



# On Your Radar

Key employment issues to be aware of internationally



# Welcome to the latest edition of CMS On your radar

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The CMS Employment team



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## Development and date

### Implementation of the Directive on Transparent and Predictable Working Conditions

The Austrian legislator has implemented the EU Transparent and Predictable Working Conditions Directive into national law more than 18 months late. The new provisions came into force on 28 March 2024.



## Description

Existing legal provisions were amended in relation to the following:

### *Obligation to provide information regarding the employment relationship*

The additional information requirements have been extended to apply to employees who are sent to a member state or third country, temporary agency workers and freelancers in accordance with the Directive. At the employee's discretion, the service note (this is the term used for the statement which must be issued to the employee setting out their statutory rights) must be submitted in electronic form

### *Right to parallel employment*

A right to parallel employment was introduced. Employers may only prohibit parallel employment if the other employment would not be compatible with working time laws; or would be detrimental to the employment relationship with the employer. Also, the ban on non-competitive employment for salaried employees continues to apply.

### *Mandatory education, training and further education*

The participation in mandatory training counts as working time and the cost for this training must be borne by the employer, unless a third party covers the costs.

### *Protection against adverse treatment/dismissal*

Employees are protected against dismissal/adverse treatment if they exercise their rights in connection with the Directive.



## Impact and risk

Non-compliance with the obligation to provide information (on time) may result in administrative fines ranging from EUR 100 to EUR 436. In cases involving a repeated offence the fine for managing directors will be EUR 500 to EUR 2,000.

The right to parallel employment does not affect the current regulation that prohibits salaried employees working within the employer's line of business, either in an employed or self-employed capacity, which is commonly referenced in employment contracts.

Mandatory training on weekends may now lead to a breach of working time laws, and potentially to additional rest time for employees in the week following the training.

In a dismissal the employee may request (in writing) that the employer state their reasons for the dismissal (in writing). Failure to provide such a statement does however not affect the legal validity of the dismissal.



## Future actions

Employers need to check and adapt their templates for employment contracts and service notes with regard to the new provisions regarding the information that needs to be provided.



## Development and date

### Appointment of a person of trust

The Act of 5 November 2023 containing various provisions relating to employment, which came into force on 1 December 2023, made it mandatory for companies with at least 50 employees to appoint a person of trust.

The person of trust plays an important role in protecting against psychosocial risks in the workplace; violence, moral and sexual harassment. The role of the person of trust is limited to seeking an informal solution (including interviews, interventions with another employee in the company, attempts to reach conciliation) when an employee requests psychosocial assistance.

Before the entry into force of the new Act, the appointment of a person of trust was optional (except when all the employees' representatives within the committee for prevention and protection at work requested it).



## Description

Whether or not it is mandatory to appoint a person of trust depends on the size of the company, defined as the technical operating unit.

In companies with at least 50 employees:

- A person of trust must be appointed, in consultation with the members of the committee for prevention and protection at work.
- The person of trust must be an employee of the company.

In companies with 20 to 49 employees:

- It is not mandatory to appoint a person of trust except if all the members of the union delegation unanimously request it.
- If the psychosocial prevention advisor is an employee of the company, the person of trust can be external to the company. If not, the person of trust must be an employee of the company.

In companies with less than 20 employees:

- There is no obligation to appoint a person of trust.
- If a person of trust is appointed, they can be external to the company.



## Impact and risk

If the employer does not respect the obligation to appoint a person of trust, this can be sanctioned by a criminal fine ranging between EUR 400 to EUR 4,000 or an administrative fine ranging between EUR 200 to EUR 2,000.



## Future actions

Companies will have to determine whether they employ at least 50 employees.

If this is the case, they will have to appoint a person of trust who must be an employee of the company.

From the date of their appointment, the person of trust will have 2 years to undergo at least 5 days of training.

# Bosnia and Herzegovina

## Development and date

### Management agreements and engaging directors

Inconsistencies are developing in relation to the authorities' interpretation of the legal nature of "management contracts" and whether a work permit is required.

Even though the authorities have not yet taken a final position on this issue, it is clear that conflicts between key regulations at both state and entity level are starting to take their toll.

## Description

With the adoption of the Labour Law of the Federation of Bosnia and Herzegovina in 2016, the possibility of engaging a director without establishing an employment relationship has been recognised as an option in all administrative units in Bosnia and Herzegovina.

From then on, it was generally accepted that individuals performing managerial positions in companies in Bosnia and Herzegovina based on management agreements are excluded from the obligation to obtain work permits. However, significant departures from the position taken earlier have now been noticed in the practice of administrative bodies.

Namely, some authorities, even though not officially, tend to interpret any type of contractual relationship (including management contracts) to mean an employment relationship, while others choose to remain ambivalent about the matter.

The main reason for the changes is the inconsistency between the provisions of the Labour Law and the Law on Foreigners of Bosnia and Herzegovina, as well as the inconsistency between the state-level and entity-level regulations governing the employment and residence of foreign individuals.

## Impact and risk

While on one side there is indeed no express legal basis for requiring work permits, especially for contracts without any compensation, some of the inspection authorities may still request the existence of such a permit.

This lack of clarity in legal interpretation of multiple provisions of conflicting laws, or inability to define the connection between different provisions, develops legal uncertainty, thus creating a difficulty for companies in Bosnia and Herzegovina that choose to appoint foreign directors.

## Future actions

As a starting point, the responsible authorities should take a more active role in solving this legal dilemma. No clear stance, however, could be made without cooperation between the authorities on different administrative levels.

The next step would then be to include legislative amendments, aimed at resolving existing conflicts and finding better solutions, as well as creating an optimal environment for doing business in Bosnia and Herzegovina.

In the meantime, companies should perform thorough due diligence and consult as many sources as possible before deciding how to engage their management.



## Development and date

### Actions on the salary transparency report

In February 2024, several companies and representative associations raised legal proceedings against the Federal Government to contest the obligation to publish the salary transparency report on the companies' social media, provided for in Ordinance No. 3,714/2024, which regulates the Brazilian law for measures to ensure equal pay and remuneration criteria between men and women. The legal proceedings aim to prevent the disclosure of employees' salaries on the internet so that they cannot be identified, according to the General Data Protection Law, and to prevent the exposure of competitive data.

Following this in March 2024, a "direct unconstitutionality action" (ADI No. 7612) was raised in the Supreme Court. The central argument made in the ADI on the publication of the report is that the law does not deal with legitimate and objective inequalities, culminating in the imposition of penalties in the event of any pay gap between men and women.

### Supplementary law bill on app drivers

In March 2024, the executive branch presented a supplementary bill to regulate the work of app drivers for passenger transportation, since they have no employment relationship with the platforms. The proposal guarantees a package of labour and social security rights, primarily related to minimum wages, working hours and social security contributions.



## Description

### Actions on the salary transparency report

The legal proceeding arose after the enactment of Law 14,611/2023 and Ordinance 3,714/2023, which obliged companies with 100 or more employees to provide data to the Ministry of Labour and Employment for the preparation and publication of the gender pay transparency report.

In general, the legal proceedings aim to prevent, by seeking a court order, the obligation to publish the report, as well as arguing that the measure causes unfair damage to companies' reputations.

### Supplementary law bill on app drivers

Considering the various discussions in Brazilian courts about whether app drivers are employees or not, the bill creates the category of "self-employed platform worker", not governed by the general rules set out in the Consolidation of Labour Laws. The drivers would be primarily entitled to (i) remuneration not less than the minimum wage in force; (ii) working hours of 8 hours/day, with a maximum period of 12 hours/day; (iii) cost allowance included in the minimum wage (mobile phone, fuel, vehicle maintenance, insurance, etc.); (iv) non-exclusivity, so drivers will be able to work for as many platforms as they wish and will have the autonomy to organise their working schedules or combine them with other professional activities.



## Impact and risk

### Actions on the salary transparency report

The obligation imposed by law was not well coordinated by the Government, not even with representatives of employers or the National Data Protection Authority, and wage inequalities are likely to be identified in many companies. The tool used by the Government is considered ineffective and the criteria do not achieve the objective pursued.

As a result, companies that did not raise legal proceedings and did not obtain an injunction exempting them from publishing the report were obliged to publish it on social media in a visible format from 31 March. Companies that fail to comply with the obligation are subject to a fine of up to 3% of the payroll, limited to 100 times the minimum wage.

### Supplementary law bill on app drivers

In Brazil, there are no labour regulations for drivers of passenger transport apps. Their work is carried out solely according to the criteria and internal rules of these apps. After several debates and legal challenges in the labour sphere and the Supreme Court, the Federal Government decided to work on the regularisation of this situation, to guarantee fair working conditions under general labour legislation, but with personalised rules, which will have a significant impact and will require companies to adapt to the new standards, under the risk of characterisation of an employment relationship.



## Future actions

### Actions on the salary transparency report

Brazilian companies will have to analyse the reports made available by the Ministry of Labour and Employment and adapt their internal policies to demonstrate good faith and efforts to comply with labour legislation until there is a favourable decision revoking the duty to publish wage transparency reports, or a law reform improving the provisions so that the report better reflects the remuneration criteria in each company.

### Supplementary law bill on app drivers

The supplementary bill will be subject to urgent scrutiny, but it is new, and it is not known whether it will be approved.

Despite this, it is crucial for app companies to monitor it to anticipate issues and analyse the possible tools and adjustments needed to the business model in line with what is being proposed and discussed by the executive branch, focused on avoiding the characterisation of an employment relationship, which significantly increases the company's costs.



## Development and date

### Remote working legislation

The Labour Code's provisions on remote working have been updated.

- Among other things, the amendments aim to:
- Provide more flexibility on determining the location of the remote place of work; and
  - Acknowledge the availability to use IT systems (including for algorithmic management of the work) for the assignment and reporting of work.

## Description

According to the latest amendments in the Labour Code, the address of the remote place of work must be specified in the employment contract. However, it has now been explicitly permitted to:

- agree more than one place of work;
- amend the agreed place of work for up to 30 working days per year.

In order to ensure compliance with the health and safety requirements, employees are now explicitly obliged to provide their employer with written information on the characteristics of the remote place of work.

Where the IT systems for the assignment and reporting of remote work are used, the employer shall provide written information on the type and volume of work-related data collected, processed and stored.

In addition, if the employer uses IT systems for algorithmic management of the work (e.g., ticketing systems), written information on the logic used to make decisions shall be provided. Following a written request from the employee, the employer or a designated manager shall verify the decision of the algorithmic management system and notify the employee of the final decision.

## Impact and risk

The new rules aim to provide additional flexibility to employers and employees in relation to determining the location where the employee is carrying out the remote work.

However, the main concerns remain that the existing health and safety regulations are outdated and do not correspond to the flexibility granted by the remote work regulations. Employers are still under an obligation to handle a full risk assessment of the remote workplace which might even require on-site measurements of the working conditions (e.g., light, space, noise background, etc.). Since compliance with these requirements is too burdensome from an organisational and financial perspective, many employers tend to partially skip them. However, this puts these employers in a vulnerable position in relation to:

- imposing financial sanctions for violation of the health and safety regulations;
- possible higher level of liability in cases where an occupational accident or professional disease occurs for employees who work remotely.

