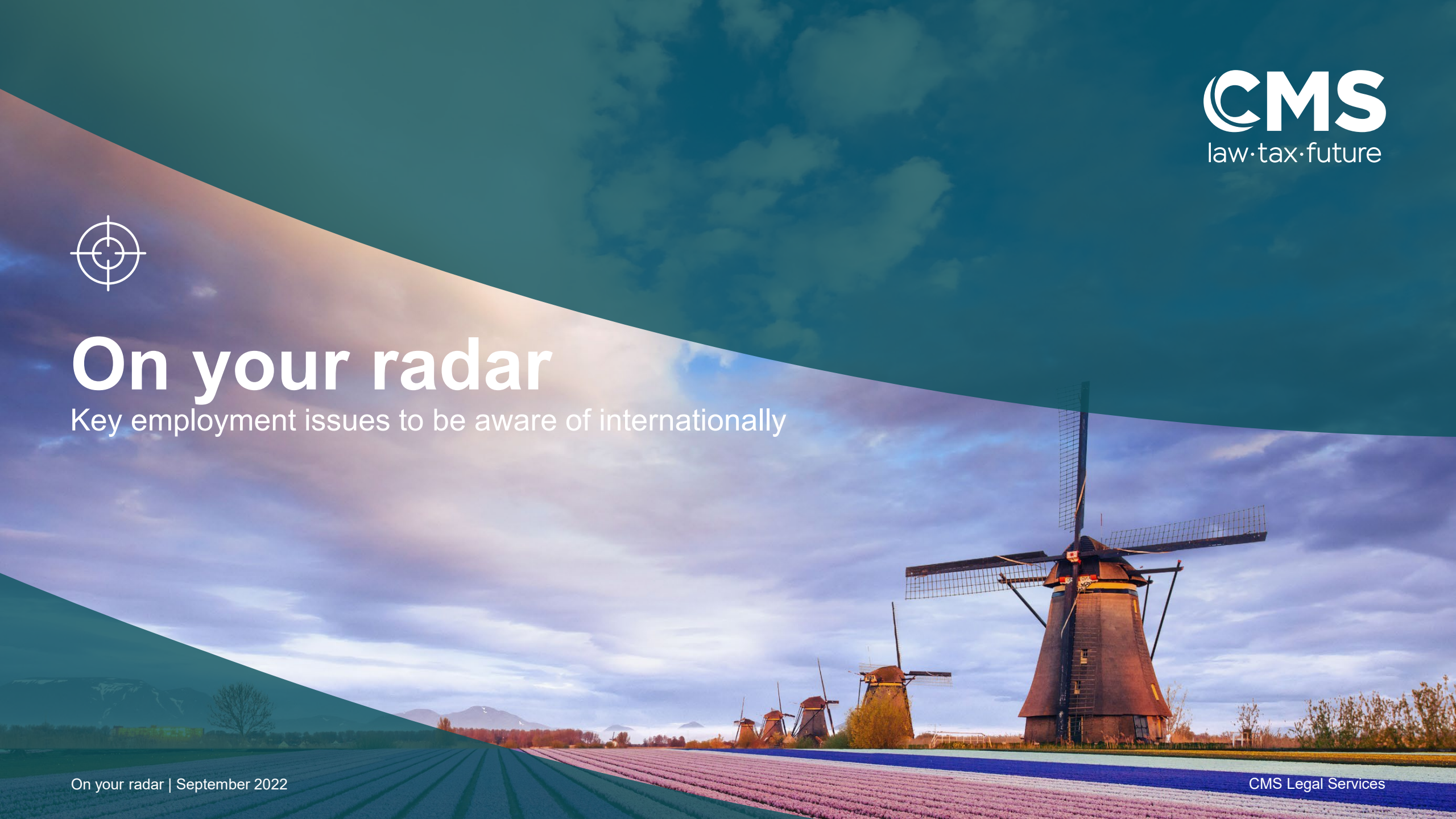
On your radar

Key employment issues to be aware of internationally



Welcome to the latest edition of CMS On your radar

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

The CMS Employment team

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Belgium

Development and date

Implementation of the EU Directive on transparent and predictable work conditions in Belgium (the Directive)

All European Union member states should have incorporated the Directive into national law by 1 August 2022. In Belgium, a draft bill to implement the Directive has been prepared, voted on and approved by the plenary meeting of the Chamber of Representatives of the Federal Parliament. However, the legislative procedure has not yet completed.

Description

The draft bill guarantees:

- the right to information, for employees in the public and private sectors, on certain essential terms and conditions of employment (e.g. position, salary, working schedule);
- the creation of a number of new, substantive rights for employees in the public and private sector;
- protection for employees:
  - against adverse treatment as a result of filing a complaint against their employer for failure to comply with the rights arising from this bill; and
  - against dismissal for exercising these rights; and
- the introduction of a number of new criminal sanctions in the Social Penal Code.

Impact and risk

Once this law comes into force:

- certain types of clauses, that until now were used in Belgium employment contracts, will no longer be legal;
- it will be necessary to ensure systems are in place to store evidence that the relevant information is communicated to, and received by, employees, within the relevant time limits; and
- employers will need to be careful if they were to dismiss an employee who coincidentally lodged a complaint against them for failure to comply with the rights arising from this bill.

Future actions

Employers should review their standard employment contracts to ensure that they contain all the relevant rights and information which should be provided.

Different rights apply to existing employees who are entitled to receive the relevant information if they make an explicit request.

Belgium

Development and date

Amendment to the Belgian Social Penal Code involving anonymous testing by labour inspectors to detect discrimination

On 31 March 2022, the Belgian House of Representatives introduced additional powers for labour inspectors. The purpose was to give the inspectors greater ability to detect discrimination in job applications, by means of mystery calls or anonymous practical tests. The change was published in the Belgian State Journal on 28 April 2022 and came into force on 8 May 2022.

Description

Through mystery calls to the employer, labour inspectors can impersonate a worker or potential worker in order to check whether discrimination is taking place on the basis of a legally protected characteristic (e.g. gender, age, origin or sexual orientation).
The new provisions enable the labour inspectors, as of 8 May 2022, to:

- rely on: objective indications of discrimination; a substantiated complaint or report; or the results of data-mining and data-matching in order to carry out a mystery call;
- commit unlawful practices in the framework of mystery calls, if they are proportionate to the objective pursued (e.g. detection of forms of discrimination in the labour market). It will no longer be required for the unlawful practices to be less serious than the discriminatory behaviour of the employer (which was the case before 8 May 2022); and
- use third parties (not part of the labour inspection) in the application of discrimination tests.

Impact and risk

As a result of these legislative changes, employers can expect to receive more mystery calls from labour inspectors or third parties with the intention of detecting discriminatory behaviour being displayed by employers in the labour market.

