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WELCOME TO THE SECOND QUARTERLY EDITION OF 2021 OF OUR GLOBAL EMPLOYMENT AND LABOUR REVIEW.

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In this review, we provide a brief summary of the key employment and labour law changes over the past few months that will have an impact on employers around the world. Unsurprisingly, many of the developments reported in the first quarter of this year continue with COVID-19 dominating the employment landscape. Financial assistance for employers in many jurisdictions continues, with some countries also continuing to maintain restrictions on dismissals. Reforms relating to remote and flexible working continue apace in many countries including Belgium, Chile and Costa Rica. We are also seeing reforms relating to sexual harassment laws including in Australia and Lebanon. This is unsurprising given the continuing prominence of equality and diversity, and #MeToo across the world. The misclassification

of independent contractors continues to be a hot topic with the UK Supreme Court being the latest national court to look at this issue. As vaccination programmes continue across the world, we expect the interplay between health and safety, employer interests, privacy and employee freedoms to be an area that many employers will have to tackle over the coming months.

In our "In Conversation with" section, we introduce Anna Karina Jiménez, Co-Head of Dentons' Central and South America Regional Employment and Labour Practice Group. We conclude with a round-up of relevant Dentons news and upcoming webinars or events that may be of interest.

If you have any feedback on the contents, or suggestions for topics that we should cover in future editions, please do let us know. In the meantime, we hope you enjoy reading this edition.

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KENYA

New leave for employees adopting children – To obtain an adoption order, a prospective adoptive parent is legally required to place the child concerned in their continuous care and control for a period of three consecutive months before making an application for adoption. To help facilitate this, new legislation introducing pre-adoptive leave took effect on 15 April 2021. An employee who wishes to adopt a child is now entitled to a one month period of fully paid pre-adoptive leave from the date of placement of the child (subject to certain conditions). The one month period may be extended with the employer's consent. Upon expiry of the pre-adoptive leave, the employee has a right to return to the job which he/she held immediately prior to the pre-adoptive leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had the employee not been on pre-adoptive leave.

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MAURITIUS

Extension of financial assistance schemes and COVID-19 levy – Two schemes were extended for the month of April 2021, providing financial support for that month to:

- small and medium enterprises and large enterprises operating in the tourism sector (under the Wage Assistance Scheme); and
- self-employed people (under the Self-Employed Assistance Scheme).

All employers that have benefited from an allowance under the Wage Assistance Scheme are liable to a COVID-19 levy payable in respect of the year of assessment commencing on 1 July 2020, on 1 July 2021 or on 1 July 2022.

Ban on any temporary or permanent reduction of workforce – Until 30 June 2021, employers may not reduce the number of workers temporarily or terminate the employment of any workers. This ban does not apply to employers:

- exempted by way of regulations, which currently include Air Mauritius Limited, Airmate Ltd and Emirates (these employers are also exempted from certain notification and negotiation requirements with trade unions and worker representatives);
- who have applied for financial assistance (set up by certain prescribed institutions for the purpose of providing financial support to enterprises which have been adversely affected by COVID-19) and the application has not been accepted.

Transition unemployment benefit – Employees are entitled to a transition unemployment benefit for a period of not less than one month and not more than 12 months. This benefit is generally paid in cases where the employee's employment agreement has been terminated justifiably or unjustifiably, or pursuant to an order by the Redundancy Board for the employee to proceed on leave without pay and the latter has not taken any other employment.

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SOUTH AFRICA

Precautionary suspensions must be on full pay – Under South African law, a distinction is made between two kinds of suspension: (i) "precautionary" suspensions (i.e. suspensions pending investigation of misconduct and disciplinary action); and (ii) suspensions imposed as a disciplinary sanction. The Labour Court recently ruled that precautionary suspensions must be on full pay, reasoning that the suspension was a "holding operation" and not a disciplinary sanction and, as such, there were no justifiable grounds to withhold the employee's pay. In addition, where the suspension is precautionary and not punitive, there is no requirement to afford the employee an opportunity to make representations prior to the suspension.

Employers not liable for racism or discrimination perpetrated by customers – The Labour Appeal Court recently confirmed that

employers cannot be held vicariously liable for the conduct of individuals not under their authority. In this case, a cashier of a large retail chain was subjected to racial abuse and aggression at the hands of a customer. The employee's eventual claim was dismissed on the basis that there is no way for an employer to exercise control or discipline individuals that it holds no authority over (unlike in the case of a fellow employee, who may be disciplined internally). The correct recourse for the employee to take would be a direct delictual claim (i.e. claim involving wrongdoing) or unfair discrimination claim against the customer.

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UGANDA

Uganda enhances labour disputes law – In 2006, legislation established the Industrial Court to arbitrate on labour disputes (among other things). This legislation was amended on 10 March 2021, to:

- increase the number of judges and give the Industrial Court the same powers as the High Court; and
- empower the Industrial Court to summon witnesses and administer oaths and affirmations, make orders for disclosure, inspection or production of documents, require any persons with special knowledge to give that evidence or testimony in writing and make orders such as for reinstatement of an employee by an employer, for the unsuccessful party to pay costs of the case and/or any other reliefs as the court may deem necessary.

This new law is important because it has increased the capacity of the Industrial Court to hear and decide cases without undue delay, which will help reduce case backlog. Similarly, under the amendment, only one judge will be sitting on panels unlike in the past where two (High Court) judges and three other panellists were required to hear and determine a labour dispute.