## Future actions

Employers need to ensure that their internal policies and agreements with employees on remote work are compliant with the updated statutory provisions. Certain amendments to these documents would be required for compliance purposes.



# China



## Development and date

### **China deregulates control on cross-border transfer of employees' personal information**

On 22 March 2024, the Chinese Government issued the Provisions on Regulating and Facilitating Cross-border Data Flow ("Provisions").

The Provisions came into effect on 22 March 2024.



## Description

According to the Provisions, the administrative requirements are no longer required if a company transfers the employees' personal information abroad for implementing cross-border human resource management under lawfully established labour rules and regulations and in accordance with a lawfully executed collective contract. Also as clarified by the Guideline on Declaration of Security Assessment of Cross-border Transfer of Personal Data (2<sup>nd</sup> edition) issued together with the Provisions, the company does not need to obtain the consent of employees for such a transfer.



## Impact and risk

In the past, the PRC Law on Protection of Personal Information did not explain clearly whether the transfer of employees' personal information abroad for implementing human resource management falls into the statutory circumstances under which the employees' consent can also be waived. Further, the law expressly required companies, if transferring such information abroad, to fulfill administrative requirements such as security assessment or certification or signing of standard contract. Now, with the implementation of the Provisions, the above barriers are removed if companies transfer their employees' personal information abroad for the purpose of implementing cross-border human resources under lawfully established labour rules and regulations and in accordance with a lawfully executed collective contract. Nevertheless, before making the transfer, the company is still obliged to notify the employees about the types of personal information involved, processing purpose and method, retention period, ways and procedures of employee's exercising legal rights, contact person of the overseas recipient and other necessary information which shall be notified to employees according to law, and make an assessment to evaluate the validity, legitimacy and necessity of the transfer as well as related risks and protective measures.



## Future actions

Companies intending to transfer the employees' personal information abroad may wish to check whether the transfer of such information is necessary for cross-border human resource management and whether the companies have relevant labour rules and regulations or collective contracts which are legally valid to cover processing the employees' personal information and transferring such information abroad.



## Development and date

### **Supreme Court ruling regarding serious misconduct by the employee capable of terminating the employment contract.**

A Supreme Court ruling published in 2024 has limited the provisions in article 62 of the Colombian Labour Statute that allows an employer to label certain employee behaviours as serious misconduct capable of terminating the contract with fair cause.

### **Supreme Court changes the way to count the days of contribution for pension purposes.**

In January 2024, the Supreme Court of Justice modified the position regarding the equivalence of time contributions to the General Social Security Pension System.

The Court takes the position established before the entry into force of Law 100 of 1993, in the sense that each of the calendar days in which the member has been exposed to the risks of disability, seniority and death must be reflected on their contributions history chart.

### **Constitutional Court ruling regarding minimum old-age pension guarantee for women**

On 22 February 2024, the Constitutional Court issued a press release that declared the unconstitutionality of the law regarding the number of weeks needed for women to access the minimum old-age pension guarantee.



## Description

### **Serious misconduct and fair causes of termination**

Article 62 of the Colombian Labour Statute enables an employer to stipulate in the contract or internal policies that certain actions are considered serious misconduct. If an employee behaves in this way, the employer has the right to terminate the contract with fair cause.

However, the Supreme Court ruling clarifies that this option is not unlimited. Therefore, a Judge can determine if the misconduct was serious enough to support a decision to terminate the contract.

### **Pension changes in how to count days of contribution**

Before 1993, the monthly salary (for pension purposes) was calculated at 4.33 weeks per month. In 1993, the monthly contribution was modified to 4.28 weeks per month. This last change implied that members of the General Social Security Pension System stopped contributing 0.71 weeks earlier in a normal year, or 0.85 weeks in a leap year, a situation which was further modified by the Supreme Court in this ruling, which is more favourable for employees.

### **Changes in old age pension guarantee for women**

According to article 65 of the Law 100 of 1993, the Constitutional Court established that women affiliated to the Individual Solidarity Savings Scheme will be able to access the Minimum Guaranteed Old Age Pension when they reach the age of 57 and have at least 1,000 weeks of contributions to the General Pension Scheme.



## Impact and risk

### **Serious misconduct and fair causes of termination**

Employers must be very careful when they are deciding whether conduct committed by an employee is sufficiently serious and damaging to support a fair cause dismissal based on article 62 of the Colombian Labour Statute. In the event of a legal challenge, a Judge could review the facts and declare that the termination did not amount to a dismissal with fair cause.

### **Pension changes in how to count days of contribution**

This change in the way days are counted will affect the reduction of contribution time, increases in replacement rates, the benefit of transition regimes, refund of balances, substitute indemnities, minimum pension guarantees, among other benefits, since a month will represent the days that it actually comprises (28, 29, 30 or 31). However, the ruling does not refer to the impact that this decision could have on the formula for calculating the weighted contribution that each contribution base income represents in the days contributed.

### **Changes in old age pension guarantee for women**

The Court warned that the decision would eventually result in a significant reduction in the capital of women's individual savings accounts and consequently an increase in the amount of subsidy that the state would have to assume in order to continue providing coverage.



## Future actions

### **Serious misconduct and fair causes of termination**

Employers should review their contract templates, handbooks and policies to assess whether the situations they have labelled as serious misconduct are serious enough to support a fair cause termination. Also, each specific case must be carefully analysed to determine whether there is enough evidence to demonstrate in court that the action labelled as serious misconduct is harmful enough to support the decision to proceed with a fair cause dismissal.

### **Pension changes in how to count days of contribution**

The ruling does not call for the modification of the Integrated Contribution Settlement Form or the labour records of the Pension Funds and Administrators, which currently only allow contribution values between 0 and 30 days. At the time of publication these entities have still to confirm their position.

### **Changes in old age pension guarantee for women**

The Court has taken this into consideration and has requested the National Government to regulate this type of situation before 31 December 2025 and to adopt affirmative measures in support of women.



## Development and date

### TUPE Regulation

A decision of the Supreme Court of Croatia on 4 May 2023 confirmed an earlier decision of the Appeal Court in Zagreb regarding certain TUPE rules.

The Supreme Court confirmed (amongst other issues), that an employee has the right to object to the transfer of their employment agreement to a new employer in the event of a transfer of an undertaking, subject to the transferring employer continuing to operate. The Supreme Court also held that the employee does not need a specific reason to object to the transfer.

In the event of a transfer of an undertaking, Croatian law prescribes that all employment agreements of that undertaking are transferred to the new employer (the transferee) as a matter of law.

The decision of the Supreme Court is significant, since there are very few legal judgments regarding TUPE rules in Croatia.



## Description

The Claimant's (i.e. employee's) employment agreement was transferred to the new employer because of the sale of the department in which the employee was working, even though he objected to the transfer.

The transferring employer held that the employee cannot object to the transfer, since TUPE rules were triggered, meaning that the transfer of the employment agreement is concluded as a matter of law.

The Appeal Court decided that, even though the Croatian Labour Act stipulates a transfer of employment agreements as a matter of law in the event of a transfer of an undertaking, the employee has a right to object to the transfer of their own employment agreement and therefore the transfer of the Claimant's employment agreement was null and void.

The Appeal Court held that the right of the employee to object to the transfer of their employment agreement is in line with case law from the Court of Justice of the EU (CJEU) and the employee has a right to choose their employer.

However, when the employee objects to the transfer, the Appeal Court concluded (and the Supreme Court confirmed) that the employee loses the protection confined to them on the basis of TUPE rules.



## Impact and risk

While the employment agreements of an undertaking are still transferred as a matter of law to the new employer, the decision of the Supreme Court confirms that employees can object to the transfer of their employment agreements and in that case, remain employed with the transferring employer.

Employers should be aware of the possibility that employees could object to the transfer of their employment agreements in the event of a transfer of an undertaking, notwithstanding the fact that this would result in the loss of protection under TUPE rules and potentially allowing the transferring employers the right to terminate those agreements (if a justifiable cause exists).



## Future actions

Employers should always be aware of the risks that could arise when TUPE rules are triggered and should ensure that employees are properly informed of (potential) transfers. Furthermore, employers should try to acquire consent prior to the actual transfer of an undertaking or at least be aware of employees who would object to the transfer – especially in the context of transactions.

Special caution should be given to TUPE rules since, although they are relatively straightforward, their implementation in practice is almost always complex, especially since court practice (both on national and EU level) is yet to provide answers to certain key questions.

# Czech Republic



## Development and date

### Liability of contractors in the construction industry

From 1 January 2024, an amendment to the Czech Labour Code introduced contractor's liability for salary claims of the subcontractor's employees (including employees performing their work based on agreements on work performed outside the employment relationship) when performing construction contracts.

The legislation is a further transposition of the Posting of Workers Directive.

The aim of the legislation is to provide a higher level of certainty and stability for employees performing work for employers involved in subcontracting chains in the construction sector (construction, repair, maintenance, alteration or demolition of buildings). However, as in other cases, the minimum required by the Directive was exceeded - the legislation applies beyond posting of workers.



## Description

The position of employees in the construction industry has been strengthened by this change. The change affects all construction entrepreneurs (entrepreneurs with a trade license to carry out construction or assembly work) that work on a contract involving construction, alteration, maintenance, or demolition of buildings, and use subcontractors (including work agencies that has temporarily assigned employees to them).

Each entrepreneur, in its capacity as a contractor, is liable for the payment of the salary of the employees of its closest subcontractor (or work agency). However, the general contractor at the highest level of the contractual chain (usually the contractor that has a direct contractual relationship with the end customer), is jointly liable for the salary claims of employees throughout the contractual chain with specific contractors. This means that employees of individual subcontractors who are in arrears in the payment of the salary can choose whether to claim the salary against the nearest superior contractor of their employer or with the general contractor. The new rules will only apply to salary for work performed from 1 January 2024 onwards.



## Impact and risk

If the subcontractor fails to pay the salary to the employee by its due date, the employee may immediately after the due date call on the guarantor in writing to pay the salary. The guarantor is then obliged to satisfy the salary claim within ten days of receipt of the request. However, the employee's request is subject to strict content requirements and must be delivered within three months after the due date. Failure to fulfil the guarantor's obligation is an administrative offence punishable by a fine of up to CZK 2,000,000. If the guarantor fulfils its obligation, it is entitled to compensation from the employer.

In this context, employers in the construction industry also have a new information obligation and must inform their employees of the identities of the guarantors, any changes to them and all the conditions and procedures for exercising their right against the guarantors, including the time limit for a request. A failure to comply with the information obligation can be sanctioned by a fine of up to CZK 200,000 by the authorities. For evidentiary purposes, it is therefore advisable to fulfil the information obligation in writing.



