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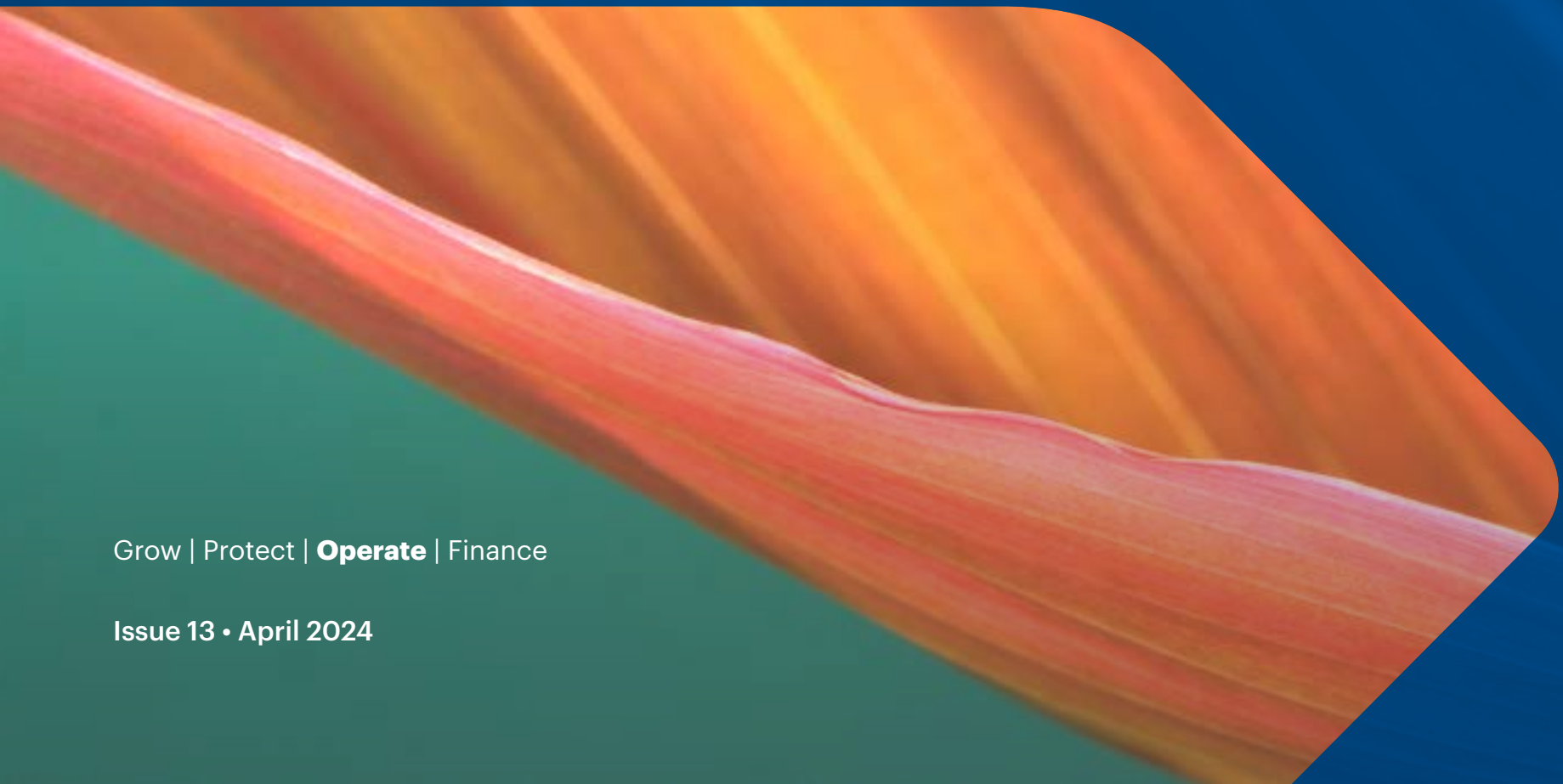
Global Employment Lawyer

Global Employment & Labor Quarterly Review



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Welcome to the first 2024 edition of our quarterly global employment and labour law update. Continuing our tradition, we aim to provide a concise and insightful summary of the latest international developments, ensuring you remain well-informed and ahead of the curve in the ever-evolving workplace landscape.

In this issue, we explore the critical importance of integrity in employment relationships, underscored by a ruling in South Africa. We also examine Australia's progressive changes aimed at enhancing work-life balance and redefining employment classifications, Ireland's introduction of new remote and flexible working standards and proposed new legislation on non-competition clauses in the Netherlands, we look at Turkey and the UAE as they reform their labour laws with wage adjustments and new benefit schemes, and many more updates from across our global teams.

Thank you for reading, and we look forward to keeping you informed throughout the year.

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South Africa

Protest action and dishonesty at the workplace – On 20 July 2023, the Labour Court of South Africa in Johannesburg delivered its judgment in a case concerning an employee who participated in protest action on days he claimed he was ill. The employer had found he was not so indisposed that he could not attend to his work. As a result of his dishonesty, he was dismissed. The employee subsequently challenged the dismissal, and the Commission for Conciliation, Mediation and Arbitration found the dismissal was substantively unfair. The employer subsequently challenged the decision at the Labour Court. The following key principles can be taken from this judgment handed down by the Labour Court:

- honesty forms an integral part of the employment relationship and misrepresenting any information to an employer regarding one's health when applying for sick leave may be sufficient to cause a breakdown in the trust relationship and warrant dismissal;
- medical certificates constitute hearsay evidence and, in order to be admissible, an employee may be required to produce an accompanying affidavit from the medical practitioner, or the medical practitioner may be required to testify to the truthfulness of the medical certificate; and
- an assumption made by a Commissioner in arbitration proceedings may result in a reviewable irregularity for purposes of section 145(2)(a) of the Labour Relations Act.

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Asia

Mainland China

Employee participation in company management – The most recent revision of the Company Law, issued on 29 December 2023, and set to take effect on 1 July 2024, by the Standing Committee of the National People's Congress, introduces additional requirements regarding employee participation in company management. Article 68 of this revision stipulates that, for limited liability companies with 300 or more employees, the board of directors must include an employee representative, unless such representatives are already included on supervisory boards, provided that such supervisory boards exist within those companies. Until this revision, this requirement was only mandated for solely state-owned enterprises.

The implementation of employee participation may reflect legislators' intentions to enhance protection for employees, suggesting a shift in ethical theory towards companies taking on more social responsibility beyond mere economic efficiency. However, the effectiveness of this change remains uncertain.

For large and medium-sized enterprises, especially foreign-invested and private ones, which do not meet the exception, there is particular concern about the consequences if they failed to include employees on their boards of directors after 1 July 2024, particularly as it is not indicated in the new revision whether the resolutions would be deemed invalid, revocable or not established under such circumstances.

Employee stock ownership plans – The new revision also addresses the provision of support for employee stock ownership plans by companies. While the current Company Law does not explicitly specify whether companies can provide financial assistance, the new Company Law establishes the principle that limited liability companies generally may only offer financial assistance for the implementation of employee stock ownership plans. This article in the new revision provides a solution for employees who may lack funds to participate in stock ownership plans, thereby enabling companies to assist eligible and interested employees in joining such plans.

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Hong Kong

Relaxation of the "418 rule" – Employees are entitled to various statutory benefits under the Employment Ordinance including paid annual leave, sickness allowance, statutory holiday pay and long service, as well as severance payments, provided that they are employed under a "continuous contract". Employees will be deemed so provided if they fall under the so-called "418 rule". This rule requires employees to:

- have been employed by the same employer for four or more consecutive weeks; and
- have worked for at least 18 hours each week.

The "418 rule" can be disadvantageous to employees who do not have a regular work schedule, such as gig workers and casual workers. The rule is also prone to manipulation by employers, who may circumvent the "418 rule" by keeping an employee's number of working hours in a week below 18 and breaking their continuity of service, thus depriving them of their statutory benefits.

Recently, the Hong Kong government resolved to relax the second limb of the "418 rule". Under the new arrangement, employees will be deemed to be employed under a "continuous contract" provided they meet the first requirement above and have worked a total of 68 hours in four weeks. It will no longer matter how many hours an employee has worked in a particular week.

The new arrangement is aimed at preventing manipulation by employers to deprive certain employees of their statutory benefits under the Employment Ordinance. Having said that, it may still be possible for employers to circumvent the new rule by limiting an employee's total working hours in any four weeks.

The government has not yet tabled an amendment bill for discussion in the Legislative Council and it is unclear when the new law will come into effect.

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India

Karnataka Compulsory Gratuity Insurance Rules 2024 – In January 2024, the government of the State of Karnataka notified the rules pursuant to which every employer is required to obtain a valid insurance policy for its liability towards payment of gratuity under the Payment of Gratuity Act, 1972 and is also required to register itself with the competent authority. The insurance policy can be obtained from the Life Insurance Corporation of India or any other approved insurance company.

The rules also provide for conditional exemption to employers who:

- have previously established an approved gratuity fund and intend to continue with such arrangement for the provision of gratuities for its employees; or
- employ 500 or more persons and who establish an approved gratuity fund.

To qualify for this exemption, employers must, among other things, fulfil certain conditions provided under the rules.

EPFO circular on India-Brazil SSA – The Employees' Provident Fund Organization (**EPFO**) issued a circular dated 13 February 2024, concerning the implementation of the Social Security Agreement (**SSA**) between India and the Federative Republic of Brazil, effective from 1 January 2024. The circular outlines that, under the SSA, employees from one country sent by their employers to the other country for short-term assignments lasting up to 36 months are exempt from making social security contributions in the host country, provided they possess a certificate of coverage (**COC**). In this regard, the concerned employees may obtain a COC through their employers by applying at the relevant regional EPFO office.

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Singapore

Employment Pass (EP) salary requirement to increase – The minimum qualifying salary for Employment Pass applicants will be raised on 1 January 2025. New EP pass applicants will have to earn a minimum of S$5,600 a month, higher than the current minimum of S$5,000. The minimum qualifying salary for those in the financial services sector will increase from the current S$5,500 to S$6,200. For new EP renewal applicants, the new qualifying salary will not take effect until 1 January 2026.

Retirement age and re-employment age to rise – Singapore's retirement age will increase from 63 to 64 on 1 July 2026. The re-employment age will increase from 68 to 69.

