



On your radar

Key employment issues to be aware of internationally





Welcome to the latest edition of CMS On your radar

If you want to get in touch to find out more about a development in a particular country please do speak to your usual contact within CMS or alternatively email employment@cmslegal.com. The information set out is correct at the time of writing in early January 2022.

The CMS Employment team



Index of countries in this edition



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

 Austria

 Belgium

 Chile

 China

 Colombia

 Czech Republic

 France

 Germany

 Hungary

 Italy

 Kenya

 Mexico

 Monaco

 Montenegro

 The Netherlands

 Peru

 Poland

 Russia

 Serbia

 Singapore

 Slovakia

 Spain

 Ukraine

 United Kingdom

Austria

Looking ahead to 2022

On your radar



“3-G” rule (vaccinated, recovered or tested negative for Covid-19) in the workplace

From 1 November 2021, before an employee can attend a workplace (where they might come into contact with other people) they must either test negative for Covid-19, be recovered from Covid-19 or vaccinated. Employees, who have not been vaccinated or have not recovered from Covid-19 must provide either a negative antigen test or a PCR test from an approved facility. The time spent on testing does not count as working time. In the health care industry, professionals working in nursing homes, residential care facilities for the disabled, hospitals, mobile care etc. must produce a negative PCR test if they have not been vaccinated or have not recovered from Covid-19. Employers must carry out random checks to ensure that employees comply with the 3-G rule. As a next step, the Government plans to introduce an obligation to require vaccination in the health care profession, as well as introducing a general obligation that Austrian residents must be vaccinated.

New rules for Covid-19 risk group certificates

Employees who have a Covid-19 risk group certificate are entitled to paid leave whenever this is necessary due to the overall situation with the prevalence of the virus, subject to a decision by the relevant minister. The entitlement to leave does not apply to employees who are able to perform their work from home or if the conditions under which they perform their work can be modified in such a way that the risk of infection with Covid-19 is reduced as far as possible. If the employee is granted leave according to this provision, the employer is entitled to the reimbursement of costs by the statutory health insurance carrier.

The conditions for issuing a Covid-19 risk group certificate have changed. The risk group certificates may now only be issued if the person concerned has a medical condition(s) that makes a severe course of Covid-19 infection likely, despite having been vaccinated three times against Covid-19 with a centrally approved vaccine or if the person cannot be vaccinated against Covid-19 for medical reasons. The minister's ordinance currently applies to paid leave until 31 March 2022.

Belgium

Looking ahead to 2022

On your radar



Mandatory teleworking with a possibility of a limited return to work

Until 28 January 2022, teleworking will remain compulsory for all employers whatever their size, for those employees who carry out a teleworking role (regardless of their employment relationship). If teleworking is impossible due to the role or because of the ability of the company to operate, companies must provide a certificate or other evidence confirming the need for staff presence at the workplace. Companies must again use the electronic registration system and must register on a monthly basis the total number of people employed and the number of people who are performing roles which do not involve teleworking.

Until 28 January 2022, companies will, however, be able to ask employees to attend the workplace for a maximum of one day per week. This is subject to a daily maximum presence of 20% of employees whose role is capable of teleworking and for whom telework is mandatory.

Mandatory vaccination for health care workers expected in 2022

In its cooperation agreement, the Government has decided to make vaccination compulsory for health care workers. As a first step, the unvaccinated health care workers will be suspended from their functions between 1 January and 31 March 2022 (unless suitable employment is possible) and receive unemployment allowances during this time for force majeure.

As a second step (from 1 April 2022), workers who remain unvaccinated will be dismissed, with a right to unemployment allowances, unless these workers have clearly indicated their opposition to vaccination before 1 April 2022.

Chile

Looking ahead to 2022

On your radar



Shorter working week

The Chilean Congress is discussing a Bill aimed at reducing the working week in the country from 45 to 40 hours. This initiative has the unanimous support of the entire political spectrum, so it can become law during the first half of 2022.

Pension reform

The Chilean Congress is currently debating a pension reform consisting of increasing the social security contribution rate for pensions, from 10% of gross remuneration to a rate close to 18%.

Changes in profit sharing

One of the components of remuneration for Chilean employees is the right to receive at least 30% of the employer's profits distributed to each employee. However, companies can alternatively meet this obligation by paying each employee a multiplier of 4.75 times their minimum monthly wages. However, the Chilean Congress is discussing two Bills aimed at reforming this situation. Although they have differences, both are similar in allowing the employer to provide an alternative to profit sharing, if the amount of money which is paid to the employee is greater than paying 30% of the Company's profits.

China

Looking ahead to 2022

On your radar



Amendment to the PRC Work Safety Law

The Amendments to the PRC Work Safety Law became effective on 1 September 2021. According to the amendments, employers are required to pay attention to both physical and psychological conditions and behaviours of their employees. Psychological counselling and spiritual consolation for employees shall be enhanced. Employers in emerging industries such as the platform economy shall establish, improve and implement the workplace safety measures for all their employees. The penalties for accidents are also increased from RMB 200,000 ~ RMB 20,000,000 to RMB 300,000 ~ RMB 100,000,000.

The PRC Personal Information Protection Law

The new PRC Personal Information Protection Law took effect on 1 November 2021. According to this new law:

- Notification plus consent is the basic requirement before an employer can process the employee's personal information. The obligation arises when the employer collects, keeps, uses, processes, or transmits the employee's personal information. The employer must notify the employee about the name and contact information of the processor, processing purpose and method, types of personal information involved and the

- retention period as well as the ways and procedures of exercising legal rights in the processing of personal information, and the employer must obtain the consent of the employee. If any sensitive personal information of the employee is involved, or the employer needs to provide the personal information of the employee to a third party, etc., the employer must obtain the specific consent of the employee. As an exception, the employer does not need to obtain the consent of employees to handle their personal information, if the information is necessary for the performance of the employment contract or for the purposes of HR management according to the labour rules, collective agreements or if any other statutory circumstance is fulfilled;
- Cross-border transfer of employee personal information shall always be subject to the specific consent of employees and fulfilment of statutory requirements as provided by law;
- The retention period of employee personal information shall be the minimum period required according to the purpose of processing the information. The employee is entitled to withdraw his/her consent on the process of his/her personal information.