## Future actions

The individual suppliers in the construction industry can avoid the liability under the new rules if the following conditions are met:

- The subcontractor has provided the supplier, at the commencement of the performance of the contract, with a certificate that it has paid all compulsory payments (social security contributions, social security penalties, state employment policy contributions and public health insurance) – this certificate must not be older than 3 months; and
- The subcontractor has not been fined more than CZK 100,000 for breach of obligations under labour law in the last 12 months before the commencement of the performance of the contract.



# France



## Development and date

### Accrual of paid leave

In September 2023 the French Supreme Court (Cour de Cassation) ruled that employees are entitled to accrue paid leave during a period of sickness absence where the reason for the absence is not work-related in the same way that employees who are absent on sick leave due to an accident at work or an occupational disease are able to accrue paid leave.

The Court also ruled that the statutory limitation to benefit from paid leave only begins when the employer has effectively enabled the employee to exercise their right to paid leave.

Given the retrospective nature of this case, any employee who was absent on sick leave before 13 September 2023, is entitled to claim paid leave accrued during this period. In view of the legal risks and financial impact of this case for companies, the legislator decided to minimise the consequences of this case and to limit its effect on companies.

The new law bringing French law into line with EU law was adopted on 10 April 2023.



## Description

According to these new legal provisions, employees who are on sick leave, due to a non-work-related illness or accident, are entitled to acquire paid leave, regardless of its duration.

The accrual of paid leave is limited to 4 weeks (2 days per month) and not 5 weeks (2.5 days per month) under current provisions.

An employee who has not been able to take paid leave during an absence on sick leave benefits from a deferral period of 15 months after returning to work. This period begins from the date on which the employee receives information about the amount of paid leave available to them, and the deadline for taking it. This information must be communicated by the employer by any means, including their pay slip, in the month following the employee's return to work.

To avoid unlimited accumulation of paid leave entitlements, the law stipulates that when the employment contract has been suspended for at least one year, the deferral period begins at the end of the paid leave acquisition period. If the deferral period has not expired when the employee returns to work, it is suspended until the employee receives information from their employer.



## Impact and risk

The new legal provisions apply to paid leave accrued during sickness absence due to non-work-related illness or accidents between 1 December 2009 and the law's entry into force.

In particular, these provisions:

- limit to 2 working days per month and 24 working days per year the number of days of paid leave acquired during sick leave due to non-work-related illness or accident;
- introduce a 15-month deferral period for the paid leave acquired from the date of the information the employee must receive within one month following their return to work;
- provide for the automatic removal of the right to paid leave acquired during the sick leave at the end of the 15-month deferral period starting from the end of the paid leave acquisition period, when the employment contract has been suspended for at least one year.

Employees who, during this period, have already acquired 4 weeks of paid leave cannot claim for additional paid leave resulting from sick leave.



## Future actions

A collective bargaining agreement may provide a longer deferral period than that provided by law.

Employees who currently have an on-going employment contract may claim for paid leave days accrued during a sickness absence period due to a work or non-work related illness or accident from 1 December 2009, within two years following the law's entry into force.

In accordance with article L. 3245-1 of the French Labour Code, employees whose employment has been terminated for more than three years, are no longer entitled to bring legal proceedings claiming compensation for any paid leave accrued during a period of sickness absence.



## Development and date

### Use of ChatGPT and generative AI

The Hamburg Labour Court has ruled in a decision from 19 January 2024, that the works council has no right to co-determination (worker participation) regarding the general use of ChatGPT. The attempt to prohibit the use of ChatGPT and other generative AI systems in the company was dismissed.

In the underlying decision, the company aimed to make generative AI available as a new tool to support its employees. Initially, it briefly blocked access to the ChatGPT website, but then published relevant guidelines for the use of OpenAI's service and similar services on its intranet platform. The relevant systems were not installed on the corporation's computer systems. Instead, their use occurs via web browsers through an account on the respective provider's server. Official user accounts were not set up. Any associated costs were to be covered by the employees themselves. According to the employer's statements, they were unaware of who used such options, for how long, and when, or what data were transmitted to the system operators.



## Description

The works council has comprehensive co-determination rights, among others, concerning the matters covered in section 87 German Works Constitution Act ("*BetrVG*").

In the specific case, the works council invoked its co-determination rights according to section 87(1) no. 1 (matters concerning the organisation of the workplace and the behaviour of employees within the workplace), no. 6 (introduction and application of technical equipment intended to monitor the behaviour or performance of employees), and no. 7 (regulations concerning the prevention of occupational accidents and diseases as well as health protection within the framework of legal regulations or accident prevention regulations) *BetrVG*.

The court ruled that a co-determination right under section 87(1) no. 1 *BetrVG* was not affected because generative AI systems constitute work tools, which do not affect the behavioural order of employees. Similarly, section 87(1) no. 6 *BetrVG* was deemed inapplicable since the use of ChatGPT does not involve technical equipment collecting and storing personal data. Finally, the co-determination right under section 87(1) no. 7 of the *BetrVG* was also not affected because there was no concrete evidence of psychological health hazards.



## Impact and risk

In this case, the court only had to assess the use of AI through individual accounts that are inaccessible to the employer. However, the co-determination under section 87(1) no. 6 *BetrVG* would be evaluated differently if the employer either set up accounts for employees (in the case of self-developed AI systems) or purchased corporate accounts from external providers. In such scenarios, the employer either would have direct access to the employees' accounts or could request access from the external provider acting as a data processor. With such access, the AI system would enable performance and behavioral monitoring, thus falling under the co-determination rights specified in section 87(1) no. 6 *BetrVG*.

It is important to note that this is a case-specific decision, and therefore, each use of generative AI systems must be evaluated separately.

As the use of AI systems in companies continues to expand, it is important to exercise caution, especially considering that co-determination rights may need to be considered depending on the circumstances.



## Future actions

AI systems offer tremendous potential to enhance the efficiency of workflows and processes, potentially providing significant economic benefits that could determine a company's competitive advantage in the market.

In practice, a crucial factor for assessing (labour) legal issues will be a technical understanding of the software solutions being used. This understanding is necessary to arrive at appropriate and legally sound solutions.

However, their use also raises concerns, particularly regarding potential infringements on employee privacy. Given that works councils may hold co-determination rights over the specific implementation of AI systems, establishing a legally secure framework for their use should involve collaboration with the works council by negotiating an AI works agreement prior to deployment.

This proactive approach ensures that both the benefits and risks of AI technology are carefully considered and addressed within the workplace environment.

# Hong Kong SAR

## Development and date

### “Continuous Contract” legislation

On 1 February 2024, the Hong Kong Government announced that it will relax the rules relating to a “continuous contract” requirement (also known as the “418” requirement).

The proposed amendment aims to align with the legislative intent in the Employment Ordinance (the “Ordinance”) and grants benefits to employees who are providing a stable and considerable level of service.

## Description

Currently, regardless of whether an employee is working part-time or full-time, an employee who works for the same employer for 18 hours or more a week for at least four consecutive weeks is regarded as being employed under a “continuous contract” of employment for the purpose of the Employment Ordinance.

An employee who is regarded as being employed under a “continuous contract” is entitled to certain benefits under the Ordinance, such as rest days, statutory holiday pay, paid annual leave, sickness allowance, statutory paternity and maternity leave, long service payment and severance payments where applicable, provided that the employee also meets the other relevant eligibility criteria for the respective benefits.

To assess if an employee is considered to have worked for 18 hours or more in a given week, the criteria outlined in the Ordinance’s First Schedule should be referenced. Certain periods of absence might still be recognised as hours worked, subject to the particular details of each case of absence.

The upcoming relaxing of the “418” rule will redefine how an employee is considered to be working under “continuous employment” and therefore which employees can access the statutory benefits.

## Impact and risk

Instead of assessing whether an employee has the requisite number of qualifying hours on a week-by-week basis, the Hong Kong Government’s proposal is to now assess an employee’s aggregate working hours over a four-week period. The “continuous” employment will be triggered if an employee works 68 hours or more over the four-week period in question.

The intention of this proposed change is to extend statutory benefits to a larger pool of employees, particularly those in part-time or casual employment.

Whilst the full legislative amendments are yet to be revealed, the Hong Kong Government anticipate that around 11,000 workers who previously did not benefit from the additional statutory entitlements and protection granted under the “continuous contract” regime would now fall under the revised definition.

## Future actions

The proposed amendment is still pending implementation. The Government will present a report to the Legislative Council, and following the finalisation of the draft, an Amendment Bill will be submitted to the Legislative Council for examination.

Employers may need to reassess their workforce structure and employment practices due to the easing of the “418” requirement, as well as other recent updates to Hong Kong’s employment laws, such as the elimination of the MPF offsetting scheme and the expansion of statutory holidays (which has now increased to 14 in 2024). These changes could have significant financial and legal repercussions for employers.

Moving forward, it is important for employers to diligently maintain accurate wage and employment records for all employees to comply with their legal responsibilities. These records should include all necessary information as required by the Ordinance to avoid any breaches of statutory duties.



# Hungary



## Development and date

### New immigration law

As of 1 January 2024, Hungary changed its immigration legislation with the introduction of the new Act XC of 2023 on the Entry and Residence of Third-Country Nationals (the "Immigration Act").



## Description

The Immigration Act regulates the rules regarding the residence of third-country nationals in Hungary for more than 90 days within a period of 180 days. The main rule remains that residence in Hungary is subject to a specific purpose (e.g. work, pursuit of gainful activity, participation in medical treatment, study, intra-corporate transfer, etc.).

In addition to the previous residence titles, new residence titles have been introduced, such as the guest-worker or guest-investor residence permits.



## Impact and risk

On the one hand, the residence titles will be more structured and the new residence titles offer a wider spectrum for third-country nationals to seek the right residence title tailored to their personal needs.

On the other hand, the legislator has the clear objective to tighten the admission rules of third-country nationals.

The Immigration Act also sets stricter liability rules for employers.



## Future actions

It is recommended that employers gain in-depth knowledge of the new residence titles and the new liability rules to streamline the employment of third-country nationals within the organisation.





## Development and date

### Hiring incentives

The Italian Government has adopted a new hiring incentive, which provides a social security contribution discount for companies who hire mothers.

In addition, in order to fight poverty, companies can hire workers who have been or are beneficiaries of the monthly allowance called the "Inclusion Allowance".

In both cases the hiring incentives translates into less costs for the company, since the employment relationship is exempt from social security contributions.



## Description

For three years, from 1 January 2024, to 31 December 2026, employers will not be required to pay social security contributions for working mothers with at least three children, if they were hired on an open-ended basis.

This social security discount will be granted until the youngest child turns 18 and within a maximum amount of EUR 3,000 per year.

Only during 2024, the discount will apply to mothers with two children until the youngest child turns 10.

