Global Employment Lawyer

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New year, new employment issues

A happy welcome to 2015! Thank you for helping to make the first edition of the Global Employment Lawyer a huge success!

The mission of Dentons' Global Employment Lawyer is to keep you informed of significant trends and developments in the area of global employment and labor law, wherever they take place, so that you are in a better position to make educated business decisions.

Deep-rooted cultural values, varying systems of government and political and economic trends drive much of the employment and labor laws in each country. The resulting vast differences in employment and labor laws by country can pose significant challenges to both multinationals trying to maintain a consistent corporate culture as well as to local companies contemplating expansion into new parts of the world. Whether your company is an established multinational or a small startup ready to expand, our global team will analyze current regulations and anticipate upcoming challenges to help you take the right steps to achieve your business goals.

Our Global Employment and Labor Group consists of over 220 employment, immigration and benefits lawyers in more than 50 cities and 30 countries.

In this second edition of the Dentons' Global Employment Lawyer, our lawyers examine:

- Options for dealing with employee layoffs in China for foreign investors
- Canada's recent decision to require employee accommodation for childcare responsibilities
- Restrictions under Polish law which can affect employment settlements
- Romania's recent decisions effecting union standing and disciplinary actions against employees
- Specific ambiguities in Egyptian labor law on financial entitlements, employment terminations and collective dispute resolution mechanisms
- UK's recent employment decision potentially increasing the amount of holiday pay owed to certain overtime workers
- Current and pending changes to US employment regulations for 2015, including laws affecting paid sick leave, anti-discrimination and bullying, social media, severance and more
- US IRS regulation Section 457A's effect on deferred compensation for US taxpayers who work for non-US entities
- Recap of Dentons' client seminar on critical employment issues for multinationals

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We welcome your input and suggestions about the type of information you want to receive as well as an honest critique of what we have provided. Please feel free to share your own "war stories" with me, with or without attribution, at brian.cousin@dentons.com. At Dentons, we understand what it takes to attract, retain and compensate talent across the globe. Please check out some of the interesting cross-border and international employment matters we have recently worked on by visiting our Employment and Labor practice page.

Thank you for reading and we look forward to receiving your thoughts and comments.

Brian S. Cousin
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Africa and the Middle East

Unresolved issues in Egyptian labor law

By J. Michael Lacey (Managing Partner, Cairo) and **Soha Abdel Aziz** (Senior Associate, Cairo)

This article aims to highlight certain ambiguities in the Egyptian Labour Law No. 12 for 2003 (Labour Law) and its executive regulations, namely employees financial entitlements, the termination of the employment relationship and collective dispute resolution mechanisms[1]. These topics have recently led to requests by trade unions, labor activists and investors. These requests are based on the belief by labor unions and activists that the Labour Law needs to be reformed to create rights more favorable to employees. Conversely, many investors believe that the Labour Law is too one-sided in favor of the employees and therefore wish to eliminate certain ambiguities so as to not stifle investment. These issues have historical roots as well, as the modern Egyptian government's founder, Gamal Abdel Nasser, had socialist leanings and believed that workers need protection from exploitation.

[1] We note that one of the controversial positions in Egyptian law is the requirement to hire nine Egyptians per one expatriate, however this is governed by the Companies Law No. 159/1981 and not the Labour Law.

Employee's financial entitlements and acquired rights

Article 1/C of the Labour Law broadly defines "salary/remuneration" as *"all receivables by the employee against his work, whether fixed or variable and whether in cash or in kind"*. This includes commissions, percentages paid in return for production, allowances of all types, in kind benefits, bonuses, whether contractual or customarily granted whenever they are of general, permanent and fixed nature and the employee's share in the profits. The list provided in Article 1/C of the Labour Law is not exhaustive, as any benefit scheme applied by an employer may also fall within the broad definition of "gross salary" if they are paid to the employees on a customary, general, permanent and fixed manner. Further such benefits will be characterized as acquired rights forming part of the "salary/remuneration".

The majority of the disputes, whether individual or collective, relate to the variable components of the salary as defined in Article 1/C of the Labour Law and more specifically on the criteria to be applied in determining the length of the period within which a right can/shall be considered acquired. The ambiguity surrounding the concept of acquired rights has created a wider opportunity for judicial intervention. Although certain court precedents have attempted to establish set of principles, these do not always cover the specific circumstances of a given case and remain inadequate to ensure sufficient predictability for investors while labor union activists insist that in some cases acquired rights are construed too narrowly.

Termination of employment relationship and settlement of individual dispute

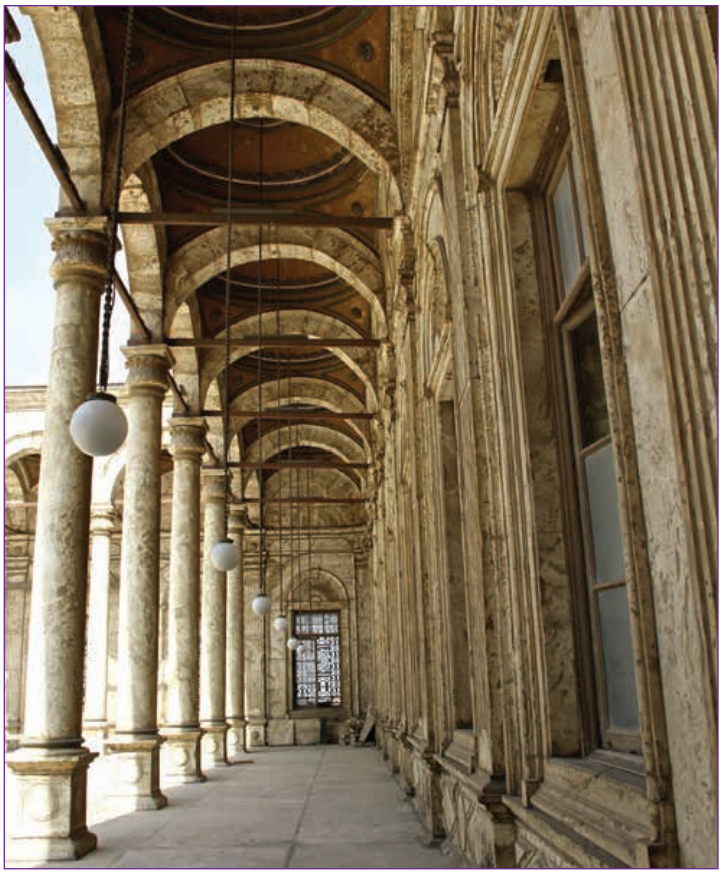
The Labour Law establishes a distinction between indefinite term employment contracts and definite term employment contracts. While the employer has the right to terminate the definite employment contract upon the expiry of its term without **> Read more on page 3**

notice or warning, the employer cannot lawfully terminate indefiniteemployment contracts except for cause. This also applies for early termination of a definite employment contract.

In this context, the Labour Law has again provided in Article 69 a non-exhaustive list of reasons that an employer is entitled to terminate the indefinite employment contract. In addition, the Labour Law allows the employer to provide other causes of justifiable termination under its employment contracts, internal work regulations/ policies and internal disciplinary regulations provided always that such causes are properly communicated to and acknowledged by the employees. As per Article 110, termination for poor performance may also be one of the justified termination causes, however an employer is not entitled to terminate based on a gross fault.