Special Individual Income Tax ("IIT") Policies for foreigners working in China extended for another two years

On the last day of 2021, the Chinese Government decided to extend the preferential IIT policies specifically adopted for foreigners on housing allowances, children's education allowances, language training allowances for another two years. This means foreigners can continue to work in China without having an additional tax burden in the next two years. This topic will be re-visited in 2023.

Introduction of parental leave

Following the amendment of the PRC Population and Family Planning Law, several locations, including Shanghai, Beijing, Chongqing, Zhejiang Province, Sichuan Province, etc., have introduced parental leave. Subject to local regulations in different areas, a female employee who gives birth and the male employee whose wife gives birth in compliance with the law can enjoy 5–15 days of paid parental leave each year before their child reaches 3 years old.

Colombia

Looking ahead to 2022

On your radar



Advances regarding evidence and incentives for vaccination

Despite the fact that vaccination is still not mandatory for employees, the Interior Ministry issued Decree 1615 on 30 November 2021 containing an obligation on premises to insist on evidence of vaccination before individuals can attend large events or meetings (this applies to members of the public and employees). In the same Decree the Government is encouraging private employers to consider the possibility of granting a free day in the first semester of 2022 to those employees who have completed the vaccination scheme before the end of the year 2021, in order to promote voluntary vaccination.

Right to disconnect from work during resting time

The Senate has approved a Bill which aims to regulate the right to disconnect from work after working hours. Employers cannot demand their employees respond to work outside of the normal working hours, unless it is a force majeure situation or an emergency that requires immediate assistance in order to avoid serious damage to the Company. At the moment, the Bill is pending and has still to become an official Law.

Special parental leave

A new law (Law 2114 of 2021) has established that parents can divide aspects of paternity and maternity leave following the creation of new legal schemes. With shared parental leave both parents can agree on the distribution of the last 6 weeks of maternity leave and share this with the father. With flexible time parental leave, parents can decide that part of the maternity or paternity leave period can be changed for a period of part time working, which would mean that during that period of time an employee's day would be divided one half of part time work and the other half maternity or paternity leave. Due to the novelty of this law during 2022 employers should consider internal changes they need to make to deal with any impact on work if employees take the leave.

Incentives for the creation of new jobs focusing on hiring young people and women

The Government has created incentives for employers who created new jobs after the Covid-19 pandemic. In cases where additional employees between the ages of 18 and 28 were hired after March 2021, the Government will grant a monthly incentive equivalent to 25% of the minimum wage for each employee. This incentive will only be applicable until August 2023, and employers can only receive it on 2 occasions. Additionally, Decree 1399 of 2021 extends the

incentive for new jobs to those who are 28 or over and earn a salary that is not higher than 3 times the legal minimum wage. Where women are hired the incentive is the equivalent of 15% of the minimum wage and with men the incentive is 10%.

Social security matters

On 19 August 2021, the Constitutional Court declared that the special mechanism created for people who receive a monthly income of less than the legal minimum wage was unconstitutional, ruling that it should be regulated by an ordinary law to be issued by Congress. In view of this, employees with lower incomes may opt to use other mechanisms, such as the Periodic Economic Benefits (BEPS) program in order to protect their retirement benefits, until the Social Protection Floor is regulated.

Czech Republic

Looking ahead to 2022

On your radar



State support in connection with Covid-19

Self-employed individuals or other eligible people, who experienced a decrease in sales of at least 30% compared to any three consecutive calendar months between June and October 2021, are entitled to obtain a compensation bonus amounting to between CZK 500–CZK 1,000 for each day of the bonus period in the form of a tax refund. The current approved bonus period is between 22 November 2021 and 31 January 2022. Further, under certain conditions an employee will be entitled to a contribution amounting to maximum CZK 370 for each calendar day during the first 14 calendar days of the compulsory quarantine period. An employee, who could not work because of caring for certain dependents (e.g. children) resulting from the extraordinary measures (e.g. school closures), is entitled to a nursing allowance.

Flat-rate reimbursement of employer's costs in connection with obligatory salary deductions

Employers will be entitled to a flat-rate reimbursement of the costs incurred where deductions from salary are ordered by a court or an executor. The Ministry of Justice shall specify the flat-rate compensation. It will be approximately CZK 50 per month. Until now, the reimbursement of costs has been determined individually.

Mandatory vaccination for certain professions

As of 11 December 2021, a new Government decree came into effect where it is mandatory for all individuals over the age of 60 and certain professions to be vaccinated against Covid-19. The obligation applies in particular to emergency and social workers. To comply, the affected individuals must be vaccinated before 28 February 2022. A group of Senators challenged the new decree in the Constitutional Court because of the potential conflict with human rights. The Constitutional Court has yet to decide on this issue.

Changes resulting from the implementation of the EU directives

The EU directive on work-life balance for parents and carers and the EU directive on transparent and predictable working conditions in the EU, which should be implemented by the end of July 2022 at the latest, will bring some changes to Czech labour law. Among one of the most important is the extension of paternity leave from 7 days (which it is currently) to 14 days (10 working days).

Impact of the election on employment law?

The election to the Czech Parliament took place in autumn 2021. Therefore, all Bills must be proposed again. The new Government has suggested increasing the flexibility of the Labour Code, new options for part-time work, greater support for teachers, however the specific draft Bills have yet to be prepared.