The incentives for hiring beneficiaries of the new anti-poverty measure covers the following exemption:

- 100% of the social security contributions, in cases of employees hired with an open-ended employment contract (full-time or part-time) or apprenticeship contract or in cases of conversion of fixed-term contracts into open-ended employment contracts. The incentive is available for a maximum of 12 months, up to a limit of EUR 8,000 per year.
- 50% of the social security contributions, in cases of employees hired with a fixed-term or seasonal contract (full-time or part-time). Employers are eligible for the incentive for a maximum of 12 months and, in any case, for no longer than the duration of the employment relationship, up to a maximum of EUR 4,000 per year.



## Impact and risk

These hiring incentives have the aim to fight unemployment and are – due to the stated economic advantage – potentially attractive for employers.

Regarding the incentives for hiring working mothers, we assume this will have a low impact, since the quota of working mothers with three children is not that high in Italy.

That may look different regarding the incentives for hiring beneficiaries of the new anti-poverty measure, especially for employers active in the south of the country.

Even if the impact is likely to be greater in this regard, we have to point out that the law does not provide for any specific procedure regarding how employers should find out if a candidate is in receipt of the Inclusion Allowance.

From similar cases and based on our experience, we suggest asking candidates directly for confirmation that they receive the Inclusion Allowance. However, employers should be aware that in the hiring process they are prohibited to ask some information to the employee (such as political opinion, health conditions, religion).



## Future actions

Hiring incentives are well-known means of addressing unemployment based on certain known criteria or to achieve other further-going Government objectives.

The Italian Government is expected to expand the hiring incentives in the near future, also in consideration of the increasing importance of ESG.



## Development and date

### Backdating of Collective Bargaining Agreements (CBAs)

A Labour Court in Kenya has determined that CBAs cannot be backdated unless with the consent of parties to the Agreement, the Employer or the Trade Union.

By way of a ruling dated 14 December 2023, Hon. Justice Bernard Odongo held that parties to a CBA do not accrue any enforceable rights during the period within which CBAs are being negotiated, and that unless agreed by the parties, the effective date will be when the document is executed by the parties and registered in Court.



## Description

Kenya Quarry & Mine Workers Union (KQMWU) raised a complaint with the Conciliator on the basis that certain terms of the CBA which they were negotiating with Mineral Enterprises Limited (MEL), had not been agreed upon. The unagreed terms of the CBA were successfully negotiated at the Conciliation, save for one term on when the CBA should take effect. KQMWU held the position that the CBA ought to have taken effect in January 2020, noting that the previous one had lapsed in December 2019.

As the “effective date” issue was pending, KQMWU referred it to the Labour Court for determination. MEL successfully opposed their claim to have the CBA’s effective date backdated on a myriad of grounds, the key issues being: that due to COVID 19, the Coalition of Trade Unions, Federation of Kenyan Employers and the Ministry of Labour had entered a tripartite agreement suspending application of CBAs, that any delays in reaching an agreement on the effective date of the CBA had been at the Union’s behest and that rights do not accrue to parties during negotiations.



## Impact and risk

This ruling is significant as it affects which CBAs will be dealt with going forward – the Labour Courts have, in the past, backdated CBAs to take effect when the previous one lapsed.

Parties negotiating a CBA for too long risk losing rights under that CBA – including salary increments, leave days etc for member employees and check-off payments towards the Union, noting that rights crystallise only upon execution and registration of the CBA.



## Future actions

It is likely that parties will resort to shorter negotiation periods for CBAs to avoid losing the scope of time within which the CBA is effective.

Parties are, however, at liberty to backdate CBAs by consent.



## Development and date

### Social elections

On 12 March 2024, companies in Luxembourg held social elections to elect new members of staff delegations.

These social elections take place every 5 years, and the next ones will be held in spring 2029.

To elect a staff delegation, the company must have more than 15 employees over a reference period of 12 months prior to the elections.

Then, the number of representatives to be elected depends on the number of employees: between 15 and 25 employees, there will be 1 permanent representative and 1 substitute representative, between 26 and 50 employees, there will be 2 permanent representatives and 2 substitute representatives, between 51 and 75 employees, there will be 3 permanent representatives and 3 substitute representatives, and so on.



## Description

The employer must allow time for the representatives to carry out their duties, and this time is regarded as paid working time.

The elected delegation must also appoint a health and safety representative and an equality representative.

The staff representatives will then have to meet at least 6 times a year, behind closed doors, in premises provided by the employer.

In addition, the staff representatives have the opportunity to meet in a plenary session once a year with all the company's salaried staff.

The elected delegation will have a right to information and a power of consultation with the employer in certain cases.



## Impact and risk

Throughout the entire term of their mandate, and for 6 months after the expiry of their mandate, permanent and substitute representatives are protected against dismissal, both with notice and for gross misconduct.

In the event of dismissal despite this protection, the dismissal would be considered null and void.

The same applies to the modification of an essential clause of the representatives' employment contracts to their disadvantage, which is impossible.

In the event of gross misconduct on the part of a representative, it will be possible to sanction the misconduct by a lay-off and to bring the matter before the Court with a view to requesting the termination of the employee's employment contract.



## Future actions

The Director of the Labour and Mines Inspectorate (*Inspection du travail et des Mines ITM*) has jurisdiction in the event of a dispute concerning the social elections.

The deadline is 15 days following the last day on which the election results are posted.

In the event of disagreement with the decision of the Director of ITM, this decision may be appealed to the Administrative Court within 15 days of notification of the decision.

If the elections are declared null and void, new elections must be organised within 2 months of the cancellation. The entire electoral procedure must then be restarted from the beginning.



## Development and date

### Salary and contractual review of collective bargaining agreements (CBA)

The Ministry of Labour and Social Welfare published in the Official Journal of the Federation on 1 May 2019, the Decree amending the Federal Labour Law (LFT), in order to obtain union democracy, among other provisions.

### Update to the table of occupational diseases

The Ministry of Labour and Social Welfare published in the Official Journal of the Federation on 4 December 2023, the Decree amending the LFT on the Table of Occupational Diseases



## Description

As a result of the amendment, negotiations for a salary or contractual review of a CBA are now genuine.

In cases involving a contractual review, it must be submitted for approval by the majority of the employees governed by a personal, free and secret vote.

### Update to the table of occupational diseases

88 occupational diseases were added, including, for the first time, the recognition of mental disorders (such as anxiety, depression, stress and insomnia), the inclusion of infectious diseases (such as Covid-19), infertility and the expansion of the number of cancers. This table must be reviewed by the Ministry of Labour and Social Security every five years; therefore, the next review must take place no later than 3 December 2028.

The evaluation checklist is a tool for occupational physicians that allows them to know the factors that cause the disease including if it was due to the work, the most common symptoms, the clinical tests that can help diagnose the condition, among other aspects



## Impact and risk

For certain companies, such as the *maquiladora* industry, (where the manufacturing plant is in Mexico and the parent company is in the US) increases in salaries and benefits sought by employees can have a complicated effect on the development of the company's business.

In addition, for companies to be able to grant an increase in salaries and benefits to their employees, productivity must also increase correspondingly.

### Update to the table of occupational diseases

New cases of occupational diseases could have a significant impact, which would translate into higher spending on social security contributions.



## Future actions

Before entering into negotiations for a salary or contractual review, we suggest the following:

- There must be good communication between the employers and the unions, explaining the financial situation faced by the company.
- There must be a formal negotiation with the union.

### Update to the table of occupational diseases

Employers must implement preventive mechanisms to prevent occupational diseases and ensure the safety and well-being of their employees. This may include implementing safety protocols, providing adequate personal protective equipment and promoting good hygiene practices.

Likewise, companies must also comply with NOMS, (Official Mexican Standards) especially those related to psychosocial risk factors (NOM 035), ergonomic risk factors (NOM 036) and, where applicable, health and safety conditions in remote work (NOM 037).





## Development and date

### Stock options and other employee incentive arrangements

Remuneration is at the heart of the employment relationship, enabling employers to attract high value-added candidates and retain their employees. Some incentive schemes were not subject to social security contributions, as the Monegasque Social Security Funds (CCSS) had no means of processing the schemes (for example, how to bring them within the scope of contribution system, how to calculate the contributions and on what basis).

The CCSS's position was therefore to exclude from social security contributions AGA plans, stock options, dividends, profit-sharing and bonuses paid to employees by other foreign entities of the group. However, after more than 10 years of looking at this, a ministerial decree has put an end to the practice of exempting some of these compensation mechanisms from social security contributions and confirms they will be subject to social security contributions. This development is not a new one, but we are seeing an increase in requests from our clients for information on the impact of this short-lived measure.



## Description

Employee incentives that should be declared now include:

- dividends, profit-sharing and incentives, whether granted by the employer or by a foreign entity if it is linked to an employment contract with a Monegasque employer;
- stock options and free or discounted share allocations (AGA plans), whether granted by the employer directly or by a foreign entity if it is linked to an employment contract with a Monegasque employer.



## Impact and risk

In view of this very broad provision, which stipulates that these mechanisms are subject to social security contributions "*when they are linked to the existence of the employment contract with a Monegasque employer*", it becomes very difficult, to envisage any social optimisation of employee remuneration.

Indeed, the provision includes mechanisms granted by Group companies where the Monegasque employer is an integral part, whether Monegasque or foreign. It is therefore no longer possible to exempt from Monegasque contributions dividends, profit-sharing or incentives from other jurisdictions, or shares granted by other companies belonging to the same group. Such a situation would further increase the social security contributions paid for employment in Monaco, while neighbouring jurisdictions provide social incentive mechanisms for this type of remuneration.

In addition, employers who fail to declare these elements of remuneration could be subject to a claim for civil damages in the event of a legal challenge by employees, resulting in the loss of part of their rights (pension, unemployment insurance, etc.). And in the event of adjustment by the CCSS, in addition to the reminder of social security contributions, they risk the payment of penalties as follows:

- an interest of 1% per month of delay,
- an increase of 10% of the amount of contributions.



## Future actions

Monegasque employers must comply with the new regulations on social security contributions for incentive schemes, by contacting their payroll administrators to calculate social security contributions for dividend payments, bonus share allocations and other related incentives.

In our view, this obligation only applies to schemes set up after the ministerial decree came into force. In other words, incentive schemes whose shares were allocated or dividends were paid prior to the ministerial decree would escape social security contributions.

In addition, employers must remain vigilant in the event of non-exercise of a stock option by employees, as they have a three-month period in which to request reimbursement of unduly paid contributions after deduction of any benefits paid to the employee in relation to the contributions.

# Montenegro

On your radar



## Development and date

### Public consultation on the Draft Law on amendments to Labour law

Until 1 April 2024, the Ministry of Labour and other stakeholders, including business and employees' associations and unions, participated in a public consultation on the Draft Law on amendments to Labour law (the Draft Law).



## Description

Montenegro is a candidate for membership of the EU, so the main reason behind these changes is the implementation of the rules of the EU Directive on work-life balance for parents and carers, the EU Directive on transparent and predictable working conditions, and the EU Framework agreement on telework.