Settlement of individual disputes

In the case of a dispute between an employee and an employer, a committee comprised of (1) a representative of the competent administrative body (Ministry of Manpower/ competent labor office), (2) a representative of the Labour Syndicate and (3) a representative of the employers organization must be formed within 10 days from the date of submission of an application. If no settlement is reached by this committee within 21 days from the date of submission, then the representative of the competent administrative body, upon request from either party, shall request the referral of such dispute of the labor court.



In practice, the Labour Law provides a complex and lengthy process to take disciplinary action against an employee and similarly when an employer intends to terminate an employee's contract (whether definite, if before its term, or indefinite). Although the Labour Law reflects a concern to protect manpower against abusive termination of service, in practice it appears to have the opposite effect as some local employers are allegedly compelling new hires to sign undated resignations in order to give the right to terminate employees at the employer's convenience.

Indemnity in case of abusive or early termination

Early termination clauses can be included in a definite employment contract, however it is difficult to enforce any liquidated damages clauses. The Labour Law does not specify *minimum* indemnity criteria for definite employment contracts and has left this to the judge's discretion. In the case of indefinite contracts, Article 122 specifies a minimum indemnity of two months of the last gross salary for each year of service. Nonetheless, the final decision is left to the judge who will examine the merits to decide based on several factors such as the assessment of the circumstances and the evidence submitted by both parties. In practice, where an employer wishes to terminate an employment relationship, a settlement package based on the minimum criteria above can usually prevent litigation. The uniform recommendation is to propose to the employee to submit unconditional and irrevocable resignation against a payment to be negotiated. The minimum base for negotiation is generally two months gross salary for each year of service. In addition, in calculating the employee's dues for the whole period prior to the coming into effect of his compelled resignation/termination so as to reach the Gross Salary, these components should be considered: (a) unpaid allowances, (b) holidays and unused balance of his annual leaves, if any, (c) his share in the unpaid annual bonus for the period up to his resignation/termination, if such bonus is either a contractual right or an acquired right and (d) any other acquired rights. Labor activists believe these payments are too small while investors generally believe them too generous.

The new draft Labour Law

A draft of a new Labour Law has been circulated through Egyptian newspapers with great fanfare. We have reviewed it and have found that it does **> Read more on page 4**

not address any of the above issues comprehensively, and commentary has shown that all sides in the debate are disappointed. With respect to acquired rights, the new draft has virtually no substantive change in the definition and therefore the ambiguities remain. With respect to termination of employment, the draft law requires that all resignations occur in person at the Ministry of Manpower, with the resigning employee, a representative from the employer and a representative from the Ministry of Manpower in attendance for any resignation to be official. This will greatly complicate employment relations and burden employees, employers and the Egyptian state. Finally, with respect to indemnities for termination of definite or indefinite contracts, the new draft codifies the minimum payment of two months of salary per year of employment. This brings some certainty with respect to definite contracts but leaves labour activists dissatisfied and investors wary of making employment decisions due to labor costs.

Neither the Labour Law, nor the draft, adequately addresses the main problem areas arising from the employment relationship. Part of the reason may be due to the fact that the draft was prepared solely by the Ministry of Manpower, apparently without input from the Ministry of Investment, Ministry of Trade or other interested administrations. While the draft has not been passed into law, we hope that these issues will be resolved through robust debate in the Egyptian cabinet and Parliament, so that a truly balanced and predictable labor law will be issued for the greater benefit of Egypt.

Asia Pacific

Practical tips for foreign investors in dealing with redundancy in China

By Margaret Luo (Associate, Shanghai)

For foreign investors in China, business downturns and their consequences, especially business closings and layoffs, can be daunting. Tales of rebellious employees facing layoffs are legion in Chinese business lore. With proper planning though, such scenarios can be avoided. In this article, we will share practical tips when dealing with redundancies in China.

Understanding PRC legal requirements for terminations

Chinese law does not recognize the concept of employment at will. Instead, employers may only terminate employees through mutual agreement, or under specific grounds.[1] Termination without legitimate causes, or in violation of the required procedures, may be deemed as wrongful termination, which could result in fines for the employer or the forced reinstatement of terminated employees.

Depending on the circumstances, different termination procedures may be required. For example, where investors decide to liquidate a company and terminate all employees, employers can terminate employees by unilateral termination notices while paying minimum statutory severance compensation to all employees, as required by law. In contrast, where investors wish to terminate most employees while maintaining the company in a dormant situation, the layoff procedures are more cumbersome and require that employers prove "economic" reasons for layoffs.[2] Further, specific consultations with employees and a filing of termination with local labor authorities are required.[3]

In view of different requirements for termination under different circumstances, investors should review the specific situations and relevant PRC law requirements when strategizing how to reduce their Chinese operations. Such planning will help investors better understand the economic and timing costs in terminating employees.

PRC law's preference for mutual termination

Under most circumstances in PRC law, mutual termination is usually the preferred manner of termination, including for the two scenarios mentioned above, and will allow employers to avoid some of the more cumbersome procedures that are otherwise necessary.

PRC law allows employers and employees to negotiate a mutual termination agreement, and such mutual termination agreements are generally not subject to rigorous procedures or **> Read more on page 5**

1 See Articles 39, 40 and 41 of the PRC Employment Contract Law.

2 See Article 41 of the PRC Employment Contract Law.

3 According to Article 41 of the PRC Employment Contract Law, if more than 20 employees or more than 10 percent of total employees will be terminated through economic layoff, the following procedures shall be followed: (i) at least 30 days consultation between the employer and all employees (or trade union of the employees), and (ii) a filing with the local labor authority detailing the layoff and compensation plan. The timing for approval of such plans by labor authorities is not clearly defined under PRC law, and in practice, local labor authorities are reluctant to approve such terminations.

requirements, such establishing grounds for termination. The parties can agree on a mutual termination with or without cause effective immediately without prior notice. Under current laws, there are no filing requirements with labor authorities and no limits on the number of employees to be terminated through mutual agreement. However, at a minimum, the terms of mutual termination must offer the statutory severance compensation if such mutual termination is initiated by the employer.

Mutual termination can greatly reduce the risks of labor disputes stemming from terminations as they necessarily entail employees agreeing to the terms of their termination. As such, their ability to challenge such terminations are strictly limited, including claims that the agreement is invalid or was induced by coercion or fraud. In contract, the risk for labor disputes can be quite high with other forms of termination, especially as PRC law grants terminated employees free access to labor arbitration. As a result, employees have little to lose by challenging other forms of termination, whereas employers face uncertainty and legal costs from such disputes.

For all the reasons above, it is highly recommended that employers consider negotiating a mutual termination and release with the employees.

Tactics for negotiating mutual termination agreements

Though mutual termination presents obvious advantages, there is of course the difficulty in reaching terms with employees. Employers will likely need to incentivize employees by offering severance compensation in excess of what employees would otherwise be entitled to under PRC law, and exert whatever other pressure may be available to the employers over employees.

As mentioned above, no specific procedures are required for mutual termination. One recommended strategy is to try to limit the time allowed for employees to review and consider the mutual termination agreement, as employees will often use increased time to organize and demand greater compensation.

Instead, employees should be given the option of (i) signing the mutual termination agreement with compensation in excess of the statutory severance, or (ii) being terminated by the employer unilaterally through notice (assuming the right of such termination), with a requirement that this choice be accepted quickly or else the mutual termination agreement be withdrawn.

