepared for the obligation to set up internal whistleblowing channels. In this respect, reporting systems already in place as part of compliance systems should be reviewed and revised as necessary.

In order to operate reporting systems effectively and to comply with the wide range of the legal requirements - for example in terms of labour law and data protection law - companies will need to allow sufficient time for implementation.

Italy

Development and date

Mandatory Green Pass
From 1 April 2022, due to the end of the state of Covid-19 emergency in Italy, the rules for entering work premises changed. In addition, the Super Green Pass, the one employees receive with a vaccine dose or a certificate of recovery, will no longer be required, except for health care workers.

From April 2022, the so called "basic" Green Pass will be sufficient. This can be obtained with the vaccine, the certificate of Covid-19 recovery or with the negative result of a swab valid for 48 hours if rapid or 72 hours if molecular. The basic Green Pass will be required not only to access your workplace, but also if you work from home or remotely.

Description

In Italy, during the state of emergency declared due to Covid-19 the Government established that, in order to work, either remotely or in person, employees must have a “basic” Green Pass and at the height of the pandemic a “super” Green Pass. As mentioned, the difference between the two is that the “basic” Green Pass can be acquired with a negative Covid-19 test, although it lasts only 48 or 72 hours.

In addition to that, the Government recently established rules requiring the mandatory vaccination of employees over 50, under penalty of suspension without pay from work.

Starting from 1 April 2022, employees over 50 will be able to return to work with the basic Green Pass, although it has been confirmed that the vaccination requirement will remain for this age group until 15 June 2022. This means that an unvaccinated worker who is 50 or older can resume working with a negative result of a swab repeated every 48 or 72 hours without risking the suspension of salary nor the fine of EUR 400 to 600 provided to those who, without a Super Green Pass, still tried to access their workplace. It still remains, for those over 50 who have not complied with the obligation to be vaccinated, a one-off fine of EUR 100 by the Revenue Agency where they have been identified through cross-referencing the data on vaccination status.

Impact and risk

Employers should continue to check the employee's possession of Green Passes daily for those with basic swab Green Passes and at least periodically for those with vaccine Green Passes.

In situations where an employee does not have a Green Pass or his/her Green Pass has expired, the employee shall not enter the company’s premises and the employees shall be suspended without pay until a valid Green Pass is presented.

Where investigations by the authorities detect a worker or workers in the absence of Green Pass, both the employee and the employer will be sanctioned with a fine. The amount of the fine is determined by the number of workers involved and the repetition of the violation.

Future actions

The employer should continue with checking the passes and promoting vaccinations among employees.

We will update our clients on the expiration of the obligation for the mandatory Green Pass and vaccination.

Monaco

Development and date

Whistleblowing
Law 1.362 of 3 August 2009 on money laundering, terrorist financing, and corruption, has recently been modified by Law 1.520 of 11 February 2022, which mandates the implementation of a corporate whistleblowing system.
Employers must also establish a whistleblowing system related to harassment and violence in the workplace. (Law 1.457 of 12 December 2017)

Description

Monegasque employers must implement procedures which are adapted to the size, nature, and exposure to financial risks of the entity concerned, which allow directors and employees to report deficiencies or breaches related to the law on money laundering.

Employees and directors must be able to report breaches of anti-money laundering rules to a designated person, to their direct superior, or to the employer itself. There is also the possibility of external reporting if the internal report is not subject to any follow up within a reasonable time.

For harassment and violence in the workplace, employers with more than 10 employees must designate a person in charge of receiving reports of such conduct, informing the employer so that they can investigate and act accordingly.

Impact and risk

Anti-money laundering rules are applicable to economic actors established in the territory of the Principality of Monaco and directly named by the Law but where branches and subsidiaries have been established abroad this may also apply.

Law 1.362 of 3 August 2009 expressly provides for administrative sanctions, ranging from a warning to the withdrawal of the authorisation to practice, and financial sanctions, capped at the highest amount between five million euros or ten per cent of the total annual turnover (which may be the one resulting from the consolidated accounts of the parent company).

An employer can be liable for damages in cases where there has been a failure to implement a whistleblowing system regarding violence and harassment and/or failure to investigate such behaviour.

Future actions

Monegasque employers must check if anti-money laundering rules apply to them and to what extent. If necessary, they should adopt the necessary means to comply with their obligations which will include training and raising awareness to their staff regarding anti-money laundering legislation and reporting procedures.