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South Korea

Revised interpretation of overtime limits – The Labor Standards Act stipulates that statutory working hours per week shall not exceed 40 hours, with a cap on overtime hours such that they may not surpass 12 hours per week, effectively limiting total maximum working hours to 52 hours. Historically, the Ministry of Employment and Labor has interpreted any work exceeding the daily statutory limit of eight hours as overtime, deeming it a violation of the law if such overtime exceeded 12 hours in a week, even if the total weekly hours remained under 52. However, a recent Supreme Court decision has led to a revised administrative interpretation. Now, it is considered a violation only if the hours worked beyond the statutory 40 hours per week exceed 12 hours. Nevertheless, the criteria for overtime pay remain unchanged – overtime work exceeding the daily eight hours must be compensated at a rate of at least 50% above the regular wage.

Supreme Court upholds dismissal for underperformance – The Supreme Court has held that dismissal may be justified when an employee's work performance or capability falls significantly below the minimum expectations over a considerable period, to the extent that continued employment would be deemed unreasonable by societal standards. This was highlighted in a case involving an automotive company where, despite providing a poorly performing employee with seven instances of Performance Improvement Programme training and seven opportunities for retraining over 11 years, the employee's work capability and performance did not improve. The court found that such circumstances could justify the termination of employment as being reasonable within the bounds of societal norms.

Accountability for severe accidents – Effective 27 January 2022, the Serious Accident Punishment Act (**SAPA**) was enacted to enhance corporate accountability in severe accidents. It outlines explicit responsibilities for management in occupational health and safety, and introduces stricter penalties for non-compliance. The SAPA addresses fatalities or serious injuries among workers or the public, attributing liability to managerial figures, such as business owners and CEOs, with penalties including a minimum of one year's imprisonment and fines up to KRW 1 billion. Its broad applicability and stringent causation criteria have prompted widespread concern and proactive legal and consulting engagements across industries. Initially, the SAPA applied exclusively to enterprises with more than 50 full-time employees (or construction projects exceeding KRW 5 billion in total costs). From 27 January 2024, the SAPA's jurisdiction has broadened to encompass entities with fewer than 50 full-time employees (or construction efforts below KRW 5 billion), significantly extending its impact across the business spectrum.

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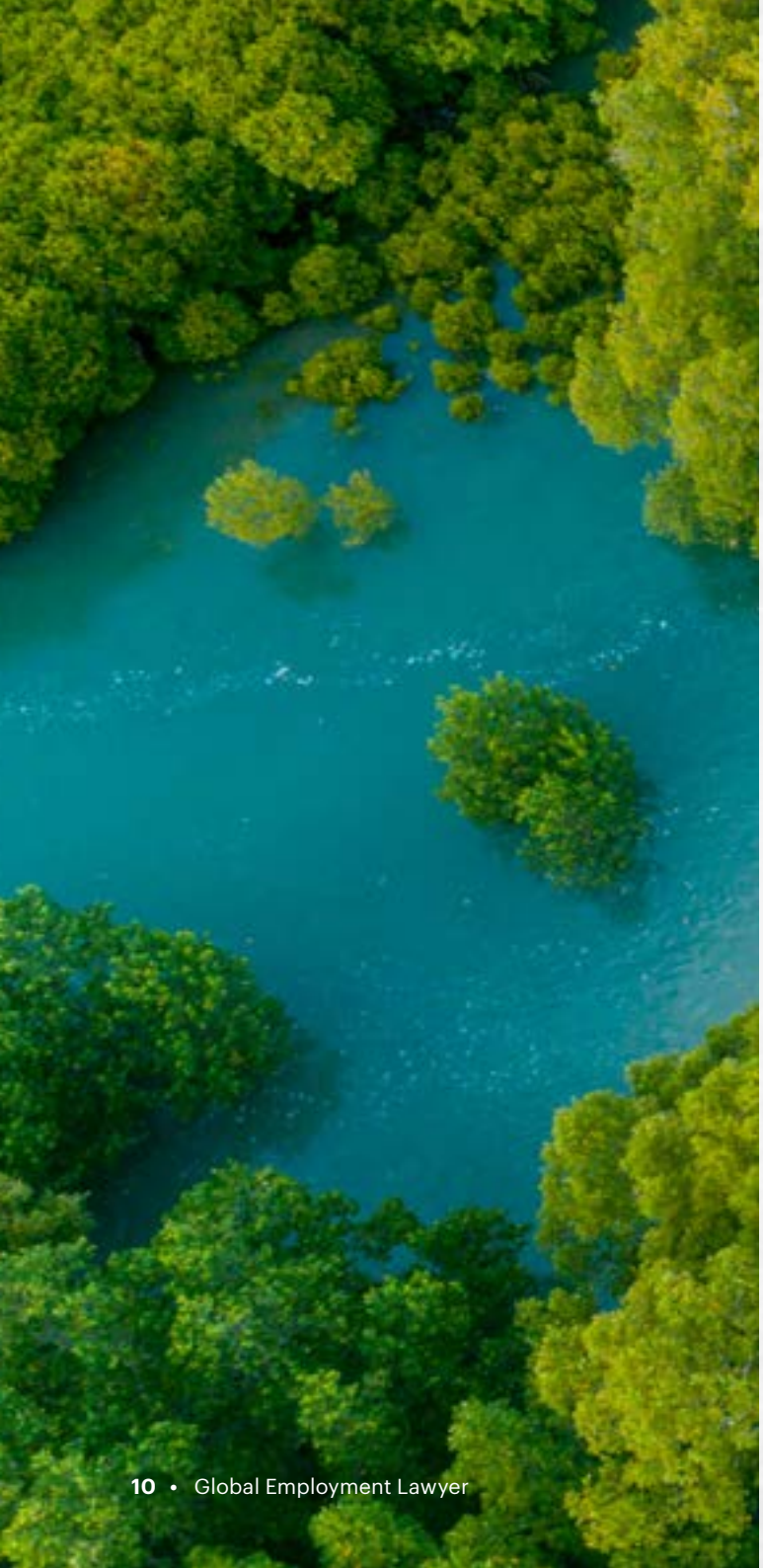

Taiwan

Strengthened sexual harassment laws come into force – On 31 July 2023, the Taiwan Legislative Yuan passed amendments to the Gender Equality Work Act, some of which came into force on 8 March 2024.

The key points of implementation include clarifying the guidelines for the prevention and control of sexual harassment in the workplace, defining the relevant forms of sexual harassment, prevention and control principles, education and training, complaint channels, complaint investigation procedures, disciplinary handling and other related measures, and clarifying the obligations of employers to prevent and control (according to the scale of the enterprise) the notification of the results of the investigation of grievances and handling, the establishment of an external complaint investigation system, and the strengthening of the protection and support of victims.

According to the amendments, if the employer receives a complaint from a victim, it shall notify the Labor Bureau, and shall immediately take relevant isolation, adjustment, correction and remedial measures upon receipt of the complaint or upon learning of the sexual harassment case. In order to improve the relevant prevention and control measures, all employers employing more than 30 workers shall formulate sexual harassment prevention measures, complaints and disciplinary norms, and shall carry out education and training on the prevention and treatment of sexual harassment in the workplace for employees, and shall also hold relevant education and training for those who hold supervisory positions and those who participate in the handling, investigation and resolution of sexual harassment complaints every year.

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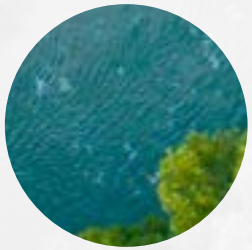

Uzbekistan

Additional innovations to the Labor Code – The Code defines the criteria for the mass dismissal of employees. Accordingly, local public authorities may suspend decisions on the mass release of workers for up to six months with simultaneous partial or full compensation to the employer for losses caused by this postponement. Criteria for the notion of mass dismissal of employees have also been approved.

In addition, mandatory terms and details of the employment contract are expanded, including:

- place of work;
- work function;
- work start date;
- conditions of labour remuneration;
- the term of the labour contract if the employee has a fixed-term labour contract, as well as the grounds for its conclusion;
- the working time and rest time regime if it differs from the general working time and rest time regime provided for employees working for the employer;
- guarantees and compensation for work under conditions different from normal, if the employee is hired for such work, specifying the characteristics of working conditions at the workplace; conditions defining, where necessary, the nature of work (mobile, travelling, on the road, other nature of work); and
- other conditions as stipulated by labour legislation and other legal acts on labour.

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Vietnam

Regulation of management, salaries and bonuses – On 23 February 2024, the government issued Decree No. 21/2024/ND-CP regulating labour management, salaries and bonuses for employees working in single-member limited liability companies with 100% charter capital held by the state. This Decree takes effect from 10 April 2024.

Based on production organisations and labour organisations, companies build and issue salary scales, payroll and salary allowances as a basis for arranging salaries, paying salaries and implementing regimes for employees, according to the provisions of labour law.

For managers, the salary levels in the salary sheet are decided by the Board of Members or the Chairman, who must ensure that the salary calculated according to the salary levels in the salary sheet do not exceed the planned salary of managers and specialised controllers according to regulations.

The salary is decided by the company which must ensure that the salary is calculated according to the salary levels in the salary scale and salary sheet, and that salary allowances must not exceed the planned salary of the employee.

Before building or amending the salary scale, salary sheet or salary allowances, the company must consult with representative organisations and counterpart organisations, report to the owner's representative agency for opinions and public at company.

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Australasia

Australia

"Closing Loopholes" Bill No. 2 passes Parliament – Australia's federal government has made significant changes to Australia's Fair Work Act 2009 (Cth). Key changes include:

- right to disconnect – from 26 August 2024 (26 August 2025 for small business employers), an employee can refuse to monitor, read or respond to contact (or attempted contact) from their employer, or third parties related to their work, outside ordinary working hours, unless the employee's refusal is unreasonable;
- casual employment – from 26 August 2024, there will be a new definition of "casual employee". A person will be a casual employee if there is an absence of a firm advance commitment to continuing and indefinite work and the employee is entitled to a casual loading. Consideration will need to be given to the real substance, practical reality and true nature of the employment relationship. There will also be a new pathway for casual employees to convert to permanent employment;
- definition of employment – from 26 August 2024 or an earlier date to be fixed, there will be a new definition of employment. This will be relevant for determining whether an individual is an employee or independent contractor. Under this new definition, whether an individual is an employee is to be determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person. This is a significant departure from the current law, which places primacy on the terms of the contract. Employers will now need to consider how the contract is performed in practice, when determining whether an individual is an employee or independent contractor;
- wage theft – from 1 January 2025, it will be a criminal offence for an employer to intentionally engage in conduct that results in an underpayment to employees. The new wage theft laws are punishable by imprisonment of up to 10 years and/or three times the underpayment amount and maximum fines of more than A$1.5 million for an individual or A$7.8 million for a body corporate;

- same job, same pay – from 1 November 2024, "regulated labour hire arrangement orders" can be made by the Fair Work Commission. Depending on the circumstances, this means that a labour hire employer may need to pay their employees the same rate of pay as employees of the host employer who perform comparable work; and
- there are also changes to workplace delegates' rights, road transport, the gig economy and enterprise bargaining.

