On your radar

Key employment issues across Europe and beyond

Welcome to our latest edition of CMS On your radar

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The CMS employment team

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Algeria

Development	Description	Effective date	Impact and risk	Future actions
The use and training of employees from the national workforce (Article 125 of the Law n° 19-13 dated 11 December 2019 related to hydrocarbon).	Article 125 states that oil companies and their subcontractors will have to prioritise local employees for the needs of upstream operations. They must ensure, directly or indirectly, the training of the Algerian workforce covering all qualifications required for the conduct of upstream operations, under the conditions set out in the hydrocarbons contract.	22 December 2019.	The commitment to hire local employees is a labour law requirement which has been confirmed in the new hydrocarbon law. Ensuring that the workforce receive adequate training is a new requirement aiming to increase local skills. There are no dedicated sanctions, but oil companies may be subject to penalties such as the withdrawal of the licence. If employers do not comply with the new provisions then they do so at their own risk.	We recommend that oil companies prepare and evaluate their recruitment plan and training program prior to the bid for the licence.
Exemption from social security contributions in the new hydrocarbon law (Law n° 19-13 dated 11 December 2019)	Articles 217 and 218 provide that salaries of employees of foreign oil companies involved in the upstream activities, are exempt from national social contributions when they continue to report to the social foreigner protection agency to which they adhered to before coming to Algeria. The same provision applies for foreign oil companies involved in transformation and refining.	22 December 2019.	It is worth mentioning that private insurance companies are not recognised as foreign social protection agencies.	We recommend checking if the agency, in which the employee is affiliated, is a public one in order to benefit from these provisions.

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Belgium

Development

In a decision of 23 January 2020, the Constitutional Court rescinded the law (of 30 March 2018) concerning the introduction of a mobility allowance (also known as “cash for cars”).

This system enables employers to offer their employees a mobility allowance if they give up their company car.

The government hopes that this system will improve mobility.

The allowance has also benefited from attractive tax treatment in order to encourage uptake.

Description

What are the implications of this decision for employers who have introduced the cash for car system?

This is twofold:

(i) The effects of the annulled law are temporarily maintained until 31 December 2020 (even if the Constitutional Court ruling does not explicitly mention it); and

(ii) the cash for cars system as it exist will disappear definitively as of 1 January 2021, unless legislative intervention (unlikely) is taken to bring the system into line with the Constitution.

Effective date

31 December 2020 (in principle).

Impact and risk

Employers who introduced the cash for cars system and their employees are now faced with uncertainty, not least because the Constitutional Court ruling is unclear, but the practical consequences that this will have.

Thus, this decision raises the following question:

What will happen at the end of 2020 for the workers who already joined the system?

The three main options that are currently available are: (i) the granting of a mobility budget concerning the establishment of a mobility budget; (ii) the provision of a new company car; or (iii) a gross cash compensation, which will be treated for tax purposes as ordinary remuneration.

Future actions

For employees who have already joined the cash for cars system, we recommend waiting for the position to be confirmed. Failing that, an alternative system should be considered by negotiating updated written agreements with the employees concerned. Such agreements should enter into force on 1 January 2021.

In the interim, employers should no longer accept new participants in the existing cash for car system.

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Bulgaria

Development	Description	Effective date	Impact and risk	Future actions
Measures to curb the excessive use of sick leave certificates instead of a regular holiday.	Various measures have been discussed recently including: • the exchange of information between the border police and the National Social Security Institute; • GPs to issue sick leave certificates for up to 7 days in a row (14 days at present); and • confirmatory health check by a doctor appointed by the employer.	Ongoing.	It is expected that the measures will lead to a reduction in relation expenses for businesses and the national social security system. However, the risk is that such measures may threaten the healthcare rights of employees without actually achieving the desired result., For example, fewer days of sick leave being used instead of annual leave.	Functioning control mechanisms are yet to be discussed by the National Council for Tripartite Cooperation. Some of the proposed measures may be difficult to implement – for example, a confirmatory health check cannot be performed without the consent of the employee.
Possible amendments to the Labour Code related to increase of the annual limit of overtime from the current 150 hours to 300 hours.	A number of proposals have also been suggested, such as: • the reduction of the maximum period for calculation of irregular working time from 6 to 4 months; and • an increase of overtime in one calendar year – up to 300 hours.	Ongoing.	It is anticipated that the changes will help to improve staff shortages in many industries and present opportunities for additional remuneration as overtime would be adequately recorded and paid.	Although the proposed amendments appear to be beneficial for both employers and employees, it is not certain whether they will be adopted. One of the trade unions is strongly against increasing the overtime hours.