Employers should, and sometimes must, implement a whistleblowing procedure in cases of harassment or violence. Employees, their representatives, as well as union representatives must be informed that such a procedure has been implemented.

The Netherlands

Development and date

Legislation on transparent and predictable working conditions
On 19 April 2022, the House of Representatives (in Dutch: *Tweede Kamer*) passed a legislative proposal on transparent and predictable working conditions. The legislative proposal is an act to implement the Directive (EU) 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union.

The purpose of the directive is twofold: (i) to improve working conditions by promoting more transparent and predictable employment, (ii) while ensuring labour market adaptability.

At the time of writing, the legislative proposal has been submitted to the Senate that will vote on the legislative proposal.

The intended implementation date is 1 August 2022 which is also the final deadline for implementation. No transitional law will be put in place. The legislative proposal will therefore have immediate effect.

Description

The most important changes in the legislative proposal are:

- Extension of the information obligation.
  An employer is required to inform an employee in writing of the essential aspects of the employment relationship within 1 week of starting employment. This includes work and rest periods, vacation arrangements, procedures in the event of dismissal, information on unpredictable work patterns, etc.
- Offering free mandatory training. An employer must provide mandatory training free of cost and the training shall take place during working hours (where possible).
- Prohibition of ancillary work clause.
  An employer may not prohibit an employee from taking up employment with other employers without an objective ground. The legislative proposal does not define what is considered an objective ground.
- Unpredictable work pattern. Employees with a completely or substantially unpredictable work pattern will no longer be required to perform work outside the agreed reference days and hours and, after 26 weeks of employment, employees will have the right to submit a written request to the employer for a more predictable work pattern.

Impact and risk

For some companies the impact of the legislative proposal will be significant.

The extension of the information obligation will mainly involve an administrative change.

In the Netherlands an employer is required to offer (i) training that is necessary for the employee to fulfil the obligations under the employment contract; (ii) training when the employee's position will be made redundant; and (iii) training if the employee is no longer able to fulfil his position. The legislative proposal impacts this obligation when training is mandatory based on Union or national law, a CBA or a regulation. The training must then be free of cost and given during working hours.

The prohibition of ancillary work will have a big impact as it is common to forbid employees to have ancillary activities. Many employers want their employees to be fully committed and having another job seems contrary to that goal. Please note that it is not necessary for an employer to state the objective ground upfront in the employment agreement. It is necessary to do so when the employee invokes this possibility.

The legislative proposal provides employees with opportunities for more predictable employment. The possible number of requests for more predictable work patterns will differ per company. An employer may refuse the request, when motivated, and thus mitigate the impact for the company if needed.

Future actions

Employers should be prepared as once adopted by the Senate, the law will have immediate effect from 1 August 2022. This means that employers should start to understand what the impact of the law could be on their company and make the necessary changes in their employment agreements.

It starts with the assessment of whether the current information given to new employees is sufficient and if not, how to align this with the legislative proposal.

Employers should also validate which training falls under the scope of mandatory training, which roles and employees this concerns and how to make the necessary changes in existing employment agreements. Such a change may also require the involvement of the works council which is a process that usually takes time.

Furthermore, employers should assess the possible impact of requests for more predictable work patterns within their organisation and how to handle such requests. An employer (with 10+ employees) is obliged to respond within one month. If there is no response in this time, the employee's request will automatically be granted.

Please note that the legislative proposal prohibits an employer to terminate a employment agreement or subject an employee to adverse treatment if an employee invokes the rights as set out in the Directive.

Norway

Development and date

Remote working legislation
On 28 March 2022, the Norwegian Government adopted amendments to the Regulation on work performed in employees' homes – the Home Office Regulation.

The Regulation was last updated in 2008. The increase in remote working during the Covid-19 pandemic saw the need to update the legal framework for this type of work. The purpose of the amendments are to adapt the rules on the home office to modern working life.

The Regulation only applies to work performed in the employees' home, i.e. not all remote work. Work performed in hotels, cafes, holiday homes etc. is not included.

Furthermore, the Regulation will only apply to work that is not "short term or sporadic". Whether the work is covered by this must be assessed on a case-by-case basis, where the scope (i.e. the number of days) of working from home and the regularity of the arrangement will be important elements.