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New Zealand

NZ$1.79 million award given for mental harm – The Employment Court has awarded a record-breaking amount to a married couple who both worked as guidance counsellors at a local high school. Over a period of two decades, the pair were exposed to highly distressing events in their work which culminated in both individuals being diagnosed with PTSD and subsequently ending their employment. The award totalling NZ$1.79 million included damages for past, present and ongoing mental harm, lost income, lost superannuation, capital loss because of their need to sell their property, rental income loss and medical expenses (plus interest).

The key takeaway for employers is the court's willingness to recognise damages suffered due to health and safety failures related to mental health, together with an openness to make awards outside the range of traditional employment remedies focused on lost wages.

"Non-employees" allowed to initiate collective bargaining – In an unusual determination from the Employment Relations Authority, a co-operative consisting of elite New Zealand athletes (Athletes' Co-operative) has been allowed to initiate collective bargaining with a government funding entity (High Performance Sport), even though the two do not have any direct employment or contractual relationship. The athletes receive funding indirectly from High Performance Sport through various individual sporting bodies, but wish to be employed directly.

The decision is being appealed because it suggests unions can force organisations into collective bargaining even if they do not have any current employees and do not propose to have any.

Minimum wage change – The government has announced an increase in the minimum wage from NZ$22.70 per hour to NZ$23.15 per hour as of 1 April 2024. This is a moderate increase with regards to the previous government's approach and, in fact, is the lowest increase to the minimum wage in the last decade.

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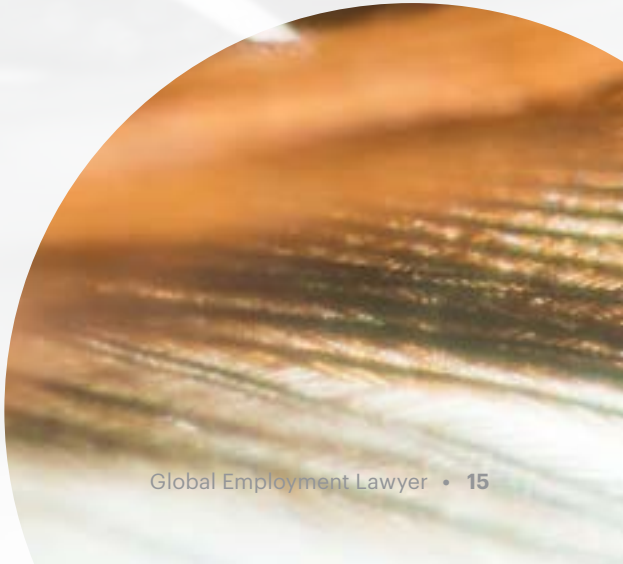

Central and South America

Argentina

Supreme Court reduces interest in labour claims – On 29 February, the National Supreme Court made an important change regarding the application of interest by modifying Resolution No. 2764 of the National Labour Appellate Courts, reducing the labour costs considerably.

Resolution No. 2764 of the National Labour Appellate Courts, issued in September 2022, introduced a new calculation method applicable to labour credits as part of the application of interest accrued plus an annual capitalisation. This capitalisation is to start from the date when the defendant is served notice of the claim and would continue to be applicable successively until the day of the final payment.

The Supreme Court, in *re Oliva, Fabio Omar vs COMA S.A.*, concluded that the calculation method decided by the National Labor Appellate Courts is not supported by the Civil and Commercial Code provisions since the general rule clearly states that interest on interest is not allowed. Although this rule has a few exceptions, the Civil and Commercial Code refers to one single capitalisation but not to successive capitalisations.

While this court decision is only binding for the parties involved in the case, it is undoubtedly an important precedent that would likely be followed by the lower courts, giving certain predictability for companies from a labour litigation cost perspective.

Changes in the social security system – On 21 February 2024, Decrees 170/2024, 171/2024 and 172/2024 were published in the Official Gazette, regulating the regulatory framework of trade union health schemes and prepaid medicine, in accordance with Decree of Necessity and Urgency 70/2023. The most relevant aspects are:

- employees will be able to freely choose between joining a trade union health scheme or hiring the services of a prepaid health care plan;
- it will no longer be mandatory for the beneficiary to remain for one year in the trade union health scheme corresponding to their activity when entering new employment;
- beneficiaries will be able to choose a trade union health scheme or prepaid health care plan from day one of their employment; and
- employees will be able to allocate their contributions directly to a prepaid health insurance company. Previously, employees had to contribute to a trade union health scheme and, optionally, transfer their contributions to a prepaid medical company.

These changes aim to promote free competition among service providers.

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Bolivia

Standards on labour inspection – During the first week of 2024, the Bolivian Ministry of Labor (**MOL**) issued Ministerial Resolution No. 1444/23 on labour inspection standards. Broadly, this regulation states that labour inspectors are empowered to enter workplaces freely at any time, even without prior notice. Furthermore, it determines deadlines for employers to file their depositions on time depending on the type of inspection.

Labour contract endorsement regulation – In January 2024, the MOL issued Ministerial Resolution No. 001/24 which provides a maximum period in which employers must endorse the labour contracts of their employees before the MOL. This regulation states the following deadlines for:

- Bolivian employees: within 60 calendar days from the date of commencement of the employment relationship; or
- foreign employees: 30 calendar days from the beginning of the employment relationship.

The endorsement must be made by the employer within the indicated period, as this will allow the contract to become legally effective. Otherwise, the contract will not be endorsed and it will be presumed that the employment relationship is for an indefinite time.

Approval of personnel attendance control systems – At the end of January 2024, the MOL issued Ministerial Resolution No. 1443/23 which determines that employers who have one or more employees must submit before the Departmental or Regional Headquarters of the MOL their request for approval of personnel attendance control systems, which may be:

- manual attendance controls, such as attendance books; or
- electronic attendance controls, such as biometric systems, facial recognition software, etc.

Late filing and rectification of payroll – The MOL published Ministerial Resolution No. 152/24 approving regulations for the late filing, rectification and exceptional physical submission of monthly payrolls of salaries, and other documents related to payrolls. By this regulation, all public and private employers can submit their late payrolls by the systems provided by the MOL, upon payment of a fine. Also, in specific scenarios, it is possible to submit a rectification form to correct the information of a previous payroll. In addition, this regulation states that the legal representative of the employer is responsible for mistakes, omissions or falsification of data submitted to the MOL.

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Chile

Application of law reducing the working day – On 26 April 2024, the law that reduces the ordinary working day will enter into force, reducing weekly working hours from 45 to 44 hours.

Labor Code modifications regarding harassment – On 13 December 2023, the bill known as the "Karin Law" was approved and dispatched, which modifies the Labour Code regarding the prevention, investigation and sanction of workplace harassment. This new law broadens the definition of "workplace harassment", now recognising even a single incident as harassment without the need for repeated behaviour to qualify as such. In addition, the concept of "workplace violence" is incorporated and in this regard the law states that behaviours exercised by third parties outside the labour relationship (such as customers or suppliers) towards employees will constitute it.

Family and work life conciliation law – On 21 December 2023, the law project that promotes and facilitates teleworking for employees who are carers of children under 14 years of age or of people with disabilities was dispatched. This new law states that, in these cases, all or part of the daily or weekly workday can be developed under a teleworking modality, to the extent that the nature of their functions allows it. Additionally, it is indicated that employees who are carers will have preference to make use of their legal holiday during the school vacation period.

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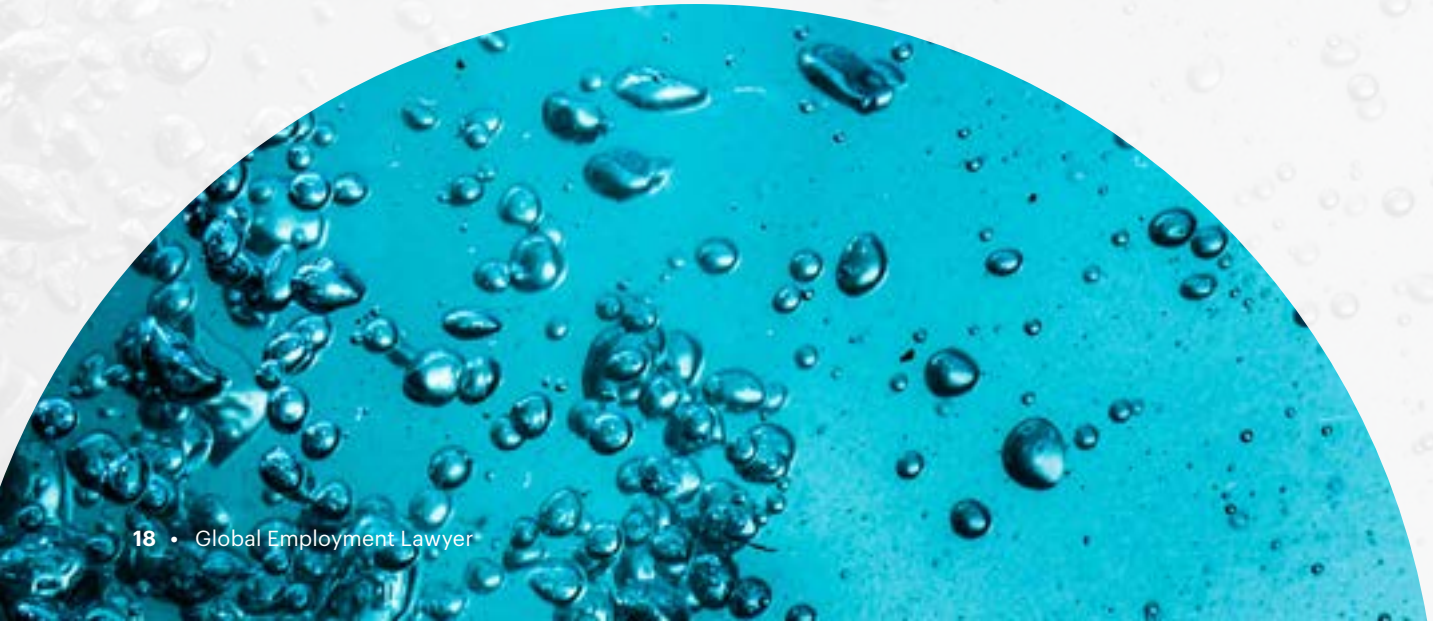

Colombia

Modifications of women's retirement requirements – The Constitutional Court declared the expression "and have contributed at least 1,150 weeks" of Article 65 of Law 100 of 1993 unconstitutional, in relation to its effects on women, and deferred the decision until 31 December 2025, so that in that period Congress may adopt measures to compensate for the unfavourable conditions faced by women in the workplace that hinder them from making contributions and consolidate their right to recognition of the minimum pension guarantee in the Individual Savings Scheme. This decision is in line with the previous decision in the same regard for those women affiliated to the Fixed Contribution Scheme.