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China

Development

PRC Ministry of Human Resources and Social Security have issued several regulations in light of the recent coronavirus outbreak in China.

They include:

- Notice on Properly Handling Labour Relationships during the Period of the Control of Coronavirus;
- Notice on Handling Social Insurance Matters during the Period of Control of Coronavirus; and
- Opinions on Better Supporting the Stabilisation of Employment Relationships and Resumption of Operation of Enterprises during the Period of Control of Coronavirus.

Description

Employees who have contracted the virus, are under observation as a suspected case or locked out by the government's quarantine or emergency measures will now be entitled to their regular salary and employment protection during the quarantined or locked-out period. Companies are encouraged to allow employees to work from home and to take annual leave.

Companies will be entitled to subsidies in order to stabilise employment relationships so long as they do not make a mass lay-off. If employees require training during the quarantined or locked out period, then companies may also be entitled to subsidies. However, if the business is suspended for more that one month then employees will only be paid the living allowance. Companies can make up the social insurance contributions within 3 months after the epidemic is over.

Effective date

The regulations were issued during the period from 24 January until 7 February 2020 and became effect immediately after being issued.

Impact and risk

The outbreak will inevitably cause difficulties for companies and increase their financial burdens. It is also set to affect specific industries such as hotels, hospitality and tourism.

Nevertheless, in order to control the virus and mitigate risk, companies are obliged to implement the protective measures as required by the government such as quarantine, with a view to returning to 'business as usual' as soon as practicably possible. This presents a number of challenges, particularly for those involved in human resource management.

Future actions

To cope with the challenges and difficulties caused by this, companies may wish to take the following measures:

- encourage flexible working according to employees' availability, business operation needs and the quarantine requirements;
- make use of the new policies and get support from the PRC government; and
- keep a close eye on future policies which will be issued by the PRC government on supporting companies' operations.

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Colombia

Development

Employment and migratory formalisation of Venezuelan immigrant workers.

The Colombian Government recently issued Decree 117 of 2020, which creates a special immigration permit for Venezuelan workers to encourage employment and formalise their migration status.

The permit will allow Venezuelan Citizens to work for a minimum term of two months and a maximum of two years, which can be renewed up to a total of four continuous or discontinuous years. When the contract ends, a new permit will be processed.

When hired, Venezuelan workers with this special permit, must be registered by their employers or contracting companies in the databases of the Ministry of Foreign Affairs (SIRE) and the Ministry of Labour (RUTEC).

Description

Decree 117 of 2020, regulates the status of Venezuelan workers, through a special immigration permit called "*Permiso Especial de Permanencia para el Fomento de la Formalización*", which can be obtained by any Venezuelan immigrant who fulfils certain conditions and presents the required documentation to the Colombian Migration Authority (*Migración Colombia.*

Permits will be cancelled if they are not used properly by the employer or immigrant worker, if the presence of the Venezuelan citizen in Colombia is not considered convenient, if any judicial sentence over a crime is issued, or if a Visa is issued on behalf of the foreign citizen.

If the maximum term of the four years is fulfilled, the Venezuelan citizen must then apply for a Visa.

Effective date

On-going since 28 January 2020.

Impact and risk

If the permit process is not properly fulfilled or if conditions to formalise and regularise the Venezuelan immigrant workers are not accomplished, administrative sanctions may be imposed by the Ministry of Foreign Affairs, the Ministry of Labour or by the Colombian Migration Authority, which could lead to the deportation or expulsion of the immigrant worker.

Future actions

It is important to regularise and formalise the situation of all Venezuelan immigrant workers, and to properly follow the instructions on acquiring the special permit, in order to avoid sanctions.

When hiring Venezuelan workers or independent contractors, this alternative of migration permit will facilitate their regularisation and hiring without the expenses and time that a Visa requires.

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Croatia

Development

Croatian law imposes an obligation on employers to conduct workplace risk assessments.

Until now, the law did not allow for any exceptions to that rule in relation to remote work (including working from home).

The relevant by-law has recently been changed and some exceptions are now included.

Description

Based on the recent changes, employers are no longer required to assess the risks for employees working remotely (and from their homes), provided that:

- employees perform administrative, office or similar activities, for which low work-related risks have been previously assessed and documented;
- activities are performed remotely on an occasional basis only; and
- employees regularly perform work in the premises of the employer.

Effective date

8 January 2020.

Impact and risk

The employer still remains liable for Health & Safety, this position remains unchanged by the new provisions. This is the case even if the employee is injured whilst working from home and a risk assessment has not been undertaken.

However, the changes are welcomed and represent a move in the right direction.

Future actions

Employers are no longer required to conduct risk assessments for remote workers where all the relevant conditions are met.