France

Looking ahead to 2022

On your radar



The political idea of the health pass

Like other places in Europe, there are parts of the French public who are reluctant to be vaccinated. As a result, the Government decided not to impose mandatory vaccination, which would have resulted in huge disruption, and instead to create the health pass. With the health pass, the Government is saying: “You don’t have to be vaccinated if you don’t want to”. But if you want to go to a bar, to a restaurant, to a theatre, you have to present a health pass which implies that you have been vaccinated or tested negative. The result has been spectacular: the number of people fully vaccinated has increased from 20 million on 1 July to 40 million on 1 September 2021.

The health pass

The health pass has been mandatory since 9 August 2021 (and from 3 September 2021 for children over 12) to access certain establishments, places, services and events listed by decree. People working in these places must also present the health pass to continue their work, this rule came into force on 30th September 2021 and is currently set to continue until 31 July 2022. In addition, a new decree requires a booster vaccination, especially for people aged 65 or older, to meet the requirements of the pass. A bill that is currently under discussion in Parliament will replace the health pass by a vaccine pass which has stricter conditions including a complete vaccination scheme.

New health measures in companies related to the fifth wave of Covid-19

In response to the resurgence of Covid-19 infections, the Government has updated the measures to ensure the health and safety of employees in companies, which came into force on 29 November 2021. The new health measures concern ventilation of premises and measurement of CO2, the suspension of social events in companies, the mandatory wearing of masks in places, establishments, services and events for which the presentation of a health pass is mandatory, the requirement of two metres between people in places where there is a collective gathering where masks cannot be worn.

Implementation of the Whistleblowing Directive

A draft law to strengthen the protection of whistleblowers was unanimously adopted by the National Assembly in its first reading on 17 November 2021. The purpose of this text is to transpose the European Directive, which creates a common framework for the protection of whistleblowers. The main aspects of the draft law concern the extension of the definition of whistleblowers (excluding certain criteria, in particular the impartiality of the whistleblower), the protection of people in connection with the whistleblower, the possibility of direct external reporting (without first going through internal reporting), the extension of cases where

there can be direct public disclosure of information, new prohibited retaliatory measures against whistleblowers (including threats or attempts to resort to such measures) and finally the reinforcement of the protection of whistleblowers (automatic nullity of retaliatory measures, provision for the costs of the proceedings to be borne by the opposing party, etc.).

Suspension of the parliamentary work before the 2022 presidential elections

According to an old republican tradition, the Parliament (National Assembly and Senate) suspend its work approximately two months before the presidential elections (10 and 24 April 2022). This suspension of parliamentary work should occur on 27 February 2022.

Germany

Looking ahead to 2022

On your radar



Mandatory vaccination for health care workers **15 March 2022**

Anyone who works in a health care or nursing profession or provides occupational care for disabled people must be fully vaccinated by 15 March 2022, if the employment relationship already exists or has started by that date. Beginning 16 March 2022, employees will be eligible for such positions only upon presentation of appropriate proof of vaccination or recovery.

Introduction of an electronic incapacity certificate

From 1 July 2022, employees will no longer have to show an incapacity certificate to their employer. Instead, health insurers will make the relevant data available electronically. As a result of the end of the so-called "yellow paper", companies need to re-evaluate their existing process.

Implementation of the Whistleblowing Directive

In spring 2022, the EU Whistleblowing Directive is expected to be implemented into German law. The new Federal Government has announced that the scope of the implementation law will extend to areas of law outside the scope of the Directive, i.e. breaches of other national laws will also be included.

Works council elections

From 1 March 2022 to 31 May 2022, all employees entitled to vote may elect their works council representative. The minimum age for works council elections has been decreased. From 2022 onwards, employees aged 16 or older may vote in works council elections.

Plans for "more time for parents"

The new family minister wants to improve the situation for parents in the near future. The expansion of parental leave and the introduction of a new provision that allows one parent – mostly fathers – to stay with the family on full pay for the first two weeks after childbirth is planned.

Hungary

Looking ahead to 2022

On your radar



Mandatory Covid-19 vaccination in the workplace 1 September 2021

An employer can ask, (although they are not obliged to insist), on employees being vaccinated against Covid-19 as a condition of entry to a workplace. If the employee refuses to have the Covid-19 vaccine within the time limit set by the employer, the employee may be placed on unpaid leave for up to one year. After this period, the employment relationship can be terminated by the employer, if the employee has not had the Covid-19 vaccine during this one-year period.

Teleworking changes 1 January 2022

In December 2021, the Hungarian Parliament was debating whether to put the current practice of teleworking onto a more uniform legal context. One of the changes includes the possibility of partial teleworking, where employees would be allowed to work at the employer's premises for up to one third of their working days in a calendar year. In addition, the new legislation would differentiate between telework performed by computing tools and telework performed by non-computing tools. The proposal will also include associated labour safety rights and obligations. In cases of teleworking, based on the agreement of the parties, the employee may be entitled to reimbursement of costs in connection with telework up to an amount equivalent of 10% of the mandatory minimum wage.

Increase of mandatory minimum wage and guaranteed wage minimum 1 January 2022

The mandatory minimum wage will be increased from HUF 167,400 (approx. EUR 460) to HUF 200,000 (approx. EUR 550). In cases where roles require at least an intermediate level of education, the guaranteed wage minimum will be increased from HUF 219,000 (approx. EUR 600) to HUF 260,000 (approx. EUR 715).



Italy

Looking ahead to 2022

Covid-19 social safety nets and ban on dismissals

The emergency legislation allows organisations to use the Covid-19 social safety nets until 31 December 2021. In order to have access to these funds, employers are not allowed to dismiss their employees for 'economic' reasons (this does not apply to dismissals for misconduct, or where there is a business closure or bankruptcy, or collective agreements with trade unions to manage voluntary redundancies.) Therefore, in the absence of further extensions, it is expected that the state of emergency will end in 2022 and that the emergency legislation will change.