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ZAMBIA

Resumption of normal work arrangements: living with COVID-19 – On 7 April 2021, the government called for employers and employees to immediately normalise working arrangements. This is in reference to earlier guidelines given in an effort to curb the spread of COVID-19. The government observed a reduction in the positivity rate in the country and directed that:

- staff that were working in their respective homes and on a rotational basis resume normal work schedules with strict adherence to public health guidelines and to increase the utilisation of electronic platforms to ensure smooth service delivery and effective communication;
- the government is monitoring the situation and will review the decision after 28 April 2021 and take appropriate action in the event that there is an increase in the COVID-19 positivity rate.

Pension benefits must be paid on last working day

– The Constitutional Court of Zambia has decided that an employee should be paid their pension benefit on their last working day and, if not, the employee should be retained on payroll until the payment of the pension benefit. The court reasoned that the relevant provisions of the Constitution of Zambia are meant to cushion pensioners and retrenchees from the hardships that they may face as a result of the delayed payment of their pension money or gratuity. The court made it clear that retention on the payroll is for the continued payment of salary until the pension benefit is liquidated in full and not for any other purpose, such as the disbursing of pension benefits in instalments.

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CHINA

Changes to rules relating to employment contracts – On 1 January 2021, the Interpretation of the Supreme People's Court on the Application of Law to the Trial of Labour Dispute Cases (I) came into force and replaced the previous four interpretations. Two changes related to employment contracts are worth noting:

- in the event that a labour contract is invalid but the employee has already performed duties, apart from the remuneration, the employer must now pay economic compensation to the employee as well; and
- previously, if the employer and employee conducted themselves in a way to vary the employment contract (e.g. change in duties), provided that the conduct took place for more than one month, the change may be deemed valid in legal practice. Now there is an emphasis on mutual consent and therefore any changes to the contract as a result of the parties' conduct will be harder to rely on unless the employer can show that any changes were mutually agreed. This change therefore increases the difficulties for employers seeking to amend labour contracts simply by relying on a change of conduct.

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HONG KONG

HK Government rolls out scheme for reimbursement of maternity leave pay – Following the extension of statutory maternity leave from 10 weeks to 14 weeks (effective from 11 December 2020), the Labour Department launched a scheme on 1 April 2021 to allow employers to apply for reimbursement of statutory maternity leave pay paid to employees in respect of the 11th to 14th weeks, subject to a cap of HK\$80,000 per employee.

Bill introduced to extend scope of statutory compensation to cover work-related injuries sustained in inclement weather – An employee who sustains an injury or dies as a result of an accident when commuting to or from work during a period of "extreme conditions" arising from a super typhoon or other natural disaster of a substantial scale will be afforded the same employees' compensation protection on par with that under Typhoon Warning Signal No. 8 or above or when the Red or Black Rainstorm Warning is in force.

Bill introduced to increase statutory holidays – The number of statutory holidays will be increased from 12 days to 17 days progressively in five stages from 2022 to 2030. Once the relevant dates become statutory holidays, the relevant statutory rules on the taking of statutory holidays will apply to those dates. Employers may need to revise leave policies and update payroll systems, if the bill is enacted.

Harassment of breastfeeding women – From 19 June 2021, breastfeeding women will be legally protected from harassment on the ground of breastfeeding in a number of areas, including employment, education, the provision of goods, and facilities and services.

Time is of the essence when applying for an injunction to restrain competition in team move cases

In a recent case, the HK court refused to grant an injunction restraining former employees of a group of companies from competing with the businesses of the group, even on an “interim interim” basis (i.e. on the basis the restraint would be effective until a further hearing) due (in part) to an inexplicable delay of three weeks on the part of the group in launching the injunction application. The court pointed out that a delay of only two weeks is still sufficient to refuse interim relief.

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SINGAPORE

Changes to work pass requirements for “Defendant’s Pass” holders – Defendant’s Pass holders are “defendants” of the holders of certain work passes in Singapore. Prior to the changes, Defendant’s Pass holders wishing to work only needed to obtain a letter of consent, instead of a separate work pass. The new regime, which came into effect on 1 May 2021, means that:

- foreigners holding a Defendant’s Pass and working in Singapore as an employee under a letter of consent (instead of a valid work pass) will no longer be able to do so;
- instead, such Defendant’s Pass holders relying on a letter of consent will need to secure a valid work pass of their own if they wish to continue working in Singapore; and
- for Defendant’s Pass holders who are business owners, it will remain possible to work using a letter of consent but with restrictions relating to the Defendant’s Pass holder’s shareholding in the business and its employees.

The changes mean that employers hiring a Defendant’s Pass holder working under a letter of consent will have to apply for an applicable work pass in order to employ, or continue to employ, that person. This may impact an employer’s hiring

process. Companies will now have to comply with the conditions which are normally required for the employment of foreigners under work passes in Singapore, including the relevant qualifying salary, quotas and levies. Employers should be mindful of the updated restrictions when hiring foreigners in Singapore and advice should be sought if there are any doubts.

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SOUTH KOREA

Dismissal for “lack of job performance” can be a just cause – In South Korea, an employer cannot terminate an employee without a “just cause” and the courts are very strict in determining whether a certain reason qualifies. However, in a recent decision, the Korean Supreme Court has ruled that lack of job performance can be a just cause for dismissal if:

- the employee’s performance or ability is below the minimum expected level for a significant period of time; and
- the likelihood that the employee’s performance or ability will improve in the near future is very low,

to the extent that it is deemed impossible to continue the employment pursuant to social norms.

Whether or not it is impossible to continue employment pursuant to social norms may vary depending on various circumstances, such as the type of work the employee was assigned to do, the length of period during which the employee has shown poor performance and the employee’s attitude and willingness to improve, among others. In addition, it is important that the employer has provided opportunities to the employee to improve his/her performance by providing extra education or training sessions or transferring to different departments where the employee may be more skilful.