In this case, the court considered that the beneficiaries of the minimum pension guarantee are low-income members of the Individual Savings Scheme who do not have sufficient capital in the individual savings account to finance a pension amounting to at least one minimum wage. In this sense, it pointed out that the challenged norm, by limiting de facto the access to the minimum pension guarantee, put at risk the vital minimum of low-income women.

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Costa Rica

Whistleblower protection introduced – On 8 February 2024, Law 10437 was published in Costa Rica, titled "Law for the protection of whistleblowers and witnesses of acts of corruption against labor retaliations", which amended article 404 of the Labor Code by establishing a special protection for employees who report or are witnesses of acts of corruption, both in the public and private sectors.

For the first time, Law 10437 provides the concept of "whistleblower". Its purpose is to protect employees who denounce or are witnesses of acts of corruption, such as bribes or granting of improper benefits to public employees, against labour retaliations which the employer could take against them, such as suspension, dismissal, abusive changes in their working conditions or dismissal.

By virtue of the above, the employer can now only sanction an employee who has denounced or is a witness of an act of corruption, by virtue of a serious justified cause and with prior authorisation given by the Ministry of Labor (MTSS). In the event that a public or private sector employee considers that they have been affected by retaliation from their employer, after having denounced an act of corruption, the employee can go to the labour courts to defend their rights and, if it is proven that a retaliation actually took place, the employer will be subject to a fine that can range from one to 100 base salaries. Currently, the base salary in Costa Rica is equivalent to approximately US$760.

2024 holidays – According to Law 9875 of 13 July 2020, and its amendment introduced by Law 10396, published on 20 December 2023, there will only be two holidays whose observation will be moved in 2024:

- 11 April: Observation of the Battle of Rivas will be moved to the following Monday 15 April; and
- 25 July: Day of the Annexation of Partido de Nicoya will be moved to the following Monday 29 July.

The other holidays of the year will keep their observation on the same day. These holidays are: 28/29 March (Holy Week); 1 May (Labor Day); 2 August (Day of Virgen de los Ángeles); 15 August (Mother's Day); 31 August (Day of the Black Person and the Afro-Costa Rican culture); 15 September (National Independence Day); 1 December (Day of the Abolition of the Army); and 25 December (Christmas).

Creation of special paternity leave – On 20 December 2023, the amendment to article 95, section C of the Labor Code, which provides the creation of special paternity leave, was published in the Official Gazette.

With the creation of the leave, in the event of the death of the mother during childbirth or during the first three months after birth if the child has survived, the biological father will be granted special paid leave, for a total period of three months after childbirth. In this case, the father of the child must commit himself to take care of the newborn child. In the absence of the father, the leave will be granted to the person who proves that they will take care of the child.

The special paternity leave will be granted to the child's father or to the person who will take care of the child, if they are employed, regardless of whether or not the mother was employed at the time of her death.

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Ecuador

Basic wage and living wage rates – The basic wage rate for 2024 has been set at $460. In addition, the Ministry of Labor has set the living wage for the year 2023 at $484.75. This figure is distinct from the basic wage and is higher because it considers the actual cost of a basic basket of goods and services, reflecting the amount a worker needs to earn to cover basic living expenses. Therefore, workers earning less than $484.75 are entitled to economic compensation in April 2024, based on the previous year's calculations. The Ministry of Labor has provided detailed procedures and guidelines for complying with this obligation.

New equal pay law – The Organic Law for Equal Pay Equality Between Women and Men was published on 19 January 2024, with the dual objectives of ensuring equal remuneration for equal work between genders and eliminating discriminatory practices in the workplace to close the gender pay gap.

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Mexico

Mandatory annual Christmas bonus to double – On 28 February 2024, the Senate presented an initiative that reforms labour legislation to increase the Christmas bonus payment that Mexican workers receive annually from 15 to 30 days. Although analysis and approval by the Mexican Congress is still pending, it is anticipated that the initiative will be resolved this 2024.

Legislative initiative to modify working hours to 40 hours per week – This initiative currently under discussion by the Congress in Mexico aims to reduce the working week from 48 hours to 40 hours and is expected to be discussed and resolved during the first semester of 2024.

The implications for companies arising from the reduction of working hours would be substantial, affecting not only labour-related concerns but also social security and tax matters. If this initiative is approved, employers will need to address the following challenges:

- reorganising employees' shifts;
- recalculating vacation bonus and overtime payments for each employee;
- hiring more personnel to maintain the organisation's operability at the appropriate levels;
- reviewing internal processes in order to streamline, modernise and even automate processes; and
- analysing the number of employees on the payroll, the type of shifts they are covering and the gaps that will arise in the event of reducing working hours.

The impact for any company will depend to a large extent on each economic sector or industry. Companies that have a large labour force and depend on it will face a greater impact. Likewise, this will open the door to having to renegotiate clauses referring to working hours within relevant collective bargaining agreements, as well as implying modifications to individual labour agreements and internal regulations, among others.

Legislative initiative for necessary number of seats for workers (Ley Silla/Chair Law) – This initiative mandates that employers in the retail and services sector must provide adequate seating for their workers and prohibits them from requiring employees to stand throughout their entire shift. This initiative was unanimously approved by the Senate on 20 February 2024, with the aim of safeguarding the health and wellbeing of workers. The significance of this reform is underscored by the Foundation for the Prevention of Occupational Risks, which has highlighted the negative health impacts of prolonged standing on workers. Without adequate rest, employees are at risk of developing herniated discs, lumbago, sciatica, muscle strains and other injuries.

Next steps involve the Chamber of Deputies reviewing and ratifying the proposal before it can become law. If passed, millions of employees could benefit from being able to sit during their workday, potentially reducing the risk of work-related health issues. Employers will be given a 180-day period to comply with the new regulations after its publication in the Official Journal of the Federation.

Currently, Mexican labour laws do not guarantee breaks for those who work standing up, except in cases of pregnancy where sitting breaks are mandated.

Renewal of the Specialized Services Providers Registry (REPSE) – On 21 February 2024, an agreement was published in the Official Gazette of the Federation amending the general provisions for the registration of individuals or legal entities providing specialised services or carrying out specialised works referred to in Article 15 of the Federal Labor Law.

The agreement outlines the procedure for renewal of registration in REPSE, effective from 22 February 2024. Amendments have been made to articles concerning registration renewal, the IT platform and the necessary documentation. Article 13 has been updated to indicate that the three-year term starts from the date of registration. Failure to renew will result in cancellation of registration.

For registration renewal, companies will need:

- proof of compliance with tax and social security obligations before SAT, IMSS and INFONAVIT;
- to carry out the process during the three months prior to the expiration of their registration notice (according to STPS criteria);
- to update the information and documentation that was provided during the registration process in the REPSE platform; and
- to ensure that the activities to be registered are part of the corporate purpose or tax status certificate and that the corresponding questionnaire is completed for each activity.

After renewal, providers must inform beneficiaries of the registration update.

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Peru

Regulations for leave of absence due to death of family members – On 24 December 2023, Supreme Decree No. 013-2023-TR was published, which regulates the law that establishes the leave of absence for the death of family members in the private sector. The main features are the following:

- the leave of absence is five calendar days;
- where the death of the family member occurs in a geographical location other than the workplace, the leave is extended according to the travel time of the employee, depending on the means of transportation used; and
- the employee must present the documentation that proves the relationship with the deceased relative at the end of the leave.

Prevention and detection of breast and cervical cancer – In January 2024, Supreme Decree No. 001-2024-SA was published, approving the regulations of the law for the prevention of cancer in women and the strengthening of specialised oncology care, applicable to all public and private sector employees. The main dispositions are the following:

- the leave time is one day per year and is not required to be compensated by the employee; and
- the employee must submit to their immediate supervisor the simple request for leave, attaching the appointment schedule for the screening tests for the referred types of cancer, either physically or virtually.

Simple presentation of the request does not automatically grant the right to the leave of absence since the medical attention must be accredited with the respective proof of care.

New Covid-19 regulations in the workplace – On 15 January 2024, Ministerial Resolution No. 022-2024/MINSA was published, approving Administrative Directive No. 349-MINSA/DIGIESP-2024, which establishes provisions for the surveillance and control of the health of workers at risk of exposure to Covid-19. The main features are as follows:

- it is applicable to all employers, regardless of whether they are included in the scope of Supreme Decree No. 003-98-SA, which approves Technical Standards for Complementary Risk Work Insurance;
- the obligation that all workplaces must prepare a plan for the surveillance, prevention and control of Covid-19 is maintained; and
- the mandatory hiring of a health professional is determined depending on the type of workplace, which is classified by the number of employees. Likewise, the Occupational Health and Safety Committee is entitled to determine the working time of such professionals in some types of workplaces.

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Uruguay

National minimum wage increase – As from 1 January 2024, the national minimum wage increased to 22,268 Uruguayan pesos monthly (before tax discounts and social security contributions) (or the equivalent of dividing this amount by 25, in order to obtain the day of work value, or by 200, in order to obtain the hour of work value).