Health and safety in the workplace

From 15 October 2021, it became mandatory to have a green pass to access public and private workplaces. If an employee does not have a green pass, it is considered an unauthorised absence until they present a green pass. This must have been done before 31 December 2021 (the date set for the end of the state of emergency) without triggering disciplinary consequences and retaining employment. From 15 February 2022, employees over the age of 50 will be required to be vaccinated and will only be able to enter the workplace after showing a green pass from the vaccine.

Budget Law 2022

In the package of measures in the new Budget Law 2022 there is a substantial chapter in favour of businesses. These measures are designed to support growth and aim to foster the competitiveness of the country's production system. The measures include:

- The Fund for Workers in Crisis: these resources are intended to facilitate early retirement for employees of small and medium-sized enterprises in crisis, who have reached at least 62 years of age. These measures will help companies in difficulty.
- An exemption from social security contributions is envisaged for private employers who hire employees on open-ended contracts, regardless of their age, from companies in crisis.
- For workers already in the Wages Guarantee Fund, further support is available to help employees of companies with more than 15 employees, in order to implement processes to help with re-employment where a company is in crisis. In detail, up to 12 additional months of wage subsidies could be granted. Actions aimed at re-employment or self-employment are to be defined during the trade union consultation procedure.

Kenya

Looking ahead to 2022

On your radar



Employee data in the Data Protection Act 2019

On 25 November 2019, the Data Protection Act came into force. This led to the appointment of the Data Commissioner a year later. The collection of employee personal data will need to be compliant with the Act. Special consideration will need to be taken when developing policies/systems which safeguard employees' data rights as employers must justify their legal basis for processing employee personal data.

Compulsory vaccination as a condition of employment

With the economy opening up to business as usual, employers are encouraging their employees to take the Covid-19 vaccine. Firstly because the Constitution of Kenya guarantees every person the right to reasonable working conditions (including a safe and healthy workplace) and secondly, because various statutes impose this duty on the employer. As the Government is leaning more towards adopting a "vaccination pre-service delivery approach", the question of compulsory vaccination in employment, is yet to be decided.

Working from home and sick leave

In some industries, working from home is still encouraged albeit under specific and exceptional circumstances. One of those circumstances is where employees who have exhausted their sick leave, are now "working from home" to avoid deduction of their annual leave days. There is currently a case pending before the Employment and Labour Relations Court in which a judgment on this is to be delivered on 16 March 2022 settling this issue.

Formulation of gig economy rules

When the UK Supreme Court ruled that a group of Uber drivers were not self-employed, the verdict turned the spotlight on the global gig economy, including Kenya's. Though the judgment may seem detached from the Kenyan situation, its principles are likely to rekindle the long-running debate on the welfare of employees in gig economy businesses and this grey area of employment law. The Digital Transport Forum, a lobby group for drivers of Uber and Bolt, called upon the Labour Cabinet Secretary to begin the development of laws which would help these drivers to be recognised as employees. Additionally, they want Service Level Agreements (SLAs) localised in accordance with the laws of Kenya, noting that Bolt and Uber still have their SLAs in line with European laws.



Mexico

Looking ahead to 2022

Changes to labour outsourcing practices

On 23 April 2021, a Bill to amend several provisions on outsourcing and profit-sharing was published in the Federal Official Gazette. The Bill, though limited to outsourcing/ subcontracting, represents the most significant labour reform in Mexico since 2013 and aims to put an end to abusive practices from employers as well as reducing tax evasion. These amendments came into force on 1 August 2021. However, Government agencies and institutions will begin to apply the changes from January 2022. The amendments to the labour and tax laws will require many businesses to reorganise their operations in Mexico since the Labour Authorities will begin inspections in 2022. Fines and sanctions for breaching the new law have been toughened for companies and will be up to EUR 18,500 and EUR 190,000 in cases where employers refuse an inspection.

New model of labour justice

On 3 November 2021, 13 states adopted the new model of labour justice promoted by the current administration with the implementation of conciliation and labour courts as the new mechanism for resolving labour disputes. A 2019 Labour Reform amended the Mexican judicial labour system with an important move to conciliation to avoid the judicialisation of disputes and, consequently, the excess of cases solved by courts, which triggered long trials and untimely resolutions. The new model aims to reduce the length of a trial from four years, on average, to eight months. The third and final phase

of the reform concludes in 2022, with the implementation of the new labour model in the remaining 11 states. With this labour reform Mexico is progressing as planned in modernising its labour laws and fulfilling its national and international commitments.

Increase in the minimum wage in Mexico

On 1 December 2021, the National Minimum Wage Commission announced an increase of 22% to the minimum wage in Mexico, which will apply from 1 January 2021. The changes involve the northern cross-border region going from \$213.39 to \$260.34 Mexican pesos; and for the rest of the country the minimum wage will go from \$141.70 to \$172.87 Mexican pesos. Increases to the minimum wage must be published in the Official Gazette before 1 January 2022.

Mexican Official Standard (NOM) regarding telework

The Ministry of Labour and Social Welfare (STPS) presented the schedule for the development of a Mexican Official Standard (NOM) regarding telework in order to outline the responsibilities of employers and unions on health and safety matters for telework employees, contemplating its publication in 2022. This regulation will include the identification and management of labour risks for telework employees at home.

Monaco

Looking ahead to 2022

On your radar



Law relating to the organisation of working time

This Law from 24 June offers Monegasque companies the possibility to organise working hours over a reference period longer than a week (which was, before that, the only legal standard). Even if its impact on work organisation is limited due to the cost for employers, it has introduced a new notion of “time saving accounts” and has given a larger place to social dialogue.

Extension of the health pass from 15 December 2021

As a result of the resurgence of Covid-19, the Monegasque Government has extended the use of the health pass to all individuals who attend places where it is required for the public to access (e.g. restaurants, bars, nightclubs, theatre, sports stadium, etc.)