Future actions

Employers should avoid displaying any discriminatory behaviour from the moment they receive a job application.

Employers should ensure that all employees in charge of recruitment are aware of the regulation and avoid any kind of discrimination in their recruitment process.

Bulgaria

Development and date

EU Blue Card legislation

In June 2022 a draft bill amending the legislation regulating EU Blue Cards was filed and is still pending before the National Assembly.

The bill envisages amendments to the Law on Labour Migration and Labour Mobility as well as other related pieces of legislation such as: the Foreigners in the Republic of Bulgaria Act; the Employment Promotion Act; the Health Insurance Act; and the Bulgarian ID Documents Act.

The purpose of the proposed amendments is to simplify the procedure for obtaining an EU Blue Card, thereby creating incentives to attract skilled workers from other countries, especially in the context of the ongoing conflict between Russia and Ukraine.

Description

Some of the key proposed amendments include:

- Replacing the strict requirement to evidence higher education qualifications with a more general requirement to evidence professional qualifications, which could be obtained from either higher education or professional experience;
- Reducing the minimum employment contract term under which an EU Blue Card holder can be employed from 12 to 6 months;
- Introducing the option of remote working for EU Blue Card holders;
- Introducing the possibility for EU Blue Card holders to be sent on business trips to EU member states for up to 90 days within a period of 180 days;
- Simplifying the procedure for EU Blue Card holders to switch from one employer to another;
- Introducing the option to work as free-lancers for EU Blue Card holders for the term of validity of their EU Blue Card; and
- Introducing the concept of a “recognised employer” which would simplify the procedure for obtaining an EU Blue Card.

Impact and risk

The proposed amendments are expected to attract more highly skilled workers from other countries.

In light of the conflict between Russia and Ukraine, many citizens of the affected and neighbouring territories are expected to relocate. Bulgaria aims to attract as many highly qualified professionals from these people, and from other countries, as possible.

The Ministry of Innovations and Growth has introduced rapid processing for EU Blue Cards covering group applications with at least 10 employees, which is intended for companies seeking to relocate their offices and workforce from Russia, Belarus and other countries. Eligible companies will be supported in their relocation projects by the Ministry of eGovernment, Migration Department, the State Agency for National Security, the Employment Agency and the Ministry of Foreign Affairs. Under the new mechanism, the Ministry of Innovation and Growth will be the first point of contact for employers wishing to relocate their business. Such employers will have to provide information about the group of applicants to the following email address: bluecard@mig.gov.bg at least two days before the formal start of the application procedure with the Migration Department.

Future actions

The proposed amendments are still pending. In light of the elections expected in October 2022, it is difficult to predict how quickly new legislation will be adopted, and what direction the winning political party will take.

China

Development and date

Protection of women's rights and interests

On 18 April 2022, a draft bill containing amendments to the PRC Law on Protection of Rights and Interests of Women (the Draft) was submitted to the Standing Committee of the National People's Congress for a second round of reviews. The final amendments are expected to be published soon.

The Draft addresses the need to protect women's rights and interests. From an employment perspective, the Draft focuses on eliminating gender discrimination in the workplace and imposing obligations on employers to help prevent sexual harassment towards women.

Description

The Draft contains provisions that prohibit discrimination against women during the recruitment process. Such discriminatory behaviours include:

- only recruiting men for the role;
- enquiring as to marital/fertility status/intention;
- requiring pregnancy testing;
- setting restrictions on marriage/fertility as conditions to recruitment; or
- any other act of refusing to recruit women on the grounds of their gender or raising the standards for recruiting women.

The Draft stipulates that all employment contracts, and any contracts achieved through collective bargaining, must include clauses ensuring the special protection of women's rights and interests, and shall not have any clauses that restrict marriage/fertility of women.

The Draft specifies the measures employers must take to help prevent sexual harassment against women, including:

- establishing relevant rules and regulations;
- appointing an internal body or person responsible for implementing the preventative measures;
- carrying out relevant training;
- taking necessary safeguarding measures;
- setting up complaints' channels;
- establishing investigation procedures to handle disputes in a timely manner; and
- protecting personal privacy.

Impact and risk

The Draft covers recent legal developments relating to discrimination and sexual harassment against women. It also sets out the legal consequences that employers may face for failing to comply with their obligations under the Draft.

For example, if an employer discriminates against a women during the recruitment process, it shall be ordered to rectify this. If the employer fails to rectify the discrimination, or if the discrimination is serious, a penalty of RMB 10,000 to RMB 50,000 may be imposed on the employer.

Further, if an employer fails to take necessary measures to help prevent sexual harassment, which leads to the infringement of a woman's rights or has a serious social impact, it shall be ordered to rectify this.

In serious cases both the employer and the person directly responsible for the failures may be punished by the authorities.

Future actions

Employers should consider reviewing their recruitment procedures to ensure that there is no evidence of discrimination against women.

Employers should also consider reviewing and updating their employment contracts, and – if relevant – collective contract templates to ensure that they comply with the need to protect women's rights and interests.

Finally, employers should establish sexual harassment prevention policies and mechanisms, and implement them into their businesses.

Colombia

Development and date

New Migration Regulations

On 22 July 2022, the Ministry of Foreign Affairs issued a resolution which changes immigration law by creating new types of visas, which favour foreigners who want to enter the country (the Resolution). The Resolution has a transition period, therefore it will not be enforceable until 22 October 2022.

Bills related to overtime and night work recently submitted in the Congress

Since 7 August 2022 Colombia has had a new president and therefore a new head of the Ministry of Labour, who announced their intention to make changes to the regulations related to overtime and night time work.

In accordance with the above, a group of senators has recently issued two bills which seek to:

- modify the period considered as night work and the relevant pay for such work; and
- make changes to disciplinary procedures available to employers.

Description

The key changes envisaged by the Resolution are:

- The existence of 25 types of visas (including the newly created digital nomads);
- The extension of time allowed to analyse visa applications (up to 30 days); and
- The obligation on employers to have a health policy applicable to foreigners who will not be covered by the Colombian social security system.

The first of the bills mentioned seeks to modify the period that is considered 'night time' in employment terms, to determine the payment of additional wages for night workers. The proposal is that 'night time' would start at 6.00pm as opposed to the current start time of 9.00pm.

Also, this bill proposes that employees who hold positions of trust or management and earn a salary lower than 3 times the minimum wage, will be entitled to receive an additional charge of 10% of their salary in case of working overtime.

The second bill proposes to make changes to article 111 of the Colombian Labour Statute by expressly stating what disciplinary sanctions employers can impose on employees who do not comply with their obligations. In the bill, "dismissal with a fair cause" is being considered as a disciplinary sanction.

Impact and risk

Given current employment developments and particularly remote working regulations, the establishment of a special visa for digital nomads seems a significant advance towards adapting the visa system to keep up with trends in global mobility. However, the extension of the time that can be taken to consider visa applications could generate risks around hiring delays as foreigners wishing to work in Columbia would have to wait for their formal visa.