New legislation, which it is hoped will encourage and facilitate remote working is currently in the pipeline. Further details on the provisions are expected in the near future.

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France

Development

France has experienced many pension reforms (1982, 1993, 2003, 2007, 2010, 2014).

At 14% of economic output, French spending on public pensions is among the highest in the world.

President Macron wants to set up a unique points-based pension system in which each day worked would trigger the same number of points for any worker's future pension benefits.

That would mark a significant break from the existing set-up with 42 different sector-specific pension schemes, each with different levels of contributions and benefits.

Description

Akin to the present system, the latest reform is based on repartition.

The retirement age will remain at 62, which is one of the lowest among the OECD group of rich nations.

It had previously been proposed that the current retirement age should remain, with a view to reducing benefits for those who retire before they are 64 and give a bonus to those who leave afterwards (so-called "pivotal age").

However, the Government had to abandon this proposal due to strong opposition from the CFDT union, the only union which supports the reform.

The universal pension system takes into account the incomes up to 3 times the annual maximum social security contributions both to calculate the contributions and the benefits (around EUR 123 000).

Effective date

The statute is now under discussion, and should be the subject of voting in April or May.

Impact and risk

France has recently been subject to a number of difficult strikes which have differed considerably from those previously encountered. For one month, public transport services were closed and there was a decrease in the number of hospital staff, teachers and police officers at work.

In order to compensate for the loss of the pivotal age, the Government has initiated a conference on the funding of the universal pension system.

This system has two major advantages:

- it would be fairer as all pensioners would be entitled to the same rights for each euro contributed; and
- it would facilitate the mobility of the workforce: if a worker moves from the private sector to an independent job, they would keep the same pension.

Future actions

As a major concession to the opposition from the trade unions, the Government has decided that the reform will come into force in 2025 and apply to those born after 1975.

Therefore, those who are born before 1975 will not be subject the reform.

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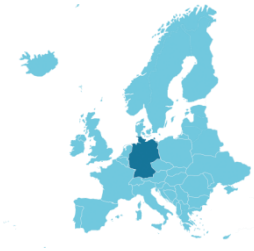
Germany



Development

Three recent German Federal Labour Court rulings confirmed that the employer's ability to reduce leave entitlements during parental leave provided by the German Federal Act on Parental Allowance and Parental Leave is consistent with European Law.

In this context, the German Federal Labour Court specified the principles which employers have to observe when declaring such reductions.

(19 March 2019 – 9 AZR 362/18; 9 AZR 495/17; 9 AZR 881/16, recently published).

Description

Employers may reduce employee's leave entitlements by one twelfth for each full calendar month of parental leave. This reduction is not applied automatically, but instead is at the discretion of the employer.

Where the employer exercises their discretion, a corresponding declaration is required and this must be sent to the employee.

It must also be noted that employer's can only exercise their discretion and issue a statement of reduction where the employment relationship is ongoing and thus the leave entitlement still exists.

Effective date

Immediately.

Impact and risk

The clarification provided by the German Federal Labour Court rulings is helpful for employers as it gives clear guidance on how they should handle these cases.

If the employer wishes to reduce leave entitlements during parental leave, then they must ensure that the declaration reaches the employee in due time. Otherwise, there is a risk that the reduction will be ineffective.

If the declaration of reduction is not received by the employee before the end of the employment relationship, the leave entitlement will automatically invoke a right to compensation. Therefore, it cannot be subject to further reductions but instead the employee will be entitled to be compensated for any accrued leave.

Future actions

Employers should declare the reduction of leave entitlements during parental leave in a manner that can be evidence easily in the event of a dispute.

A notification as part of payroll accounting is not sufficient for this purpose.

Instead, it is recommended that employers issue and document an explicit declaration of the reduction of leave entitlements and have mechanisms in place to ensure it is received by the employee.

The reduction may be declared before, during or after the end of parental leave. However, it is recommended to already include this declaration in the confirmation of parental leave.

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Italy

Development

The Supreme Court of Cassation decision 1663/20 published on 24 January 2020 has definitively stated that even if riders are self-employed and carrying out a continuous assignment, they are entitled to the same level of compensation as a subordinate employee carrying out the same tasks as set out in the collective bargaining agreement.

Furthermore, Law 128/2019 extends specific protections (generally applied to subordinate employees and not to the self-employed), to the riders.

Description

Law 128/2019 extends the regulation concerning health and safety in the workplace to riders.

From 1 February 2020, riders shall be registered at the National Welfare Institute for Injuries at Work and Professional Diseases and principals shall bear the cost of the annual premium to be paid to the National Institute for Injuries at Work and Professional Diseases.