Accountability for large-scale accidents – New legislation has been passed as part of an initiative to demand greater accountability from corporate actors in the event of a large-scale accident. The legislation’s objective is to set out more specific parameters on management’s responsibility to ensure occupational health and safety and impose greater sanctions to ensure compliance with the law.



The legislation is a response to the years of public outcry for increased corporate accountability in major accidents and is expected to impact all industries across the board. It is due to enter into effect in January 2022. As such, businesses are strongly encouraged to develop an understanding of the requirements as well as the enforcement rules that will be forthcoming throughout the year and reflect the regulatory development in personnel and budget management.

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TAIWAN

Occupational accident insurance programme may be expanded

– The Cabinet has approved a bill aimed at expanding Taiwan's occupational accident insurance coverage and increasing payments for employees who are injured on the job. If implemented, an estimated 330,000 employees are expected to gain coverage and the maximum monthly insured salary would increase (among other things). The bill is due to be submitted to Taiwan's Legislative Yuan for further review.

Minimum wage increases – From 1 January 2021:

- the minimum monthly wage is NT\$24,000 (increasing from NT\$23,800 in 2020); and
- the minimum hourly wage is NT\$160 (increasing from NT\$158 in 2020).

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UZBEKISTAN

Engagement of foreign labour – From January 2021:

- companies are no longer required to obtain a permit in order to engage foreign labour; and
- the first head (director) of any newly established foreign company or joint venture can carry out work without obtaining a work permit for the first three months from the date the company was established.

These amendments abolish the previous need to appoint a local citizen as a director until relevant work permits are obtained.

Simplifying the accreditation process – From 1 June 2021, the accreditation process for foreigners employed at representative offices of foreign companies in Uzbekistan no longer includes the requirement to submit an HIV-free certificate.

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Australasia



AUSTRALIA

New legislation for casual employment – Last quarter we reported on changes proposed for the Australian industrial relations system. Those changes were scaled back such that only the changes proposed for casual employment remain. From 27 March 2021, casual employment will be more heavily regulated. The changes include:

- a legal definition for casual employees (in the Fair Work Act 2009);
- protection for employers against double dipping claims (i.e. claims for entitlements applicable to permanent employees when the casual employee has already received a loading to compensate him/her for not receiving such entitlements);
- an express obligation on employers to offer eligible casuals permanent employment (full-time or part-time), while also allowing eligible casual employees to make requests to convert to permanent employment. Provided certain conditions are met and the employer does not have “reasonable business grounds” to refuse a request for conversion, employers must make a casual conversion offer to the casual employee; and
- a requirement for employers to give each casual employee a copy of the new **Casual Employment Information Statement**.

Workplace sexual harassment – The #MeToo movement and associated push for changes in workplace behaviour has been back on the agenda in Australia due to allegations of rape in Parliament House, Canberra.

In March 2020, the Sex Discrimination Commissioner released the Respect@Work report. The Australian Human Rights Commission led an inquiry into workplace sexual harassment. The report made 55 recommendations to the government to reform Australia’s current prevention and response tools to workplace sexual harassment. More than a year later, on 8 April 2021, the government responded to the report’s recommendations, agreeing to some in full, part or in principle, and noting others. Some recommendations pertinent to employers include:

- amending sex discrimination legislation so that it applies to sexual harassment;
- a “stop bullying order” to be available to “stop” sexual harassment;
- amending the law so that sexual harassment is a valid reason for dismissal; and
- amending the legal definition of “serious misconduct” to include sexual harassment as behaviour that can justify summary dismissal (without notice).

Further changes are being proposed, including making a failure to prevent sexual harassment a breach of health and safety obligations.

Boards across Australia are being encouraged to look at their practices in relation to dealing with sexual harassment to ensure that employees are not being exposed to preventable risks.

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NEW ZEALAND

Holiday reforms on the way – Government proposals to address the current confusing holiday regime are expected shortly. The government has accepted all 22 of the recommendations from the taskforce it commissioned. Expected changes include new “first-day” rights, along with an earlier signalled increase in minimum sick pay entitlements. We are currently advising clients on early preparations to deal with the numerous payroll changes which are likely to be required.

Trans-Tasman travel bubble – With the highly anticipated Trans-Tasman travel bubble now in place, New Zealanders and Australians are free to travel between their countries without having to quarantine (at a time when any other international travel is highly restricted). However, many New Zealand employers are considering steps to limit the potential disruption and cost should employees be stranded as a result of a sudden bursting of the bubble (as has already happened with a local lockdown in Western Australia).

Potential new employer rules include blanket bans on travel, indications that employees may be dismissed if they cannot return within a reasonable time and/or requirements to ensure employees can work remotely if they are delayed. Such rules are potentially subject to challenge and employers should seek advice before adopting any policies in this area.

Extended protections for business transfers and outsourcings –

New legislation is extending the breadth of statutory protection for employees affected by business transfers and in/outsourcings or service provider changes.

Currently, certain limited groups of staff are recognised as “vulnerable employees”. These employees are offered a statutory right to transfer automatically to any new business owner or operator on the same terms and conditions of employment as enjoyed prior to the relevant business change. At present, vulnerable employees include any employee providing cleaning or food catering services and, in some cases, those undertaking laundry services. From 1 July 2021, the definition is being extended to include employees undertaking security services. If transactions involve any employees undertaking this type of work, then early consideration of their special rights is advisable.

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Central And South America

ARGENTINA

Prohibition of dismissals and additional severance compensation may come to an end – The prohibition of dismissals and suspensions (as discussed in the last edition of the newsletter) is due to come to an end on 31 May 2021. The requirement to pay additional severance will end on 31 December 2021. However, it is possible that these measures may be extended due to increasing COVID-19 in Argentina.