The obvious impact of 'night time' - in employment terms - being moved from a start time of 9.00pm to 6.00pm is on business costs, which would increase significantly, due to the 3 additional hours that companies would have to pay the higher night wages.

Also, the establishment of overtime payments in favour of employees who hold positions of trust or management is contrary to article 162 of the Colombian Labour Statute, which excludes them from the limitations of their working schedule because of their special position. This would also increase the costs for employers and generate operational risks due to the fact that employers may not contact their key management employees outside their regular working hours, in order to avoid having to pay these additional overtime charges.

Finally, the suggestion of "dismissal with fair cause" being considered a disciplinary sanction under the second bill seems contrary to the position of the Supreme Court, that has repeatedly stated that dismissal is not a disciplinary sanction.

Future actions

Employers should take note of the additional time that will need to be factored in when hiring foreign employees, in order to avoid the visa extension period slowing down or disrupting their business activities.

Companies should begin reviewing the potential impact on their business of having to pay night wages in case of work that takes place between 6.00pm to 9.00pm, should the bill regarding this become law.

Also it would be advisable to review the remuneration of the employees who hold positions of trust or management, and earn less than 3 times the minimum wage, because if this bill passes, the employer must take into account the obligation to pay additional overtime charges in case they are required to work outside of the regular schedule.

Finally, if "dismissal with fair cause" does become an accepted disciplinary sanction, employers must exhaust all other routes available to them - either via their internal regulatory processes or Colombian labour law - before proceeding with a dismissal.

Croatia

Development and date

The Maternity and Parental Support Act

On 1 August 2022 certain amendments to the Maternity and Parental Support Act came into force.

The amendments represent the implementation of the EU Directive on work-life balance for parents and carers into national law and aim to increase equality between parents.

It is expected that granting more rights for parents will increase the birth rate, as well as improving the social wellbeing of families generally.

Description

Some of the key amendments include:

- The new right for an employed or self-employed father to 10 working days of paid paternal leave after the child is born (or 15 working days in cases of twins, triplets or the simultaneous birth of more children). The leave can be used any time before the child turns six months, is independent of any potential parental rights the child's mother uses and cannot be transferred to another person. During the leave, the father is entitled to a salary that will usually be equal to his average salary over the previous six months;
- A significant increase in pay that parents are entitled to during parental leave (after a child turns six months), the various forms of part-time work and the leave due to a child's death; and
- It has been made easier for parents to exercise various rights in relation to parental leave either individually, simultaneously or alternately, in accordance with a mutual agreement.

Impact and risk

Given that the payments mentioned will mostly be paid by the state, there is no significant financial impact for employers.

However, it is expected that many parents – especially fathers – will use the newly introduced leave entitlements.

Prior to this change it was not widespread for fathers to take parental and other forms of leave, employers should be aware that this will probably change quickly.

Also, due to the relatively low rates of pay, many mothers used to come back to work before they had used their entire leave entitlement. Now that the rate of pay has increased, it is expected that more mothers will decide to use the entire leave entitlement and come back to work later than they would have done prior to the change in the law.

Future actions

Employers should be aware of the expected practical changes that the amendments may cause and take them into consideration in relation to the impact on their business.

The amendments' purpose is to improve the work-life balance of working parents and increase the number of parents – especially fathers – using parental leave. Employers who want to retain and recruit good employees should welcome this practice and encourage their employees to use their entitlement. Further, they should consider ways to introduce additional benefits that would contribute to the goal that the legislative amendments seek to achieve.

Czech Republic

Development and date

New whistleblower protection

A draft of the Whistleblower Protection Act, which aims to incorporate into national law the EU Directive on the protection of persons who report breaches of Union law, is in the process of being passed in the Czech Republic (the Bill).

The last attempt to pass the Bill failed as the parliamentary elections took place and the new government submitted its own draft.

This will be the first comprehensive legislation on whistleblower protection in the Czech Republic.

Despite the effective date of the Whistleblower Protection Act being 1 July 2023, it may not come into effect until later, since the Bill is still subject to further review.

Description

The current draft Bill is much closer to the wording of the EU Directive than the original Bill, which was stricter. Some examples of the provisions include:

- the exemption from the obligation to introduce internal reporting systems for employers will apply to employers with fewer than 50 employees (and not to employers with fewer than 25 employees as was originally envisaged);
- the time period for examining a report and notifying the whistleblower about the results will be 3 months (instead of the previous 30 days);
- less serious offences will be omitted from the scope of the law; and
- the whistleblower can report a breach anonymously and in such a case they will be protected against any form of retaliation.

Impact and risk

Once the Bill is passed, employers will have to comply with the following obligations:

- setting up an internal reporting system;
- providing relevant training to employees;
- appointing an appropriate person to be responsible for receiving reports and providing them with adequate resources to fulfil this role;
- ensuring that only the designated person has access to the reports;
- monitoring the performance of the designated person;
- allowing whistleblowers to submit their complaints both verbally and in writing;
- protecting whistleblowers against any form of retaliation;
- keeping record of submitted reports; and
- publishing the relevant information on how to submit a report with remote access.

Non-compliance with the respective obligations poses a risk of administrative fines for employers, which the Labour Inspectorate or the Ministry of Justice may impose, for instance:

- a fine of up to CZK 1,000,000 (approx. EUR 40,000) or 5% of the net turnover achieved by the employer in the last completed accounting period for not setting up the internal reporting system; or
- a fine of up to CZK 50,000 (approx. EUR 2,000) for making a deliberately false report.

Future actions

By the effective date, all employers with equal to or more than 50 employees will have to have an internal reporting system set up correctly. For employers with less than 250 employees, the Whistleblower Protection Act brings the option for smaller employers to have a common system and share it together. Employers must ensure that if applicable, they comply with all obligations imposed upon them by the Act.

France

Development and date

Emergency measures for the protection of purchasing power

Given the high rate of inflation in France - with an increase of 5.2% over one year, the highest it has been since 1985 – Parliament has intervened to support the purchasing power of households, particularly those with the lowest income. Emergency legislation covering this issue came into force on 18 August 2022.

Description

The legislation covers the following points:

- the implementation of a value-sharing premium (the PPV) whereby an employer may pay employees a bonus, free of tax of up to EUR 3,000. This amount is increased to EUR 6,000 when the company has fewer than 50 employees and implements a qualifying incentive or profit-sharing scheme; or when the company has at least 50 employees and implements a profit-sharing scheme;
- from 1 October 2022, the flat-rate deduction of employer's contributions to overtime and waived days of rest in companies employing from 20 to 249 employees;
- the extension of profit-sharing agreements to last for 5 years, in order to encourage their use;
- the simplification of the control procedure for profit-sharing agreements, which can now be drafted according to a digital procedure that allows companies to check their compliance with in-force legislation; and
- an employee will be able to request the early release of money saved on a qualifying profit-sharing scheme until 31 December 2022, to finance the purchase of a good or the provision of a service.