## Impact and risk

The main aim of the proposed changes is to encourage fathers to use parental leave for a minimum duration of two months, as this cannot be transferred to the mother. On the other hand, this measure facilitates the reintegration of mothers into the labour market after maternity and parental leave. Additionally, in order to encourage parents and caregivers to remain in the labour market, they will be allowed to adjust their work schedule to their needs, in terms of having the right to request flexible working hours, reduce the number of working hours, or work from home.



## Future actions

It is expected that the Government will adopt the official Draft Law on amendments to Labour law in the last quarter of 2024 and after that the draft will be sent to the Montenegrin Parliament for adoption.

# The Netherlands

## Development and date

### Criteria for anonymous reporting under whistleblowing legislation

The Ministry of Internal Affairs has, with some delay, published a draft order in council (in Dutch AMvB) which describes how companies must organise anonymous reporting under the whistleblowers legislation.

Through internet consultation, everyone is invited to submit their feedback to the draft until 14 May 2024. It is expected that the order in council will enter into force in the course of this year.

## Description

The new whistleblowers legislation came into effect on 18 February 2023. Some parts of the legislation were not yet implemented such as the criteria for the officer to whom an anonymous report can be made.

The order in council describes the role of the officer and what companies must be mindful of when appointing such an officer.

Each company must appoint at least one officer who is not also employed in a managerial position, or a position primarily involved in recruiting, hiring and firing employees within the organisation. This means that someone in HR cannot also be said officer.

The officer must have the relevant expertise needed to handle this role (what that exactly means is not described), must ensure the anonymity of the reporter and must be given time and resources to handle this role. The employer must ensure that the officer is and can remain independent in their role.

The officer must report at least once a year about the number of anonymous reports and the nature of these reports to the employer, the works council or staff representation. If there is no works council, then these reports must be shared with all employees.

## Impact and risk

Under the whistleblowers legislation it was already possible to report anonymously. There were however no guidelines about the officer to whom such a report should be made. With the order in council, these guidelines are set, and employers must prepare themselves for the introduction and implementation.

For smaller companies, there is no threshold in terms of number of employees to who this clause applies, and it may be a challenge to appoint an independent officer. The obligation to inform the company about the number of reports and their nature without disclosing the identity of the reporter may mean in some companies that the officer cannot share all information if that would mean that the identity of persons is disclosed.

It is important to bear in mind that an anonymous report should in principle be handled as a regular report.

Depending on the size of the companies, it may be challenging to continue to handle the report anonymously.

## Future actions

Employers should prepare themselves for the introduction of an officer who can receive and manage anonymous reports. It is not necessary that the officer is an employee. The employer must ensure that the officer is skilled and trained to receive anonymous reports and is made aware of the importance of keeping reports anonymous and confidential.

It is equally important to prepare communication and information for employees about the introduction of such an officer and how an anonymous report can be made.

Some employers have already arranged for electronic tools and software that allow for anonymous reporting in a way that the reporter can be contacted as part of the handling of the report.

# North Macedonia

## Development and date

**New Labour Act**  
 In 2024, we expect to see the introduction of a new Labour Act to supersede the outdated one. The forthcoming legislation aims to align with global advancements and encompasses key amendments that relate to remote work, new fixed-term employment, written warning prior to dismissal, limitation period for monetary claims, parental leave, etc.

## Description

**Remote work:** Currently undergoing public expert discussions, the new rules will introduce a definition of remote work as being employment outside the employer's premises while granting employees the flexibility to determine their working hours and rest periods.

**Three-year definite term:** The proposed amendment aims to reduce the duration of "definite term" employment from five to three years. Employers will be restricted to using these contracts for only 20% of the total workforce, treating them as exceptions subject to additional criteria.

**Written warning prior to dismissal:** It is expected that it will become mandatory for employers to issue a written warning, complete with appropriate instructions and guidance, before dismissing an employee. The employee would be provided with a period of 15 to 45 working days' notice to rectify their behaviour, prior to proceeding with the dismissal process.

**Limitation period for monetary claims:** The proposed changes aim to extend the limitation period for employee's making employment-related monetary claims to five years, up from the current three years.

**Parental Leave:** The new labour rules suggest a 13-month period, with nine months designated for the mother and four for the father, allowing the flexible transfer of leave between parents as mutually agreed.

## Impact and risk

The introduction of these amendments is likely to have a significant impact on both employers and employees. Employers may face challenges in adapting to the new regulations, especially regarding the application of the contemplated remote work rules to the existing arrangements and the limitation period for monetary claims. There may also be an increase in internal administrative processes due to the requirement for written warnings prior to dismissal.

Employees, on the other hand, are expected to benefit from increased rights and protections, particularly in terms of parental leave and the extension of the limitation period for monetary claims. However, there may be some risk of misuse or misinterpretation of the new rules, leading to potential conflicts between employers and employees.

## Future actions

Employers should closely monitor the progress of the implementation process of the new Labour Act and ensure they are able to comply with the updated regulations once they come into effect, after the new Labour Act is adopted. This may involve reviewing and potentially revising existing employment contracts, policies, and procedures to align with the new requirements.

Additionally, employers should consider providing training and guidance to managers and HR personnel to ensure they understand their obligations under the new law, particularly regarding remote work arrangements, dismissal procedures, and parental leave entitlements.

Employees should familiarise themselves with their rights under the new Labour Act (once it comes in force) and seek clarification from their employers or legal advisors if they have any questions or concerns about how the changes may affect them. They should also be proactive in asserting their rights, particularly regarding parental leave and monetary claims, and seek appropriate recourse if they believe their rights have been violated.





## Development and date

### Compensation for damages in labour matters

A ruling by the Supreme Court of Justice has recently been published establishing the following rules regarding compensation for damages in labour matters.

- The right to compensation for damages is recognised for workers who are dismissed for reasons contrary to the Constitution.
- Claims for compensation due to a work accident or occupational disease are subject to the civil statute of limitations of 10 years.
- The employer can sue the employee for damages only if the employee was fired for serious misconduct, if the misconduct caused economic damage to the employer, and if the claim is filed within 30 days of the dismissal.
- It is not possible to sue workers with a current employment relationship or who were dismissed for reasons other than dismissal due to serious misconduct.



## Description

Although the law recognises the right to be reinstated in employment and to payment of outstanding salary in cases of a nullified dismissal, the Supreme Court and the Constitutional Court have also recognised these rights where the dismissals are unconstitutional.

Actions due to a work accident or occupational disease are subject to the civil prescription period for contractual liability of 10 years, because there is no special rule on labour matters that sets an expiration period.

Although in civil law it is possible to obtain compensation for the sole breach of contractual obligations, the rules of the Civil Code do not apply to labour matters, because there is a labour legal norm that regulates legal claims against the worker for claiming damages but in a restricted way. Therefore, the breach of contractual obligations is not enough to entitle the employer to sue a worker if the employer did not comply with the other requirements mentioned.



## Impact and risk

Even though it has not been uniformly accepted by the Supreme Court, employers must be aware that the Supreme Court has been recognising a worker's right to compensation for damages for dismissals contrary to the law or the Constitution.

Employers should also note that until a few years ago the law did not regulate the payment of compensation for damages in cases of work accidents or occupational diseases, recent legal provisions have expressly recognised the right to compensation for this reason.

The employer must be aware that a compensation claim against the worker is not admissible if, having accused them of serious misconduct, the employer condones the misconduct and stops short of dismissing the worker.



## Future actions

The details of this ruling, and many of the recent rulings of the courts ordering compensation for dismissal or the reinstatement of workers' employment, mean that employers should be very careful about identifying the reason for dismissal and to ensure they follow the correct dismissal process even if the worker has committed a serious act of misconduct at work.

Employers should also keep in mind that to bring a legal claim against the worker, not every serious violation, (even if it justifies dismissal), will be grounds for claiming damages, since it is essential that there is economic damage. In addition, proof of damage is the responsibility of the employer.



## Development and date

### Whistleblower legislation

The Polish Government has adopted the final draft of the law on whistleblowing. It makes significant changes to previous concept. However, the law is in draft, so the final content may differ from the current proposals.

The start date of the new regulation is unclear, but the Government suggests it will be in a few months.

### Length of service calculation

The Labour Minister said that employees' entitlements will count periods of their work under civil law contracts. Civil law contracts in Poland include a mandate contract, a contract for specific task or a service contract. It is not known exactly which contracts will be covered by the law. There is no draft law yet, and we do not know the effective date.

### Social security contributions for civil law contracts

Some of the civil law contracts in Poland will be fully subject to social security contributions. However, there is no draft law yet, and we do not know the effective date.



## Description

### Whistleblower legislation

The new draft specifies that whistleblowers can also report violations of labour laws, in addition to other issues. The whistleblower will be eligible for minimum compensation and will be able to seek extra compensation for non-material damages. Employers will not have to process anonymous reports.

### Length of service calculation

The length of service can include periods of self-employment and mandate or service contract work. The length of service calculation will depend on such entitlements as: (i) length of annual leave, (ii) length of termination notice or (iii) severance pay for collective redundancies.

### Social security contributions for civil law contracts

Currently, employers do not have to pay social security contributions on all mandate contracts. It is enough if the worker has them paid by one employer based on the minimum wage. However, this is set to change, and all mandate contracts will require mandatory social security contributions.



## Impact and risk

### Whistleblower legislation

Expanding the law to cover labour law issues could create conflicts with existing company policies on anti-bullying and other matters, leading to overlaps and confusion.

Choosing not to address anonymous reports is beneficial. Handling such reports could lead to practical issues, like determining eligibility for protection.

### Length of service calculation

People who previously worked under civil law contracts and are now employed under an employment contract will automatically gain additional rights, such as longer annual leave or longer notice periods.

### Social contributions for civil law contracts

Using mandate contracts for employment, which is quite popular in Poland, will no longer be financially practical because the costs will become comparable to employing someone under a standard employment contract.



## Future actions

### Whistleblower legislation

It is important for companies to start comparing their current internal policies with the proposed rules in the whistleblower draft law to identify any differences. Large companies should also check whether their worldwide or regional whistleblower policies are going to be in line with Polish law.

### Length of service calculation

When the change approaches its effective date which is now unclear, the company will need to identify individuals who previously worked under civil law contracts and recalculate their employment entitlements.

### Social contributions for civil law contracts

Companies should reconsider if having different types of employment structures (employment contracts and mandate contracts) will remain profitable. If not, they should choose to employ people under a single type of contract (mainly employment contract), which will be easier for them to manage operationally.

# Portugal



## Development and date

### Service providers

There is currently a worry on behalf of the Labour Conditions Authority (LCA) and the Government, regarding the nature of the relationship between service providers and companies that benefit from these services. This legislation came into force to assist with determining the real nature of the relationship between the parties. The LCA has also been carrying out inspections at the companies.