Re-opening of some activities – Certain activities may return to the workplace provided that relevant protocols are approved by the health authority and the number of people in any enclosed space does not exceed 50% of usual capacity. However, employees in at-risk groups must in any event continue to stay at home performing remote work (except for vaccinated employees who may be required to return 14 days after receiving their first dose).

Special parental leave – A new resolution provides that parents, caretakers and tutors, whose presence at home is essential for the care of children and teenagers, are exempt from any requirement to be physically present in the workplace in the following circumstances:

- when children are not able to attend school; or
- when children are attending school on a limited schedule.

Only one adult per family may use this special leave.

Promotion of employment in northern provinces – A programme promoting employment in the northern provinces (Tucuman, Catamarca, Chaco, Corrientes, Formosa, Jujuy, La Rioja, Misiones, Salta and Santiago del Estero) will run from 1 April 2021 to 31 March 2022. The programme includes significant reductions (ranging between 20% and 80%) to social security contributions for employers hiring new employees in these provinces, according to their gender and diversity matters.

Telework– A recent resolution from the Ministry of Labour has stated that teleworking due to COVID-19 reasons will not be considered voluntary teleworking. Teleworkers of this nature will therefore fall within the normal scope of employment.

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CAYMAN ISLANDS

Pension holiday extended – In order to combat the economic impact of COVID-19, the Cayman Islands government introduced a “pension holiday” at the beginning of the pandemic. The pension holiday sought to combat the financial strain put on employees and employers alike by the effects of the global COVID-19 outbreak, as well as acting as an economic stimulus, and has been extended so that it will now be in place until June 2021.

During the pension holiday, all employers and employees are automatically exempt from paying into statutory pension plans. This means that businesses will make savings, as will those employees who are subject to mandatory pension deductions from their wages. Employers with employees in the Cayman Islands should be aware of the recent extension so that they can make the necessary adjustments to their pay-roll policies and relay relevant information to their staff.

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CHILE

Measures for employees who are parents –

Employees whose maternity leave finishes during the State of Emergency are entitled to a medical leave of 30 days, renewable for up to 90 days as long as the State of Emergency continues (currently until 30 June). In addition, parents of children born after 2013 who are not eligible for medical leave may unilaterally suspend their employment contract.

Flexible work arrangements – Employment contracts can be suspended, under certain conditions, until 6 June 2021. During that period, the employee does not render services, and the employer does not pay any remuneration. Part of the employee’s remuneration will be assumed by the Severance Fund Administrator. In addition, until 31 August 2021, a reduction of working hours can be agreed between the parties, with certain limitations.

Prohibition of dismissals – During the current State of Emergency (until 30 June 2021), employment contracts cannot be terminated on the grounds of force majeure or fortuitous event by invoking the effects of the COVID-19 pandemic. In addition, employees with suspended contracts before the Severance Fund Administrator may not be dismissed for certain reasons.

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COSTA RICA

Working from home – The COVID-19 pandemic has created several new issues and challenges for employers, stemming from the increase in full-time working from home. Some of the issues that can arise include disputes in relation to responsibility for the payment of utilities, drug and alcohol consumption, cyber security and data protection, and possible loss or damage to company property used at home. There has been an increase in the use of specific internal policies to address and regulate some of these issues.

In addition, the National Insurance Institute (INS), which manages workers’ compensation insurance, has had to relax its rules during the pandemic (now that almost all employees are working from remote locations, including abroad). This policy covers only work-related accidents/illnesses. This has caused conflict between this government agency and employers who expect the INS to apply full coverage to insured employees wherever they are located. The INS has responded by requiring employers to inform it of where their employees will be working from during the pandemic, to better control the application of the insurance policy and accept coverage.

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PERU

Right to disconnect – Amidst the current global pandemic and State of Emergency still in force for Peru, a new “right to digital disconnection” has been established which is applicable to all employees currently providing services through remote work. This right seeks to ensure that the working hours and schedules of employees are respected by their employers. Employees not subject to inspection over their working time are entitled to at least 12 hours of continuous digital disconnection.

Modifications to the agricultural sector – Changes to the regime applicable to the agricultural sector were approved in December 2020, including:

- a special bonus equivalent to 30% of the minimum wage;

- employee participation in a prescribed percentage of profits; and
- companies below a set net income level pay a 15% income tax rate (until 2031 onwards when they will pay the general regime rate of 29.5%).

General elections – The country is currently in an electoral process that will conclude with a change of command both in the Executive Power and in Congress on 28 July 2021. There is currently no clear favourite, but the change in government could mean changes for employment law in the future, particularly given that the candidates leading the polls have different proposals in this regard.

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URUGUAY

Assistance for small and medium enterprises –

In March 2021, a new law was introduced to assist small and medium enterprises to mitigate the economic impacts caused by COVID-19, including:

- exemption of 50% on employer social security tax for the period between 1 January to 30 June 2021, for enterprises with up to 19 employees and incomes up to UI10 million (approximately US\$1,110) in the last 12 months; and
- exemption of 50% on employer social security tax for the period between 1 April to 30 June 2021, for every enterprise whose business adjusts to economic activities listed in the law.

Extension of health insurance – Health insurance has been extended for:

- employees over 65 years old, in order to mitigate the risk of getting infected with COVID-19. Therefore, these employees may stay home receiving a health subsidy from the government. The insurance has been extended until 31 May 2021; and
- independent health contractors linked to emergency medical assistance services and who have assisted patients with the risk of getting infected or who have received a positive COVID-19 test result.

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VENEZUELA

Workers' right to enjoy vacation during the COVID-19 pandemic –

During 2020, the Labour Ministry Office answered an enquiry filed by a private company regarding the granting of vacation to workers during the COVID-19 pandemic. The opinion did not provide a simple response but indicated that rights to grant vacations were partially suspended while preventive and mandatory quarantine was in force. The Labour Ministry Office has now issued a new opinion indicating that employees working in activities or industries exempted from the Alertness Decree on suspension of activities due to COVID-19 (essential services) are able to request and enjoy vacations.