Impact and risk

- The bonuses paid since 1 July 2022 are exempt from employer and employee contributions. However, they are subject to CSG/CRDS, the "Forfait social" contribution and income tax. However, bonuses paid between 1 July 2022 and 31 December 2023 to employees whose remuneration is less than three times the annual value of the minimum guaranteed growth wage (the SMIC) are exempt from CSG/CRDS and income tax.
- Employees who work overtime in excess of the statutory maximum working hours; or are a party to an annual fixed-hour agreement and worked more than 1607 hours per year as a result will be impacted by this change. This also applies to days of rest waived by an employee subject to a lump-sum agreement, beyond 218 days per year.
- Employers can implement the incentive plans unilaterally in companies with less than 50 employees in the absence of a trade union delegate (a DS) or a Works Council (a CSE) or in case of failure of the negotiations with the DS or CSE.
- Sums from profit-sharing and sums allocated under incentive schemes and assigned to the PERCO, PERECO and mandatory PER are excluded from the early release provision.

Future actions

- Before 31 December 2024, the Government shall submit to Parliament a report evaluating the PPV.
- A decree will confirm the procedure and conditions relating to the lump-sum deduction of employer contributions.
- The rules applicable to the drafting of incentive agreements by digital means; the compliance process by the labour administration; and the approval of incentive agreements apply to filings made from 1 January 2023, subject to the conditions determined by decree.
- Employers must, no less than 2 months after the legislation's implementation, inform eligible employees of the rights created by the legislation.

Germany

Development and date

New law on notification of working conditions governing an employment relationship

On 1 August 2022, a new law implementing the EU Directive on transparent and predictable working conditions came into force in Germany.

The previous law on notification of conditions governing an employment relationship has often been neglected in practice. However, the new legislation provides stricter rules that are less likely to be ignored.

Description

Examples of the stricter rules implemented by the legislation include:

- that on their first day of work, an employee must be notified of the basic terms of their employment contract, this includes, but is not limited to: individual remuneration, agreed working hours and place of work);
- employers must provide information about the procedure for dismissal (covering the written form requirement (section 126 of the German Civil Code) and the deadline for filing a claim for unfair dismissal; and
- when amending terms of the employment contract (such as a salary increase) the employer must notify the employee no later than the date on which the change(s) take effect.

The new legislation still mandates that proof of the contractual terms should be in writing, it is expressly excluded to provide evidence by electronic or digital means.

Existing employment relationships are also affected by the new legislation. On request, employers have only seven days to provide existing employees with the required information.

Impact and risk

Employers should be aware that a breach of the duty to inform is an administrative offence and that in committing such an offence they risk a fine of up to EUR 2,000.

Further, employers should be aware that if employees are not provided with their terms of employment in an adequate and timely manner, they may refuse to work and still be entitled to be paid.

Future actions

Employers are strongly recommended to review their standard employment contracts and amend them as necessary for future use.

For existing contracts, an information sheet could be prepared, in order to ensure that a swift response can be provided to an employee's request.

Italy

Development and date

Implementation of the EU Directive on transparent and predictable work conditions in Italy (the Directive)

Italy had until 2 August 2022 to implement the Directive into national law.

A new Italian Decree implementing the Directive was approved on August 13th 2022.

Description

The Decree has not yet been published in the Italian Official Journal but, according to the draft currently available (which may be subject to change), employers when they are hiring will have to comply with new disclosure obligations.

It seems that the rules will apply to all new employment contracts, as well as to existing ones (if relevant information is requested by an employee), and to other types of relationships.

In addition to the information normally provided to workers (such as place of work, working hours etc.), employers will have to specify additional information, including the information which is currently covered in the collective bargaining agreement.

Impact and risk

The Directive will introduce new rights for all workers, including modifying insufficient protections for workers in part-time or zero hours contracts, whilst limiting the risk of burdens on employers and maintaining the adaptability of the labour market.

The main changes provided by the Directive are as follows:

- mandatory training will be required to be provided to workers (and to be counted as paid working time);
- exclusivity clauses will be banned for workers;
- workers will be entitled to receive a description of their duties from day one;
- workers will be entitled to compensation for the last-minute cancellation of work;
- probation periods for workers shall be limited to six months; and
- an indication of what a standard working day qualified by set working hours shall be provided to workers.

Employers who do not comply with the new provisions may be subject to monetary sanctions.

Future actions

Employers should consider reviewing and updating their template employment contracts once the final terms are known.

Luxembourg

Development and date

Tax and social security thresholds

From 1 July 2022 the teleworking days thresholds for cross-border workers are as follows:

- 29 days for France;
- 19 days for Germany; and
- 34 days for Belgium.

The change in Belgium from 24 days to 34 days of authorised teleworking has not yet been enacted by the Belgian authorities. However, this should be done by the end of the year.

In terms of social security, the 25% threshold to remain affiliated with Luxembourg social security if an employee works from his country of residence (if that country is not Luxembourg) remains suspended until 31 December 2022 and will operate again from 1 January 2023.

Description

In terms of taxation, the teleworking days thresholds have been agreed in bilateral tax agreements between Luxembourg and the bordering countries (namely France, Germany and Belgium).

The thresholds were suspended for the duration of the Covid-19 pandemic. The authorities have decided to re-introduce them from 1 July 2022.

However, until the end of 2022, the number of authorised teleworking days is not prorated, meaning that between 1 July 2022 and 31 December 2022, employees are entitled to their full, authorised teleworking days.

The 25% social security threshold has been set by European Regulation and is therefore in line with the European Union.

However, the Administrative Commission for the Coordination of Social Security Systems in the European Union has decided on a transition period of 6 months from 1 July 2022 to 31 December 2022. During this period, an administrative tolerance will be applied, allowing cross-border workers to continue to carry out work in the form of telework from home, without changing their social security position if the 25% threshold is exceeded.

Impact and risk

For employees, the risk in relation to teleworking days is that they could be taxed in both Luxembourg and in their country of residence if they exceed the threshold.

For employers, a risk also exists because if their employees exceed the threshold, they will have to set up a payroll system in the border countries where the employees telework and reside, in order to pay the requested taxes in the relevant countries.

For employees, the risk if they work for more than 25% of their working time in their country of residence is that they will no longer be affiliated to the Luxembourg social security system, but to the social security system of their country of residence.

For employers, the risk - if the 25% threshold is exceeded – is that they would have to contribute to the social security of their employee's residence country and no longer to the Luxembourg social security.

Future actions

Employers must ensure that their employees are aware of the thresholds for both tax and social security purposes and ensure that they are respected in order to minimise risk for both parties.