New statute enables the payment of tips through electronic means – Every worker who routinely receives tips, or who performs tasks in which it is customary to receive tips, has the right to be paid this entry via electronic payment methods. On the flip side, the employer is obliged to supply the necessary technology in order for clients to be able to include tips in the transaction through the same method of payment in which they pay for the service or product related to the tip. Tips received under these provisions must not be subject to any discount or deduction by the employer, except for applicable taxes. Workers also retain the right to accept cash tips directly from clients and this cannot be restricted by the employer.

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Venezuela

Supreme Tribunal of Justice ratifies use of alternative dispute resolution (ADR) – The Supreme Tribunal of Justice has issued two key decisions promoting the use of ADR in labour disputes:

- in a labour case involving Cerveceria Polar, a subsidiary of a Venezuelan food and brewery company with operations throughout Latin America, the Constitutional Chamber ruled that courts can encourage parties to utilise ADR mechanisms such as mediation, even if not initially requested (Decision No. 80 of 7 February 2024); and
- the Social Cassation Chamber approved a request for mediation in the case of Especialidades Dollder, C.A. (Decision No. 14 of 1 March 2024).

These decisions highlight the growing emphasis on ADR as a means to efficiently resolve labour disputes.

New regulations on health and employment security – New regulations were published on 29 December 2023, outlining the process for identifying and managing risks associated with employment (the **Regulation**). The full text became available in mid-January. Key points for employers include:

- the Regulation applies to all employees, regardless of service type or location;
- only employers are required to register with the Social Security System;
- social security contributions are due within the first five days of each month; and
- the Venezuelan Institute for Employee Health and Safety (INSAPSEL) classifies risks based on employee activities. This classification determines social security fees.

Employer may dismiss worker who participated in illegal strike – The Constitutional Chamber of the STJ, in its ruling No. 97 dated 7 February 2024, found no facial violation of constitutional rights in a recent ruling of the Superior Labor Court which affirmed that an employee who participated in an illegal strike may be dismissed if their actions unjustifiably disrupt the company's production process.

While all employees possess a constitutional right to strike, this right is subject to specific terms and conditions outlined in the law. In the case at hand, there was no evidence that the employees filed a petition with the Labor Inspector Office to start a collective conflict. Therefore, the Labor Inspector's decision to authorise the employee's justified dismissal aligns with current legal requirements.

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Europe

Czech Republic

Amendment overhauls employment agency regulations – Following last year's major amendment to the Labor Code, an extensive amendment to the Act on Employment has now been adopted.

It primarily regulates the conditions for employment intermediation through employment agencies. An employment intermediation permit (for employment agencies) is now being issued by the Ministry of Labor and Social Affairs (**MLSA**). Further, there is a new obligation for permit applicants to provide the MLSA with certificates of no debts (employment agencies with permits issued before 1 January 2024 are required to provide the certificate of no debts by 1 April 2024) and the deposit for permit applicants has been raised from the current CZK 500,000 to CZK 1 million (employment agencies with permits issued before 1 January 2024 have to pay the deposit increase by 1 April 2024).

Further, the amendment changes the definition of illegal work as the criterion of continuity has been removed from the definition of illegal work and, as a result, the length of the employment relationship is no longer important.

The amendment also includes a change to the Labor Code, which newly regulates the unilateral termination of a temporary assignment to the user and the liability of entrepreneurs in the construction industry for wage claims in subcontracting chains.

Last, but not least, the amendment tightens sanctions for illegal work and disguised employment intermediation.

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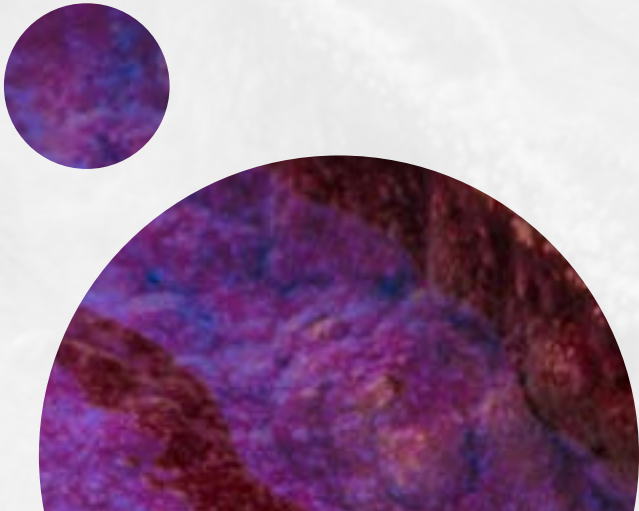

France

Acquisition of paid leave during sick leave – In three rulings handed down on 13 September 2023, the French Supreme Court, influenced by EU law, overturned the French law applicable to the acquisition of paid leave during sick leave:

- current national provisions: The French Labor Code stipulates that only illnesses or accidents with a professional origin can be treated as time actually worked, and thus entitle an employee whose employment contract has been suspended to accrue vacation. However, this accrued vacation is limited to an uninterrupted one-year suspension of the employment contract. Accordingly, an employee whose employment contract is suspended due to a non-professional related illness or accident does not acquire vacation entitlement during the period of suspension of their employment contract.
- EU law in conflict with national legislation: Under EU law, the right to paid annual leave is an essential principle of EU social law. Article 7 of Directive 2003/88/EC of 4 November 2003 stipulates that member states must grant employees the right to at least four weeks' annual leave. In addition, the Court of Justice of the European Union states that an employee whose employment contract is suspended due to illness or accident cannot be deprived of the right to acquire leave during this period, regardless of whether or not the accident or illness is work-related;
- the French Supreme Court (**Cour de cassation**) sets aside domestic law in favour of EU law: For years, the Cour de cassation has been urging lawmakers to amend national legislation. In the absence of any reaction from the legislature, the Cour de cassation rendered three decisions contrary to domestic law:
  - in the first decision, the court set aside article L 3141-3 of the French Labour Code and ruled, in application of EU law, that an employee whose employment contract is suspended due to a non-work related illness is entitled to paid leave for this period (Cass soc 13.09.2023 No. 22-17.340);
  - in a second decision, the court ruled that an employee whose employment contract is suspended due to a work-related illness or accident cannot be held to the limit of one year's uninterrupted suspension of the employment contract for the purpose of acquiring vacation entitlement (Cass soc 13.09.2023 No. 22-17.638); and
  - in a third decision, the Cour de cassation considers that the starting point of the prescription period, beyond which the employee can no longer act, runs from the day when the employer justifies having put the employee in a position to take his leave (Cass soc 13.09.2023 No. 22-10.529);
- consequences: These three rulings will have a considerable financial impact on companies which were complying with internal law, and which will be faced with innumerable claims from employees suffering from non-work-related illness and deprived of the right to acquire paid leave.

A law is expected in the coming months to bring the law into line with EU law. In particular, the legislator will have to specify whether the right to leave concerns the four weeks provided for by EU law or the five weeks provided for by domestic law, and also specify the contours of the deferral period – will it be unlimited, as suggested by the French Supreme Court, or limited to 15 months, as envisaged by the Court of Justice of the European Union?

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Variable remuneration, regulate carefully! – Companies should carefully check whether their contractual basis for the payment of variable remuneration still complies with current case law. Case law is currently developing to the disadvantage of companies in connection with regulations on variable remuneration:

- the Hamburg Regional Labour Court decided that provisions are invalid which entitle the employer to unilaterally determine targets in the event that an agreement on the targets to be met is not reached between the employer and the employee; and
- the Higher Regional Court in Munich decided that a managing director's variable remuneration entitlement may only end as a result of the removal from the office of managing director if the managing director is simultaneously released from the service obligation in accordance with the contractual provision. If the contractual requirements are not met, the company may be obliged to pay the full variable remuneration.

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Child and parental leave allocation – As of 1 January 2024, the conditions for granting child and parental leave under the Hungarian Labor Code have changed. The 44 working days of parental leave to which an employee is entitled (for children up to the age of three) must continue to be granted at the time requested by the employee, with the clarification that, in the future, such request will have to be sent to the employer 15 days before the start of the leave period. Going forward, employees will be entitled to make use of child leave in addition to parental leave. The only limitation is that requests for leave must be submitted at least 15 days prior to the start of the planned leave.

On the one hand, this means that additional days off, beyond the seven working days, must be granted at the time requested by the employee (as long as they have made a proper request), which could be an important change for employers from a work organisation point of view.

New type of certificate upon termination of employment – At the beginning of the year, Act IV of 1991 on the Promotion of Employment and Unemployment Benefits altered the type of certificate issued upon termination of employment. The objective is to provide employees with a single, uniform document containing all necessary information either in electronic form or, if expressly requested by the employee, on paper. This aims to streamline the process and eliminate the need for six different documents upon termination, with the electronic format becoming the primary format for the new certificate.

Changes to working conditions in front of a screen – Effective 1 January, the previous six-hour daily limit for working in front of a screen has been eliminated, as well as the restriction that actual screen time cannot exceed 75% of the daily working time. Consequently, employees can no longer claim that the employer is not adhering to these provisions when organising daily work.

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New statutory right to request remote and flexible working – As of 7 March 2024, employees have a new statutory right to request remote working, and certain parents and carers have a statutory right to request flexible working. Employees do not have a right under the new legislation to challenge the substantive refusal of a request, but rather only the failure to follow the prescriptive process in considering such requests. However, employers should be mindful of the discrimination risks in refusing such requests. Employers should now review their policies and ensure that systems are in place to deal with the new statutory requests. Read more here.

Widened scope of whistleblowing legislation – From 17 December 2023, private sector employers with 50 or more employees are now required to establish, maintain and operate internal reporting channels and procedures for the making of protected disclosures and for follow-up (private sector employers with 250 or more employees were brought within scope from 1 January 2023). Failure to do so will amount to a criminal offence. In-scope employers will need to update their whistleblowing policies.

Widened scope of gender pay gap reporting – Employers with 150 or more employees are required to choose a snapshot date in June 2024 on which to calculate the relevant gender pay gap data and report no later than the same date in December 2024 (employers with 250 or more employees were brought within scope in 2022). In-scope employers will need to put in place mechanisms now to ensure that the relevant data is captured and reported on within time.