Bill on intellectual property

This Bill expressly refers to the notion of a salaried author and defines, for the first time, a legal scheme for intellectual work created in the course of an employment contract. The text, which is not finalised yet, provides for a rebuttable presumption that rights of exploitation of intellectual work made by employees in the course of their employment contract are transferred to the employer. This presumption would not apply i) if the intellectual work does not result from the employment contract, and ii) if the employment contract provides for a specific compensation for the transfer of intellectual work to the employer.

Bill on the acquisition of nationality by marriage

This Bill, if adopted, may amend Law no. 629 of 17 July 1957, concerning the order of priority for hiring and economic redundancies. For example, foreigners residing in Monaco may be granted a priority rank even if they have never worked before in Monaco.

Tax exemption in 2022 for payment of overtime hours worked in 2021

The Government confirmed that French employees of Monegasque employers can benefit from a tax exemption on overtime hours worked in excess of the legal working hours in Monaco, i.e. 39 hours. According to the ruling by the highest Court of Monaco, a certificate from the employer recognising overtime for tax exemption purposes binds the employer who must pay the certified hours.

In 2022, employers should carefully assess the conditions for providing overtime work certificates to employees for work conducted in the previous tax year.

Montenegro

Looking ahead to 2022

On your radar



Amendments to the Law on Personal Income Tax and to the Law on Mandatory Social Insurance Contributions

As a result of changes to the Law on Personal Income Tax and the Law on Mandatory Social Insurance Contributions, from 1 January 2022 the following changes will apply (amongst others):

- the minimum monthly wage is increasing to EUR 450 (net), whereas previously the minimum net wage was EUR 250;
- the income tax calculation has been adjusted, with wages of up to EUR 700 (gross) non-taxable;
- the contribution for health insurance has been abolished, both for the employer and the employee, with the state taking over.

Montenegrin Government adopts Programme for attracting Digital Nomads in Montenegro

On 28 December 2021, the Montenegrin Government adopted the Programme for Attracting Digital Nomads in Montenegro up to 2025, with the Action Plan for 2022 which aims to increase the number of digital nomads residing in the country. Once the necessary legal and procedural steps are adopted, foreign nationals can be granted a temporary residence permit for digital nomads. On this basis they may remain in Montenegro and work digitally for up to a year with the possibility of an extension. The action plan in the Programme, outlines that by mid-2022 the Montenegrin Government will adopt the amendments to the law on foreigners, as well as the law on Personal Income Tax in a way that digital nomads, as a category, are recognised. Furthermore, the aim of the action plan in the Programme is that in 2023, Montenegrin authorities will issue 250 temporary residence permits for digital nomads, while the goal for 2025 is to issue 1000 permits on the same basis.

The Netherlands

Looking ahead to 2022

On your radar



Legislative proposal on 3G policy to enter the workplace

The Covid-19 pass in the Netherlands is the Dutch equivalent of the Digital Covid Certificate. The QR-code which is visible in the Covid-19 pass reflects whether a person has had Covid-19, or has been vaccinated or has been tested. Based on the 3G policy a QR-code can be issued by means of (i) a negative test result, (ii) a vaccination certificate or (iii) a recovery certificate. The legislative proposal requires a QR-code to enter the workplace for employees working in sectors where the QR-code is also required for visitors, such as the hospitality, cultural and non-essential retail sectors. In addition, the legislative proposal provides the Government with the ability to insist on the use of the QR-code for employers in workplaces where the risk of transmission of Covid-19 is high. The proposal will be considered by the House of Parliament in January 2022.

Compensation for working from home

From 1 January 2022, an employer can pay an employee compensation of EUR 2 net for each day the employee works from home. This tax-free amount can be spent by the employee for costs related to working from home such as coffee, heating and other costs the employee has when working from home.

Pending legislation: work where you want

At the moment the location of where an employee should work is the employer's decision. However, new legislation has been proposed in Q4 2021, that will allow employees to have the decisive voice about the location of their work, providing employees with a better balance between working from home and the office. If the legislation is adopted, then employees can ask the employer to work from home. It will be difficult for employers to refuse such a request. The legislation will be discussed at the beginning of 2022.

Change in voting rights for works councils

From 1 January 2022, employees with three months service can vote in an election and stand for election to a works council. Currently, an employee has an active voting right after six months and a passive voting right after twelve months. Both periods are shortened to three months. This will create more opportunities for flexible workers (e.g. employees with a temporary contract, temporary workers, seconded workers and payroll employees) to participate in employee representation.

The employer's interest in creating a safe working environment can outweigh fundamental rights of the employee

A court ruling from 14 December 2021, shows a shift in the balance of interests when assessing Covid-19 policy in the workplace. In this case the employer of an unvaccinated dancer had requested the dancer to self-test on a weekly basis in order to create a safe working environment. The dancer refused, which led to the employer suspending the dancer and stop paying their wages. The court ruled that the infringement of the dancer's fundamental right was outweighed by the employer's need to create a safe working environment and the financial interests of the employer. The balancing of interests will be assessed on a case-by-case basis. In the dance sector other measures, such as wearing a face mask, social distancing and working from home are not an option. Nonetheless, this ruling shows that there are circumstances where fundamental rights can be overridden.

Peru

Looking ahead to 2022

On your radar



Legal requirement of full vaccination to attend work

From 10 December 2021, any company with more than ten employees is only able to operate with workers in their premises if the employees have been fully vaccinated. The employer is obliged to verify the vaccination status of employees and must adapt its safety protocols to meet this obligation. In cases where the employee was vaccinated abroad, the employer could take verification measures, such as asking the employee for a copy of their passport to verify that their departures and entries to Peru coincide with the dates of vaccination shown on the document they present.