If the work is covered by the Regulation, a written agreement (with minimum requirements) on working from home shall be entered into. The amendments will enter into force on 1 July 2022.

Description

One of the major changes relates to the rules on working hours in the Working Environment Act applying to work in the employee's home as well. The provisions on working time will be identical regardless of whether the work is performed in the office or in the employee's home.

It will also be the employer's responsibility to ensure the psychosocial work environment applies when the employee performs work from home.

Where working from home is ordered or made in accordance with a recommendation from the authorities, the employer may forego the requirement of a written agreement. Instead, written information may be provided to the employee on the matters that are normally required to be included in such an agreement. The employer must consult with employee representatives before this information is given.

The Norwegian Labour Authority is given the authority to supervise compliance with the Regulation. The Authority is not granted access to the employees' home without a separate agreement.

Impact and risk

An update to the legislation on remote working has been long awaited. The amendments will provide a more practical and suitable framework for most employers as well as employees. This applies particularly in terms of the rules on working hours which are now coordinated regardless of whether the work is performed at home or in the office. Also, should a situation like the Covid-19 pandemic arise again, the Regulation explicitly stipulates that the requirement of a written agreement may be replaced by written information to the employees. This will no doubt be of practical importance.

The clarification of the scope of the Regulation is useful. However, the threshold for when work is "short term or sporadic" may be difficult to define in practice and must be assessed for each individual employee.

Future actions

Employers should assess any arrangements of remote working already in place, to ensure they are in accordance with the amended Regulation. If employees are covered by the Regulation, a template written agreement for working from home should be drafted.

The Regulation does not provide an exhaustive regulation of all issues related to remote working. It may be useful for employers to establish a policy for remote work, addressing issues such as the handling of requests for remote working, where employees may work remotely from, IT and document security, requirements for the physical working environment when working remotely, the bearing of costs related to the home office etc. This would supplement the individual written agreements and ensure predictability for employees.

Remote working from abroad may raise particular issues. The consequences of such arrangements should be assessed, if relevant.

Perú

Development and date

Proposed changes to the Draft Labour Code
A number of changes are being proposed. These include:

- In cases of group of companies, i.e. when two or more companies have elements that link them, all the companies of the group would be jointly and severally liable for the labour rights of the employees working in two or more companies in the group.
- In order to dismiss the main union leaders for serious misconduct, the employer must request prior judicial authorisation.
- At present the indemnity for unjustified dismissal amounts to 45 days pay for each year of service, capped at 12. However, the bill proposes to eliminate this cap.
- If for economic or technical reasons, the Ministry of Labour authorises the dismissal of a group of workers, they would receive a severance payment of 22 days' salary for each year of service.
- The illegality of a strike would be determined judicially and not by the Ministry of Labor, as is currently the case.
- If it is judicially determined that the strike was caused by a breach of the employer's labour obligations, the employer would have to pay them the wages for the days of the strike.

Description

The effect of these amendments, if approved by Congress, would be to significantly increase the cost of labour and generate greater contingencies for employers.

Companies that have a group structure or need to outsource some of the activities they carry out for the development of their business, are most likely to be affected.

In addition, requiring prior judicial authorisation for the dismissal of union leaders, eliminating the existing legal ceiling for severance pay, without eliminating the reinstatement of dismissed workers, and establishing severance pay for collective dismissals for companies that are forced to reduce their workforce for economic reasons, are measures aimed at making dismissals more expensive and more difficult to carry out.

Likewise, it is expected that the draft bill will favour the development of strikes and also make them last longer, as it is intended that the Judges will be the ones to determine the illegality of such strikes and not the Ministry of Labour, thus delaying resolution. The same happens with strikes due to non-compliance with the employer's obligations, which would induce workers to strike, encouraged by the possibility that the employer will pay them for the days where there has been strikes.

Impact and risk

The modifications that the Ministry of Labour intends to introduce that regulate the relationship between workers and their employers, are intended to grant more advantages to workers, but unfortunately the proposals have not taken into account the negative effects that they would produce.

Indeed, not only would the cost of labour substantially increase, but it would also make it extremely difficult for employers to freely develop their activities, especially by making it much more difficult to dismiss workers, even though it is already quite difficult for employers to dispense with workers whose services they find unnecessary or inconvenient.