Calculating compensation for termination

When terminating employees, PRC law requires that employers compensate employees based on the total number of years that the employees have worked for such employers,[4] unless the termination results from serious misconduct of the employee such as a crime or serious violation of company policies.[5]

Aside from statutory severance requirements, employers may need to provide additional compensation to incentivize employees agreeing to mutual termination. When determining the amount of such severance, several factors should be taken into consideration in order to make a comparatively fair termination plan.

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[4] According to the PRC Employment Contract Law, statutory severance compensation required under PRC law is generally equal to (i) the average monthly pay of a terminated employee during the twelve months immediately preceding the termination, though such amount shall be capped at three times the average monthly salary for all workers in the city where the employee works, multiplied by (ii) the total years that a terminated employee has worked for the employer, though such amount is capped at 12 years; additionally, a service period between six months and one year will be treated as one year, whereas a service period of less than six months will be calculated as a half year. The above calculation method took effect January 1, 2008. For employees that worked for a company before January 1, 2008, different calculation methods may apply depending on the grounds for termination.

[5] See Article 38 of the PRC Employment Contract Law.

Such ex-gratia severance should reflect the length of service years for the employee, with the result that longer-serving employees receive greater amounts. Indeed, where companies attempt to offer equal amounts of ex-gratia severance to all employees, regardless of service length, longer-serving employees often resist such offers.

Employers may also need to pay additional compensation to employees with special protections under PRC law, such as employees with work-related injuries, or pregnant employees/those on maternity leave. PRC law grants certain protected employees protections from unilateral termination, including prohibiting the employer from terminating such protected employees during an economic layoff and other grounds for termination by the employer.[6] Though such protected employees are allowed to be terminated through mutual agreement, the fact that the employer may not be able to terminate them based on certain terminating grounds requires greater incentives to induce such protected employers' agreement to mutual termination.

Local government assistance with employee protests

After a notice of termination is published, it is likely that employees will seek to organize a response to negotiate the terms of termination. In general, many PRC employees are not aware of their statutory rights and will instead organize a response to aggressively pressure employers for compensation. Where such demands are excessive and rejected by employers, confrontations have occasionally occurred in China, even including violence.

It is advisable for employers to consult in advance with the local labor authority and officials of the relevant industrial zone on the terminations to ensure their involvement and assistance. Officials may have strong incentives to help resolve potential conflicts, such as: (1) officials do not wish such confrontations to escalate and reflect poorly on them or (2) officials do not wish employees to obtain unreasonable requests and set precedent for other such confrontations in their region.

If involved in the termination, officials may explain to the employees the PRC legal requirements and local policies on termination, as officials have more credence with employees to explain that their requests may be unreasonable than the employers or their lawyers. In addition, if employers involve officials, such officials are more likely to be sympathetic in subsequent disputes over terminations of unreasonable employees.

Legal trends to watch

While mutual termination is usually preferred under PRC law, authorities appear to be considering greater restrictions on mutual termination in the future. According to a Draft Regulation on Layoffs by Enterprises, published by PRC authorities on December 31, 2014 soliciting public opinion[7], employers that intend to terminate more than 20 employees through mutual termination agreements will in the future be required to notify the company's labor union or all employees (where there is no labor union) of such termination 30 days in advance, and employers must report to local labor authorities the total number of employees to be terminated by mutual agreement. The draft regulation does not specify whether such notices are a prerequisite for a termination to take effect. Regardless, the adoption of the draft regulation into law would place a heavier burden on employers terminating employees through mutual agreement.

[6] See Article 42 of the PRC Employment Contract Law.

[7] See http://www.chinalaw.gov.cn/article/cazjgg/201412/20141200397923.shtml (in Chinese only).

Canada

Balancing life's responsibilities: Canadian human rights developments in the accommodation of family status

By Barbara B. Johnston, Q.C. (Partner, Calgary) and **Chelsea Ritchie** (Associate, Calgary)

With an increase in the number of dual-income households in Canada, it is not surprising that employers are facing growing demands from workers for flexible work regimes that allow for the fulfillment of childcare obligations. As many parents struggle to meet both work and family obligations, Canada's legal perspective on the duty to accommodate has expanded, placing an increased onus on employers to accommodate family status, both federally under the Canadian Human Rights Act, RSC 1985, c H-6 (Act), and provincially under relevant human rights legislation.

In Canada, employers are subject to extensive obligations to accommodate employees. Canadian employers must take steps to eliminate differential negative treatment of individuals on the basis of certain protected grounds.[1] The law in Canada recognizes that differential treatment on one of these grounds may, on occasion, be necessary in the employment context. When this is the case, employers have a duty to accommodate the affected employee(s) up to the point of undue hardship.

In Canada, the legal duty on employers to accommodate an employee to the point of undue hardship on the basis of family status now imposes an obligation to accommodate childcare responsibilities. Recent Federal Court of Appeal jurisprudence outlines how far employers must go before they can be said to have met their duty to accommodate. In Canada *(Attorney General) v. Johnstone*, 2014 FCA 110, the Federal Court of Appeal agreed with the Canadian Human Rights Tribunal (CHRT) that the Canadian Border Services Agency (CBSA) discriminated against Fiona Johnstone on the basis of family status when it refused to accommodate her childcare obligations through flexible work arrangements.[2]

Ms. Johnstone was employed on a full-time basis by CBSA at the Pearson International Airport in Toronto, Ontario. Her work schedule was based on a rotating 56-day shift plan whereby she alternated between six different start times with no predictable pattern. Upon the birth of her first child, Ms. Johnstone went on maternity leave. Prior to returning from leave, she requested a static work schedule on a full-time basis. She requested this schedule to accommodate her childcare arrangements. The CBSA took the position that it had no legal duty to accommodate childcare responsibilities and offered Ms. Johnstone static shifts for 34 hours per week, resulting in her becoming a part-time employee. Full-time employees were required to work 37.5 hours per week. Employees working less than 37.5 hours per week were considered part-time and received fewer employment benefits, specifically with respect to pension entitlements and promotion opportunities.

Ms. Johnstone filed a complaint with the Canadian Human Rights Commission (CHRC), claiming discrimination on the basis of family status. Her claim was brought pursuant to the provisions of the Act identifying family status as a protected ground. The CHRC initially dismissed the complaint, finding that the CBSA's actions did not amount to discrimination on the basis of family status. Ms. Johnstone sought judicial review and the Federal Court remitted the complaint back for a decision by the CHRT.

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[1] Such protected grounds include race, ethnic or national origin, color, religion, age, sex, sexual orientation, disability, a conviction where a pardon has been granted or a record suspended, marital status and family status. The protected grounds vary by jurisdiction in Canada, according to the relevant human rights legislation.

[2] See also *Seely v. Canadian National* Railway, 2014 FCA 111.

The CHRT found that the prohibited ground of discrimination on the basis of family status includes family and parental obligations, such as childcare obligations. The CHRT rejected the CBSA's argument that the definition of family status was limited to the status of being in a family relationship and found in favor of Ms. Johnstone, finding the case *prima facie* discrimination.

The CBSA sought judicial review of the CHRT's decision to the Federal Court of Canada. The Court dismissed the application, with the exception of the issue of the damages award, which was remitted back to the CHRT for consideration. The CBSA further appealed to the Federal Court of Appeal.