Senior Executive Accountability Regime – The Central Bank of Ireland has introduced the Senior Executive Accountability Regime (**SEAR**), which from 1 July 2024 will apply to senior individuals within certain financial institutions, namely credit institutions, insurance undertakings and certain investment firms. Statements of responsibilities will be required for such individuals. The mapping exercise to ensure the relevant regulatory responsibilities are assigned and documented will need to be completed by that date. From 1 July 2025, SEAR will apply to independent non-executive directors. The Conduct Standards and the new certification requirements have already come into force.

Statutory sick leave – From 1 January 2024, an employee's entitlement to statutory sick leave (introduced in 2023) increased from three to five days. It is intended that this will increase on a phased basis to 10 days in 2026. Statutory sick pay is paid at a rate of 70% of an employee's wage, subject to a maximum of €110 per day. Employers should update their sickness policies to reflect the change.

"On the spot" fines – From January 2024, new "on the spot" fines can be issued by Workplace Relations Commission inspectors, including a fine of €1,500 for failure to provide an employee with terms and conditions within a period of one month of the start of employment, a fine of €2,000 for failure in a collective redundancy situation to consult with employees' representatives and to provide them with mandatory specified information, and a fine of €750 for failure to provide employees with a written statement on the distribution of tips and gratuities or to treat a service charge as a tip. Employers should ensure compliance with mandatory employment laws given stronger enforcement mechanisms. Importantly, fines are imposed per breach – so for large employers this is a significant development.

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Managing emails and related metadata in the workplace – On 6 February 2024, the Data Protection Authority (**Garante**) released new guidelines for both public and private sector employers on the proper use of software and services to manage company emails.

The Garante created this guidance following investigations into the processing of personal data in the work context and the risk of default collection of employee email metadata – such as date, time, sender, recipient, subject, and size – and its prolonged retention. The Garante, therefore, reiterates that the contents of emails, including attachments and associated metadata, are a form of "protected" correspondence under the Italian Constitution. This underscores the importance of respecting workers' legitimate expectations of privacy regarding their messages.

In light of the above, the Garante stressed that metadata necessary to ensure the functioning of e-mail system infrastructure should be collected and stored for no longer than a few hours or a few days, and in any case, a maximum of seven days. This may be extended by no more than 48 hours when there is a proven and documented need for the extension. In accordance with the new guidelines, generalised collection of such data for a longer time is considered remote monitoring of employee activities and is therefore subject to applicable requirements and procedures, i.e., to sign a trade union agreement or obtain authorisation from the National or Area Labor Inspectorate. This is because extending the retention period beyond the seven/nine-day time frame may lead to indirect remote control of the worker's activity.

As a result of the difficulty raised by the short timeframe and the disruptive scope of the consequences of these measures, on 22 February 2024, the Garante temporarily suspended the effectiveness of the guidelines and launched a public consultation lasting 30 days on the forms and methods of use that would necessitate retention of metadata beyond that assumed in the guidelines document.

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Dutch proposed legislation on the use of non-competition clauses in employment contracts – There are plans to sharpen the rules for the use of non-competition clauses in employment contracts governed by Dutch law. On 4 March 2024, the Dutch Act on the Modernization of Competition Clauses was introduced. The Act is to ensure that competition clauses are only to be used if it is truly necessary to protect a company's legitimate interest and to limit the reach of competition clauses which are included. Importantly, employers would also be obliged to reimburse employees when upholding a competition clause – which is currently not the situation in the Netherlands.

The changes to current legislation on non-competition clauses pursuant to the proposed Act are:

- limitation in duration: maximum duration of 12 months compared to no boundaries at this stage;
- explanation of geographic scope: the employer must determine the geographic scope of the competition clause, which is again not regulated at this time;
- motivation of compelling business interest for permanent employment contracts: the employer must motivate his compelling business or service interest for including the competition clause in all forms of employment contracts. Currently, this is required for fixed-term contracts of definitive term only; and
- compulsory compensation in cases where the employer invokes the competition clause: the employer must pay compensation to the employee when invoking the competition clause, which currently can only be claimed (either successfully or not) by employees in court proceedings.

The Act is currently going through consultation, after which an updated legislative proposal is to be expected.

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Employer's right to process candidates' personal data after the recruitment process – Following a complaint against the decision of the Polish Data Protection Authority (**Polish DPA**), the Supreme Administrative Court has confirmed that an employer has a legally justified interest in storing candidates' personal data after it has completed a recruitment process. According to the court, the employer can store candidates' personal data until the end of the limitation period for a potential allegation from the candidate i.e. three years after the end of the recruitment process. During this period, candidates may raise an objection that their application was rejected due to discrimination or unequal treatment.

Previously, according to the Polish DPA, a candidate's personal data should have been immediately deleted after the end of a recruitment process. The Polish DPA claimed that the employer is not allowed to process a candidate's personal data for the purpose of future and uncertain claims of the personal data subject. According to the Polish DPA, this action would constitute an unnecessary processing of personal data "just in case".

The Supreme Administrative Court did not share this position and indicated that the employer has a legally justified purpose to process a candidate's personal data after the recruitment process. According to Article 6.1(f) of the GDPR, processing is lawful if necessary for the purpose of a legitimate interest pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data. Above all, where a candidate files a claim against the employer for the recruitment process, the employer as a personal data controller has a legitimate purpose to prove that it did not violate the rule of fair treatment and that it selected the candidates for employment based on objective and justified criteria. To this end, the employer must have access to candidates' personal data to recreate the process of comparing them during the recruitment process. In fact, deleting candidates' personal data immediately after the recruitment process would make it impossible for the employer to fulfil the obligation to counteract discrimination, because the employer would not be able to prove recruitment processes compliance. At the same time, storing candidates' personal data also protects the interest of third parties i.e. candidates who may be seeking personal data of other candidates to support their claims.

The judgment is final and was welcomed as a breakthrough in the law and the general approach to the processing of candidates' personal data after the recruitment process.

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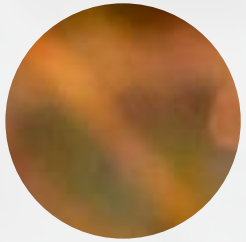

Spain

Spanish courts start to apply European doctrine on dismissals of disabled employees – In January 2024, the Court of Justice of the European Union ruled that Article 49 of the Spanish Workers' Statute, permitting the termination of employees declared permanently disabled, contradicts EU principles. Previously, such terminations were automatic in Spain (save in certain circumstances).

The European Court of Justice ruled that employers must make necessary adjustments for disabled employees or, where it is not possible to adapt the job position, evidence in the termination letter why adaptation or relocation is unfeasible. Consequently, in January, the Labour Court of Vigo declared a dismissal null and void where the employer had failed to evidence efforts to modify the employee's position.

The Spanish Minister of Employment has announced that a legislative amendment will be carried out to adapt the Workers' Statute to the EU ruling.

In similar cases, it is advisable to thoroughly explore options to reassign or modify the disabled employee's role, detailing this in the termination letter. Depending on the circumstances, this may require consulting medical or occupational risk specialists to determine suitable positions for the employee.

The High Court of Justice of Catalonia annuls fine for subcontracting "riders" – In April 2022, the Generalitat de Catalunya sanctioned Just Eat with a fine of €187,515 on the basis that an illegal transfer of 183 riders, whose direct employer is Fleet Delivery Solutions, existed. The labour inspection considered that this subcontracted activity damages the riders because they had less favourable employment conditions compared to Just Eat employees.

However, the Superior Court of Justice has revoked the fine, determining that the subcontracting of the courier services provided by Fleet Delivery Solutions is a lawful and properly carried out subcontracting activity because Just Eat only offers to Fleet Delivery Solutions the coordination and quality control of the orders. Since it has not been evidenced that Just Eat participates in the management of these 183 delivery drivers (providing them direct instructions; setting up their breaks, annual leave, shifts or performance systems; or providing them, on a recurrent basis, with any tools apart from the logos and marketing bags for which Just Eat was paying Fleet Delivery a fee for the publicity provided by its riders), no sign of illegal transfer of employees existed.

Consequently, in order to assess whether this kind of service may be subcontracted or whether the risk of an illegal transfer of employees exists, it is necessary to assess whether the employees receive instructions from the contractor and whether the contractor exercises organisational and disciplinary authority over the riders.

Companies cannot spy on teleworkers' devices without trade union permission – The shift to hybrid or fully remote working has led companies to enhance employee monitoring measures. Companies are deploying software to monitor performance and ensure company devices are not misplaced or misused for personal activities. The Supreme Court has ruled that employers can monitor employee performance and device usage, as long as it does not violate their privacy and intimacy rights. Additionally, the court stated that the introduction of such monitoring systems should be agreed with employee representatives to prevent breaches of employees' constitutional fundamental rights and/or the right to digital disconnection.

Non-compete covenant cannot be unilaterally withdrawn – A Spanish court ruling previously allowed companies to unilaterally retract a non-competition covenant upon an employee's voluntary departure, without compensating the employee. This decision gave companies the flexibility to dismiss the covenant if it no longer served their interests. However, the Supreme Court has since overturned this, maintaining that, under the Civil Code, neither party can unilaterally withdraw from a post-termination non-competition agreement.

Accordingly, the position reverts to the previous prior case law, where neither party can unilaterally withdraw the covenant. Therefore, even if the company, at the termination date, has no interest in keeping the non-competition after termination covenant, it cannot be unilaterally withdrawn and the company will have to pay the agreed compensation to the employee.

Given this ruling, companies should evaluate the potential damage an employee's departure might cause, considering their role and expertise, before deciding to include a non-competition clause. If the risk of damage is low, the clause might be omitted. Additionally, companies should consider their capacity to monitor the ex-employee's compliance with the non-competition terms post-employment.

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United Kingdom

Changes to family friendly rights – From 6 April 2024, various rights and changes under a number of new laws become effective, including:

- the right to request flexible working will be available to employees from their first day of service and a number of other changes to the flexible working requests regime;
- a new right to unpaid carer's leave;
- existing redundancy protection is extended to apply during pregnancy and for a period of 18 months after the birth or placement for adoption for those taking maternity, adoption or shared parental leave; and
- paternity leave rules change so that the two-week period of leave can be taken in non-consecutive weeks at any time in the year following birth or adoption.

Employers are advised to review their current policies and procedures and ensure managers understand the practical impact of the changes.