Effective date

Ongoing.

Impact and risk

The employment relationship of riders is now regulated by law with the introduction of specific rules to regulate their employment.

Furthermore, this decision has extended to riders the base salary provided by national collective bargaining agreement.

Future actions

It is possible that in the future, riders will be reclassified as subordinate employees in new legislation.

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Kenya

Development

The Employment Act (Amendment) Bill, 2019.

The Employment Act (Amendment) Bill, 2019 was brought before the National Assembly on the 15 March 2019 seeking to amend the Employment Act No 11 of 2007

Data Protection Act

Data Protection Act 2019 ("the Act") came into force on the 25 November 2019.

The risk that employers face for failing to comply with the Act after an enforcement notice has been issued by the Data Commissioner is that of a Kshs. 5,000,000.00 fine and/or imprisonment for 2 years.

Additionally, the employee who suffers damage (financial and personal e.g. distress) by reason of the Employer contravening the Act is entitled to compensation from the employer.

Description

The Employment Bill seeks to make amendments to the following areas of employment law:

- Sexual harassment policy s. 6(2) Employment Act 2007;
- Grounds for discrimination s. 5(3)(a) Employment Act 2007 includes new protected classes;
- Effects of Mergers & Acquisitions (M&A) on employees;
- Employers obligations with regard to night work;
- Compassionate leave – an employee who has exhausted their annual leave may be granted up to 5 days compassionate leave upon the death of a parent, spouse, child or sibling;
- Repeals s.48 Employment Act 2007 on the lack of legal representation during a disciplinary hearing; and
- Lays down the fair procedure process in detail.

Effective date

The Employment Act (Amendment) Bill, 2019.

Ongoing.

Data Protection Act

25 November 2019.

Impact and risk

The Employment Bill

Sexual Harassment Policy (SHP) changes include the reduction in the threshold for the adoption of a SHP from 20 to 5 employees.

New classes for protection from discrimination based on – health status, ethnic or social origin, colour, conscience, belief, culture, dress and, curiously, birth.

M & A obligations for employers include:

- Information and consultation obligations;
- Continuity of employment contracts post–transfer;
- Automatic transfer principle. In scope employees transfer with no loss of benefits or contractual dues; and
- The new owner shall be liable for all the employees' dues from the commencement of the employment contract.

Data Protection

The new rules relate to the collection and retention of employee data including lawful processing, in addition to enhanced rights for data subjects.

Future actions

The Employment Bill

There are a number of changes to take into account regarding the new fair procedure rules, regarding knowledge of the charge, an opportunity to be heard and an appeal.

A new section will allow any party (employee) to be represented by an Advocate during a hearing.

No employee will be required to undertake night work unless this has been agreed in the contract. In addition, night work will attract an extra allowance.

Data Protection

Employers will be forced to adopt safety and consent oriented mechanisms for the collection, update and use of the data.

It will be important to ensure that there is transparency, consent and clarity with the use, collection and sharing of the data collected.

On your radar | Key employment issues across Europe and beyond

Monaco

Development

The possibility for an employer to replace paper payslips by electronic payslips was introduced by the Ministerial Decree No. 2019-1088.

This new legislation follows the European standard, which is commonly used by companies as a means to limit their carbon footprint.

Description

The employee's consent is now mandatory.

The information on the payslip must remain the same, regardless of the format used.

The employer can revert to paper payslips within a specific delay and subject to employees being properly informed.

The employees can also object and request paper payslips within a specific delay.

Any changes regarding the format will be effective for a year.

The electronic payslip must be communicated to the employees privately and securely.

Effective date

20 December 2019.

Impact and risk

The implementation of electronic payslips implies the following new duties on the part of the employer:

- to inform properly the employees (about the implementation and their right to object); and
- to guarantee the security of the information collected on them and the access to this information for a period of 5 years.

Failure to comply with the conditions set out in this decree may result in a criminal fine, under Article 10 of Act No. 638.

Future actions

This regulation is welcomed in light of the mounting pressure on companies to reduce their carbon footprint.

Employers are encouraged to consult the potential future recommendations of the Monegasque data protection authority (Commission de Contrôle des Informations Nominatives - CCIN) regarding the protection of personal data. Indeed, CCIN could adapt its recommendations in comparison with the ones made about paper payslips.

On your radar | Key employment issues across Europe and beyond

Morocco

Development

There have been a number of recent changes to the employment contracts entered into with foreign employees.

Employers wishing to employ foreign employees in Morocco must obtain a work permit from the employment ministry.

The initial employment contract caused various debates and was always considered by the Moroccan jurisdictions as a fixed term contract.