We recommend that employers keep an up-to-date record of the number of days their employees have been teleworking, so that they have a record to provide if any regulatory body wishes to investigate the matter.

Some large Luxembourg employers have also created an original solution to reduce the impact of the tax and social thresholds. They have started to install flexi-offices at the country's borders in order to shorten the distance and time their employees spend travelling and to helps them avoid exceeding the thresholds.

Monaco

Development and date

Two cases challenged whether labour laws complied with the Constitution

Two recent decisions by the Monaco Supreme Court addressed the issue of whether certain labour laws comply with the Principality's Constitution.
In accordance with Article 90 of the Constitution of Monaco, the Supreme Court is allowed to rule on appeals for annulment in constitutional matters only if they are concerned that an infringement of the rights and freedoms protected in Title III of the Constitution has occurred.
On 18 February 2022, a union challenged whether the law made on 24 June 2021 complies with the Monegasque Constitution. This law allows a collective or company agreement to set the maximum working hours over a reference period longer than a week (for the purposes of calculating overtime work), with up to a maximum of one year, which results in employers being able to distribute working time over an entire year without paying overtime work if the agreed volume is not exceeded.
On 31 May 2022, the same union challenged whether the law made on 20 September 2021 complies with the Constitution. This law made vaccination against Covid-19 compulsory for certain categories of people notably healthcare and care workers. Non-compliance with this law was punishable by suspension and a 50% pay cut.

Description

In both cases the union referred to Article 22 of the Constitution and Article 8 of the ECHR: the right to respect for private and family life, in order to argue for the annulment of the laws.
The Court highlighted that it was not their job to assess whether national law complied with international treaties, therefore the ruling only dealt with the Constitutional issue. The Court found that the two laws did not disproportionately infringe the right to privacy:

- In the first case, the Court ruled that the law provided for a notice period of 14 days for any change in the distribution of working hours. It also stated that the agreement is subject to the prior agreement of the Director of Labour; and is subject throughout its duration to the control of the Labour Inspector to ensure the right to respect for private and family life is upheld.
- In the second case, the Court upheld the law and emphasised that a person who refuses to be vaccinated cannot be dismissed before the end of a twelve-week suspension period without their agreement to early dismissal. They stated the suspension is preventive and not punitive and that the legislator has taken into account the consequences of the suspension for the employee, by providing the maintenance of half of their wages during the first four weeks.

Impact and risk

Although the Monaco Supreme Court has not annulled these laws, it is still preferable for employers to obtain their employees agreement to these changes.

Future actions

When a new law is likely to have an impact on the private and family life of employees, it is recommended that employers provide employees with some information on the law and its impact, in order to ensure both parties are on the same page.

Norway

Development and date

Hiring personnel from staffing agencies

On 17 June 2022, the Norwegian government proposed amendments to the rules on hiring personnel from staffing agencies. The proposal will introduce severe restrictions of such personnel. If adopted, it will have serious effects for both staffing agencies and employers that have a fluctuating need for workers.

The proposal aims to restrict the use of hiring personnel from staffing agencies, in favour of securing direct employment with the entity where the work is performed. It is the last development in a series of measures introduced in order to control the use of hiring personnel from staffing agencies.

The proposal is now being considered by the legislator. It is expected to be adopted. If so, the proposal is expected to come into force in January 2023, with transitional rules expected for existing contracts etc.

Description

The proposal eliminates the most widely used legal basis for hiring personnel from staffing agencies: the performance of work of a temporary character. As a general rule, hiring from staffing agencies will only be allowed where the work is performed as a temp for one/several employee(s) or where the entity is bound by a collective wage agreement with one of the large labour unions (and the union agrees to this hiring).

Furthermore, the proposal entails a general prohibition against hiring of personnel from staffing agencies for construction work on construction sites throughout the Oslo-region.

Additionally, the proposal contains wording clarifying the boundaries between the hiring of personnel and contracts on purchase of goods/services, whereby a larger number of contracts than before will be deemed as hiring (with corresponding rights for the employees).

Impact and risk

The proposal will naturally have a very serious impact on staffing agencies. It is expected that they will have to shift their business from hiring out employees to e.g. acting as an intermediary between employers and new employees, recruiting, headhunting etc.

The proposal will also have a major impact on the organisation of labour for employers with fluctuating needs for manpower/employees. These entities will either have to employ employees directly (temporarily or permanently), by hiring from “production” companies or enter into written agreements on hiring of personnel with employee representatives (if bound by a collective wage agreement with one of the larger labour unions). For construction companies in the Oslo-region, the last alternative is not available.

In some sectors, particularly where the personnel has been hired from abroad, it may prove challenging to find personnel with the necessary qualifications/background. There is also a general fear that the proposed rules will lead to more frequent downsizing processes, which again will lead to employees leaving such sectors in favour of more stable industries.

Future actions

The proposal has not yet been adopted. However, we expect this to happen, most likely during this autumn/winter.

Organisations should prepare for the adoption of the rules. Staffing agencies need to look at alternative business models. Employers with fluctuating needs for manpower/employees should start looking at alternative ways of manning their organisation, in order to ensure they have the necessary manpower if and when the new rules do enter into force. This includes the long-term planning of workforce needs.

Perú

Development and date

Amendment to Collective Labour Relations Law

On 25 July 2022 the Government amended legal regulations related to collective labour relations. The following are some of the key changes:

Labour unions
- Employees associated with unions could be entitled to union leave whenever the union decides.

Collective bargaining
- In negotiations between employers and unions, it prohibits them from establishing 'unjustified differences', and prohibits employers from applying the terms of a collective agreement to non-union employees.

Strikes
- It allows strikes due to non-compliance with legal or conventional provisions without a court order.
- If a union strike occurs, all employees and workers must refrain from work, and employers cannot replace striking workers with non-union ones.
- The Labour Authority must decide whether a strike is illegal or not by applying national and international standards.

Description

Labour unions
- According to the Law as it was originally enacted, Trade union leaders were entitled to at least 30 days of trade union leave per year, plus the right to attend mandatory events, which, only included summons from the police, judicial or administrative authorities.

Collective bargaining
- The Law pre-amendment allowed employers and trade unions to freely agree on the scope, limitations and exclusions of collective agreements.

Strikes
- The following provisions applied before the Law was amended:
- Strikes were used to apply pressure in collective bargaining, and in cases of non-compliance with legal or contractual provisions, but were only legal with court approval;
- The obligation to abstain from work did not apply to employees who held management positions or positions of trust; and
- For strike action to be deemed legal, the Labour Authority had to assess the action against several legal requirements.

Impact and risk

Labour unions
- The amendment makes it easier for trade unions to apply for paid trade union leave, with the only limitation being that the reason for the leave has to be a "compulsory act of attendance".