Dismissal and re-engagement – The government has published a final Code of Practice on "dismissal and re-engagement" procedures (also known as "fire and rehire"). Employment tribunals will have the authority to increase an employee's compensation by up to 25% if an employer is found to have unreasonably failed to adhere to the Code. Among other things, employers are expected to engage in consultation for "as long as is reasonably possible in good faith, with a view to reaching agreement". Unlike collective redundancy rules, there is no minimum consultation period set out in the Code and there may be arguments over how long "as long as reasonably possible" is that will require guidance from the courts in due course. The Code is expected to be brought into force by summer 2024.

Tribunal fees – The government has launched a consultation on re-introducing fees for employment tribunal claims. The previous fee regime was quashed in 2017 by the Supreme Court on the basis that it had a disproportionate impact on access to justice. Under the new proposals, a (lower) flat fee of £55 for claims and appeals, with a fee remission scheme for those who meet certain financial criteria, is proposed.

Rate increases – April sees a variety of increases:

- from 1 April 2023, new national minimum wage rates come into effect, with the main National Living Wage rate (for those aged 21 and over) increasing to £11.44; and
- from 6 April 2024, limits applying to certain employment tribunal awards increase, including the maximum compensatory award for unfair dismissal which increases from £105,707 to £115,115. (This cap does not apply to certain categories of dismissal, including discriminatory dismissals or dismissals for whistleblowing, among others.)

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Middle East

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Determination of statutory minimum wage – In Turkey, the Minimum Wage Determination Commission announces the minimum wage amount each year. On 27 December 2023, the Commission decided that the minimum wage will be gross TRY 20,002.50 (approximately €590) and net TRY 17,002.12 (approximately €500) per month, to be valid for the period between 1 January 2024 and 31 December 2024.

Increase in statutory severance compensation ceiling – In the event of termination of employment under certain circumstances, statutory severance compensation must be paid to the employee. After the completion of the first service year, for each year of service, 30 days' salary shall be paid to the employee up to the then current statutory ceiling. Pursuant to the communiqué issued by the Ministry of Treasury and Finance dated 5 January 2024, the ceiling for statutory severance compensation was increased to TRY 35,058.58 (approximately €1,035), to be valid between 1 January 2024 and 30 June 2024.

Postponement of certain occupational health and safety obligations in some workplaces – A law dated 28 December 2023 introduced an amendment to Article 38 of the Occupational Health and Safety Law No. 6331 (**Occupational Health and Safety Law**). As per this amendment, the effective date of Articles 6 and 7 of the Occupational Health and Safety Law regulating certain occupational health and safety obligations of employers was postponed to 31 December 2024 for public institutions and workplaces with low-level danger classification and fewer than 50 employees. As a result, the obligation of assigning an occupational safety specialist and a workplace doctor at these workplaces will become effective as of 31 December 2024.

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Introduction of Voluntary Alternative Scheme (VAS) – On 13 October 2023, the UAE authorities introduced VAS as an official alternative scheme to the conventional end-of-service gratuity (EOSG) regime. VAS provides a new approach to managing end-of-service benefits, providing employers and employees with more flexibility and potentially higher returns to the employee.

VAS allows for ongoing contributions into an investment fund throughout an employee's tenure of employment, with a view to enhancing potential returns over time. It is an investment-based alternative to traditional EOSG, which solely provides a lump sum at the end of the employment relationship based on a calculation of the final basic salary and duration served.

The key concepts of VAS are that:

- the employer will have the option to make monthly contributions into one of the specific investment funds for the benefit of the employee, instead of accumulating the employees' EOSG with the employer;
- the monthly contribution must be equivalent to 5.83% of the employee's basic salary whenever the period of service does not exceed five years;
- the percentage will be increased to 8.33% whenever the period of service exceeds the five-year period;
- the investment funds will offer a guarantee option, various risk options (low, medium and high) and a Sharia-compliant option; and
- it offers the employee a chance to increase the amounts to which they will be entitled at the end of their employment relationship by selecting high-return investment funds.

Whilst the main legislation establishing VAS has been issued, there are still many uncertainties as to its implementation with a number of clarifications still being sought. Therefore, until now, VAS is not active and we are yet to see employers opting for it in practice.

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North America

Canada

Pay transparency comes to Canada – The legislative push in Canada to enact pay transparency laws and advance pay equity made strides in 2023 when British Columbia (Canada's third-largest province by population) became the third province (following Newfoundland and Prince Edward Island) to enact pay transparency legislation. In November 2023, Ontario also proposed certain legislative amendments that would require employers to disclose whether they use artificial intelligence in the hiring process, as well as to provide information regarding pay ranges for all job postings in the country's largest province should those amendments be passed.

The British Columbia Pay Transparency Act (the BC Act) is being touted by the local government and certain advocacy groups as a material step forward in advancing pay equity. According to the British Columbia government, women in the province earned 17% less than men, with the pay gap also disproportionately impacting indigenous women, women of colour, immigrant women, women with disabilities and non-binary people.

Employers are now prohibited from asking job applicants about their previous pay rate and from disciplining or otherwise adversely impacting an employee who asks about their pay, reveals their pay to another employee or job applicant, or makes enquiries/complaints about pay transparency reports or compliance with the BC Act. In addition, publicly advertised job postings for specific positions must include the expected pay or pay range for such position.

Significantly, the new legislation will require employers to produce pay transparency reports that must be published online or otherwise made publicly available. Currently, only certain public sector employers have been required to produce reports but other employers will be required to produce reports on a staggered scheduled depending on their size starting on 1 November 2024.

Although the BC Act is a step forward in preventing pay secrecy and increasing transparency for workers in hiring and during employment, it does not currently set out penalties or enforcement mechanisms for non-compliant employers. Instead, the only recourse that employees in British Columbia currently have to remedy pay inequity is found in the BC Human Rights Code, which prohibits employers from discriminating in wages between similarly positioned employees on the basis of gender. This places the onus on employees to initiate a complaints process with the BC Human Rights Tribunal in order to address concerns with respect to wage discrimination. Whether the province will fill any of these legislative gaps remains uncertain.

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United States of America

EEOC signals priorities for 2024 and beyond with strategic enforcement plan and proposed guidance on workplace harassment – In advance of its 2024 fiscal year, the Equal Employment Opportunity Commission (EEOC) released its Strategic Enforcement Plan (SEP) for 2024 through to 2028. As announced by the EEOC, "the SEP establishes the EEOC's subject matter priorities to achieve its mission of preventing and remedying unlawful employment discrimination and to advance its vision of fair and inclusive workplaces with equal opportunity for all".

To fulfil its strategy for the next four years, the EEOC plans to:

- target discrimination, bias and hate directed against religious minorities (including antisemitism and Islamophobia), racial or ethnic groups, and LGBTQI+ individuals;
- expand protections for vulnerable workers to include additional categories of workers who may be unaware of or reluctant to exercise their rights under equal employment opportunity laws or who have historically been underserved by federal employment discrimination protections;
- update the EEOC's priorities for emerging and developing issues to include protection of workers affected by pregnancy, childbirth or related medical conditions, employment discrimination associated with the long-term effects of Covid-19 symptoms, and technology-related employment discrimination;
- highlight the continued underrepresentation of women and workers of colour in certain industries and sectors, such as construction and manufacturing, finance, science, technology, engineering and mathematics;
- recognise employers' increasing use of technology, including AI and machine learning, to target job advertisements, recruit applicants and make or assist in hiring and other employment decisions; and
- preserve access to the legal system by addressing overly broad waivers, releases, non-disclosure agreements or non-disparagement agreements when they restrict workers' ability to obtain remedies for civil rights violations.

Shortly after issuance of the SEP and consistent with several of the goals announced within it, the EEOC published Proposed Enforcement Guidance on Harassment in the Workplace. If the proposed guidance becomes effective in 2024 as expected, it will be the first time the EEOC has updated its guidance on harassment since 1999. In that 25-year span, there have been substantial developments in the law regarding workplace harassment and major changes in the way employees work.

The updated guidance incorporates recent legal developments and addresses the nature of harassment in the modern workplace. For instance, the proposed guidance references the legal changes caused by the US Supreme Court decision in *Bostock v. Clayton County*, which defines sex discrimination under Title VII of the Civil Rights Act to include discrimination based on gender identity and sexual orientation. The new guidance also recognises the potential for harassment through electronic communications, social media postings and other conduct occurring outside the physical workplace.

Although EEOC enforcement guidance does not have the force of law, it is used by EEOC staff when determining whether unlawful harassment has occurred and when an employer is liable for workplace harassment. It also provides a roadmap for employers to follow to comply with the various federal statutes that prohibit harassment in the workplace.

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In conversation with...

In this edition, we talk to **Anuj Trivedi**. Anuj is a partner with Dentons Link Legal (formerly Link Legal) in our New Delhi office and a trusted adviser to his clients with more than 17 years of extensive experience in employment as well as mergers and acquisitions, private equity, corporate restructuring, and general corporate and commercial laws with an emphasis on foreign investments and joint ventures.

Anuj has been actively advising clients on policy changes in the e-commerce sector and investments in the electric vehicles space. His experience spans various sectors including infrastructure, automobiles, manufacturing, insurance and hospitality. Anuj has assisted various clients on transactions involving both outbound acquisition in sectors such as specialty-chemicals and in-bound investments in sectors such as automobiles, manufacturing and hospitality. Anuj is also a key player in modelling the firm's ESG practice, as well as being a founding member

of the Asia Pacific M&A Association. He has contributed as a guest speaker in a Conference for High Court Justices on Commercial Division and Commercial Appellate Division.

What excited you about joining Dentons?

I believe Dentons Link Legal is a great and unique platform to lawyers in a market like India. India's dynamic business landscape presents numerous opportunities for growth and expansion, particularly in the legal sector. With Dentons' global expertise and Link Legal's growing local presence in India, I am excited to contribute in helping businesses navigate the complexities of the Indian market with success and confidence. India enjoys an important and enviable position in the current geopolitical and economic landscape. The combination with Dentons helps us meet and exceed the needs of our clients who are becoming increasingly global.

Along with my team, I am focused on ensuring that businesses navigate the complexities of Indian labour laws effectively, mitigate risks and maintain productive and compliant workplaces. By providing strategic and practical guidance and hands-on legal support, we aim to assist businesses foster positive employee relations and uphold their obligations, thereby contributing to their success and sustainability in the competitive business landscape.

You provide regular support to clients in a range of industries. Are there any recurrent themes or patterns that stand out?