The Federal Court of Appeal affirmed that family status as defined by the Act incorporates childcare obligations and articulated the test to be applied when considering a case of prima facie discrimination on the basis of childcare obligations. Under this test, discrimination will be found when an employee demonstrates that a child is under his or her care and supervision, that there is a child care obligation(s) which engages his or her legal responsibility for that child, that the employee has made genuine efforts to meet those obligations through reasonable alternative solutions and that the impugned workplace rule interferes in a manner that is more than trivial with the fulfillment of the childcare obligation(s).

The Court was clear that the childcare obligation(s) at issue must be those which a parent cannot neglect without engaging their legal responsibilities for the child. In this regard, the Court drew a distinction between family *choices* and parental *obligations*. The Court also found that the test requires employees to show they have made a sincere effort to secure childcare arrangements that do not require employer accommodation. While each case will turn on its specific facts, this may include investigating regulated and non-regulated childcare providers, both near the employee's home and work. It may also include steps such as canvassing family members to determine if childcare obligations can be met, or exploring live-in care providers. However, when such reasonable steps fall short of allowing an employee to meet his or her child care obligations, the onus will fall to the employer.

When applied to Ms. Johnstone, the Court found she was legally responsible for two children and that she had made a reasonable but unsuccessful effort to secure alternative childcare arrangements that would allow her to work the rotating shift schedule at the CBSA. In particular, Ms. Johnstone had explored regulated and non-regulated child care arrangements, but none could accommodate a rotating work schedule. Furthermore, live-in care was not an option as Ms. Johnstone's house could not accommodate another adult person. Lastly, the Court found that the rotating shift schedule imposed by the CBSA interfered with Ms. Johnstone's childcare obligations in a more than trivial manner. The result was a finding that the CBSA had discriminated against Ms. Johnstone on the basis of family status due to her childcare obligations.

Although *Johnstone* dealt with a federally regulated employer, provincial human rights tribunals seem to be adopting the Federal Court of Appeal's ruling.[3] As such, in Canada both federally and provincially regulated employers ought to be mindful of the onus on them to accommodate childcare obligations to the point of undue hardship. With this in mind, employers in Canada need to carefully review their policies and ensure they are meeting this onus. The test articulated by the Court should provide a clear framework for Canadian employers, who at the very least will be better able to understand when discrimination on the basis of childcare obligations has been engaged. While an employee who claims discrimination on the basis of childcare obligations must demonstrate that they have sought reasonable alternative childcare solutions, once such an effort has been established, it will be up to the employer to show that it could not accommodate the employee's childcare obligations without experiencing undue hardship. Where an employer cannot demonstrate this, there will be a finding of prima facie discrimination.

[3] See, for example, *Clark v. Bow Valley College*, 2014 AHRC 2014 and *Wing v. Niagara Falls Hydro Holding Corporation*, 2014 HRTO 1472, adopting the test set out in *Johnstone*.

Europe

Recent rulings by Romania's High Court clarify thorny issues in labor and employment law

By Anamaria Corbescu (Managing Counsel, Bucharest) and **Tiberiu Csaki** (Partner, Bucharest)

In Romania, the inconsistent interpretation and application of legal provisions by the courts have resulted in uneven and confusing case law and, in general, in an increased degree of uncertainty with respect to the predictability of litigation outcome. Under the Romanian legal system, the High Court of Cassation and Justice (High Court) has final authority in unifying divergent case law through a special type of ruling—one that is issued following a so-called "appeal in the interest of law" (*"recurs in interesul legii"*) filed by the country's General Prosecutor to restore legal certainty if, as the jurisprudence around existing legal provisions evolves, different opinions or interpretations of the lower courts are reported.

Labor law has finally made it to the agenda of Romania's High Court, which has recently ruled on three important topics, outlined below. In doing so, the High Court has created a binding judicial precedent which sets out the mandatory rules for any subsequent cases involving identical or similar situations, trialed in front of the High Court itself or in lower courts in the judicial hierarchy.

The capacity of unions to bring court actions on behalf of their members

Through Decision no. 1/2013, the High Court has shed light on a matter that initially arose under the previous law on unions, Law 54/2003, as amended, now replaced by Law 62/2011 on the Social Dialogue, which, even if it brought about great reforms, failed to clarify this issue. There were two different opinions in the jurisprudence regarding the capacity of unions to bring a direct court action in connection with the rights and interests of its members. One opinion says that the union itself did not have litigation standing in its own name and it could only represent its members, to the extent to which union members themselves launched a court action. Another opinion says that unions were allowed to initiate a court action even in the absence of a direct mandate from its members, to defend their rights and interests.

The latter opinion has prevailed and been acknowledged by the High Court, which has thus consecrated the independent standing of unions in court. As a result, unions can initiate litigation to the individual or collective benefit of their members.

It is important to note that union members retain the so-called "litigation disposition rights" at all times, which means that they may withdraw the claim and thus stop the trial if they choose to do so. The court which has jurisdiction with respect to the union's headquarters is invested to rule on the case.

A court's possibility to change a disciplinary sanction imposed by an employer

Before the High Court's Decision no. 11/2013, the dominant view of the courts hearing challenges brought to disciplinary sanctions by disgruntled employees, was that the disciplinary prerogative belonged solely to the employer and, as such, judges could only rule with respect to the legality and soundness of the disciplinary investigation process, but not with respect to the actual sanction imposed. If this disciplinary investigation process had been carried out in violation of the applicable legal rules, a court would declare it void and render it without effects, but it could never change the disciplinary sanction imposed on the employee, as this would equate to a substitution into the employer's position and rights.

In its decision, the High Court stated that the disciplinary prerogative of employers end at the point where the oversight powers of the courts begin, so the courts have the power to not only control the legality of the disciplinary process, but to materially change its outcome as well. The High Court ruled that, under the **> Read more on page 10**

pre-existing dominant interpretation of the courts' powers, the employer's disciplinary prerogative would be absolute and discretionary, and that courts should be allowed and able to check if the sanctions are appropriate, tailored to the employee's track record and work history and, in general, adequate considering a particular disciplinary breach.

We note that, under Romanian labor law, there is a range of disciplinary sanctions that may be applied by employers, depending on the seriousness and circumstances of the breach and the employee's record, as follows: (i) written warning; (ii) demotion of the employee up to 60 days with a corresponding salary reduction; (iii) 5 to 10 percent salary reduction for one to three months; (iv) 5 to 10 percent salary reduction and/or, as applicable, reduction of the management compensation for one to three months and (v) dismissal.

The timeframe to be followed by employers when taking disciplinary action against their employees

According to the Romanian Labor Code, employers may take disciplinary action against employees only upon following a prescribed procedure. The procedure includes an investigation phase, within 30 calendar days of when the breach is acknowledged by the employer (subjective moment), but not later than six months from the occurrence of the alleged breach (objective moment). The jurisprudence was not uniform in identifying the subjective moment from which the 30-day term is calculated. Some courts considered that the subjective moment is the initial moment when the employer is first alerted (usually, by another employee or a third party, through a note, a written statement, letter, etc.) that a potential disciplinary breach could have occurred, while others considered that a formal and meaningful acknowledgement occurs only upon conclusion of the investigation phase by the employer's representatives.

The latter position was deemed more accurate by the High Court which stated, through Decision 16/2012, that at the initial moment when the employer is first alerted, it is not certain yet if the deed allegedly committed by an employee amounts to a disciplinary breach (with the consequence that the employee is still presumed not guilty at that time) since the investigation phase has not been completed yet. As such, the High Court has confirmed that, in fact, employers have 30 days from the moment when the investigation commission issues its final report determining if a breach has been committed to sanction the responsible employee.