Collective bargaining
- It is contrary to the freedom of collective bargaining to prohibit the parties from establishing differences that some authority might consider unjustified.
- Although the Supreme Court has previously allowed the benefits of collective agreements to extend to non-union workers, the Government have explicitly stated this is prohibited.

Strikes
- The new regulation allows a broader range of reasons to act as justification for strike action and makes it easier for trade unions to strike.
- It is intended that a strike will have a greater impact than before.
- Finally, the new regulation also allows the Labour Authority to declare most strikes legal due to less stringent requirements.

Future actions

Labour unions
- Employers should be aware of the possibility that union leaders may abuse the new wider-ranging powers since they are able to stop working for as long as they wish without this affecting their salaries or their jobs.

Collective bargaining
- It is worth noting the potential impact that the Government support of unions could have on economic growth. As it is currently predominately workers in medium and large companies who are union members, many small companies may be put off of the idea of expanding due to the potential of their workers unionising.

Strikes
- Whilst the Government's intention seems to be to increase employees' collective bargaining rights, there is a potential for the changes to be detrimental if employers are put off expanding their workforce because of the legislative changes.

Poland

Development and date

Regulatory amendments to support Ukrainian citizens in relation to conflict in Ukraine

The Government has recently introduced several changes to the regulations governing the status of Ukrainian citizens. The most recent changes came into force in July 2022.

Increase in the daily amount for business travel

On 28 July 2022 the Government introduced an increased charge for employers in relation to their contribution to employees' business travel.

Description

The Government has released a mobile application form allowing Ukrainian citizens to download a special electronic document confirming their legal right to stay in Poland. This is available to Ukrainian citizens who need to benefit from temporary protection in Poland (i.a. have PESEL number and so-called trusted profile to enable individuals to confirm their identity).

The Government has also set up a special website (pracawpolsce.gov.pl) to facilitate contact between employers and Ukrainian citizens looking for work in Poland.

Employers who employ Ukrainian citizens based on notification to the competent employment office must include information on wage rates and working hours of the Ukrainian citizen and the headcount in the notification.

Increase in the daily amount for business travel

On the second point, the Government increased the daily amount, due from employers to cover business travel, from PLN 30 to PLN 38 per day. As a result, certain other business travel related costs will be affected.

Impact and risk

It has been made easier for Ukrainians seeking refuge to cross the border by using the new electronic document produced by the Government.

From an employment perspective, this increases and diversifies the pool of potential workers and makes it easier for employers to find workers.

From an administrative perspective, there is an increased workload for employers as they now need to provide not only a more comprehensive amount of information on the arrangements of any employment contract with Ukrainian citizens but also their headcount statistics.

Increase in the daily amount for business travel

Finally, the changes will involve an increase in costs to the business.

Future actions

Employers should review their remuneration/ business travels regulations and update them in accordance with the increased contribution to business travel costs per day.

Employers should be aware that the Government plans another increase in the daily amount from PLN 38 to PLN 45.

Singapore

Development and date

Implementation of Workplace Discrimination Guidelines into law

Currently, the Tripartite Alliance for Fair & Progressive Employment Practices (TAFEP) Guidelines (the Guidelines) governs discrimination in the workplace. In August 2021, the Singapore Government announced that these Guidelines would be implemented into legislation, although no specific timeline has been provided.

Along with the Guidelines being written into law, a tribunal will be created to deal with workplace discrimination on the basis of nationality, gender, race, age, religion and disability.

Also, the Singapore Ministry of Manpower (MOM) has created a 'Managing Workplace Diversity' Toolkit which provides resources for organisations to assess how well they are managing diversity, and to help them implement practices and policies to manage it better, and to build an inclusive workplace culture.

The Singapore Code of Corporate Governance also emphasises the need for a company board to have "diversity of thought and background" in the form of a mix of genders, age, skills, knowledge, experience and other factors.

Description

The Guidelines protect a wide range of characteristics, including age, race, gender, marital status, religion, nationality and disability. Sexual orientation is not a characteristic included in the Guidelines, and it remains to be seen if it will be included in the new workplace anti-discrimination law. The Guidelines are also silent on the types of employment relationships that the new law will apply to.

Currently, individuals who encounter discrimination in the workplace can contact TAFEP for advice and assistance. TAFEP will contact the employer and work with them to improve their employment practices and adopt the Tripartite Guidelines.

At present, there are no mandatory policies or training that employers are required to put in place to prevent discrimination in the workplace.

Impact and risk

If an employer remains uncooperative or unresponsive, or persistently fails to improve their employment practices after the legislation is introduced, TAFEP would refer the case to MOM for further investigation. If the complaint is proven and the employer has contravened the Guidelines, the employer will generally be given the opportunity to rectify its actions. Non-rectification or future occurrences could result in administrative action, including the curtailment of work pass privileges.

It is presently not a legal requirement to have Diversity & Inclusion (D&I) policies. A report by the Singapore National Employers Federation and human capital firm Kincentric in September 2021 showed that 7 in 10 Singapore firms have yet to introduce D&I policies.

There is currently no requirement to report on pay transparency or gender, ethnicity or disability pay gaps. There are no diversity quotas that must be met, although the Council for Board Diversity has set voluntary targets for women's participation on the boards of Top 100 listed companies, statutory boards, and Top 100 Institutions of Public Character.

Future actions

Employers should familiarise themselves with the Guidelines, as these may soon become law.

Employers should also consider implementing their own anti-discrimination workplace policies to help decrease and avoid complaints of discrimination. In the event that such a complaint does arise, employers should fully cooperate with TAFEP to prevent the matter from being escalated to MOM.

Spain

Development and date

Reform of Spanish immigration legislation

On 26 July the Government introduced a royal decree (the RD) containing measures to improve the Spanish immigration model and assimilate non-EU citizens into the Spanish workforce.

The RD includes measures to enable non-EU students to live and work in the country; and updates regulations in connection with the hiring of foreign employees, including a new regulation on employing foreigners who are completing professional training, and a simplified process to obtain temporary residence status in Spain on employment grounds.

Key aspects of this legislation came into force on 15 August 2022, with other parts to be implemented at a later date.

Description

The key aspects of the new legislation are as follows:

- Non-EU citizens who are authorised to stay in the country for training purposes will be entitled to work in either the public or private sector for a maximum of 30 hours a week, if their employer files the relevant application and the employment is compatible with their training. Once the applicants have completed their studies or training successfully, they may live and work in the country without applying for a visa, as long as their employer files the relevant application;

- Non-EU citizens who commit to staying in the country after completing formal training for jobs where there are labour shortages will be entitled to a temporary residence status for training reasons for 12 months;

- The requirements for obtaining a temporary residence status on employment grounds have been simplified; and

- Non-EU citizens employed without an employment contract nor work permit for a period of at least six months in the past year, are eligible for a one-year work permit in cases where those employees report this to the Labour Inspectorate.