Extension of the bar against dismissals –

The government has extended the special bar against dismissals regime until 31 December 2022. In broad terms, this means that no workers can be dismissed unless the employer has obtained advance authorisation from the Labour Agency based on cause. Top-management employees, occasional workers and those with less than one month service are exempted from this regime.

Venezuelan economy and labour relations –

As hyperinflation and devaluation of the local currency (Bolivar) have continued in 2021, despite not reaching the same levels as in 2020, the Executive has not reviewed or increased the minimum wage and the food benefit since May 2020. The effects of the continuous economic downturn have had a significant effect on the employment and labour environment, resulting in further restructuring, downsizing, closures and employee cost reductions. Unfortunately, there are no official unemployment rates or statistics in Venezuela. Private employers continue to make significant efforts to retain key personnel and talent by granting payments in foreign currency, and providing a diversity of compensation alternatives to support employment and business.

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Europe

BELGIUM

Rapid COVID-19 testing in companies now permitted – As a general rule (with some limited exceptions), the law prohibits medical tests or examinations being carried out by employers seeking to obtain information on employees' health. However, to help combat the pandemic, the government has introduced an exception to this rule, allowing employers to carry out COVID-19 rapid testing subject to certain conditions (including, among other things, the consent of the employee). Privacy restrictions will apply. Most notably, the labour physician carrying out the test may not disclose any individual employee's results to the employer but may confirm that there has been a positive result on an anonymous basis.

Tax exemption for homeworking remuneration increased and made permanent – Previously, employers were required to enter into specific rulings with the tax authority in order to ensure that any homeworking remuneration was tax neutral for employees. As part of its response to the COVID-19 crisis and reliance on homeworking (which is still mandatory to the extent possible), the government introduced certain temporary tax exemptions from March 2020 onwards. These exemptions have now been increased and made permanent for employees working from home for at least five days per month.

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CZECH REPUBLIC

Employers' ability to unilaterally waive non-compete further limited – Under Czech law an employee must be paid during any non-compete period, and employers sometimes decide that they do not wish to enforce, or pay for, the obligation when the relationship ends. In a recent decision, the Czech Supreme Court considered a contractual arrangement which entitled the employer to unilaterally withdraw from a non-compete clause if it concluded (in its exclusive discretion) that the employee had not obtained information worthy of protection in the course of the employment. The Supreme Court determined that the effect of this was the same as if the employer were able to withdraw from the non-compete clause without providing a reason or for any reason, which is invalid. The contractual arrangement in question was therefore also invalid.

Taken together with previous case law, the combined effect is that once a non-compete has been entered into with an employee the employer will not, in the vast majority of cases, be able to unilaterally withdraw from this later. Employers should therefore carefully consider whether they are indeed dealing with an employee where a non-compete will be necessary or desirable.

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GERMANY

COVID-19 testing – From 20 April 2021, employers must offer all employees who do not work wholly remotely a COVID-19 test at least once per calendar week. Two tests must be offered to “employees who have frequently changing contact with other persons due to the nature of their work”. However, employees are not obligated to take the offered tests. Evidence of the procurement of COVID-19 tests or agreements with third parties on the testing of employees must be kept by the employer for four weeks.

Works Council modernisation – On 31 March 2021, the German Federal government released new draft legislation designed to facilitate the establishment of works councils. Not only does the draft legislation provide for simpler rules regarding the election process, but it will also introduce greater dismissal protection for those employees who initiate the election. It is likely that the new regulations will be applicable during the general works council elections in spring 2022. In addition, the draft enhances the co-determination rights of German works councils. For example, in the areas of remote working and vocational training, employers will have an obligation to make arrangements with their works councils.

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ITALY

Extension of the ban on dismissals – In relation to dismissals during the current COVID-19 emergency, the general ban on economic dismissals in Italy has recently been extended. In particular, the ban on individual and collective dismissals is extended as follows:

- until 30 June 2021, for companies generally; or
- until 31 October 2021, for employers who access certain specific redundancy funds.

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SPAIN

Providing an employee with the opportunity to voluntarily resign can be legitimate – The Spanish Supreme Court has decided that:

- an employer is entitled to request an employee's voluntary resignation when employment or criminal infringements have been carried out by the employee;
- this is not an unlawful threat by the employer but a legitimate exercise of the employer's disciplinary power, provided that such action is proportionate, adequate and does not limit the employee's ability to freely choose between resigning or waiting to be dismissed by the employer; and
- given that the employee will send the employer a voluntary termination letter, there is no ability to withdraw this once the relevant notice period has expired.

Employees cannot be forced to instal “geo-location” monitoring tools on personal devices

– The Spanish Supreme Court has determined that this breaches employees' privacy and personal data rights, on the basis that the measure did not comply with the three requirements of proportionality, adequacy and adjustment to the company's purposes. Although the company in this case had compensated the employees economically for installing the system, this was not sufficient. The outcome may be different if an employer is able to provide the employees with the company devices and to introduce accompanying measures which more particularly address the three requirements referred to above.

Family care leave does not extend to help to pass the school year – The Spanish Supreme Court has decided that although the law protects children, in particular those over three years old, and under the civil code parents must take care of the education of their children, it is not reasonable to extend family care leave to children who need support to pass the school year. Especially when, as in this case, the child is nine years old.

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TURKEY

Extension of termination ban – Since April 2020, a termination ban has been in effect preventing termination of employment other than for certain limited reasons. This ban has now been extended until 17 May 2021, with the possibility of a further extension to 30 June 2021. Note that it is possible to place employees on unpaid leave during the ban (and those employees are then provided with wage support from the state, subject to certain conditions).