However, we caution that many collective bargaining agreements and company-level internal regulations may refer to the initial alert of the employer as being the subjective moment from which the 30-day deadline starts to run. Although it could be argued that the ruling of the High Court has full legal force and prevails over conflicting provisions in such documents, going forward, a rewording of the relevant sections in collective bargaining agreements and company-level internal regulations may be advisable.

Settlements under Polish employment law

By Aleksandra Minkowicz-Flanek (Counsel, Warsaw) and **Katarzyna Karczewska** (Associate, Warsaw)

Resolving an employment dispute in an amicable way seems to be beneficial for both parties: the employer and the employee. The Polish Labor Code includes special provisions regulating the conciliation procedure that may be conducted before the employee files the formal court claim. Labor courts often encourage parties to attempt to reach a settlement, in particular, by using the special mediation system. Settlements may also be reached outside the court. Even though it appears straightforward to reach settlements, there are a number of restrictions under Polish employment law which need to be taken into consideration.

The most important restriction is contained in Article 84 of the Labor Code, which states that an employee may not waive the right to remuneration or transfer that right to another person. This means it is impossible for the employee to effectively waive the right to remuneration or any part of it by any declaration, act in law or even by way of a settlement. This absolute prohibition also applies to other benefits which are considered to perform a similar function to remuneration and are covered by the same scope of legal protection. Pursuant to case law and doctrine these benefits are, in particular: monetary compensation for unused vacation leave, performance bonuses, statutory severance pay and social security contributions. These conclusions are expressed very clearly in the doctrine and case law (numerous court decisions), although they raise quite a lot of doubts among practitioners.

The concept of a settlement under Polish law is based on mutual concessions by the parties in order to avoid uncertainty as to the claims arising from their legal relationship or to avert a dispute now or in the future. In matters regarding employee **> Read more on page 11**

remuneration or benefits, the employee's ability to make concessions is severely restricted.

The court may consider a settlement inadmissible where it is against the law or social norms, justified interest of an employee or if it intends to circumvent the law. The employee's protection goes even further than that. The courts state that an employee cannot waive any and all claims against the employer regarding remuneration or other benefits. What seems to be a standard clause in many settlements will void the settlement on the basis of Polish labor law. Moreover, even if a voluntary settlement is signed, the employee may pursue further claims relating to his or her remuneration or other benefits in the future.

A number of practitioners claim however, that such action taken by the employee, or former employee in some cases, may be deemed an abuse of right and a violation of trust and loyalty to the employer. When an employee signs a settlement in bad faith, knowing that he/she will be pursuing further claims in the future, the employer may argue that the settlement was valid and the employee's claim is unjustified. The majority of the jurisprudence however, is convinced that these circumstances do not matter and the employee's right to remuneration cannot be limited in any way regardless of the consequences.

Polish employment law on many occasions may seem to be rigid and inflexible. According to case law, the only settlements that are allowed in matters relating to remuneration or benefits are settlements under which the employee receives the claim in the full amount. This will not only be unfavorable for employers and employees, but also will practically deprive them of the possibility of negotiating in order to reach some compromise. At issue here is also the very broad definition of remuneration, which severely curtails the options the employer and the employee have in reaching an agreement. It should be noted that this interpretation of the law in some situations may even be contrary to the legitimate interests of the employee.

The question is how to assess the justified interest of an employee. One could say that it is the employee's right to decide what is best for him/her. The prohibition against waiving the right to remuneration is absolute, but there is no guarantee that in judicial proceedings the whole claim might be enforced. This concerns, in particular, overtime pay or performance bonuses, when the amount is very often disputable. Therefore it seems like immediate gratification, even at the expense of waiver of a part of the reported

claim, may be far more beneficial for the employee than a time-consuming and costly lawsuit. It is also important to note that the employee's claim is often unclear and needs to be proven in court. In light of the above, it appears far more favorable to the employee and the employer to settle.

The main point of the prohibition against waiving the right to remuneration is to protect the employee. The wide scope of protection results from the desire to prevent abuse of power by the employer. It should be noted though that settlements regarding overtime or benefits (which are the most popular) are often entered into between the employer and the former employee and therefore it cannot be said that the employer's position has any influence on the employee's decisions. It would seem that in such circumstances a settlement that is mutually beneficial (a quick solution to the dispute and avoiding litigation costs and associated risks) should be considered as just satisfaction of the interests of the employee.

Employers must exercise extreme caution when entering into settlements with employees on remuneration or remuneration components. Employers should also take into account that labor courts tend to treat protection of employee's rights very seriously, which sometimes can lead to unexpected results. The case law in this area clearly indicates that labor courts share a contentious view regarding settlements on remuneration matters, which must be considered before deciding on negotiating a settlement—and that should also have an impact on the content of the settlement.

United Kingdom

The cost of a holiday

By Nicola Briggs (Senior Associate, London)

Under English law, all workers[1] receive 5.6 weeks of paid holiday every year. This is 28 days for a full-time worker working a five-day week—already generous when compared with vacation globally. Four weeks of this holiday comes from European law, while the extra 1.6 weeks is UK specific.

Traditionally holiday pay has been a worker's basic rate of pay for those with normal working hours (plus guaranteed contractual overtime). However, European cases have already decided that workers must receive their "normal pay" during their holiday. This is not always just a basic pay rate.

In November 2014, the UK Employment Appeal Tribunal looked specifically at overtime payments, with potentially expensive results. It also decided how far back workers could claim they have been underpaid holiday pay by their employer in the past.

The decision reiterated that workers with normal working hours must receive holiday pay that is equal to the pay that they "normally receive." This does not mean looking at the normal working hours in an employment contract. Where a person has a settled working pattern that includes compulsory overtime (i.e. overtime that a worker must work if their employer offers it), employers must include these overtime payments when calculating holiday pay. The judge accepted that, for a payment to be "normal," a worker must receive a payment for a sufficient period of time. One new battleground in the future will be how often a worker must work overtime for it to be "normal." One-off or ad hoc overtime arrangements will not be caught, but the dividing line will be fact-specific.

The judge did not specifically address voluntary overtime (overtime a worker could refuse to work). It is likely that tribunals will deal with this overtime in a similar way (i.e. a settled pattern of voluntary overtime will be treated as normal pay). The ramifications of this case will not end there. Unions in particular eagerly awaited this decision.

[1] "Workers" includes all employees. It also includes other individuals who have a contract under which they agree to work personally for a third party where that third party is not the client or customer of the individual's profession or business.

There will be further cases on what other pay and allowances employers must include when setting holiday pay. Arguments around bonuses are likely to be key.

Employers should not underestimate the potential effects of the decision. The government has previously estimated that some five million workers may not have been receiving enough holiday pay to meet the new rules. Soon after this decision, the government announced it was setting up a task force to assess the ruling and to discuss how to "limit its impact" on businesses.