Impact and risk

Despite the attempt in the RD to regulate non-EU employees, those who are employed without an employment contract nor work permit for a period of at least six months may apply for a one-year authorisation to work in Spain in cases where those non-EU citizens report this situation to the Labour Inspectorate. Employers hiring such individuals should be aware that administrative fines may be imposed on them for hiring employees without the proper authorisation to work. The aim of this regulation is to counteract the emergence of the 'gig economy'. In any case, it is not automatic that the authorisation would be granted, since it must be approved by the Spanish Authorities.

Future actions

This new regulation is an opportunity for employers to hire specialised professionals from non-EU countries. In particular, it opens the door to students and professionals who travel to Spain for training or education and wish to remain in Spain for work.

Slovakia

Development and date

Amendment to the Slovak Labour Code on seasonal work

This amendment introduces a new type of work agreement for seasonal workers, and regulates the social security framework for such workers. The amendment is aimed at employers in the tourism and agriculture sectors and aims to make it easier to employ seasonal workers. It is expected to become effective from 1 January 2023.

Implementation of the EU Directives on transparent and predictable working conditions and on work-life balance

In September 2022 the Slovak Parliament will be discussing the implementation of 2 EU Directives into national law. The first aims to regulate the obligations for employers to inform the employee about the key terms of their employment contract, or their employment relationship, to ensure that working conditions are transparent and predictable. The second addresses the issue of paternity leave and allows both parents to simultaneously stay at home with their child after birth. The amendments are expected to be effective from 1 October 2022.

Description

Amendment to the Slovak Labour Code on seasonal work

Employees will be able to undertake 520 hours of seasonal work in each calendar year. Neither employees or employers will be obliged to pay social security contributions if the employee's wage is below 50% of the average monthly wage. If the wage earnt during seasonal work is above this threshold, contributions will only relate to the proportion of the monthly seasonal wage above the threshold.

Implementation of the EU Directives on transparent and predictable working conditions and on work-life balance

The key points that will be implemented are as follows:

- extending the range of information to be provided to the employee in order to ensure there is transparency and predictability surrounding the role (including the specific date that wages are paid each month);
- introducing the right to request a change in the pattern of employment (such as to allow hybrid working) for employees;
- to provide the information also in electronic form; and
- to introduce a new form of paternity leave, where both parents could stay at home with their child for 2 weeks within the first 6 weeks of the child being born.

Impact and risk

Amendment to the Slovak Labour Code on seasonal work

Because seasonal workers are exempt from paying social security contributions, they - and any potential beneficiaries of theirs - will not be entitled to receive any benefits as a result of the periods that they worked seasonally.

It is expected that this development could eventually increase both the interest in undertaking, and the demand for, seasonal work.

Implementation of the EU Directives on transparent and predictable working conditions and on work-life balance

It is expected that the introduction of transparent and predictable working conditions will produce positive outcomes for both employees and employers.

Future actions

Amendment to the Slovak Labour Code on seasonal work

Employers should manage the working hours of their employees in order to take advantage of the exemption from paying social security contributions. It is necessary to bear in mind, that in Slovakia, the minimum hourly wage is EUR 3,713 for the year 2022.

Implementation of the EU Directives on transparent and predictable working conditions and on work life balance

Employers should be aware that during paternity leave fathers will enjoy the same statutory protection as mothers, meaning their employment cannot be terminated due to such leave. They should also note that such leave is unpaid.

Switzerland

Development and date

Landmark cases on termination without notice

Under Swiss law, the threshold for a justified termination of the employment relationship with immediate effect (for cause) is very high.

The Swiss Federal Supreme Court has recently issued two remarkable decisions in relation to a notice of termination with immediate effect.

Description

In the first decision, the Swiss Federal Supreme Court held that a dismissal without notice is not justified if the employer has not done everything that can be expected of them to verify the accuracy of the relevant facts. Therefore, before issuing notice of termination with immediate effect, the employer must establish the relevant facts, which may entail conducting a formal internal or external investigation and hearing from the employee concerned.

In the second decision, the Swiss Federal Supreme Court held that secondary activities completed during paid working hours that are not permitted and/or the failure to disclose profits earned from such activities may justify a termination without notice. The case related to a partner in a law firm who had earned a (personal) side income from a job that he had carried out outside the law firm, despite his employment contract barring such ancillary activities.

Impact and risk

It is useful for employers to be aware that in cases where there has been an unjustified or belated notice of termination with immediate effect, the employee may claim both:

- damages, corresponding to the salary owed until the end of the ordinary notice period, minus any salary that the employee earned or omitted to earn during such time; and
- a penalty fine to be paid by the employer, up to the value of six months' salary.

Future actions

In situations where there is a potential issue of termination without notice, a Swiss employer must carefully verify the accuracy of all relevant facts. Nevertheless, any corresponding investigation must be conducted without any delay once the employer has become aware of the relevant issue.

Furthermore, according to case law, the employer only has 2-3 working days to issue a notice of termination with immediate effect, calculated from the establishment of the relevant facts. The deadline can start during an ongoing investigation, e.g. if the employee admits the relevant facts, but the conclusion of the investigation (e.g. the preparation of a report) takes more time.

Turkey

Development and date

Minimum wage and severance pay cap

In Turkey, there is a yearly review of the rates and limits of the minimum wage, severance pay and administrative fines.

The current rates came into force on 1 January 2022, however an additional increase has taken place during the second half of 2022 due to high inflation rates.

Unpaid leave during the pandemic ~~period~~

In a decision made on 23 March 2022 by the 11th Civil Chamber of the Sakarya Regional Court of Justice, it was ruled that the periods spent on unpaid leave during the pandemic should be added to any severance pay calculations.

Description

Minimum wage

From 1 January 2022 to 30 June 2022, the monthly gross minimum wage was TRY 5,004. However, with the high inflation rates, the amount was increased to TRY 6,471. This new amount applies from 1 July 2022 to 31 December 2022.

Severance pay cap

The severance pay cap is updated every six months. From 1 January 2022 to 30 June 2022, the severance pay cap was TRY 10,848.59 gross. From 1 July 2022, the amount was increased to TRY 15,371.40 gross. This new amount applies from 1 July 2022 to 31 December 2022. In this regard, if an employee who has worked for 10 years is dismissed, their severance pay will be TRY 153,714.

Impact and risk

Minimum wage

In accordance with Article 102 of the Labour Law in Turkey, employers that pay less than the minimum wage will be subject to administrative fines of TRY 429 every month for each employee being paid below the minimum.

Unpaid leave during the pandemic ~~period~~

When calculating the severance pay on the basis of length of service, employers who dismiss an employee must take into account the unpaid leave periods.