Consequently, the party that wished to terminate the employment contract was liable to pay damages equal to the remaining salary until the end of the foreigner's employment contract.

The cassation court adopted a new position by ruling that an employment contract given by the employment ministry to foreign nationals was just simply a work permit.

Description

The cassation court, in its decision n°936/1 of 16 October 2018, considered that a foreigner's employment contract delivered by the employment ministry is more appropriately described as an administrative authorisation.

Consequently, the dismissal of the foreign employee comes under the same conditions as the dismissal of national citizens.

The judge, in cases involving the termination of a foreigner's employment contract, should consider the real nature of the employment relationship with the foreign employee and the employer and not automatically conclude that there is an employment relationship purely that there is a fixed term employment contract in place.

Effective date

Since 16 October 2018.

Impact and risk

The decision of the cassation court has been confirmed by subsequent decisions that have adopted the same approach.

Foreigners employed in the country should be entitled to the same rights as Moroccan citizens. This will improve their position and provide some clarity, compared to the previous and precarious situation.

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

Future actions

Both employers and employees have expressed a number of concerns regarding the consequences and the impact that the foreigner's employment contract will have on the overall employment relationship.

To avoid any ambiguity, we recommend that the nature of the employment contract between the parties is clearly stipulated.

Therefore, the employer must ensure that they have all the necessary documentation required to prove the real nature of the employment relationship such as the foreigner's employment contract. This contract should clearly define the relationship between the parties.

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Netherlands

Development

As of 1 January 2020, employees whose employment ends by operation of law, are entitled to statutory severance. The entitlement to statutory severance starts as of the first day of employment.

Description

Employers are obliged to pay employees whose employment of definite time ends, a statutory severance.

The employer was already obliged to inform the employee with a definite contract at least one month before the end date, whether the contract will be extended and if so based on what terms. Failure to do so allows the employee to claim, within two months after termination, one months gross salary.

If and when the employment is not extended, the employer can calculate the severance due. Such severance is also due in cases where the probation period is terminated.

Effective date

1 January 2020 which means that employees with a definite term contract that ends after 1 January 2020 are immediately entitled to severance.

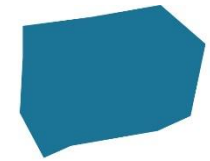
Impact and risk

The impact is serious as employees were not entitled to severance if their employment for a definite term ended by operation of law. The new legislation leads to additional costs for employers.

Future actions

Make sure that when an employment agreement for definite time ends, the statutory severance is calculated timely and paid with the final payment to the employee.

On your radar | Key employment issues across Europe and beyond
North Macedonia



Development

According to the latest amendments to the Law on Minimum Wage ("Official Gazette of Republic of North Macedonia no. 239/2019 dated 19 November 2019"), the minimum wage in the Republic of North Macedonia has increased to EUR 236.

Description

With this development, the minimum wage in the Republic of North Macedonia has increased to EUR 236. All private sector employers are required to comply with this amendment. With this change the minimum wage in the Republic of North Macedonia is increased to EUR 236. All employers from the private sector are obliged to comply with this amendment. This increase is applicable for the payment of salary in the period as of December 2019 until March 2020.

Effective date

December 2019.

Impact and risk

All private sector employers are obliged to comply with this development.

If the employer does not comply with this amendment, the following fines could be incurred:

- A fine of EUR 300 to EUR 400 for micro and small businesses and a fine of EUR 150 for the responsible person;
- A fine of EUR 500 to 600 euros on a medium-sized organisation and a fine in the amount of EUR 300 for the responsible person; and
- A fine of EUR 800 to EUR 1,000 for a large organisation and a fine in the amount of EUR 400 for the responsible person.

Future actions

If the employer repeats the non compliance within one year from the day of a previous occasion the Labour Inspector could:

- prohibit the employer's working activities for 15 days;
- order the employer to pay the employees a minimum wage and social security contributions; or
- file a claim for initiation of a misdemeanour procedure.

Furthermore, during the above prohibition, the employer is obliged to pay employees a minimum salary and social security contributions. Additionally, after the expiry of the prohibition, the employer must not reduce the number of employees in the following three months.

On your radar | Key employment issues across Europe and beyond

Peru

Development

The Regulation of the Occupational Safety and Health Act has recently been amended to specify the minimum requirements to be contained in the hazard identification matrix, assessment and control of risks associated with the activities at work (IPERC) that every employer must have.

Description

The minimum requirements include, but are not limited to the following:

- Include possible emergency situations by identifying the routine and non-routine activities of each job;
- Identify existing or expected working conditions, highlighting particularly sensitive risk factors;
- Warn of existing or expected hazards and risks, related to the environment or the organisation of work;
- Indicate protective measures for workers with disabilities and assessment of risk factors related to a gender and adolescence; and
- Review and analyse the results of physical, chemical, biological, ergonomic and psychosocial risk factor assessments.