Moreover, it remains to be seen how it will work if workers can strike for non-compliance with obligations, when in many cases non-compliance is involuntary or unavoidable for small employers, given the existing excessive legal regulation that makes it difficult for many employers to comply with all the formal obligations imposed by labour laws.

Future actions

The changes are being criticised as a populist proposal because of the difficulties it will impose on formal business activities, which may force entrepreneurs to opt for informality.

According to many economists the percentage of informality in Peru is well over 70%, which would mean that if many of the proposed changes were implemented, they would end up harming the very workers they are intended to protect, since there would be less formal labour supply and more workers forced to work for informal employers who would not grant them the benefits established by law.

Poland

Development and date	Description	Impact and risk	Future actions
Support for Ukrainian citizens in relation to the armed conflict in Ukraine New regulations governing the status of Ukrainian citizens have recently entered into force with retrospective effect from 24 February 2022.	Ukrainian citizens who came to Poland because of the hostilities in Ukraine are legally permitted to stay for 18 months from 24 February 2022. The legal ability for Ukrainian citizens to stay who were residing in Poland before 24 February 2022 has been extended. The extension period depends on their residence permit. Employers may employ Ukrainian citizens without the need to obtain a work permit for them, provided that they notify the competent employment office within 14 days of the date the Ukrainian citizen starts work. Ukrainian citizens who legally reside in Poland may start and run their own commercial business activity in Poland, provided that they have a PESEL number.	The new regulations mean that Ukrainian citizens who are legally permitted to stay in Poland can easily access the labour market. Humanitarian aid which has been provided from 24 February to 31 December 2022 to Ukrainian citizens who arrive in this period from Ukraine are exempt from personal income tax.	Employers should monitor the potential amendments to these new regulations. The future Ukrainian citizens who arrive in Poland due to the hostilities on Ukrainian territory will be able to further stay in Poland based on a single, 3-year temporary residence permit. An application for such a permit should be submitted no earlier than after 9 months from the date of entry into Poland. The procedure for obtaining this type of residence permit will be simplified, and a person with this permit will be able to work in Poland without the need to have a work permit.
Lifting restrictions on Covid-19 New regulations lifting the restrictions on Covid-19, including the obligation to wear face mask, undergo isolation/quarantine, entered into force on 28 March 2022.	It is no longer mandatory to wear face masks, except for medical facilities and pharmacies. In case of Covid-19 infection or housemate's infection, neither isolation nor quarantine are mandatory. Infected employee may however, receive a sick leave certificate on general rules. Providing 1.5 m distance between workstations is no longer mandatory.	The loosening of Covid-19 related restrictions may have an impact on current health and safety conditions applicable at employment establishments. However, we recommend that employers thoroughly consider introducing any significant changes as the state of epidemic emergency still applies in Poland.	Employers may consider a return of remote employees to the offices – at least temporarily before the Government introduces any potential future restrictions related to Covid-19.

Portugal

Development and date

Remote working legislation
A new law from 6 December 2021, which came into force on 1 January 2022, redefined the remote working regime. The new regime applies to both the public and private sector.

The remote working regime now also applies to employees who are not under the legal control of the employer, i.e. service providers that are economically dependent on one employer.

The need to change the remote working legal regime is a result of changes to the way work is being performed.

The change in the legal regime, includes the definition, content, rights and duties of both the employer and employee, as well as the payment of expenses to be considered in the performance of remote work.

Description

Employees have a right to work remotely if they have a child under 3 or under 8 in special conditions. In all other situations the employer may refuse the employees' request to work remotely if the role cannot be performed remotely or if the company does not have the necessary means to provide it.

The implementation of the remote working regime depends on a written agreement between the employer and the employee. Its duration may be (i) fixed-term for less than 6 months, with the possibility of automatic renewal for equal periods or (ii) indefinite duration and either party may terminate the agreement by giving the other party at least 60 days' notice in writing. At the end of the agreement the employee is entitled to work at the company premises again.

The new regime establishes that the employer must i) pay the extra costs related to the remote work provision demonstrated by the employee; ii) ensure that the employee's home meets health and safety obligations and any obligations relating to the employee's physical and mental health iii) respect the employee's right to privacy limiting the legal contacting hours.

Impact and risk

The employer must have a mandatory accident at work insurance policy, which covers the remote working location (i.e the worker's home or other location).