In my experience, several themes and patterns have emerged whilst dealing with Indian employment law issues. The wide gamut of human resource issues on which we regularly advise our clients include, among other things, executive terminations, disciplinary cases, restructure and reorganisation projects, pensions, benefits and compensation restructuring, employee immigration support, employee privacy notices and policies, and finalisation of employee onboarding and offboarding documentation, including employment contract templates, statutory policies and handbooks.

In addition to the above general human resource issues, we also deal with specific, highly sensitive and confidential issues arising out of anti-sexual harassment at workplace law, maternity benefit laws and disability protection laws. In recent times, we have also seen an increase in complex employee investigation matters and whistleblowing claims by employees involving complex allegations of regulatory breaches and protected disclosures. These issues are highly sensitive and unique in nature and require a nuanced approach.

Indian employment laws are constantly evolving, with the law-making power being distributed between the central and state governments, and it is sometimes challenging for clients to keep track of developments and updates. The recurrent themes highlighted above reiterate the importance of staying updated and ensuring wide-ranging compliance strategies to mitigate risks and promote ethical business practices.

What is your employment team currently focusing on and what are its plans going forward?

At the moment, the team and I are dedicated to providing advice and support to clients covering various aspects of employment, compensation and benefits issues. This includes both advisory and transactional services. We focus on offering guidance on compliance matters, transaction structuring and global acquisitions involving complex employment transfer arrangements, as well as handling issues related to employee benefit trusts, employee relations, employee policies and data privacy.

Looking ahead, our focus remains on addressing the shifting landscape of the workplace, particularly in light of the remote work accelerated by the pandemic. We recognise that remote working is now becoming a more permanent feature, with employees increasingly seeking flexibility in their work arrangements. Consequently, employers around the globe are adopting policies to accommodate these preferences, both to enhance their brand and to attract top talent in competitive recruitment markets like India.

As remote work becomes more prevalent, compliance and risk management across borders becomes more challenging. These challenges range from taxation issues, labour law compliance issues and other regulatory requirements. Whilst some governments have made efforts to ease conditions to attract remote employment, compliance risks persist and are expected to continue in the near future.

In response to these trends, we are proactively assisting clients in navigating the complexities of flexible work arrangements. Our goal is to enable our clients to reap the benefits of flexible work arrangements whilst maintaining legal compliance and minimising exposure to regulatory challenges.

What developments do you expect to see in the world of work in the near future?

I am anticipating several significant developments in the world of work, driven by evolving societal and technological trends.

The increasing use of automation and artificial intelligence (AI) across the globe has the potential to transform conventional workplace requirements. Whilst automation can enhance efficiency and productivity, it also raises concerns about job displacement. Nonetheless, this shift will create new opportunities, particularly in robotics, AI and software engineering. We have to recognise that, whilst machines can perform certain tasks, they cannot replicate human creativity and problem-solving abilities.

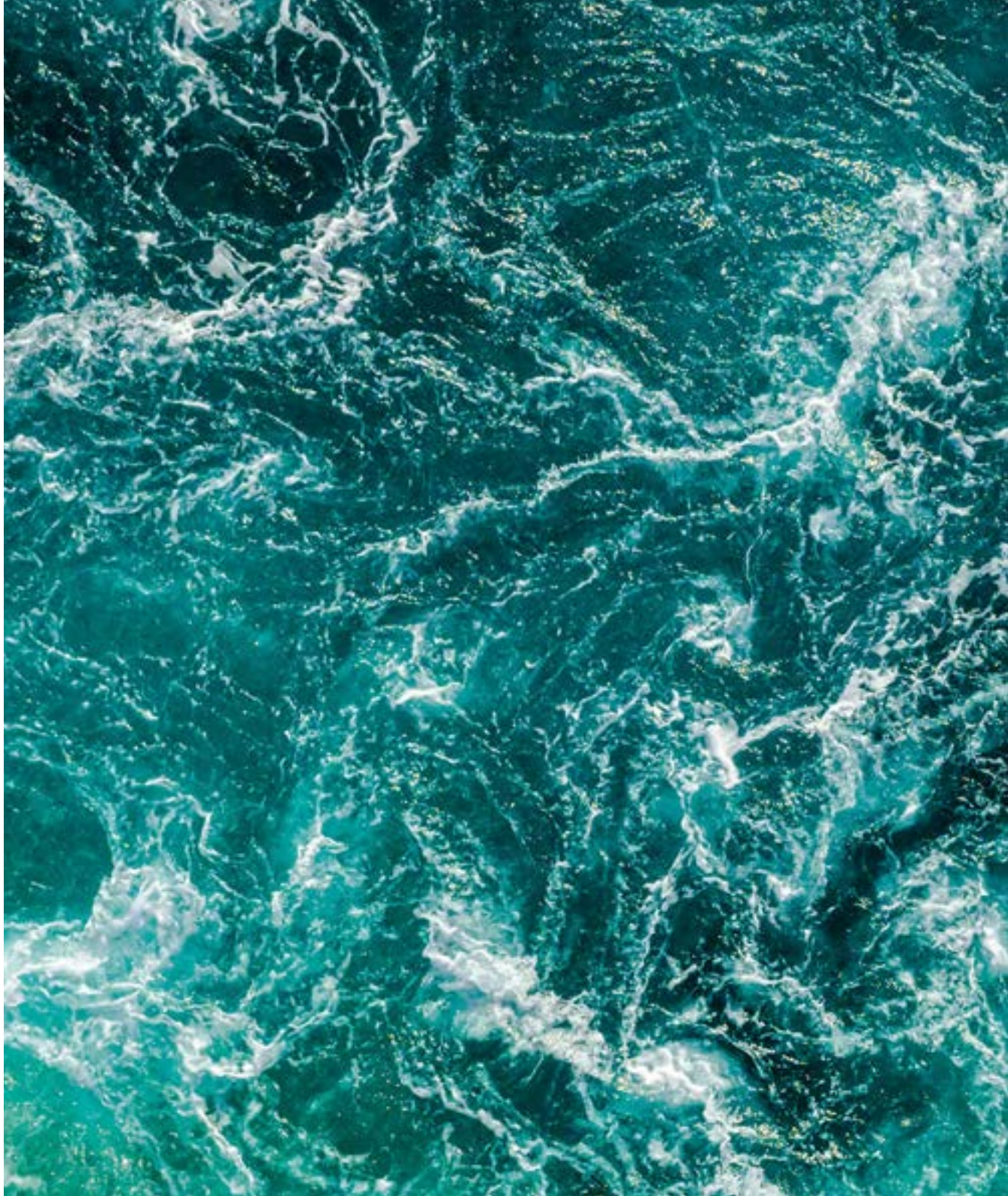
Further, the advancement of technology has also enabled the emergence of temporary workers using online platforms, thereby amplifying the focus on gig work. The increasing focus on India's gig and platform economy will continue to shape the way people work, with a growing number of individuals opting for self-employment or freelance work facilitated by technological advancements. Whilst this trend offers workers greater flexibility and autonomy over their schedules, allowing them to pursue their passions and interests, it also presents challenges, such as insecurity and lack of access to traditional employee benefits and protections. Whilst currently Indian employment laws do not specifically recognise gig workers, the Indian government has introduced four labour codes, which will consolidate 29 central labour laws. These labour codes provide for new concepts such as gig workers, platform workers, fixed-term employees etc.

Further, equity and inclusion in the workplace will become increasingly important for companies seeking to attract and retain top talent. Indian companies are likely to prioritise such initiatives to gain a competitive advantage in the future.

In summary, the future of work will be characterised by a blend of traditional employment models and emerging trends such as the gig economy, automation and inclusion initiatives. We are prepared to navigate these changes and assist clients in adapting to the evolving legal landscape whilst ensuring compliance with relevant laws and regulations.

What do you enjoy doing outside work?

Despite the demanding nature of the profession, I make it a priority to carve out time to spend with my family. Whether it is sharing a meal together, enjoying outdoor activities or simply having meaningful conversations, these moments are invaluable to me. When I do have some downtime, I indulge in my passion for driving, finding solace behind the wheel during leisurely drives.



Dentons news and events

New Dublin employment partner

Susan Doris-Obando has rejoined the People, Reward and Mobility (PRM) team as an employment partner in the Dublin office.

Susan rejoined the firm on 19 February 2024, arriving from Matheson where she was a senior associate. Prior to that, Susan worked in the Dentons London office as counsel for two years, having spent 11 years at Freshfields, London. Before then, she was an independent employment barrister in London for eight years, having been called to the Bar of England & Wales by Gray's Inn, London. Susan has an impressive track record of excellence in the full spectrum of employment law – advisory, litigation and transactional. Her international expertise spans various sectors, with notable achievements in the financial services, technology and retail industries. She is a CEDR-accredited mediator and is also a former management committee member of the Employment Law Association of Ireland and the Law Society of Ireland employment committee.

Australia IR Insights webinar series

This monthly webinar series offers tips, tricks and insights on a range of current topics. This quarter's topics are "Get ready for new term contract law changes in the Fair Work Act" (30 January 2024), "Maximise the benefits of conducting forensic/ investigative due diligence on employees" (28 February 2024) and "Key changes arising from Closing the Loopholes Bill" (27 March 2024). These are now available via podcast – please access them here. Please contact us if you would like to join the invitation list.

Australian team grows

Our Employment and Safety practice continues to go from strength to strength with the addition of 12 new team members, expanding the strength and expertise of the practice as well as reflecting Dentons pre-empting our clients' needs.

Dentons' employment and safety expertise has grown in Australia, with the addition of partner, Edmund Burke, in Brisbane on 15 January 2024, closely followed by the addition of partners, Justin Le Blond and Persephone Stuckey-Clarke, to the Sydney office on 4 March. Justin and Persephone bring with them a nine-strong team, including special counsels Dominic Russell and William Slattery, senior associates Jennifer Moran and Dominic Grasso, associates Mackenzie Roberts, Sonny Butterworth and John Nairn, graduate Ashlee Nealon and legal administration assistant John Marovic.

Caracas office partners recognised by 100 Protagonistas

Esther Cecilia Blondet and Yanet Aguiar were rewarded for their actions as women protagonists committed to human rights and feminine empowerment. 100 Protagonistas is a symphonic event co-created by the Embassy of the Kingdom of the Netherlands, the Impact Hub Caracas and other agencies to recognise, value and celebrate the daily work of women in Venezuela.

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