The amendments to the Labour Code introduced in May 2023 established that service providers should be compared to dependent employees, whereby the service provider is entitled to protection in personality rights (use of name), non-discrimination, safety at work, application of CBAs, if the service provider is a single person who receives more than 50% of their respective income from a company or other companies in the Group.

Furthermore, a specific article was introduced regarding the presumption of an employment contract in the context of digital platforms, in situations where the digital platform monitors and supervises the provision of the activity, including in real time, or checks the quality of the activity provided, (amongst other requirements).



## Description

In February 2024, the LCA notified 9,699 employers that they were required to regularise the employment relationship of 17,701 economically dependent self-employed individuals, i.e. service providers who provide 80% or more of their activity to a single entity.

The LCA gave the companies a time limit to legalise their employment relationship.

The LCA is now able to cross-check data with the Social Security Authority in order to have access to communications and salaries. This first cross-check between the LCA and the Social Security Authority made it possible to identify 80,000 companies with 350,000 service providers where the amounts paid could demonstrate that the service providers were legally considered as economically dependent.

In January 2024, 2,600 "alleged service providers" within the digital platforms were identified, resulting in 1,113 notifications to companies and 861 complaints to the Public Prosecutor's Office, which initiated the special judicial action for recognising employment contracts.



## Impact and risk

Regarding digital platforms, the courts have recently recognised the existence of an employment contract, for an indefinite period between the digital platform and the courier, with retrospective effect from 1 May 2023.

The court's decision recognises the existence of an employment contract, and sets the employment relationship starting date meaning that contributions for the Social Security and Tax Authorities should be backdated to that date.

However, more recently, Portimão's Labour Court issued a sentence denying the existence of an employment contract in relation to 27 couriers working through a digital platform, due to the operating model of the digital platforms where there was insufficient evidence of an employment contract.



## Future actions

This decision recognising the existence of an employment contract has a major impact on joint and several liability in relation to: (i) social security contributions and (ii) the eventual payment of fines for labour offences over the last three years involving the following parties: the digital platform; the natural or legal person acting as an intermediary; the respective managers, administrators or directors; and also the companies with which they have a reciprocal shareholding. Furthermore, the service provider may bring legal proceedings to obtain the payment of all labour credits due.

This will result in an increase in the number of legal claims to recognise employment contracts and more inspections of companies by the LCA.

# Romania

On your radar



## Development and date

### Hiring foreign employees

The first months of 2024 have brought significant changes to the regime which applies to foreigners entering Romania and the conditions under which they may be hired by Romanian employers.

These changes were implemented via two acts, which both came into force in March 2024.



## Description

The key aspects of the changes include the following:

- The employer is required to conclude the employment contract within 15 working days from the date of the foreigner's entry into Romania, (or from obtaining the new work permit in case of a long-stay visa);
- A new condition has been introduced before an employer can obtain the work permit, i.e., the employer must have carried out the activity in the field for which the work permit is requested for at least 1 year;
- Employers will have a shorter period in which they must notify the General Inspectorate for Immigration regarding the amendment or termination of the employment contract. It has been reduced from 30 days to 5 working days;
- As a rule, a foreigners' right to work may be extended by two years (before the extension was for 1 year);
- Foreigners will receive a personal identification number, which will be provided in the work permit; and
- The General Inspectorate for Immigration will be able to carry out inspections at the premises of employers in order to ascertain whether they fulfill the legal conditions for the employment of foreigners in Romania.



## Impact and risk

As a result of the growing number of foreigners who come to work in Romania each year, and Romania's recent accession to the Schengen area (air and maritime borders only), it was considered necessary to have a stricter and more regulated regime for the employment of foreigners, resulting in these legislative changes.

Some of the changes will directly impact Romanian employers, i.e., the rules/ procedures which should be observed when hiring foreign employees.

Non-compliance with these rules will mainly trigger administrative fines for companies. For instance, failure to conclude an employment contract with the foreign employee within the new set deadline will be sanctioned by a fine of up to RON 10,000 (approx. EUR 2,000). Also, depending on the type of breach, damages could be claimed in court by the foreign employees.

The new provision that empowers the General Inspectorate for Immigration to conduct checks on the premises of the employers to determine if they are complying with the regime for employing foreign workers, could be a sign that the authorities will be more active in enforcing the law from now on.



## Future actions

Hiring foreign employees is an increasingly popular topic with clients, and we expect this will continue. We also anticipate that there will be further changes in the law.

In this evolving context, the enforcement of the law by the competent authorities is expected to be more frequent and stricter. As a result, companies will need to pay more attention to this subject than they used to do in the past e.g., keeping up to date on developments in this field, implement internal measures to ensure that all the legal requirements are met in relation to hiring their foreign employees, and properly keep the evidence/documentation that could be later requested by the authorities.

# Serbia

On your radar



## Development and date

### Online procedure for work permits for expats operational

From 1 February 2024, it is finally possible, for both expats who plan to work in Serbia and for local companies that hire such expats, to apply online for the so-called single permit, which includes the temporary residence permit and the work permit.



## Description

Both the expats and the local company may apply for the single permit, which may be issued for a period of up to three years. The whole procedure is conducted online, via a portal specifically designed for expats who plan to work or live in Serbia, and the required documents may be uploaded in a simple .pdf format. The regulations prescribe that the procedure shall last up to 15 days only, however, the authorities announced that such a short deadline will not be possible to achieve in the first period but that they will aim for this to happen before the end of this year. At the time of writing (April 2024), the procedure usually lasts one to one and a half months, after which the expats are invited to come to the police authority to give their biometric data for the expat ID card.



## Impact and risk

The biggest impact will be the efficiency and simplicity of acquiring work permits. The easier procedures for obtaining permits, visas, asylum etc. is expected to encourage an increase in foreigners to the Republic of Serbia.



## Future actions

It is expected that the current online portal for expats will be replaced by the end of this year. The new portal will also include important information for expats planning to come to Serbia and offer other functionalities and services that will make the stay of expats in Serbia easier.

The authorities also announced that they are still working on the rules and set up to enable visas in electronic format. It is expected that this will be introduced for the short-term “visa C” by the end of the year and that “visa D” (for a period of up to 180 days, which also gives the right to work in Serbia) will be issued in electronic format sometime next year.



# Singapore

On your radar



## Development and date

### Application for interim injunction to enforce restrictive covenants

*In Shopee Singapore Pte Ltd v Lim Teck Yong*, the defendant, Lim Teck Yong (Lim), was a former employee of the claimant, Shopee Singapore Pte Ltd ("Shopee"), who had accepted employment with ByteDance Pte Ltd (ByteDance) on 11 September 2023.

Shopee sought interim injunctions to restrain Lim from accepting employment with ByteDance, and to restrain Lim from soliciting Shopee's clients and employees. At ByteDance, Lim was part of a team that operated *TikTok Shop*, an e-commerce platform deemed similar to Shopee's own *Shopee Brazil*, for which Lim was Executive Director, Head of Operations.

Lim signed Shopee's confidentiality and restrictive covenant agreements on or around 15 August 2015. These agreements contained confidentiality, non-competition and non-solicitation obligations respectively.

Applying the principles set out in *American Cyanamid Co v Ethicon Ltd* the High Court dismissed Shopee's application on the ground that Shopee had failed to establish that there were serious questions to be tried.



## Description

The High Court held that an applicant seeking an interim injunction in respect of a restraint of trade clause must show: (a) a serious question to be tried that the restraint of trade clause is valid and enforceable, namely that it protects a legitimate proprietary interest and that it is reasonable in the interests of the parties and the public; (b) a serious question to be tried (with a real prospect of success) that a restraint of trade clause has been breached; and (c) if there are serious questions to be tried, that the balance of convenience lies in favour of the granting the interim injunction.

In arriving at its decision, the Court held that Shopee failed to show that the non-competition restrictions cover a legitimate proprietary interest over and above the protection of trade connections. Amongst other things, Lim's role in *Shopee Brazil* was irrelevant since *TikTok Shop* operated in the US, the UK and various parts of Southeast Asia, but not in Brazil.

The judge also noted that Lim had stated on affidavit that he had not and would not breach the confidentiality and non-solicitation restrictions, and found that Shopee had not established a serious case to be tried that the non-solicitation restrictions had been or were about to be breached by Lim.



## Impact and risk

This case reaffirms the principle that restrictive covenants are, as a starting point, void and invalid under Singapore law unless it can be shown that they protect a legitimate proprietary interest and are reasonable in the eyes of both the public and as between private parties.

Parties seeking to enforce restrictive covenants must be capable of showing that such legitimate proprietary interests are at genuine risk of being breached, failing which an application for interim injunctions seeking to enforce said restrictive covenants is likely to fail.



## Future actions

The Tripartite Partners consisting of the Ministry of Manpower (MOM), the National Trades Union Congress (NTUC), and the Singapore National Employers Federation (SNEF) are working together to develop guidelines on the reasonable use of restrictive covenants in employment contracts. The guidelines are expected to be released in the second half of 2024, and are likely to provide clarity and invaluable guidance to both employers and employees alike on the utility of such clauses in employment contracts.



## Development and date

### Extension of sector/industry collective agreements

The Slovak Government is planning to reintroduce the option of extending the HCA collective agreement (this is the Higher Collective Agreement) to a third party, which was not originally party to the agreement. The new legislation should be effective from January 2025.

### Employment of self-employed

The Slovak Ministry of Labour, Social Affairs and Family announced that it plans to prepare legislation that prevents employers using self-employed people as employees. The Ministry announced that it plans to strengthen the competence of the labour inspectorates. The deadline for implementation is not yet known but should be in 2024 according to Ministry.

### Gender balance among directors

The Slovak Ministry of Labor, Social Affairs and Family also announced the work on implementing EU Directive 2022/2381 on improving the gender balance among directors of listed companies. Despite the Ministry first publishing information on this in November 2023, no further information is available.



## Description

### Extension of sector/industry collective agreements

Usually an HCA or its parties have to obtain a sufficient level of representation (e.g., by the percentage of the employees covered) in order to justify an extension to other employers in the same industry. This means that an HCA in a specific sector/industry can automatically extend to all employers in the same sector/industry assuming that the HCA reaches the required threshold of representation.

### Employment of self-employed

While bogus employment (illegal employment) is already regulated the Ministry intends to implement stricter rules. The aim is to protect self-employed individuals, who are *de facto* employees and sanction employers for illegal employment.

### Gender balance among directors

The Directive is aimed at ensuring the application of the principle of equal opportunities between women and men and achieving a gender-balanced representation among top management positions by establishing a set of procedural requirements concerning the selection of candidates for appointment or election to director positions based on transparency and merit.



## Impact and risk

### Extension of sector/industry collective agreements

The main impact for employers is that they will be covered by a representative HCA in the same sector/industry and consequently be bound by its obligations.

### Employment of self-employed

At the moment, it is not known how far the Slovak Government will go in its battle against bogus employment. However, employers relying on self-employed workers (e.g. gig economy) should closely watch the legal developments in this area.