The employer must provide the necessary equipment and systems for the performance of the remote work and pay the additional expenses incurred by the employee by reference to the same month of the year prior to initiation of the remote work.

The law contains the employee's *"Right to Disconnect"* which must be followed by the employer. The employer should not make contact outside working hours, except in situations of force majeure, or for the assessment and control of the remote working conditions, in a previously agreed period, between 9am and 7pm, within the employee's working hours.

Future actions

It is essential that the employer prepares a written teleworking agreement to comply with the regulation and outlines their systems on remote work. This can be done by providing a new agreement when hiring a new employee, or by an addendum to the existing employment contract.

Employers should check that the formalities required for remote work are complied with in the written agreement, namely, i) whether the remote work is permanent or there are alternative periods of remote working/face-to-face working; ii) the location of the work; iii) the working hours; iv) the activity performed; v) pay and other benefits, including the meal allowance, amongst others.

Finally, before any remote work takes place an employee should have a medical examination and the employer should certify that the place of work complies with the conditions required for remote work.

Singapore

Development and date

Changes to Foreign Manpower Policies
From September 2022 onwards, the minimum qualifying salary for applicants for the new Employment Pass ("EP") and S Pass will be increased.

The changes to the Singapore foreign manpower policy were announced during the reading of Singapore's Budget in February 2022, with a view to ensuring that the foreign workforce in Singapore is of a suitable quality for the country's needs.

EP holders are usually those who take on professional, managerial, executive and technical (PMET) roles in their relevant sectors. S Pass holders are usually mid-level skilled foreign workers.

Description

For new EP applicants, their minimum qualifying salary ("MQS") will increase from the current S$4,000 to S$5,000. For those in the financial services sector, the MQS will be adjusted from S$5,000 to S$5,500, as employees from this sector usually command higher salaries. The qualifying salaries for older EP applicants will also increase in tandem. For renewal of EP cases, these adjustments will only take place from September 2023 onwards in order to give businesses time to acclimatise to the changes.

For S Pass applicants, the MQS will be raised from S$2,500 to S$3,000 from the same period. Those in the financial services sector will also face a higher MQS of S$3,500. The MQS for S Pass holders will again be adjusted in September 2023 and 2025.

For work permit holders, starting from 1 January 2024, the Dependency Ratio Ceiling ("DRC") for the construction and process sectors will be reduced from the current 1:7 to 1:5. The DRC refers to the maximum permitted ratio of foreign workers to the total workforce that a company in a stipulated sector is allowed to hire.

Impact and risk

While Singapore continues to welcome foreign talent to its shores, the Government is making a concerted effort to ensure that employees of the appropriate calibre are being hired for the relevant sectors. This will ensure that the foreign workforce is of the right quality to complement the Singapore core workforce.

Employers in Singapore therefore need to be more judicious and selective when choosing their candidates for their foreign labour force.

The announced changes are more likely to impact the broad middle of the workforce rather than the top tier of the workforce. Top tier professionals will continue to be brought in, especially in industries where there is a shortage of certain skillsets. The upskilling of industries is likely to translate to more employment opportunities being created for both the local and foreign workforce.

Future actions

With what appears to be the waning of the Covid-19 pandemic and the decline of resident unemployment rates to close to pre-pandemic levels over the past year, Singapore is now shifting its focus to improving the quality of candidates in its foreign workforce.

Employers should start factoring in the higher MQS for the hiring of foreign employees in the EP and S Pass categories into their budget for the coming financial year.

Firms operating in manpower-reliant industries such as the construction, manufacturing and process sectors also have to begin to devise strategies on how to be more manpower-efficient, as they will have to rely on a lower proportion of foreign manpower come January 2024.

Slovakia

Development and date

New national visa for highly qualified foreign nationals and temporary refuge

A new Slovak Government regulation came into effect on 1 April 2022 which will significantly ease the entry of highly qualified foreigners into the Slovak labour market.

The regulation addresses issues faced by many employers wishing to bring in qualified workers from abroad. This issue was particularly challenging for multinational companies operating within Slovakia.

The conflict in Ukraine has caused a massive influx of refugees on the Eastern border of Slovakia. Temporary refuge is provided for citizens of Ukraine and their relatives. It also covers people under national or international protection, together with their families. The temporary refuge covers individuals who held permanent residence in Ukraine and cannot go back to their state of origin for security reasons, provided they resided in Ukraine before 24th February 2022.