A new regulation on remote work – With effect from 10 March 2021:

- an employment relationship can be established directly through execution of a written remote work agreement or the employment agreement of an existing employee can be amended to become a remote work agreement;
- if remote work is required by the employer (in whole or in part) for a compelling reason, the employee's request, consent or approval is not required and the remote working arrangement can be imposed by the employer;
- a remote work agreement for these purposes must include certain provisions and data protection arrangements will also be required.

Overall, the new regulation is to be welcomed but uncertainties with regard to remote working conditions remain in many areas. It is likely these uncertainties will be considered and resolved through future court decisions.

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UNITED KINGDOM

Extension of UK furlough scheme – The government has extended the UK furlough scheme relief for employers again, until 30 September 2021. Employers only have to cover employer social security and pension contributions currently but will be required to also pay 10% of wages from 1 July 2021 and 20% from 1 August 2021.

Employment tax status of contractors – After being postponed for a year during the pandemic, the new regime has been extended to the private sector and came into force on 6 April 2021. All medium or large private sector organisations are now required to assess the status of any contractors who operate through an intermediary (usually a personal services company or PSC) and make a determination as to whether, for employment tax purposes, these contractors are “deemed employees”. Where a contractor is assessed to be a deemed employee for these purposes, its fee must be processed through payroll and subject to applicable deductions in the same way as employment income. This will also trigger a financial impact for the client (13.8% employer social security contributions).

Ride-hailing platform drivers are entitled to certain employment rights – The UK Supreme Court has determined that drivers working via the Uber platform were not independent contractors but, instead, were “workers”. The significance lies in the different levels of protection in the UK for independent contractors, workers and employees. Employees have the most extensive statutory rights, only some of which extend to workers. Independent contractors have no real protection. The drivers successfully argued that they were workers and so entitled to rights such as the minimum wage and holiday pay. This case is considered to have potentially wide-reaching implications for platform business models in the UK. It confirms that the true status of a gig-economy worker is not determined by complex written agreements but rather by what the gig-economy worker does, how they carry out their work and the reality of who controls the work in question.

New legislation affecting defined benefit (DB) pension schemes

pension schemes – The new Pension Schemes Act 2021 is expected to have wide-reaching implications, including new funding requirements. The UK Pensions Regulator will also have strengthened powers, backed by criminal sanctions and increased civil penalties. DB scheme trustees must update their “statement of investment principles” to reflect action on environmental, societal and governance factors, and the Act could require reporting on exposure to climate risk. Employers with DB schemes would be well advised to seek specific advice from UK counsel if they have not already done so.

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Middle East

JORDAN

Minimum wage increases – From 1 January 2021, the monthly minimum wage for:

- all Jordanian national workers increased from 220 Jordanian Dinars (around US\$310) to 260 Jordanian Dinars (around US\$366); and
- non-Jordanian national workers increased from 150 Jordanian Dinars (around US\$211) to 230 Jordanian Dinars (around US\$324). From 1 January 2022, the minimum monthly wage for non-Jordanian national workers will increase over the course of two years to equal the minimum monthly wage for Jordanian nationals.

Certain categories of worker are excluded from the minimum wage changes.

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KUWAIT

Promotion of employment opportunities for Kuwait nationals in Kuwait – A new law provides for a national plan which will cover, among other things:

- the need for Kuwait-based expatriates to be employed by an employer based in Kuwait;
- details of the specific professional qualifications required for each profession; and
- a drive to encourage the transfer of Kuwait national employees from the public to the private sector, given that only a small proportion of Kuwait nationals currently work in the private sector.

The law also specifies:

- the importance of considering education alternatives for Kuwait nationals to enable Kuwait nationals to contribute to a diverse workforce;
- restrictions on the entry to Kuwait of non-Kuwait nationals from certain countries as part of a focus on the prevention and treatment of diseases and epidemics; and
- that certain nationalities will be identified and potentially excluded from employment in Kuwait in light of developmental needs and labour market policies.

Implementing regulations in respect of this new law are expected to be issued by June 2021, which should assist in clarifying the impact of this legislation. Due to the need to employ Kuwait nationals, international employers tendering for public sector projects in Kuwait will be impacted substantially in both pricing and personnel availability.

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LEBANON

Combating sexual harassment – Efforts to comply with international treaties and the increasing awareness of abuse against women (including #MeToo) have led to a new law criminalising sexual harassment. For these purposes, the concept of sexual harassment includes:

- offending behaviour that is repeated, exceeds what is normally acceptable, has a sexual connotation, is not welcomed by the victim and constitutes a violation of the latter's body, privacy or feelings; and
- the acts or endeavours of a person which, although unrepeatable, constitute psychological, moral, economic or racial pressure exercised to obtain sexual favours, be it for himself or for a third party.

By specifying that criminal sanctions apply (without prejudice to disciplinary sanctions), the law also paves the way for employment law to address sexual harassment. Additionally, the law provides for a victim's right to damages and for social support via the establishment of a dedicated public fund within the Ministry of Social Affairs (although the fund initiative requires implementing measures and is unlikely to come into effect in the near future).

Although it is not limited in scope to the workplace, the law explicitly addresses sexual harassment in this setting. Where the offender and the victim are in a subordination or employment relationship, sanctions (including fines and/or a prison sentence) are significantly increased.

In addition, the law punishes retaliation against victims who resist harassment in the workplace and measures which deprive victims of salary, promotion, renewal of their employment contract or other disciplinary sanctions are punished by a fine and/or a prison sentence.

Gender-based discrimination in the workplace has been prohibited by law since 2000 but, until the enactment of this new law on sexual harassment, little had been done to provide effective protection. Indeed, under the Labour Code where the employer or its representative had committed an offence against "public morals", all an employee could do was exercise an option to resign without prior notice. As such, victims of sexual harassment previously had, in practice, little option but to leave their job.