Effective date

Effective as of 9 January 2020.

Impact and risk

It is expected that these changes to occupational safety and health regulations will reduce the risks and accidents that take place in companies across the country.

Therefore, employers are expected to collaborate with the Government and adapt their practices in accordance with the law to ensure that they have the appropriate documentation in place to facilitate the prevention of accidents and illnesses at work.

Future actions

We recommend that employers established in Peru comply with the new regulations in improve working conditions in the country and also in order to avoid the imposition of fines.

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Russia

Development

The introduction of fines for a breach of localisation personal data rules.

Description

The localisation rules require data controllers to ensure that, when collecting Russian citizens' personal data, the recording, systemisation, accumulation, storage, clarification (updating, modification) and retrieval of such data are to be conducted in databases located in Russia.

This means that initial data and any subsequent updates to the database must be located in Russia. A further transfer to other jurisdictions may be permitted subject to the requirements for personal data cross-border transfer.

Before adoption of the new law there were no specific fines for violation of the localisation rules.

Effective date

2 December 2019.

Impact and risk

The law provides for fines ranging from RUB 1m (EUR 14,000) to RUB 6m (EUR 84,000) for failure to comply with localisation rules. In cases of repeat violations, the fines will range from RUB 6m (EUR 84,000) to RUB 18m (EUR 252,000).

Future actions

Companies are advised to check and ensure that their current business processes comply with all legal requirements, since the potential financial exposure for non-compliance has significantly increased.

On your radar | Key employment issues across Europe and beyond

Serbia

Development

The Law on Agency Employment (“the Law”).

Description

The Law regulates Agencies which establish working relationships with an employee for the purpose of a temporary assignment with an employer.

The purpose of the Law is to clearly define and regulate conditions and relationships between agency employees, beneficiary employers and licenced temporary employment agencies.

Basic work conditions, the definition of assignment, and salary requirements of the agency employees are also stipulated in this Law.

Effective date

1 March 2020.

Impact and risk

The implementation of the Law will contribute to the suppression of the grey economy. Until now, agency employees were not visible in the system of labour law.

Previously, workers hired through their own agency did not legally have the right to annual leave and sick leave, but also for meal allowance and transportation costs for commuting to work. However, by enacting this Law, minimum of agency employees’ rights are regulated.

Future actions

Employers will have to comply with the Law regarding the proportion of employees and agency employees.

The total number of employees assigned to a fixed-term contract with the beneficiary employer may not exceed 10% of the total number of employees with the beneficiary employer on the date of conclusion of the employee transfer contract.

Specific restrictions are imposed on the beneficiary employer who has less than 50 employees.

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Slovakia

Development

Parliament has adopted an amendment to the Labour Code (the “Amendment”).

Description

Employees are entitled to four weeks of paid holiday. From the year in which the employees reach the age of 33 they are entitled to five weeks of paid holiday.

The Amendment has also introduced the entitlement to five weeks of paid holiday for employees who have not yet reached the age of 33, but permanently take care of a child.

Effective date

1 January 2020.

Impact and risk

On the one hand, this change may have a positive effect on marriage, parenthood and tourism, on the other hand it increases employers‘ costs.

In addition, it is not entirely clear what category of parents under 33 years of age are entitled to this extra week of holiday and in what circumstances.

The Labour Code does not provide a definition of the term “permanent childcare” or an explanation whether for the purposes of the Amendment the upper limit for the permanent care of a child should be the adulthood of that child. Similarly, it is not clear whether the Amendment applies also to employees who have their child in a joint custody.

Future actions

The increase in holiday entitlement for the affected employees means a real reduction in the availability of working hours and the need to cover the missing hours by overtime or hiring new staff (both solutions will cause increased costs for employers).

The Amendment also brings uncertainty for employers in relation to its application to their employees who are younger than 33 who have children.

On your radar | Key employment issues across Europe and beyond
Slovenia

Development

New definition of the minimum wage.

Description

The Minimum Wage Act ("ZMinP-B") has amended the definition of the minimum wage in such a way that:

- all allowances determined by laws, regulations and collective agreements; and
- part of the salary for work performance and payment for business performance, agreed by either a collective agreement or an employment agreement

are not included in the minimum wage.

Effective date

1 January 2020.

Impact and risk

Before 1 January 2020, only allowances for overtime, night work, work on Sundays, holidays and non-working days provided by law were excluded from the minimum wage.