The recent decision also looked at backdated claims. Workers can bring a claim for an unlawful deduction from their wages if they have been underpaid for their holiday, but they must do so within three months of the underpayment (i.e. the holiday). A worker can also claim for a series of deductions for the same kind of underpayment. These claims must be brought within three months of the most recent underpayment. There was concern that these claims could extend back to 1998, the year the rules came into force. Helpfully the judge decided that a break of more than three months between underpayments broke the "series." This significantly reduces the potential liability for historic claims. Although the judge gave permission to appeal, the relevant union has since suggested that it does not currently propose to appeal this point. There is a risk of breach of contract claims but only where an employment contract has incorporated the relevant statutory rules (and this is rare).

Obviously this presents potentially a significant financial liability for employers with staff who currently work a lot of compulsory (or potentially regular) overtime, but are only paid basic pay while on holiday. Previous cases have decided that pay intrinsically linked to tasks a worker must perform (i.e. commission) and pay linked to professional status should also be included. Strictly, all these decisions only apply to the minimum four weeks' holiday under European law. However, it would likely be difficult to make a distinction for payroll purposes in practice. Employers should assess their current holiday pay arrangements, with a particular focus on employees' overtime patterns, commission, allowances and bonuses. They can then assess what risk and financial liability they face, for both holiday pay in the future and historic claims.

United States

You're sick of being warned about Section 409A, but do you know about Section 457A?

By Pamela Baker (Partner, Chicago) and
Michael R. Maryn (Partner, Washington, DC)

Most employment lawyers are at least somewhat familiar with the US tax rules on deferred compensation under Section 409A of the US Internal Revenue Code (Section 409A). Many fewer understand the additional rules under Section 457A of the US Internal Revenue Code (the 457A Rules). Those rules apply in addition to Section 409A rules, and they effectively preclude more than a 12-month deferral of vested compensation for many persons subject to US tax who work for non-US domiciled companies, including subsidiaries of US entities or who work for non-US owned partnerships ("nonqualified entities").

The 457A Rules, like Section 409A, apply broadly to "service providers," including employees, consultants and some service businesses. As with Section 409A, the 457A Rules broadly define deferred compensation. However, unlike under Section 409A, compensation subject to the 457A Rules is generally taxable as ordinary income in the year it vests if the payment is deferred beyond the "Payment Deadline" described below. An exception applies if the amount includable in income is not "determinable" when it vests, in which case the deferred compensation will be taxable when it is paid but it will also be subject to a 20 percent penalty tax and penalty interest. In other words, for compensation subject to the 457A rules, unlike under Section 409A, there is no permissible way to provide for tax-deferred delay of payment until termination of employment, a change in control or other events that would be a permissible trigger for payment under Section 409A.

Comparison of 457A Rules with Section 409A

Deferred compensation payable by nonqualified entities must satisfy both Section 409A and the 457A Rules. The 457A Rules are very similar to the Section 409A rules but there are some key differences, as highlighted in the chart below. **> Read more on page 14**

Section 409A	457A Rules
Aggregates all entities in a controlled group and treats as a single entity for purposes of determining whether compensation is deferred.	Applies on an entity-by-entity basis to compensation payable to employees of "tax indifferent" entities ("nonqualified entities")—those deemed under the rules to be indifferent as to whether they receive a current or delayed deduction for compensation expense.
Applies to all employees in "like" plans in the controlled group.	Applies only to employees of nonqualified entities, whether or not part of a controlled group.
Broadly defines deferred compensation, but excludes options, stock appreciation rights and restricted stock.	Same definition of deferred compensation, except includes stock appreciation rights settled in cash.
Compensation paid by March 15 of the year after the year it vests is not "deferred".	Compensation paid within 12 months after the end of the employer's year in which it vests ("Payment Deadline") is not "deferred".
Vesting can be based on the provision of future services, performance or the occurrence of a condition not certain to occur, such as an IPO.	Vesting conditions other than the provision of future services are ignored.
OK to defer payment after March 15 without penalty as long as rules for timing of deferral elections, payment triggers and payment timing are satisfied.	If payment is deferred beyond the Payment Deadline, the payment is taxable as ordinary income in the year it vests if the amount is determinable. If the amount is not determinable, it will be taxable when paid but a 20 percent penalty tax and additional penalty interest will apply.

As an example, assume a retirement-eligible employee of a non-qualified entity is granted restricted stock units that vest in three years if the company's cumulative profits over the three-year period exceed a specified target amount. Assume the employer's usual employment-at-payment date requirement is waived for persons who retire during the three-year period. Payment is in all events made shortly after the end of the three-year period if the cumulative profit goal is attained. This arrangement satisfies Section 409A, but not the 457A Rules. The retirement-eligible employee would be considered fully vested on the date of grant, whether or not he or she actually retires (no requirement to perform future services to receive payment, even though the performance condition will not be satisfied, if at all, for three years). The amount that would be includable in income under the 457A Rules cannot be determined prior to the end of the three-year performance vesting period because the amount of cumulative profits cannot be determined until the three year period ends. Therefore, the employee would be subject to the 20 percent tax and penalty interest under the 457A Rules as soon as the amount payable is determinable.

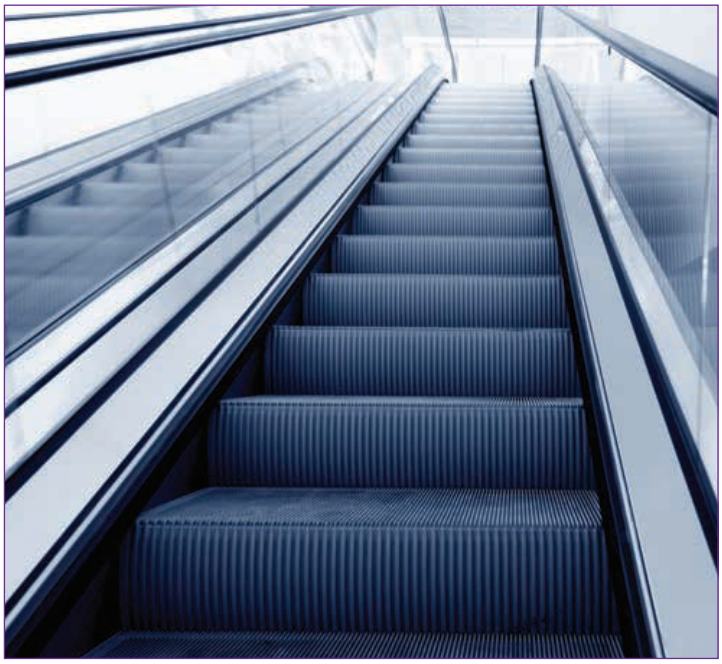
Definition of nonqualified entity

The 457A Rules apply to deferred compensation from nonqualified entities. There are two types:

(1) any entity domiciled outside the US unless (a) substantially all its income is subject to a "comprehensive foreign income tax" or (b) at least 80 percent of its income is taxable in the US;

(2) any partnership (US or non-US) of which more than 20 percent of the gross income is directly or indirectly allocated to US tax-exempt organizations (such as public pension plans) or to foreign persons not subject to a comprehensive foreign income tax.

A non-US entity is subject to a "comprehensive foreign income tax" if it is eligible to benefit from a comprehensive income tax treaty between its country of residence (other than Bermuda or the Netherlands Antilles) and the US, and substantially all its income is actually taxed under the non-US country's tax regime without special treatment. Thus, for example, US taxpayers employed by a Chinese subsidiary of a US company that enjoys tax incentives or a tax holiday for locating a facility in China would be subject to the 457A Rules, despite the existence of an income tax treaty between the US and China.