Vaccination remains voluntary but unvaccinated workers will not be allowed to attend the workplace. In cases where a worker decides not to be vaccinated, the employer has the right to suspend the worker without paying their salary. However, the employer is not entitled to discipline the worker for not being vaccinated.

New precedent established by the Supreme Court: falsely denouncing an employer to the Public Prosecutor's Office constitutes grounds for dismissal.

In a decision issued last November, the Supreme Court of Justice established that it is a serious offence justifying dismissal if a worker brings a criminal complaint to the Public Prosecutor's Office about a co-worker without grounds.

If an employee makes criminal allegations to the Public Prosecutor's Office and falsely accuses a manager or representative of the employer, despite knowing that the Labor Authority is in charge of labour disputes, this may be grounds for dismissal. This type of conduct demonstrates that what they are really trying to do is harm the accused and their reputation. Any labour dispute must be decided by the labour authorities and not by criminal judges.

Poland

Looking ahead to 2022

On your radar



New rules on whistleblowing

The Polish Government has recently published draft whistleblowing legislation. The new rules will apply to all companies hiring at least 50 employees. Companies will need to introduce internal procedures for reporting irregularities. Whistleblowers will be allowed to make an external report to the Polish Commissioner for Human Rights without making an internal report first. Whistleblowers will also be protected against dismissal because of having reported irregularities. The draft legislation is currently going through a consultation process, and we may see some further changes. According to this draft, companies that employ at least 250 employees will have to adopt internal procedures within 2 weeks after the new law comes into force (probably early 2022). Companies that employ less than 250 employees will have to adopt internal procedures and set up internal reporting channels up until 17 December 2023.

The Polish New Deal – changes in tax and labour law

The “Polish New Deal” Act has been adopted. It indicates that for example:

- the tax-free income will be increased to PLN 30,000 (up from the current PLN 8,000);
- the threshold triggering a 32% tax rate will increase to PLN 120,000 (up from the current PLN 85,528);
- entrepreneurs who settle flat tax rate will pay a health contribution of 4.9% of their income, but not less than 9% of the minimum wage. The health contribution will not be deducted from tax.

New rules on employing foreigners

The new legislation on changing Polish immigration law has been adopted. The aim of these changes is to shorten and simplify the procedures on legalising work and the ability to stay for non-EU citizens in Poland. The new act introduces a new procedure for changing the temporary residence and work permit, in situations where an individual changes their employer. Along with this the new legislation extends the list of situations where obtaining a new work permit will not be required.

Verification of employees’ test results

Parliament is working on a new act that will give employers a right to expect an employee to take a Covid-19 test and to present its result, unless the employee has been vaccinated or recovered from Covid-19. The draft legislation is currently going through a consultation process.

Russia

Looking ahead to 2022

On your radar



Electronic document workflow

Starting from 22 November 2021, employers are allowed to sign and store work-related documents in electronic form without duplication on paper, except for employment records, industrial accident reports, employee termination orders and employee health and safety training documents. The requirements relating to electronic documents established by the federal executive authorities will apply from 1 March 2023. The provisions of the Russian Labour Code on the interaction between unified digital platforms, the state services portal and the employer's information system will apply from 1 September 2022.

Medical examinations of foreign nationals

Starting from 29 December 2021 all foreign citizens entering Russia for work, as well as foreign citizens arriving in Russia for purposes other than work, for a period exceeding 90 days, should undergo fingerprint, photographic and medical examination procedures. This medical examination should be done within 30 calendar days from the date of entry to Russia for those arriving for work and within 90 calendar days from the date of entry to Russia for those arriving in Russia for a period exceeding 90 days for a different purpose.

Amount of minimum wage is increased

From 1 January 2022 the minimum monthly wage is increasing to RUB 13,890 (*approximately EUR 167*).

Mandatory vaccination

A number of Russian regions have introduced rules on mandatory vaccination against Covid-19. In general, employers are obliged to vaccinate at least 80% of the total number of employees. As part of these rules, the second component of the vaccine should be administrated by 15 January 2022.

New list of the Far North areas

Since 1 January 2022, far north and equivalent areas have been recategorised to qualify for financial assistance from the state. People working in the far north and equivalent areas, depending on the area, are provided with additional guarantees and compensation, such as the percentage wage increment, additional vacation days, and others.

Serbia

Looking ahead to 2022

On your radar



New law on health and safety at work expected to be adopted soon

After the public discussions held in the autumn of 2021, the draft law is being finalised and is expected to be adopted in the first quarter of 2022. The current draft mentions remote work and working from home for the first time, but in a very general manner, so we expect many uncertainties in practice. The employer must determine the conditions and the work processes to ensure that remote working is safe, and the employee is required to inform their employer on whether these conditions are fulfilled.

Serbian Government opens public discussion on draft law on internships

In December 2021, the Serbian Government opened a public discussion on the draft Law on Internships, which will for the first time regulate internships that are not a requirement under the mandatory regulations for certain professions. Under the draft Law, within the first nine months after the intern completes the relevant education, he/she can establish a “voluntary” internship only for the profession that is in line with the relevant education and acquired qualifications. After that period expires, an internship can be established for any profession. However, an internship can only be established

on one occasion for a certain profession and not after the employment relationship. The internship agreement can be for a period up to six months and the intern will be entitled to be paid an amount equivalent to two thirds of the official minimum wage. We expect that the final wording will be different, as several influential employers’ associations requested that the above restrictive limitations are relaxed.

Upcoming amendments to the law on foreigners and to the law on the hiring of foreigners will introduce a combined permit for staying and work in Serbia

The amendments to these two laws are expected to be adopted in the first quarter of 2022, as public discussion closed in autumn 2021. The amendments will introduce a combined permit for stay and work in Serbia, which means that only one application will be required, instead of the current application for the temporary residence permit (filed by the foreign national) and the application for the work permit (filed by the local company, once the temporary residence permit has been issued). The intention is to simplify and shorten the procedure and it will also be possible to conduct the whole procedure online.