Description

The new regulation outlines that 90-day visas will be made available to foreigners to look for work on the Slovak labour market without the need for a prior work agreement. Upon finding a job, the work-seeker can begin working immediately using the national visa which lasts for one year.

Three groups are in scope:

- graduates of either Czech or Slovak universities
- alumni of a higher education institution ranked top 500 or an equivalent qualification according to the European Qualifications Framework from a research institution (ranking according to QS2022, ARWU 2021, Times Higher Education 2022)
- graduates working in fields required by the job market, such as IT specialists.

The visa is issued for one year without the possibility of an extension. The holder of a visa will need to apply for a standard permit before the visa expires.

Further, the residence permit based on temporary refuge will last untill 4 March 2023. Afterwards, it shall automatically be extended for a period of six months, with a maximum period of one year.

Impact and risk

Although there can be shortages of workers with certain required qualifications in the Slovak labour market, most employers face problems in obtaining permission to employ third-country nationals who possess such qualifications. The combination of difficulties in hiring foreign workers with a lack of national workers is viewed as a major barrier to economic growth.

The regulation should result in 3000 employment visas in 2022. Furthermore, the regulation contains a list of occupations deemed as strategically important. 80 occupations fall within the scope of this regulation. Each of them adds significant value and requires a high level of qualification.

In relation to the rules on temporary refuge, problems may arise for people who left Ukraine before the 24th February.

Future actions

Employers can use this opportunity to bring in highly qualified foreign workers. It is important to understand that the visas available for 2022 are capped at 3000. This should favour the employers who will be able to act promptly.

Similarly, it will be necessary to apply for permits during the periods covered by the visa to avoid further complications. Residence and work permits remain governed by complicated procedures.

Employers should also familiarise themselves with the temporary refuge registration proceedings in order to be able to support their prospective employees.

Slovenia

Development and date

Description

Impact and risk

Future actions

Sickness absence payments

Article 137(3) of the Employment Relationship Act has been amended to reduce the period where an employer is responsible for making sickness absence payments. This change came into force on 1 March 2022.

According to the amendment, the employer will meet the costs of making sickness absence payments from its own funds, on the following basis: (i) in cases of incapacity from work due to the worker's illness or a non-work-related injury, up to 20 working days per absence from work (previously it was 30 working days), but not more than 80 working days (previously it was 120 working days) in a calendar year; and (ii) in cases where the absence is the result of an occupational injury or disease, the employer shall pay the worker up to 30 working days for each individual absence from work.

In all other cases or for longer absences from work, the employer pays the sickness absence payment at the expense of the health insurance scheme.

The amendment has a positive affect on an employer‘s costs in relation to reducing the period of paying the sickness absence payment as a result of absence from work.

Employers should take note of these changes and the new time periods.

Income tax changes

The Act amending and supplementing the Income Tax Act entered into force on 22 March 2022. The amendments apply to tax years starting from 1 January 2022.

The amendments introduced a higher monthly general tax allowance (EUR 4,500 for the tax year 2022 instead of EUR 3,500) and a revised income tax rate (there has been a reduction in the highest income tax bracket from 50% to 45%). These changes are considered in the calculation of advance personal income tax payments from 22 March 2022. Payments already made applying the previous personal income tax rate until that date will be recalculated.

The amendment has a positive affect on employees‘ net remuneration.

Spain

Development and date

Urgent measures in response to the economic and social consequences of the war in Ukraine

Royal Decree 6/2022 of 29 March ("RD 6/2022") contains new measures for alleviating the situation in Spain caused by the war in Ukraine, mainly regarding the increase in energy prices.

This regulation includes some tools aimed at avoiding dismissals due to the economic consequences of the war for those companies benefiting from public aid. In principle, these tools will be in force until 30 June 2022 – although it is possible that, once the deadline approaches, the Government will decide to extend the duration of these measures.

This Royal Decree entered into force on 31 March 2022.

Description

The two specific measures for avoiding dismissals as a consequence of the war in Ukraine are:

i) The rising energy costs will not be a valid ground for termination of companies that benefit from specific war-related aid approved by the Spanish Government.

ii) Companies which have implemented a furlough (ERTE) due to grounds related to Ukraine's invasion and benefit from public aid, shall not use these grounds for terminating employment.