Which countries benefit from a comprehensive income tax treaty with the US? The IRS' most recent list (Notice 2011-64) includes 57 countries which include Canada, Mexico and most European countries. However, the only Dentons locations in Africa with treaties are Morocco, Egypt and South Africa. None of the seven countries in the Middle East where Dentons is located have treaties, nor do Singapore or Hong Kong. In South America, only Venezuela has a treaty.

The other type of entity whose employees are subject to the 457A Rules are partnerships (US or non-US) where at least 80 percent of the income of which is allocable to non-US partners (in a country without a comprehensive tax treaty with the US) or to US tax-exempt entities, such as pension plans.

The 457A Rules should be of concern primarily to US expatriates working in a country without a US tax treaty (for example, Singapore, the UAE, Brazil or Kazakhstan); non-US employees who work for a non-US entity but who become subject to US tax because they work in the US; and US employees who work for partnerships in which non-US or tax-exempt entities own a substantial equity interest.

It may be difficult to know, from year to year, whether the 457A Rules apply or not to a given US taxpayer. For each year, it requires a detailed look at the employer's tax position and a complex calculus beyond the scope of this article. Companies (and partnerships) should have a procedure in place to make the determination at least annually.

US federal, state and local employment law requirements in 2015

By Sandra R. McCandless (Partner, San Francisco)

Employment laws are passed or newly interpreted in the United States each year, which make employer compliance with federal, state and local law increasingly more complicated. As 2015 begins, this article addresses some of the most recent of US employment law developments.

National developments

Mandatory paid sick leave

Until recently, employers doing business in the United States were not legally required to provide paid sick leave to employees. In 2015, however, employers will have to comply with newly adopted paid sick leave laws covering workers in the states of California, Connecticut and Massachusetts, and in the cities of New York City and San Francisco and Oakland, California, among other jurisdictions. Who is covered by each law, the rate of accrual and the amount that can be earned per year varies from jurisdiction to jurisdiction.

Many employers provide paid sick leave but limit the type of employees eligible for paid sick leave. Often, certain part-time employees are ineligible for paid sick leave under the employer's policy. The new laws require paid sick leave based on the number of hours worked, which means that more part-time workers will have to be provided paid sick leave. Every company employing workers in any of the areas covered by a sick leave law should review its policies in detail to ensure that it is properly providing paid sick leave.

Severance agreements

It is common for employers to ask terminated employees to sign release agreements agreeing not to sue the employer in return for severance pay. The United States Equal Employment Opportunity Commission (EEOC) which enforces the non-discrimination provisions of federal law, has been challenging employer severance agreements in court, claiming certain provisions violate employee rights. The EEOC has thus far met with limited success in court. However, to assure the enforceability of their severance agreements and to avoid any later legal challenge, employers should review their release agreements in the context of the EEOC's position. In particular, employers' release agreements should confirm that an employee retains the right to file an administrative charge and participate in an agency investigation but cannot later obtain monetary damages from any such proceeding.

US jurisdictions have statutes allowing an employer to have a policy of "employment at will." The employer's documentation of its at will policy, if confirmed in signed offer letters and employee handbooks, is a defense against a breach of contract claim. However, there are many other types of claims—discrimination, personal injury, wage and hour and violation of public policy, by way of example—which can be made by terminated US employees, and the termination of employees in the United States is a complicated matter which varies by jurisdiction. While the use of release agreements is recommended to enable reaching early and amicable termination arrangements with employees, employers doing business in the United States should consult counsel when terminating an employee about the documentation of termination and the terms of any release agreement.

National anti-discrimination priorities

The EEOC enforces federal laws that make it illegal to discriminate against a job applicant or employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Retaliation against workers who oppose discrimination or harassment on any of these protected bases is also federally protected.

In 2012, the EEOC adopted a Strategic Enforcement Plan for 2013 to 2016 which makes protection of lesbian, gay, bisexual and transgender individuals a national priority.

> Read more on page 16

Women and racial minorities continue to be underrepresented in upper management and in technology companies. Pay disparities—higher pay to white males as compared to women, blacks and Hispanics, among others—continue to be prevalent throughout the United States. Because of this disparity, other federal priorities for 2015 and 2016 include requiring employers to change recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women and people with disabilities and to administer compensation systems and practices to avoid discrimination against women.

Confidential information, social media and non-disparagement policies

The National Labor Relations Board (NLRB) protects the right of non-management employees to engage in "concerted" activity involving wages, hours and working conditions. The NLRB is well known for enforcing the rights of union-represented employees, which it had done throughout the past century. But the NLRB also has jurisdiction over non-union employees, and it has recently been challenging common employer confidentiality, social media and non-disparagement policies and practices, claiming violation of the National Labor Relations Act.

A policy which prohibits all employees from discussing the terms and conditions of their employment is unlawful. More narrow employer confidentiality and non-disparagement policies may also be unlawful, depending upon how they are worded and applied. It is recommended that employers do have policies protecting their confidential and proprietary information and prohibiting the public sharing of certain types of information related to the company. But, as this is an arena in which any employer policy or practice —or discipline of an employee for engaging in conduct which the employer believes to be against its interests— may be subject to legal challenge, the employer should have its policies reviewed for compliance with evolving federal and state laws.

State law developments

"Banning the box" which asks about criminal convictions

Another new legal trend in the United States is the passage of state and local laws limiting when applicants may legally be asked about criminal convictions ("ban the box" legislation, referring to the box on an application form asking whether an applicant has been convicted of a crime). The most recent of these laws, effective in Illinois for 2015, prohibits employers with 15 or more employees from inquiring about, considering or requiring disclosure of an applicant's criminal history until the employer has decided the employee is qualified and notified the employee of selection for an interview or, if there is no interview, until a conditional job offer has been made. There are only very limited exceptions, such as positions where the employer must exclude applicants with certain criminal convictions.

An employer with a practice of inquiring about applicants' criminal histories, a common practice in the past, must now investigate the applicable law in each jurisdiction in which it hires employees and determine when and whether a criminal history inquiry is allowable. The effect of these new laws may, in the end, lead national employers to refrain from inquiring about criminal records, except for positions in which a criminal record is disqualifying under other applicable law.

California law developments

California is a national trendsetter in employment law, and employment laws passed in California often later spread across the country. The California employment laws passed in 2014 include:

Statewide mandatory paid sick leave

The Healthy Workplaces, Healthy Families Act of 2014 requires paid sick leave for an employee who works at least 30 days within a year in California, including part-time, per diem and temporary employees. Starting July 1, 2015, California employees will earn at least one hour of paid leave for every 30 hours worked. For statewide purposes, employers can limit the amount of paid leave an employee can take in one year to 24 hours and cap the accrual of paid sick leave at 48 hours or six days. However, the cities of San Francisco and Oakland have more stringent paid sick leave requirements. For example, San Francisco provides for the accrual of up to 72 hours of paid sick leave. An employer with employees in San Francisco and/or Oakland must abide by both the state and local requirements. All three of these laws provide **> Read more on page 17**

that the employee may use paid sick leave for a family member's health condition as well as for the employee's own health condition.

Many employers have a paid time off policy, which is intended to cover both vacation and sick leave, and others have a "use it or lose it" vacation policy. California prohibits a "use it or lose it" vacation policy, but other language, providing for a cap on earned vacation, is allowable. The rules on vacation and sick leave in California are complex and, like California's unique overtime pay requirements, these rules are unlike those of any other state. Any employer operating in California who is unfamiliar with these rules should have its vacation and sick leave or paid time off policies reviewed by counsel.