Singapore

Looking ahead to 2022

On your radar



Advisory on work and leave arrangements for employees who test positive for Covid-19 but are mildly symptomatic or physically well

Employees who self-test positive on the Antigen Rapid Test (ART) but are otherwise physically well (i.e. no evident symptoms like fever, cough or runny nose) are advised to self-isolate at home for 72 hours. There is no need for them to visit a GP clinic or obtain a PCR test. Employees who are symptomatic should see a doctor. Those who test positive at a GP clinic / hospital but are assessed to be mildly symptomatic and of low risk by the doctor will be given a five day medical certificate (MC) and advised to self-isolate at home for 72 hours.

After 72 hours of self-isolation, the employee should do a self-ART. If the result is negative, they may return to work and resume daily activities. If the result is positive, they should continue to self-isolate and take another ART every 24 hours. They can end self-isolation upon a negative self-test ART or on Day 10 if vaccinated or Day 14 if unvaccinated, where Day 1 is the date of the first positive self-ART. If an employee develops symptoms or symptoms do not improve after the MC duration, they should see a doctor.

Employees should immediately inform their employers when they test positive for Covid-19 and begin self-isolation at home. They should not report to the workplace. Those who are physically well should be allowed to work from home if

possible. If that is not possible, employers should treat the period of absence as paid sick leave without requiring a MC from the employee. Employers should treat employees with mild symptoms and a 5 day MC from a doctor similarly as being on paid sick leave.

Updated Stay-Home Notice (SHN) regime and onboarding requirements for migrant workers from the Construction, Marine shipyard and Process sectors from 7 January 2022

From 7 January 2022, 2359 hours, all non-Malaysian male work permit and S Pass holders from the Construction, Marine shipyard and Process (CMP) sectors arriving from Categories II and III countries will serve their SHN directly at the Ministry of Manpower's (MOM) Onboard centre.

An employer is required to pick up their migrant workers at the point of entry, and provide transport to send them directly to the Onboard centre for their Stay-Home Notice (SHN). MOM will inform employers of the details before the migrant workers arrive in Singapore. Employers should pick up their workers within an hour of them clearing immigration.

Non-Malaysian work permit holders holding an In-Principle Approval (IPA) will undergo an additional residential onboarding programme during their stay at the Onboard centre. Further details summarising the revised SHN regime for migrant workers can be found on the MOM website.

Updated advisory on Covid-19 vaccination at the workplace

Phase 1 (1 to 14 January 2022): Employees who are fully vaccinated, certified to be medically ineligible, or have recovered from Covid-19 within 180 days, can return to the workplace. Unvaccinated employees will still be allowed at the workplace if they have a negative Pre-Event Testing (PET) result. The PET negative result must be valid for the duration that employees are required at the workplace. Unvaccinated employees have to pay for their own PET and show the PET results to employers when reporting to work.

Phase 2 (15 January 2022 onwards): Only employees who are fully vaccinated, certified to be medically ineligible, or have recovered from Covid-19 within 180 days, can return to the workplace. Unvaccinated employees will not be able to return to the workplace by performing PET in lieu of full vaccination. Partially vaccinated employees will still be allowed at workplaces with a negative PET result up to 31 January 2022 after which they must be fully vaccinated.

Jobs Growth Incentive (JGI) extended to March 2022

The JGI was implemented to increase the employment of local employees by businesses during the pandemic. Following its success, the Ministry of Manpower has decided to extend the JGI by another six months from October 2021 to March 2022. Employers that meet the JGI eligibility criteria will receive wage support for their new local hires.

Slovakia

Looking ahead to 2022

On your radar



Amendments to the Labour Code

Amendments to the Labour Code are being discussed by the Slovak public authorities. The aim of the amendments is to implement the European Directives on transparent and predictable working conditions and the Directive on work-life balance. The amendment covers several labour-law areas, for example: new rules on electronic communications, new information obligations towards employees, and the work-life balance related provisions for parents and carers. The amendments should be effective from 1 August 2022.

Implementation of the Whistleblowing Directive

Although the Slovak Republic has already implemented certain rules regarding protection of whistleblowers and established the special whistleblower authority, the final version of the amendment for transposing the EU Whistleblowing Directive is still subject to the discussion of Slovak public authorities. The new amendment should be effective from 1 May 2022, so the Slovak Republic will miss the deadline for transposition.

Mandatory vaccination

The Slovak Government is discussing the possibility of mandatory vaccination against Covid-19. The opposition parties are against statutory rules and a clear consensus regarding the specific terms is missing within the governing parties, too. The Ministry of Justice and the Ministry of Health are preparing an analysis of the possibilities of mandatory vaccination against Covid-19, and the possibility of limiting the reimbursement from public health insurance for any health care provided to a person with Covid-19 who has voluntarily decided not to be vaccinated.

First help for employers during Covid-19 crisis

Although the Slovak Republic introduced the new “Kurtzarbeit Act” that aimed to help employers preserve jobs during the Covid-19 crisis, it has been paused until 1 March 2022. Until then, employers can apply for “First help” that aims to help employers cover the salaries of employees upon meeting some statutory conditions, e.g. registration with the Register of Public Sector Partners when they exceed the statutory threshold of financial aid.

Employee’s age as a new ground for notice of termination

From 1 January 2022, an employer was supposed to have the option of dismissing an employee who had reached the age of 65 and was entitled to a retirement pension. The employee would have a statutory right to severance payment in the event of such termination. However, in December 2021 the Slovak Constitutional Court suspended the effectiveness of this law. The court has not yet ruled on whether the law is in accordance with the Slovak Constitution.

Spain

Looking ahead to 2022

On your radar



Labour reform

The Labour reform has now been approved. Most relevant measures relate to temporary employment: several new limitations to fixed-term employment have been approved, including higher administrative fines in case of fraudulent temporary contracts. New measures have also been approved relating to training contracts, collective bargaining, internal flexibility measures, and contractors and subcontractors.