### Gender balance among directors

The Directive sets objectives in relation to gender balance on boards as well as reporting rules for such companies. The rules will then require to be implemented into national law. This will lead to additional obligations on employers in order to achieve gender balance among the directors.



## Future actions

### Extension of sector/industry collective agreements

At this point, employers should review and become familiar with any existing HCA in their sector/industry, which could be extended in the future to their company.

### Employment of self-employed

Employers should closely monitor the legislative process in order to understand and prepare for the new legislation.

### Gender balance among directors

Although the national legislative text has still to be published, employers, who are listed companies should review the Directive and prepare for its implementation.

# South Africa



## Development and date

### Changes to statutory rates

A number of changes have come into effect in South Africa including;

- Increase in earnings threshold
- Increase in the National Minimum Wage

In addition, draft regulations were opened for public comment on the Proposed Numerical Sectoral Targets.



## Description

### Increase in earnings threshold

Effective 1 April 2024, the earnings threshold applicable in terms of the Basic Conditions of Employment Act 75 of 1997 (BCEA), increased from R241 110.50 to R254 371.67 per annum. This represents an increase of R13 261.08 per annum.

### Increase in the National Minimum Wage

Effective 1 March 2024, the National Minimum Wage (NMW) was increased in accordance with section 6(5) of the National Minimum Wage Act 9 of 2018 (NMWA) by 8.5% from R25,42 to R27,58 per hour. This increase relates to ordinary working hours.

### New draft regulations on the Proposed Numerical Sectoral Targets

On 1 February 2024, new Proposed Numerical Sectoral Target draft regulations were opened for public comment and will close on 2 May 2024. Under these regulations, the Minister of Employment and Labour can classify different national economic sector targets that will define which companies that operate in South Africa, will be deemed "designated employers". The classification of a designated employer will be made without considering their annual turnover using industry-specific thresholds, but rather using numerical sectoral targets which were initially intended to be flexible employment guidelines. Both drafts however seem to indicate otherwise.



## Impact and risk

### Increase in earnings threshold

Those employees who have historically been paid at or close to the prior earnings threshold may now fall under the threshold and may now be entitled to the additional protections afforded to these employees, such as overtime pay and limited working hours. This may also impact those employees who are employed on a fixed term basis and/or by temporary employment services, as they may become deemed indefinite employees (in the case of a TES, they could become employees of the client for purposes of the Labour Relations Act 66 of 1995).

### Increase in the National Minimum Wage

The increase in the NMW will impact employers in various sectors who will need to increase the wages of those employees who earn below the new NMW and/or apply for an exemption in terms of the NMWA. This increase applies to all categories of employees. Failure to comply with the NMW could result in a compliance order being issued against the employer and/or monetary fines being imposed.

### New draft regulations on the Proposed Numerical Sectoral Targets

A proposed consequence of not complying with the numerical sector targets without justifiable reasons, is that employers may become ineligible for government contracts and/or may be fined between 2% and 10% of their annual turn-over.



## Future actions

### Increase in earnings threshold

Employers should conduct an analysis of their employees to ensure that those who they intend to pay above the threshold remain above threshold and/or to identify which employees have now dropped below. Those employers who wish to pay above the earnings threshold, will need to provide these employees with an increase in line with the gazetted increase, despite annual increases having potentially already taken place.

### Increase in the National Minimum Wage

Employers should conduct an analysis of their employees to ensure that all employees earn, at a minimum, the NMW and if not, to either, increase such employees' remuneration or to apply for an exemption from paying the NMW.

### New draft regulations on the Proposed Numerical Sectoral Targets

Employers in the relevant sectors should submit comments on the draft regulations and the thresholds proposed.

# Spain

On your radar



## Development and date

### Transparent and Predictable Working Conditions

On 16 February 2024 the text of the Draft Law for the transposition of the EU Directive on Transparent and Predictable Working Conditions was published.

Spain had failed to implement this Directive within the required deadline which was 1 August 2022.

The text, which is still in the process of parliamentary proceedings, will entail a series of modifications in the field of labour legislation that should be closely monitored.



## Description

The implementation of the Directive will ensure predictable working conditions, mandatory written contracts, and an expansion in the rights of workers such as the formalisation of contractual changes and management of working hours. Additionally, probationary periods are restricted, and the right to stable job positions is reinforced.

The new regulation introduces recognition in Article 4 of the Workers' Statute of the right to predictable working conditions, implying that the employee must be aware in advance of their work schedule and, if applicable, the criteria under which these conditions may change. Further, other protections are granted to employees regarding the probationary period, prior notice related to complementary hours and the non-discrimination right of employees working for several employers. (Complementary hours in Spain are overtime hours for part-time workers.)



## Impact and risk

Among the most relevant modifications, we would highlight the following:

**Multiple employments:** Companies may not prohibit, limit, or provide unfavourable treatment to employees for providing services to other companies.

**Probationary periods:** Collective agreements are expressly prevented from setting a probationary period longer than that established by the Spanish Workers' Statute.

**Complementary hours:** Collective agreements cannot reduce the minimum notice period of 3 days, and in the event of total or partial cancellation of complementary hours without respecting this notice period, it will entail the right to corresponding remuneration.



## Future actions

Given the non-binding nature, for the time being, of the Draft Law, it is necessary for companies to take note of potential regulatory changes in the field of labour relations and gradually adapt their activities to the requirements driven by the European Union.

For this reason, our recommendation is to closely follow legislative developments in this regard, as well as to consulting experts in labour law to avoid fake news regarding legislative changes.



## Development and date

### Temporary Agency Workers

Starting in autumn 2024, user undertakings must either offer indefinite term employment or compensate temporary agency workers who have completed a minimum of 24 months of service within the preceding 36 months at the same user undertaking and operational unit. This applies regardless of whether the worker was employed through different temporary work agencies during the 24 months. The compensation must be at least two months' salary.

This legislation is based on the EU Directive on temporary agency work, which aims to provide employees with the opportunity to obtain indefinite employment with the user undertaking. However, the legislation goes beyond what is necessary to implement the Directive and may differ from corresponding legislation in other EU member states.

By going beyond what is necessary to implement the EU Directive, this new legislation indicates that the Swedish legislator is not in favour of the temporary agency work arrangement.



## Description

The Agency Work Act applies to employees hired by temporary work agencies and temporarily assigned to work for a user undertaking under their supervision and direction. However, the Act does not provide clear guidance on determining its applicability to specific business setups. Instead, each scenario must be assessed comprehensively on its own.

The business concept of a regular temporary work agency is to employ workers for the purpose of assigning them to user undertakings. The Agency Work Act applies when its prerequisites are met, regardless of whether involved parties consider the Act to be applicable or not. The main prerequisite for the Agency Work Act to be applicable is that the user undertaking supervises and directs the work.

The obligation to offer either indefinite term employment or compensation is mandatory and will apply when the Agency Work Act is in force.



## Impact and risk

The primary risk for user undertakings is the obligation to provide temporary agency workers with either indefinite term employment or compensation equivalent to at least two months' salary. Meanwhile, temporary work agencies face the potential loss of their workers to user undertakings.

The obligation to offer either indefinite term employment or compensation is clear and should not cause application difficulties. Another issue is the applicability of the Agency Work Act.

The lack of legal precedent regarding the distinction between supervision and direction carried out by the temporary work agency or the user undertaking creates ambiguities that pose a risk. However, with this new legislation, we anticipate an increase in court cases dealing with these questions, resulting in legal precedents.



## Future actions

Although the obligation to offer either indefinite term employment or compensation is mandatory and cannot be deviated from except through a collective bargaining agreement, the temporary work agency and user undertaking may take measures to mitigate the risks associated with the legislation.

The main measures include ensuring that the threshold is not reached or organising the assignments in such a way that the Agency Work Act does not apply.

Although legal precedents are lacking, there are measures that can be taken to reduce the risk of the Agency Work Act being applicable. To avoid the application of the Agency Work Act, the temporary work agency should supervise and direct the work, rather than the user undertaking. Additionally, the agreement between the temporary work agency the user undertaking should stipulate that the temporary work agency shall perform a result rather than provide labour to be under the user undertaking's supervision and direction.



# Switzerland



## Development and date

### Internal Investigations

On 12 February 2024, the Swiss Federal Supreme Court issued a landmark decision concerning internal employment investigations.

In reaching its decision, the Court had to assess whether an internal investigation by a bank, which ultimately led to an employee's dismissal, had been conducted properly.



## Description

The Swiss Federal Supreme Court held the following:

When performing an internal employment investigation, a private employer is not bound by the procedural guarantees, as defined by criminal law.

A private employer must conduct the internal investigation in good faith, but does not need to provide the employee with advance notice for the interview nor an opportunity to prepare for it. Instead, it is sufficient for the employer to inform the accused employee at the beginning of the interview of its purpose and content. In this context, it was important that the employee had the opportunity to file comments at a later stage of the investigation.

The absence of a companion during the interview did not constitute a serious deficiency in the investigation process that would render the employee's termination abusive, although the bank's internal regulations generally entitled employees to be accompanied at such interviews.



## Impact and risk

It is not surprising that the Court (contrary to some doctrine) held that the procedural guarantees, as defined by criminal law do not apply to internal employment investigations (based on private law).

However, the standards set by the Swiss Federal Supreme Court for the further conduct of an internal employment investigation are quite low.

A Swiss employer is of course free to follow higher standards than the ones outlined in the decision, and this will in most cases also be appropriate and recommended.



## Future actions

A Swiss employer should clearly act in good faith at all times when conducting such investigation.

We would strongly recommend that the employer also strictly follows any own regulations/policies established in this regard.

# Türkiye 1/2



## Development and date

### Operational business decisions taken prior to termination

On 21 September 2023, the Constitutional Court (the Court) rejected a reinstatement case involving the applicant (Applicant) ruling this was not a breach of the right to a fair trial. The decision was based on a previous ruling by the 22nd Civil Chamber of the Supreme Court of Appeals (Chamber), when it held that obtaining a business decision in the workplace was not subject to judicial review for expediency. Consequently, in this case the Court deemed the application inadmissible.

### Mediation: prerequisite for employment claims

The 9th Civil Chamber of the Supreme Court of Appeals (Court), in its decision dated 20 November 2023 determined that it is not obligatory to reapply for mediation prior to initiating legal claims for identical employment claims.



## Description

### Operational business decisions taken prior to termination

Initially, in a case regarding reinstatement, the court ruled in favour of the Applicant, highlighting the subcontractor's failure to justify termination and the continued necessity of their job. However, a reinterpretation of the law by the Chamber led to a reversal of this decision. The Chamber asserted that termination due to the end of the service agreement was beyond judicial review for expediency, emphasising that these decisions should only be scrutinised for compliance with the principle of last resort. Consequently, the Applicant's case was dismissed based on this new interpretation. The Constitutional Court later upheld the Chamber's consistent change in legal interpretation, deeming the Applicant's application inadmissible.