Impact and risk

In general terms, companies which will benefit from specific war-related aid or implement furlough due to war-related grounds will have certain limitations placed on them regarding dismissal – in practice, dismissals related to these grounds will have higher costs.

Specifically:

- Companies that benefit from war-related aid approved by the Spanish Government that decide to dismiss employees due to rising energy costs, (i) will need to reimburse the aid received and (ii) the dismissals will not be declared fair, involving higher termination costs.

- Companies which furloughed employees (ERTE) due to grounds related to Ukraine's invasion and benefit from public aid, and, regardless of this, decide to dismiss employees because of this, then the dismissals will not be declared fair. The consequences of a dismissal in this situation is not clear, whether there is a risk of a null and void dismissal, rather than an unfair dismissal.

Future actions

Companies benefiting from public aid related to the war in Ukraine should avoid implementing objective dismissals for this reason until at least 30 June 2022.

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Switzerland

Development and date

Employment certificates and time bar
A claim relating to an employee certificate is only time barred 10 years after the end of the employment relationship.

An employment certificate in Switzerland is a form of reference letter, which an employer is required to provide. There are specific issues that it should cover including the employer's assessment of the quality of work provided and of the behaviour of the employee.

Description

According to a recent decision of the Swiss Federal Supreme Court, claims brought by an employee for an employment certificate (or for a modification of an employment certificate) will be subject to a limitation period of 10 years following termination of the employment relationship.

While this decision seems legally correct, in practice it will be very difficult to bring a claim regarding the content of an employment certificate so many years after the employee has left the employer.

Impact and risk

The decision will impact the duration of time that an employer is required to retain the relevant employee data. In particular, it means that, for example, interim employment certificates and employee review documents will have to be stored for a period of 10 years following the end of the employment relationship.

Future actions

Swiss employers will have to be aware of the case law and store the relevant employee data for 10 years following the end of the employment relationship.

Turkey

Development and date

Minimum wage, cap on severance pay and administrative fines
Every year the rates and limits for the minimum wage, severance pay and administrative fines are updated at the beginning of each year.

Current amounts are valid for 2022 and came into effect on 1 January 2022.

Description

Minimum wage
In 2021, the monthly gross minimum wage was TRY 3,577.50. From 1 January 2022, the amount was updated to TRY 5,004.00 gross. The current amount applies from 1 January 2022 to 31 December 2022.

In addition, the portion corresponding to the minimum amount of wage income has been excluded from income tax and also stamp tax.

The minimum living allowance was not paid to the State as a tax, but paid to employees by the employer. As of 1 January 2022, it has been abolished.

Severance pay cap
The severance pay cap is updated every six months. The severance pay cap that can be paid between 1 January 2022 and 30 June 2022 has been increased to TRY 10,848.59 gross. The next adjustment regarding the severance pay cap is likely to take place in 1 July 2022.

Administrative fines
In Labour Law, administrative fines are imposed for various violations, including violations of the obligation to treat employees equally, the minimum wage payment rule, the obligation to employ people with disabilities and the collective dismissal procedures. The administrative fine amounts are also updated every year. Compared to 2021, the amount of administrative fines in 2022 has been increased by 36.20%.

Impact and risk

Minimum wage
In accordance with Article 102 of the Labour Law, employers that pay less than the minimum wage will be subject to administrative fines of TRY 429 for each employee per month.

The amount of wage payment made to the employee, which is calculated by deducting 14% social security institution premium and 1% unemployment insurance premium from the monthly gross amount of the minimum wage (TRY 5,004.00) valid in the month in which it is made, will be exempt from income tax. In this regard, the income tax exemption amount to be applied in 2022 for those earning the minimum wage will be TRY 4,253.40. No income tax will be deducted from this amount. The remaining TRY 4,253.40 following the employee's social security deductions will be paid to the minimum wage earner as a net amount.

The tax to be paid for the wage income exceeding the exemption will be calculated by deducting the portion corresponding to the exemption amount from the total tax amount.

Since the minimum living allowance has been abolished, there will be no wage differentiation based on the marital status and the number of children of wage earners as of 2022.

Future actions

Employers should pay at least the minimum wage to their employees by taking into account the social security deductions.

Employers should consider updating the severance pay cap when making severance payments to their employees.