Of course, employers must also comply with the federal Family and Medical Leave Act and California Family Rights Act and, under the Americans with Disabilities Act and companion state and local laws, reasonably accommodate disabled workers needing extended leaves of absence, as applicable. The arena of employee and family member illness and disability is extremely complicated. Sophisticated advice should be obtained when dealing with illness and disability of an employee or an employee's family member to avoid claims of discrimination, harassment and/or retaliation which may lead to the recovery of very substantial damages against the employer.

Mandatory anti-bullying training for supervisory employees

California requires employers with 50 or more employees to provide at least two hours of sexual harassment training to supervisory employees every two years. Effective January 1, 2015, employers are also required to train supervisory employees on the prevention of "abusive conduct", defined as conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive and unrelated to an employer's legitimate business interests. Presently, "abusive conduct" or "bullying" is not unlawful, and no claim can be made in court based on "bullying" alone. An employee would have to allege discrimination or harassment based on a legally protected category, such as race, sex, national origin, age or disability. But one can assume that, some years from now, the requirement for training involving "bullying" in the employment setting may be transformed into an outright legal prohibition of "bullying". A worst case scenario for employers would be a law prohibiting "bullying", which is inherently a broad and vague concept, and providing for the damages recoverable for other types of harassment, such as lost wages, emotional distress damages, punitive

damages and recovery by the employee of his or her attorneys' fees, all in the context of a jury trial.

The laws and regulations imposed upon employers doing business in the United States will continue to become more and more complex. The sophisticated employer will need to be aware of the new laws as they are passed and bring its policies and practices into compliance with those laws.

Dentons' Global Employment Practice Group leads lawyers and clients on an around-the-world review of global employment topics

By Richard Scharlat (Partner, New York)

On December 10, 2014, partners from the Dentons' Global Employment and Labor Practice gathered with clients in the firm's Rockefeller Center offices in New York City for a three-hour discussion of critical employment issues for multinational employers.

Global Employment and Labor Practice Group Leader Brian Cousin moderated three panels—Employee Privacy, Global Mobility and Restrictive **> Read more on page 18**

Covenants—where attorneys from Canada, France, the United Kingdom, the United States and China compared and contrasted their country's laws in those substantive areas and applied those laws to real world fact patterns.

Leading off the evening addressing issues surrounding privacy rights of employees and candidates for employment were Michael Bronstein (London), Neil Capobianco (New York), Katell Deniel-Allioux, Barbara Johnston (Calgary), Todd Liao (Shanghai) and Andy Roth (New York). This panel explored the parameters of criminal background checks, credit checks, reviewing social network websites and performing Google searches on candidates. Discussion of the permissibility of accessing and reviewing employees' emails and disclosure of personal employee information like driver's licenses, social security numbers and medical information rounded out the privacy session.

The next panel, lead off by Matt Schultz (Silicon Valley, California), used a hypothetical fact pattern to launch a discussion about employee mobility topics including: visas for business trips, visas for work assignments and visas for accompanying family members. Michael Bronstein (London) then took the attendees through the British Nationality Act of 1981 and the Immigration Act of 1971, as well as the particulars of laws governing mobility of business visitors, high value migrants, skilled workers, temporary workers and Commonwealth citizens with UK ancestry.

Closing out the evening, a panel consisting of Michael Bronstein (London), Katell Deniel-Allioux (Paris), Todd Liao (Shanghai), Adrian Miedema (Toronto) and Richard Scharlat (New York) navigated a hypothetical fact pattern to illustrate the issues surrounding restrictive covenants in the various jurisdictions. The panel addressed the enforceability of contractual provisions providing for post-employment restrictions on competition and the solicitation of employees and customers. The attorneys also discussed the pros and cons of including arbitration provisions in employee agreements and the effect of including such an arbitration provision on the enforceability of restrictive covenants.

In total, attorneys from seven different Dentons offices covered more than a dozen different employment issues of critical importance to multinational employers. A videotape of this event and the materials provided can be found at http://www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/events/2014/december/10/critical-employment-issues-facing-multi-national-employers.

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About Dentons Global Employment and Labor Practice

Dentons has more than 220 employment, immigration and benefits lawyers located in 50 locations spanning 28 countries who focus their efforts on employment and labor counseling and litigation, immigration issues and benefits matters. With our global presence and contacts, we are one of only a few law firms that can provide multinational businesses with a coordinated solution to all their employment and benefits needs throughout the world. Some examples:

Financial software and services company. A team from China, Hong Kong, Poland, Germany, Canada, France, Spain and the US provided global employment representation, including coordination of opening of an office in China; various global employment matters involving Poland, Hong Kong, Korea, and Mexico; global non-compete project involving the US, China, Hong Kong, Canada, Spain, France, and Russia; corporate and corporate governance advice in Germany.

Major international manufacturer. A Dentons team from China, UAE, Germany, and the US provided employment representation and coordination of global representation in employment and corporate matters, including in China, the United Arab Emirates, Germany, and Hungary; advice regarding resolution of a highly sensitive and completely confidential US employment matter; and advice regarding other confidential employment matters, including FCPA issues.

Leading manufacturer of paper-related products. Our Spanish team took the lead on this multinational matter with potential impacts in Germany and worldwide, regarding the closing of a manufacturing plant in Spain affecting 75 out of 81 employees.

Major conglomerate. A team from the UAE, Oman, Qatar, Kuwait, Egypt, Saudi Arabia and Jordan provided advice on implementing a whistleblowing external reporting hotline and reporting system, for its staff employees in certain countries (UAE, Oman, Qatar, Kuwait, Egypt, Saudi Arabia, Bahrain and Jordan) to report any violations of the company's compliance policy through a third party company, who will provide anonymous reports to the client covering reported issues.

Major airline. UK lawyers working with our Paris office advised on employment implications of transferring contracts within the UK and to France, and dealing with the collective redundancy process for 20–100 employees and negotiating exit packages.

Pharmaceutical laboratory. French team led the cross-border restructuring and collective litigations before Administrative and Employment Courts for an Irish laboratory specialized in feminine health and skin care, in employment law matters with respect to its acquisition of the ethical pharmaceuticals unit of a US consumer product manufacturer and on the related cross-border restructuration in Europe.

Major railway system. German lawyers working with colleagues in France, the US, Canada, Dubai, Spain and Poland provided advice regarding the form of long-term incentive agreements for the higher corporate managers in twelve different countries, and other employment law related questions.

About Dentons

Dentons is a global law firm driven to provide clients a competitive edge in an increasingly complex and interconnected world. A top 20 firm on the Acritas 2014 Global Elite Brand Index, Dentons is committed to challenging the status quo in delivering consistent and uncompromising quality in new and inventive ways. Dentons was formed by the combination of international law firm Salans LLP, Canadian law firm Fraser Milner Casgrain LLP (FMC) and international law firm SNR Denton. Dentons' clients now benefit from approximately 2,600 lawyers and professionals in more than 75 locations spanning 50-plus countries across Africa, Asia Pacific, Canada, Central Asia, Europe, the Middle East, Russia, CIS and the Caucasus, the UK, and the US. The Firm serves the local, regional and global needs of a broad spectrum of clients, including private and public corporations; governments and government agencies; small businesses and start-ups; entrepreneurs; and individuals.

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