ZMinP-B has excluded all allowances provided by law, regulations and collective agreements from the minimum wage.

Future actions

Under the new definition of the minimum wage, only the allowances that are determined by law, regulations and collective agreements are excluded, which means that allowances that are based *solely* on the employer's general acts or the employment agreement could potentially be included in the minimum wage. However, this is only possible in cases where the employee's basic salary or the employee's starting salary is set below the statutory minimum wage.

On your radar | Key employment issues across Europe and beyond

Spain

Development

The Decision of the Spanish Supreme Court dated 13 November 2019 points out the risks arising from pre-retirement schemes implemented through objective dismissals.

The Supreme Court confirms this criterion, given that:

- One of the requirements for the involuntary early retirement benefit is the payment of the severance, which, in this case, did not take place;
- It is contradictory that the company goes through a negative economic situation and that it pays an amount almost 4 times above the legal severance, resulting in the payment of an amount almost equivalent to the employees' salary until his retirement age.

Description

In general terms, when an objective dismissal takes place, the legal severance should be paid in full when the termination letter is delivered.

However, in this case, the parties agreed that the employee would be paid an amount well above the legal severance paid through an insurance policy from the termination of the employment contract until the employee reached age of 63. Thus, the employee would receive each month an amount almost equivalent to his salary.

When the employee applied for the public early retirement benefit applicable in case of dismissal, the Social Security authorities denied the benefit, as they considered that the termination was not really a dismissal, but a termination by mutual agreement.

Effective date

N/A.

Impact and risk

Reclassification of an objective dismissal as a termination by mutual agreement may have consequences such as:

- Administrative fines for the company up to EUR 187,515;
- No access by the employee to public benefits which require an involuntary termination of employment (e.g. unemployment benefit, early retirement benefit);
- The amounts paid as severance would not be tax-exempt.

In particular, the Spanish Supreme Court has reclassified these objective dismissals as a termination by mutual agreement which may also involve, among others, that the employee is not eligible for the involuntary early retirement (as in the case at hand).

Future actions

In cases of dismissal, companies will need to be especially careful when drafting settlement agreements, avoiding any trace of mutual agreement termination of employment.

On your radar | Key employment issues across Europe and beyond

Switzerland

Development

Effective 1 July 2020, employers with 100 or more employees (including part-time and hourly employees) will be required to conduct an internal gender pay gap analysis.

Description

In addition to conducting the analysis, employers will also be required to submit their analyses for independent verification. Independent verification may be undertaken by:

- a firm authorised under the Audit Supervision Act;
- (an organisation that meets the requirements of Article 7 of the Gender Equality Act; or
- an employee representation pursuant to the Swiss Workers' Participation Act.

Effective date

Affected employers will be required to complete their first internal analysis by 30 June 2021.

Impact and risk

The amendment to the Swiss Gender Equality Act does not provide for sanctions or penalties in the event that an employer does not conduct an analysis or in the event that the analysis shows that there is a gender pay gap.

However, employers are obliged to inform their employees in writing about the results of the analysis within one year of its verification. Additionally, publicly listed companies in Switzerland must publish the results of their analyses in their annual financial reports.

Future actions

While there are no direct sanctions, there are serious reputational risks if an employer does not conduct an analysis or in the event that the analysis shows that there is a gender pay gap.

In addition, employees who file a lawsuit against their employers alleging a breach of equal pay legislation will certainly use any negative results of their employers' analysis as key evidence to support their claim.

On your radar | Key employment issues across Europe and beyond

Ukraine

Development

Ukraine has decreased penalties for employment law breaches as follows:

Fines for (i) employment without an employment agreement (employment without reporting tax authorities), (ii) full-time employment of an employee, whereas part-time employment is reported, and (iii) payment of shadow wages – have been decreased from ~ EUR 5,100 to ~ EUR1,700 per each employee.

In the above cases, small and medium businesses are only subject to a warning.

However, if there is a repeat violation within two years of the first violation, then this will trigger a fine of ~ EUR 5,100 per each employee.

Description

Additional fine decreases include:

- Fine for non-compliance with minimal state guarantees for payment of salary (e.g. payment of remuneration for the full-time employment in the amount of at least one minimum wage, etc.) is decreased from ~ EUR 1,700 to ~ EUR 340;
- Fine for non-compliance with state guarantees for people enrolled in military service is decreased from ~ EUR 1,700 to ~ EUR 680; and
- Fine for refusal to undergo state labour inspection is decreased from EUR 17,000 to ~ EUR 2,700.

Effective date

2 February 2020.

Impact and risk

The changes were introduced for the benefit of employers that unintentionally commit violations of employment laws and are ready to rectify them on a short notice.