Gender equality

From 7 March 2022, companies with 50 employees or more should have already negotiated and implemented their relevant general equality plan.

Whistleblowing channel in Spain (Whistleblowing)

By 17 December 2021, the EU Whistleblowing Directive should have been implemented, even if delays are expected in Spain. The implementation of the European regulations in Spain will introduce the obligation to implement internal whistleblowing channels.

Minimum wage increase

A minimum interprofessional wage increase is expected in 2022. That said, negotiations for this have not yet started. The current annual minimum wage amounts to EUR 13,510 gross per annum.

Automation of labour inspectorate infringement reports

From 1 January 2022, the Labour Inspectorate will be able to carry out automated administrative activity in the sanctioning procedure. To this end, it will use big data analysis to detect lack of compliance with employment and social security regulations – it is expected that this will affect social security infringements.

Ukraine

Looking ahead to 2022

On your radar



Liberalisation of labour relations in 2022

Certain draft laws have been considered by the Parliament of Ukraine recently and are expected to come into force in 2022, liberalising labour relations and providing the following changes:

- Additional rights, obligations and grounds for an employee's dismissal may be included in a labour agreement including in a fixed-term agreement;
- A new type of labour agreement, which regulates flexible working hours regime, will be introduced; and
- Additional measures to protect job applicants from discrimination will be guaranteed.

Agreements with CEOs of limited liability companies

According to the recent change to the Law of Ukraine "On Limited and Additional Liability Companies" there is an option to conclude a civil law (services) agreement with a CEO of a limited liability company. Previously, it was mandatory to execute an employment contract with a CEO. Therefore, a foreigner may be appointed as a CEO without obtaining a work permit. We expect this will be implemented in 2022.

Electronic format for labour safety documents

An employer has recently been allowed to store documents related to labour safety in an electronic format. It is necessary to introduce an internal policy on the processing of electronic documents. At the same time, the electronic management of labour safety documentation is not mandatory; it is only an alternative. Therefore, each company can choose a format which is convenient for them.

Ukrainian Ombudsman issues a notification about the processing of personal data by employers

The notification emphasises that employers cannot demand from a job applicant a consent to personal data processing when hiring him/her. Consent to the processing of personal data must be given voluntarily. Generally, personal data collected by employers under Ukrainian labour law does not require a separate consent from a data subject. More changes on personal data protection in the workplace are expected in 2022.

Special conditions of engagement of IT specialists under the Diia City regime

Currently, a special legal regime for IT companies (the Diia City regime) is at the stage of implementation in Ukraine. Once fully operational (this is expected to happen in 2022), the regime provides for numerous benefits for the IT sector. These include the introduction of a gig contract as a new contractual model for the engagement of IT contractors by companies who are residents of the Diia City regime. This combines features of the standard employment contract and a civil law services agreement. The companies who are residents will be entitled to choose the format of engagement of IT specialists that best suits them.

United Kingdom

Looking ahead to 2022

On your radar



Mandatory vaccination for health care workers 1 April 2022

All frontline NHS staff and volunteers with patient contact in England must be fully vaccinated by 1 April 2022. This will not apply to those workers who do not have direct contact with patients. The question of vaccination and in what circumstances employers can mandate this (outside a health or social care setting) remains an ongoing challenge in the UK.

Response to the consultation on flexible working

The UK Government carried out a consultation in 2021 to consider updating the statutory right to request flexible working. In 2022 we expect to see changes, including the removal of the current requirement that employees must have 26 weeks service before making a request to work flexibly. Instead it looks like it will become a day one right. Other changes include revising the eight business reasons for refusing a request and reducing the current three month period in which UK employers are obliged to respond to a request under the statutory procedure.

New laws on sexual harassment

The UK Government confirmed in 2021 that there will be a new duty on employers to prevent sexual harassment, a new statutory code of practice and employers will be liable for the actions of third parties if they harass their staff. No date has been scheduled for implementation.

Consultation on workforce disability reporting

A consultation on workforce disability reporting and whether this should be mandatory or voluntary for larger companies will close on 25 March 2022. Voluntary reporting is already encouraged for employers with 250+ employees.

Carers leave

Employees will be able to take one week of unpaid leave each year to help with caring responsibilities for people with long term care needs. The right is to be available from day one of employment where the employee is caring for a spouse or partner, child, parent, or a person who lives in their household where there is a responsibility to care for them. This new right will be introduced “when parliamentary time allows.”

Consultation on data protection regime in the UK

In September 2021 the UK Government opened a consultation on reforming the UK data protection regime following the UK’s departure from the EU. Possible changes include the removal of the requirement to carry out a data protection impact assessment, the introduction of fees for some data subject access requests, and reducing the threshold of when it is necessary to report data breaches to the UK supervisory authority, the Information Commissioners Office. The consultation closed on 19th November and we may see data protection changes in 2022.



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On your radar

Key employment issues to be aware of internationally





Welcome to the latest edition of CMS On your radar

If you want to get in touch to find out more about a development in a particular country please do speak to your usual contact within CMS or alternatively email employment@cmslegal.com. The information set out is correct at the time of writing in early January 2022.

The CMS Employment team

Index of countries in this edition



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

[Austria](#)

[Belgium](#)

[Chile](#)

[China](#)

[Colombia](#)

[Czech Republic](#)

[France](#)

[Germany](#)

[Hungary](#)

[Italy](#)

[Kenya](#)

[Mexico](#)

[Monaco](#)

[Montenegro](#)

[The Netherlands](#)

[Peru](#)

[Poland](#)

[Russia](#)

[Serbia](#)

[Singapore](#)

[Slovakia](#)

[Spain](#)

[Ukraine](#)

[United Kingdom](#)