Although the protection afforded under the new law is not limited to women, it appears highly likely that women will be the first to benefit from such legislation.

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OMAN

Job Security Fund – From 1 January 2021, Oman national employees must pay 1% of their salaries as a contribution to the Job Security Fund and employers must also pay a matching contribution of 1%. In return, where: (i) an employee is terminated collectively for non-disciplinary reasons; and (ii) the employee has been contributing to the Job Security Fund for at least 12 months, s/he will receive a monthly benefit payment for up to six months. The law states that payment of the benefit will begin in January 2022 and it can be claimed more than once. However, due to the unprecedented circumstances of COVID-19, the Fund started paying the monthly benefit to individuals who lost their jobs before this law came into effect.

Obligation to notify before collective dismissals – The law has introduced an obligation on all employers to notify the Ministry of Labour three months prior to making a collective dismissal decision in respect of Oman nationals. The law does not define what constitutes collective dismissal, nor does it set out the consequences of employers' failure to notify. It is expected that these matters will be clarified by way of a Ministerial Decision.

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UNITED ARAB EMIRATES

Proposed changes to DIFC employment law – In February 2021, a consultation paper was issued by the Dubai International Financial Centre (DIFC), the international financial hub and common law free zone located in Dubai which has more than 25,000 employees. The consultation paper proposes various key changes to the DIFC Employment Law and the DIFC Employment Regulations. Its main focus is on changes to clarify the DIFC Employee Workplace Savings (DEWS) Scheme, which came into force in January 2020 and replaced end of service gratuity (which was a lump sum payment payable to employees upon termination of employment). Certain other changes and clarifications are also proposed, including:

- the status of “Exempted Employees” in the context of employees who are exempt from the DEWS Scheme;
- limitation periods for employee claims;
- probation periods for fixed-term contracts of six months or less;
- statutory minimum number of unused annual leave days that can be carried forward into the next year;
- male employees on paternity leave accrue annual leave; and
- to take account of the increase in employee home-working (due to the COVID-19 pandemic), removal of certain employer health and safety duties e.g. those relating to fire hazards and providing drinking water.

The deadline for providing comments on the consultation paper was 28 March 2021. We await the outcome with interest and expect that new drafts of the DIFC Employment Law and the DIFC Employment Regulations will be released later this year.

New UAE-wide remote working visa – In our previous issue of this newsletter, we highlighted that a new remote working programme had been announced (October 2020) for the Emirate of Dubai which allows non-GCC professionals to live in Dubai while being employed by overseas companies. Previously, non-GCC nationals visiting the UAE would only be granted a 30-day tourist visa. According to recent press reports, a UAE cabinet meeting in March 2021 has introduced a series of changes which affect the immigration policy in the UAE, including extending the concept of the remote working visa across the whole of the UAE.

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North America

CANADA

Excessively expensive employee terminations – In Canada, employment laws vary between provinces. In the province of Ontario (Canada's largest province, and the home of the national capital Ottawa, as well as the city of Toronto), a recent court decision which applies to Ontario employers with written employment agreements confirmed that:

- an invalid termination for just cause provision will invalidate an otherwise valid termination without just cause provision; and
- termination for just cause provisions must reference the definition of just cause set out in Ontario employment standards legislation.

This is a fundamental change to the way in which Ontario employment agreements have been interpreted over the years, and it means that a majority of Ontario employers are likely not to have valid termination provisions in their contracts. As a result, employees terminated without just cause are likely to be entitled to what is known as "common law notice" upon termination, rather than just statutory entitlements under employment standards legislation. In practical terms, this generally means providing terminated employees with approximately one month or more of total compensation per year of service in the event of a termination without just cause, rather than just one to two weeks of total compensation per year of service.

Companies which have operations in Canada, and more particularly in Ontario, should reach out to Ontario legal counsel for a review of their employment agreements and possible amendment, in order to get out in front of potential future issues upon termination.

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UNITED STATES OF AMERICA

The American Rescue Plan Act (ARPA) –

On 11 March 2021, President Biden signed the ARPA into law. It allocates almost US\$1.9 trillion to COVID-19 relief initiatives. Among its provisions is an extension of tax credits to subsidise COVID-19-related leave. Employers are no longer required to provide this leave to employees, but those who do may claim a corresponding tax credit through to 30 September 2021. In addition to previously recognised bases for this form of paid sick leave, the tax credit is also available if employees take leave because they are obtaining a COVID-19 vaccine, recovering from COVID-19 vaccine-related illness or awaiting the results of a COVID-19 test. The “clock” for providing this form of paid sick leave was also reset as of 1 April 2021. ARPA also extends the pandemic-era unemployment insurance programmes established by the CARES Act through to 6 September 2021, among other things.

Employer vaccination policies – The Equal Employment Opportunity Commission has issued guidance suggesting that mandatory COVID-19 vaccination policies are generally permissible in the workplace (although employers will still have to accommodate disabilities, as well as religious objections to vaccination). However, there remains some uncertainty regarding the extent to which mandating that employees be vaccinated carries any risk of potential legal liability. Many employers have instead opted to create vaccine incentive programmes to reward employees who voluntarily agree to be vaccinated, while those employers who intend to implement mandatory vaccination policies may find it helpful to obtain specific legal advice in advance.

Occupational Safety and Health Administration (OSHA)'s COVID-era initiatives –

On 12 March 2021, the OSHA announced a programme to temporarily focus the agency's resources on COVID-19-related hazards. Among other things, at least 5% of the total inspection goal for each OSHA region must be devoted to COVID-19 inspections, with top priority given to fatality inspections and other unprogrammed inspections alleging employee exposure to COVID-19 hazards.