In other words, actual working hours is not always the definitive way of calculating severance pay. According to the decision made by the Court of Appeal, when calculating the length of service, the sum of the periods actually worked and deemed to have been worked should be taken as the basis of the calculation. In this case, the unpaid leave periods provided by employers as a result of unilateral leave that was imposed by employers during the pandemic should be taken into account in the calculation of the length of service.

Future actions

Minimum wage

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

Severance pay cap

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

Unpaid leave during the pandemic ~~period~~

Employers should consider the unpaid leave periods that certain employees had to take during the pandemic when calculating their severance pay.

Ukraine

Development and date

Zero hours employment agreements

As part of the Parliament of Ukraine's initiative to reform the legislative framework and bring labour relations in Ukraine in line with internationally recognised practices, on 18 July 2022 the Parliament adopted the law “On Amendment of Certain Legislative Acts of Ukraine Concerning Regulation of Non-Standard Forms of Employment” (the “Law”), which applies to freelance employment. The Law came into force on 10 August 2022.

For the first time, the Law introduces in Ukraine the equivalent of a ‘zero hours contract’ to be called in the local language an ‘agreement with non-fixed working hours’.

Description

The main features of this special form of employment include:

- That an employee is paid only for the work actually provided by the employer, except for 32 hours per month (statutory minimum), which must be paid irrespective of whether any work was performed;
- Parties shall enter into a written agreement of employment which, among others, shall specify (i) the basic working days/hours, and (ii) the minimum notice period to be given by an employer to an employee of upcoming work and the maximum response time due from an employee;
- An employee’s unjustified refusal to perform work when requested by the employer (subject to agreed notice periods and basic working days/hours) can trigger disciplinary sanctions;
- The statutory maximum of 40 working hours and six working days per week will apply (work outside these limits will be treated and paid as overtime); and
- The parties can agree upon additional grounds for termination, but they must be related to an employee’s skills or actions, or reasons of economic, structural or similar nature.

An overall number of agreements with non-fixed working hours cannot exceed 10% of a total number of employment agreements concluded by a given company.

Impact and risk

Zero hours agreements introduce more flexibility to the employment relationship. However, an employee can request that an employer provides them with a regular employment agreement after working for at least 12 months under a non-fixed working hours agreement.

Future actions

Employers should consider the potential benefits available from the implementation of zero hours agreements, with particular attention to the possible conversion of such agreements into a regular employment agreement.

Ukraine

Development and date

Implementation of the 'Freedom of Contract' Mechanism into employment relations for the duration of martial law

As part of the ongoing reform of Ukrainian employment law and in response to the urgent needs of Ukrainian businesses affected by the full-scale Russian military aggression against Ukraine, the Parliament of Ukraine adopted the law "On Introduction of Changes to Certain Laws Regarding Simplification of Employment Relations Regulation for Small and Medium Business and Decrease of Administrative Burden on Business" on 19 July 2022 (the Law), which may represent a significant change to employment law in Ukraine.

The key change is the introduction of the concept of 'freedom of contract' in employment relations, based on the so-called "contractual regime of employment" (the Contractual Regime). Prior to this, the majority of employment agreements in Ukraine were based on a regular employment agreement, which allowed few deviations from the rigid rules of the Labour Code that was adopted in Soviet times, and does not address the needs of modern businesses. The problem became especially noticeable during the challenging times of the martial law regime.

Description

In short, the Contractual Regime allows parties to the employment agreement to mutually agree on most aspects of their employment relationship (e.g. remuneration, vacation, termination) in the agreement, thus deviating from many outdated rules of the Labour Code applicable to regular employment relations.

If the Contractual Regime is chosen, the parties are free to agree the following:

- a fixed term of employment (currently the default rule is permanent employment with few exceptions);
- a schedule of salary payments (but no less that once a month);
- the duration of an employee's unpaid leave;
- terms of engagement and payment for employee's overtime, weekend, and holiday work (however these are still subject to minimum guarantees stipulated in the Labour Code);
- a notice period in cases where there are changes to the terms of employment; and
- grounds for employment agreement's termination (however, an employer has the right to unilaterally terminate the agreement by concluding an additional severance agreement or serving notice to an employee (with the payment of a compensation).

Impact and risk

Only private law companies can benefit from the Contractual Regime (state authorities and public law companies cannot use it). Furthermore, the following criteria must be met in order to apply the Contractual Regime:

- an employer must be a small or medium business with an annual average number of employees below 250; or
- an employee's gross monthly salary must exceed the amount of eight statutory minimums (UAH 56,000 or ca. EUR 1,400).

The primary risk for employees is that employers may misuse the 'freedom of contract' principle in relation to employees having relatively low salaries. Such employees are likely to be detrimentally impacted by the application of the Contractual Regime and would be better protected under the general employment regime.

Future actions

Employers that are potentially eligible for the Contractual Regime might consider and weigh up the potential benefits of its implementation, but with a particular attention to its potential impact on their employees.

United Kingdom

Development and date

Industrial action and replacement labour

On 21 July 2022, legislation came into force meaning that agency workers will now be allowed to replace striking staff in any workplace in the UK.

This development follows a summer of industrial action in the UK, not helped by rising inflation, and a significant increase in energy prices, both of which have resulted in a cost of living crisis.

Unions have been challenging pay offers and terms generally across a variety of sectors. This has included the UK's postal service, the Royal Mail, in transport, schools and in refuse collection for example.

Whereas the UK had gone through a long period of declining union membership, there has been a renewed interest in collective bargaining, and tensions around pay have included sectors that have not previously been associated with industrial relations protests. We have also seen criminal barristers participate in industrial action over rates of pay.

Description

Prior to 21 July 2022 it was a criminal offence for an employment business to supply an employer with agency workers to cover the work of either a) striking workers or b) the workers who had been deployed to cover the work of striking workers.

The aim of the recent change is to make it easier for businesses to minimise disruption during industrial action and continue to provide a service or otherwise operate their business.

Impact and risk

As a result of this change, employers have greater flexibility to cover the disruption arising from industrial action by using agency workers, provided there is an available supply of suitably skilled agency staff.

Employers should consider carefully the competing risks – including reputational and employee relations risks - of taking this step in each case, as part of a wider strategy in managing immediate industrial action, and the wider landscape with any recognised unions, and the employer's workforce.

Future actions

Unsurprisingly, unions have been very unhappy about this change. Eleven trade unions and the Trades Union Congress (TUC) have raised proceedings for a judicial review of these regulations, so we may see further developments in the future.

For employers faced with industrial action this change may provides additional options for replacing labour. The difficulty comes where employees are performing highly skilled roles and there is no or limited agency cover.

Employers who believe they may be at risk of industrial action may wish to identify whether there are agency organisations that can assist their staffing needs, should a strike be called.

More generally, it will be appropriate to consider this measure alongside other existing mitigation options, as part of any wider industrial relations planning.

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