### Mediation: prerequisite for employment claims

Initially, the plaintiff raised a claim for unpaid salary and labour payments, partially succeeding in court. When attempting to collect the expenses through enforcement, the process was stopped due to the defendant's objection. The plaintiff then tried to overturn the objection and continue the enforcement process. However, the defendant argued that mandatory mediation had not been pursued before this claim, resulting in its dismissal by the court. On appeal by the Ministry of Justice, the Court overturned the lower court's decision, stating that requiring mediation before subsequent claims on the same matter was disproportionate and counterproductive to the mediation's purpose, acknowledging it as a restriction on fundamental rights.



## Impact and risk

### Operational business decisions taken prior to termination

Employers are obligated to adhere to the principle of last resort before terminating an employee, meaning termination should be the final option after exploring alternative measures to resolve labour disputes. These measures include alternatives such as waiving overtime, offering alternative positions, unpaid leave, short-time work, or wage reductions. When dismissing based on workplace needs, specific guidelines must be followed, including making a valid business decision, typically by the board of directors or managers. This decision should ideally be recorded in the company book one or two weeks before informing the employee. Failure to adhere to these procedures could lead to termination invalidity and potential reinstatement of the employee.

### Mediation: prerequisite for employment claims

Before initiating claims concerning claims for labour payments, compensation, or reinstatement stemming from collective or individual employment agreements, it is mandatory to apply to a mediator. Failure to engage with the mediation process prior to filing a claim results in the dismissal of the claim due to non-compliance with procedural litigation requirements.

However, the initial mediation application will be sufficient even for subsequent related claims (e.g., on the same labour payments).



## Future actions

### Operational business decisions taken prior to termination

Employers should ensure that they have a board resolution regarding the operational business decision signed and dated one or two weeks prior to the date on which the impacted employee is served with the dismissal letter, while terminating the employment contract due to a valid reason such as reorganisation/redundancy.

### Mediation: prerequisite for employment claims

Under Turkish labour law, the claimant-party must apply to mediation before filling an employment claim against the other party, as the mediation is a condition for employment litigation.

However, parties should not waste time applying for mediation in the subsequent cases on the identical employment claims.

# Türkiye 2/2



## Development and date

### Lower and upper limits of earnings subject to the premiums

The General Directorate of Insurance Premiums has published the figures setting out the minimum and maximum thresholds for daily and monthly earnings subject to insurance premiums. The same Circular contains guidelines for periods spent abroad, employment service loans, administrative penalties, temporary disability, funeral expenses, and breastfeeding allowances. These determinations, outlined in Circular No. 2024/2 dated 8 January 2024, are to remain in effect for the entirety of 2024.

### Amendment to the short-time working allowance

The legislation, titled the Amendment Law for the Unemployment Insurance Law and Other Laws (Law), lays down provisions regarding incentives for insurance premiums, allowances for short-time work, support for minimum salaries, and pensions



## Description

### Lower and upper limits of earnings subject to the premiums

For insured individuals in the private sector covered by Article 4/(a) of Law No. 5510, the set lower and upper limits of daily and monthly earnings subject to insurance and unemployment premiums for 2024 are as follows: (i) daily earnings lower limit: TRY 666.75; (ii) monthly earnings lower limit: TRY 20,002.50; (iii) daily earnings upper limit: TRY 5,000.63; and (iv) monthly earnings upper limit: TRY 150,018.90. Certain payments such as lunch, child, and family allowances are not included in premium calculations. Turkish employees working abroad without a social security agreement have an insurance premium upper limit three times higher than domestic workers. Temporary incapacity allowances are determined based on a daily earnings threshold of TRY 666.75.

### Amendment to the short-time working allowance

The Law extends employer insurance premium incentives for specific groups until 31 December 2025, potentially extending to 31 December 2026. It permits short-time work during a general pandemic and reduces the minimum premium payment days required for a short-time working allowance. Additionally, it requires that periods of short-time working allowance be deducted from entitlement periods for unemployment allowances within three years. This allowance is granted to insured employees facing temporary reductions in working hours or suspended workplace activities for at least four weeks, such as during the COVID-19 pandemic, upon approval of their application to the Turkish Employment Agency (İŞKUR).



## Impact and risk

### Lower and upper limits of earnings subject to the premiums

For those who fail to fulfil their obligations stipulated in the Law, administrative penalties in the form of a fine will be imposed by considering the monthly minimum salary valid on the date of the Act contrary to the obligation and determined to be applied to employees over the age of 16. Accordingly, the amount to be taken as the basis for the administrative fine for acts committed in 2024 will be TRY 20,002.50.

### Amendment to the short-time working allowance

The Law introduces changes that both benefit and pose risks to employers.

- Extension of Premium Incentives: Employers can continue receiving incentives for hiring specific groups until 2025, potentially 2026, reducing labour costs.
- Short-Time Work Provision: It allows for short-time work during pandemics, offering flexibility but risking decreased productivity and employee satisfaction.
- Reduction in Minimum Payment Days: This eases access to short-time working allowances, though it may lead to misuse.
- Deduction of Allowance Periods: While fair, deducting short-time working periods from unemployment allowances may discourage employers from implementing such measures.



## Future actions

### Lower and upper limits of earnings subject to the premiums

Considering the legal risk and administrative fines, the obligations stipulated in the Law must be fulfilled.

### Amendment to the short-time working allowance

Employers can take several future actions in response to the changes introduced by the Law:

- Review and optimise hiring practices to use extended premium incentives;
- Develop contingency plans for short-time work during pandemics;
- Monitor short-time work arrangements to prevent misuse;
- Balance benefits and risks associated with short-time work; and
- Communicate changes to employees transparently and effectively.

By implementing these actions, employers can effectively navigate the impact of the Law on their business operations and workforce.

# Ukraine



## Development and date

### **New rules for registration of copyright agreements with employees**

On 24 November 2023, the new Procedure for State Registration of Copyright and Agreements Concerning Proprietary Rights to Copyright Works came into force.

The new Procedure establishes rules for copyright registration based on works created under employment agreements.

### **Employer's increased liability for maintaining employees' military records**

A Draft Law amending the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine to increase liability for military offenses is currently being considered by the parliament of Ukraine (the Draft Law).



## Description

The new rules establish detailed procedures for preparing and submitting applications for copyright registration in general, which also covers registration of works created by employees. The applications should be made to the Ukrainian National Intellectual Property Agency.

The application for copyright registration may be filed either in paper or electronically (via a special system). It is mandatory to submit the employment agreement (any other documents establishing the proper allocation of proprietary rights to the copyright work to the employer) along with the application where the copyright work created by the employee is being registered in the name of the employer.

### **Employer's increased liability for maintaining employees' military records**

Among other changes, the Draft Law includes an increase in employers' liability for failure to meet the legislative requirements to maintain the military records of their employees as well as other breaches of mobilisation-related obligations during martial law, up to 204,000 UAH (approx. 4,744 EUR). The current maximum fine imposed for the breach amounts to 8,500 UAH (approx. 198 EUR).



## Impact and risk

The new rules provide template application forms and guidance as well as describing the registration procedure at each stage and includes, for instance, the file format for submitting samples of copyrighted works which are being registered.

Overall, the new amendments simplify the registration procedure and represent a further alignment of Ukrainian IP protection laws to the EU standards.

### **Employer's increased liability for maintaining employees' military records**

The imposition of higher fines is primarily aimed at motivating employers to comply with the mobilisation legislation, especially during martial law, including the maintenance of military records of their employees for the purposes of mobilisation.



## Future actions

The newly adopted rules are a part of a general alignment of Ukrainian IP legislation with EU regulatory standards and practice following adoption of a new Copyright Law of Ukraine which entered into force on 1 January 2023 as well as a successful institutional reform implemented in 2023, which also includes the regulation of IP related employment relationships. The changes are yet to be applied in practice prior to any further regulatory developments.

### **Employer's increased liability for maintaining employees' military records**

The Draft Law is yet to be adopted and may provide fines different from those in the current draft. It is also being considered along with a Draft Law On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilisation and Military Records, which has already passed the first vote and is pending its final consideration.

# United Kingdom



## Development and date

### Flexible working

Changes to the statutory right to request flexible working came into force on 6 April 2024.

This does not create an entitlement to benefit from flexible working or remote working. Instead, there is a statutory procedure for making a request with rules for employers to follow, including a requirement on employers to provide specific business reasons for refusing a request.

The UK Advisory Conciliation and Arbitration Service (ACAS) has published a revised Code of Practice on requests for flexible working which reflects the changes to the legal framework.

### Extension to priority redeployment in redundancy situations

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 came into force on 6 April extending the right to be offered 'suitable alternative employment' in a redundancy situation to employees who are pregnant, on maternity, adoption or shared parental leave (SPL) and for a period after the leave has come to an end.

This right does not prevent employees from being made redundant, it only relates to offering priority redeployment, if a *suitable vacancy* is available.



## Description

### Flexible working

Changes include:

- removal of the 26 weeks service requirement. A request can be made from day 1 of employment;
- allowing employees to make two requests in any 12-month period;
- reducing the period within which employers are required to respond to a request from three to two months;
- introducing a requirement to consult with an employee before rejecting their request; and
- removing the requirement that an employee must explain what effect the change would have on their employer and how that might be addressed.

The eight business reasons for refusing a statutory request will remain unchanged.

### Extension to priority redeployment in redundancy situations

The obligation to offer priority redeployment now applies from when an employee informs their employer that they are pregnant and for an additional 18 months:

- for adoption leave – from the day the child is placed with the employee for adoption,
- for maternity leave – from the first day of the expected week of childbirth or the day on which the child is born,
- for SPL – from the date of the child's birth if the employee takes more than 6 weeks SPL.



## Impact and risk

### Flexible working

The potential sanction for breach of the specific procedures remains low, carrying a risk of maximum eight weeks' pay capped at GBP 700 per week i.e. max GBP 5,600.

The real risk in rejecting a request for flexible working is a claim of indirect discrimination where, for example, a woman requests part-time working because she is the primary carer of children or where an employee is the carer of a disabled dependent, where advice should be taken.

### Extension to priority redeployment in redundancy situations

Any employer carrying out a redundancy exercise in the UK should be aware that after April 2024 the pool of people who have a right to priority redeployment has increased.

If an employer fails to offer an employee who has a priority right suitable alternative employment where a vacancy is available, they may have a claim for automatic unfair dismissal. Compensation is not capped in these cases and an employee does not need two years' service to bring a claim.



## Future actions

### Flexible working

Employers should:

- amend their flexible working policies; and
- train managers who deal with these requests to understand the changes and the shorter timescale in which to respond.

### Extension to priority redeployment in redundancy situations

The additional protections applies to pregnancies notified after 6 April 2024. In some cases, this may mean that a woman could receive up to 2 years of protection depending on when they notify their employer of their pregnancy.

Employers should ensure that when they carry out redundancy situations that they assess carefully all individuals in the priority redeployment pool. This pool will now include people who are not on leave.





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