50% discount is available if the fine is paid within 10 days.

It should also be noted that amounts of the financial penalties against employers for breaches of the employment legislation are linked to a certain number of minimum wages. Hence, in case of any change of the amount of a minimum wage. such penalties will automatically increase or decrease accordingly.

Future actions

To avoid fines, employers should ensure that they have the necessary measures in place to ensure compliance with the employment laws.

On your radar | Key employment issues across Europe and beyond

United Arab Emirates

Development

The Dubai International Financial Centre free zone (the **"**DIFC") has replaced the previous end of service gratuity payment arrangements with new requirements for employers to contribute to savings accounts managed by professional fund managers that operate similarly to pension schemes in the United Kingdom.

Employees will be entitled to receive contributions from the commencement of their employment (or successful completion of their probation period), rather than on completion of one years' service (as was the requirement under the old end of service gratuity regime).

Description

Amendments to the DIFC Employment Law (DIFC Law No. 2 of 2019) have now been enacted to require DIFC employers to enrol applicable employees into a qualifying savings scheme and pay contributions to such scheme.

The scheme can be either the DIFC Employee Workplace Savings Plan ("DEWS") established by the DIFC or an alternative qualifying scheme which meets the criteria.

Additionally, employees can make voluntary savings on top of employers' contributions. The employer contribution rates will be broadly the same as what was required by the end of service gratuity scheme. Employees' existing end of service gratuity entitlements will crystallise as at 31 January 2020 and will either (i) be payable on termination at the rate based on their final salary; or (ii) transferred into the DEWS or alternative scheme, provided the consent of the employee has been obtained and no separate sum will be payable.

Effective date

1 February 2020.

Employers will have until 31 March 2020 (or two months after employee start date if later) to enrol applicable employees into a qualifying scheme.

Impact and risk

The new scheme avoids imposing an open-ended liability on employers.

Employees will receive greater cash flow certainty with their end of service entitlement spread across their employment term. There will no longer be a minimum length of service requirement for employees to be entitled to participate. The new scheme will also provide security for employees in circumstances where their company goes into administration.

It should be noted that the obligations under the amended law are mandatory and employees and employers cannot agree to opt out of this new regime. Any agreement purporting to do so will be void and unenforceable. Employers who fail to comply with their obligations under the new regime are liable to a fine of USD 2,000.

Future actions

With the impending deadline for compliance, employers must start to:

- identify which employees the new requirements apply to and which are exempt;
- decide whether to enrol employees into the DEWS or an alternative qualifying scheme;
- calculate accrued end of service liabilities and deciding whether they will be held by the employer or transferred into the selected qualifying scheme; and
- arrange consultations with employees to explain the changes being brought in and their rights and entitlements of the chosen qualifying scheme.

On your radar | Key employment issues across Europe and beyond

United Kingdom

Development

The UK leaves the EU.

The Brexit transition period has been agreed.

Post transition, this will affect EU nationals working in the UK and in the longer term we expect to see an impact on workers' rights.

Description

- The UK left the EU on 31 January 2020 with a deal meaning that a transition period will exist until 31 December 2020.
- During this period the UK will continue to apply EU law.
- For UK employers this means that free movement continues and essentially during the transition period the status quo is retained.
- During this period the UK also continues to participate in reciprocal EU arrangements, including the posting of workers, EWCs and cross border data transfers.

Effective date

Exit date – 31 January 2020.

Transition period ends 31 December 2020.

Impact and risk

It is not clear what the future will hold for employment law and workers' rights, in the period after December 2020.

The previous UK Withdrawal Bill contained provisions enshrining workers' rights. This was removed in the final version of the Bill, leaving open the possibility that at some point in the future the position may change.

In addition, within the final Withdrawal Bill once the transition period is over there is power for Ministers to issue secondary legislation to specify the circumstances in which lower courts could depart from the rulings of the Court of Justice of the European Union.

In the UK, the obvious contender for change in the longer term with employment law is holiday pay. The recent extensions in the definition of holiday pay In the UK to include variable payments such as overtime flows from EU rights.

Future actions

The transition period also affects the rights of EU workers currently resident in the UK.

Many EU nationals will already have applied for settled status, or depending on how long they have been in the UK, pre-settled status.

EU nationals who come to the UK before 31 December 2020 will have until 30 June 2021 to apply.

After the transition period ends, EEA/Swiss nationals arriving in the UK will be subject to the new points based immigration system that is set to be implemented in January 2021.

From 2021 onwards, existing EU law and EU derived rights will be converted to a new body of "retained EU law."

Courts/tribunals must have regard to retained EU case law when deciding a dispute about EU retained law.

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