Employers should also monitor future updates to the minimum wage. It is expected that an additional increase will take place within the second half of 2022 due to high inflation rates.

Ukraine

Development and date

Deregulation of the key aspects of labour relations for the period of martial law

Following the beginning of a full-scale stage of a war of aggression launched by Russia against Ukraine on 24 February 2022, the Ukrainian Parliament adopted a law allowing employers to rearrange and deregulate employment relations in order to make it possible for employees and employers to adjust to the day-to-day realities of martial law.

This legislation came into force on 24 March 2022.

Description

The key areas of deregulation are as follows:

- an employee may be transferred to another job for the period of martial law, without their consent and without the standard two-month prior notice (except for the transfer to the area of active military actions) if the transfer is required to prevent or eliminate the consequences of hostile actions or other health or life-threatening circumstances;
- the standard maximum working hours are increased during martial law to 60 hours per week (instead of 40 hours maximum that normally apply). The start and end time of daily work is established by the employer;
- if pay cannot be paid on time due to military actions, the payment of salary may be suspended until the company resumes its core business activity;
- a new mechanism of suspension of the employment agreement is introduced - temporary termination by the parties to provide and perform of work, which does not entail the termination of the employment agreement. In this case the unpaid salary to the employee shall be reimbursed by Russia as the aggressor state;
- within the martial law period, management of HR documents and their archival storage is maintained at the discretion of the employer.

Impact and risk

The deregulation provisions will be in force for the term of the martial law's effect.

These clauses temporarily substitute certain provisions of the Labour Code of Ukraine (the main Ukrainian legislative act in the field) with the purpose of facilitating the Ukrainian economy facing these numerous challenges, but employment relations will still be primarily regulated by the Labour Code.

Future actions

The employment deregulation was drafted to respond to requests from employers and employees around the current situation.
It is recommended that Ukrainian employers and employees analyse the options to restructure employment relations to cope with the challenges of martial law in the most efficient manner.

United Kingdom

Development and date

New Code of Practice on 'fire and rehire'
At the end of March 2022 the Government announced plans to introduce a new statutory Code of Practice (the Code) on 'fire and rehire" tactics by employers.

The Government has said that the Code would "*detail how businesses must hold fair, transparent and meaningful consultations on proposed changes to employment terms*". This follows increased concern about use of this practice during the pandemic and since.

Description

Fire and rehire describes situations where an employer wants to change the terms and conditions of (normally a group) of employees, but is unable to obtain their agreement to this.

Where the employer wants to push ahead with the change(s), it will issue notice of dismissal and offer re-engagement based on the new terms, which are normally less favourable.

The decision to proceed with a dismissal and re-engagement exercise is normally the last resort. Employers need to be careful to have sought consent, and to have followed a fair consultation process, given that this process results in dismissals – and the risk therefore of unfair dismissal claims, and claims for failure to consult where the numbers are at collective level.

Impact and risk

It is not expected that the Code will create any freestanding legal rights.

However, if an employer fails to follow the provisions in the Code (once in place) then this may affect whether a dismissal is fair, and a tribunal will have the power to increase an award of compensation for unfair dismissal by up to 25%.

There are also reputational consequences for employers who pursue this approach. It can be damaging to employment relations and relationships with any trade union. Employers who use this approach as a negotiating tactic rather than because of a financial necessity are likely to encounter strong criticism.

The media in the UK reported stories about employers engaging in this practice particularly in the early stage of the pandemic when businesses were facing financial problems and needed to cut their staffing costs quickly.

As we move into a period of high inflation we may see more businesses struggling once again. It remains to be seen whether the Code will contain any special circumstances reflecting insolvency or equivalent. There is a recognition in the press release that fire and rehire "*should only ever be considered as an absolute last resort if changes to employment contracts are critical and voluntary agreement is not possible.*"

Future actions

Employers who plan to carry out a consultation exercise to change terms and conditions should be aware that the new Code is expected.

Once the Code is published, employers should pay careful attention to the terms. The main aim is to encourage meaningful consultation.

In the meantime employers should take into account advice published in November 2021 by the UK independent public body that provides employment advice, ACAS (Advisory and Conciliation Service) on making changes to employment contracts.

It is likely that the Code will adopt a similar message as the ACAS advice, which encourages employers to engage in consultation and consider all other options before firing and rehiring employees who do not agree to a change in terms and conditions.

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