Biden-era Department of Labor (DOL) initiatives –

On 11 March 2021, the DOL announced its intention to withdraw the two following Trump-era Final Rules:

- the Joint Employer Final Rule, which established an employer-friendly four-factor, non-exclusive test for evaluating possible joint employment relationships between two entities; and
- the Independent Contractor Final Rule, which is currently scheduled to go into effect in May 2021 and would have the practical effect of making it easier for employers to classify their employees as independent contractors.

The DOL's withdrawal proposal was open for public comment until 12 April 2021, and it will next either issue new or revised Final Rules or simply withdraw the existing ones.

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California pay data reporting – California has adopted a new pay data reporting law which requires covered employers to submit the first set of data to the state by 31 March 2021 (unless a deferral was granted, in which case the deadline was 30 April 2021) and annually thereafter. Covered employers must submit pay and hours-worked data by establishment, job category, race, ethnicity and sex (pay data) to the California Department of Fair Employment and Housing (the DFEH). The new law covers private employers with 100 or more employees (at least one of whom must be in California) who are required to file an EEO-1 report under federal law. In cases of non-compliance, the DFEH may seek an order for compliance and is entitled to recover related costs.

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In conversation with...

IN THIS EDITION, WE TALK TO **ANNA KARINA JIMÉNEZ**, DENTONS' CO-HEAD OF CENTRAL AND SOUTH AMERICA REGIONAL EMPLOYMENT AND LABOUR PRACTICE GROUP.



Tell us a bit about yourself.

I am a Partner at the Dentons Muñoz office in San José, Costa Rica. I am in charge of Employment, Labour and Business Immigration for Costa Rica and the Central America region. I am also the Regional Representative for Employment and Labour for the LAC (Latin America and the Caribbean) region. I have been with the legacy firm of Dentons for 16 years and, prior to that, I worked as adviser at the Costa Rican Congress. My practice delves into day-to-day preventive labour advice to multinational corporate employers, negotiation and transaction advice, and labour litigation.

I am the mother of one daughter (20) and two sons (16 and 13) and, along with my husband of 23 years, we have had the opportunity to spend some time together, which was rarely the case prior to these trying pandemic times. I miss spending time with close friends and teammates, and have tried to make the best of it by meeting regularly via virtual meetings and sharing experiences about each other's current lifestyles.

What is it that you like about Dentons?

Joining Dentons has been one of the most fulfilling professional experiences I have had in my career, as it has opened a window to what being a member of a global law firm is all about. Being a Dentons member is being a part of the most dynamic, enthusiastic and engaged group of colleagues, of all ages and backgrounds, which has given me career and personal first-hand knowledge. In particular, about global trends in the legal industry and in topics such as personal branding, current marketing techniques, mindfulness and how legal services are developing as a result of the Information Age. This is only possible when you are a part of such a prestigious organisation.

What developments do you expect to see in 2021?

I expect big changes regarding the "new normal" way to work and provide legal services. From a work perspective, we will have to get used to doing more things remotely and to figure out how to keep team dynamics as "personal" as possible. Now, we will have to make teams work from a distance. We will also have to get used to travelling less to visit clients and close deals, and still ensure that the quality of legal services remains efficient and of a high quality. For this, we will have

to resort to new technologies and more modern ways to provide advice in a timely way. Moreover, the current vaccination programmes taking place around the world at different speeds will also change how we interact at the workplace and how flexible we will be able to be, if and when we travel to other countries.

What activity is at the top of your 'Bucket List'?

I look forward to visiting and meeting colleagues at our upcoming Dentons Partners meetings, as well as getting to know places I still have not been able to visit. I also plan to include outdoor sports in my daily routine, as the pandemic has shown me that taking care of oneself should be at the top of everyone's "to do" list.

What do you enjoy doing outside of work?

I enjoy having long walks with family and friends. Last year, by not having to commute to work or to client meetings that much, I had the chance to read more and learn a bit about non-legal topics such as mindfulness and how to stimulate your brain with artistic and musical activities. I also became a member of my gym's Working Women group, where we share tips on how to keep a balance between the profession's daily demands and a healthy lifestyle.

Dentons news and events

COVID-19 EMPLOYMENT HUB

Please click [here](#) for access to the latest country developments on COVID-19 and employment law.

GLOBAL COLLECTIVE REDUNDANCY GUIDE

Managing a global workforce reduction programme while navigating local law requirements can be a complex process. Our Dentons Global Employment and Labour team is perfectly placed to support clients, and is pleased to introduce its Global Collective Redundancy Guide and tracker. This tool provides quick and easy access to summaries of the collective dismissal and redundancy rules in more than 50 countries. Click [here](#) to access the full guide

DENTONS WOMENLEAD

Dentons has incredibly talented women who have demonstrated success in many ways, both internally and externally. WomenLEAD (Leadership, Entrepreneurism, Advancement, Development) is a network that plays a critical role in supporting and building the success of women in our Firm. Dentons continually seeks to improve women's advancement within the Firm and to provide the resources and platform to enable women to connect with and learn from each other. For the latest events click [here](#).

CANADIAN EMPLOYMENT AND LABOUR WEBINAR SERIES: (COVID-19) – LEGAL UPDATE FOR CANADIAN EMPLOYERS

Join the Dentons Canadian Employment and Labour group on 28 May for part 24 of its [Legal update for Canadian employers](#), a one-hour complimentary webinar series on workplace issues relating to the COVID-19 pandemic. Please click [here](#) for registration information and to access past webinar materials. Registration information will become available in the week prior to the event.

YOUTH MONTH IN SOUTH AFRICA

In June, Dentons' South African office will be launching a skills development workshop aimed at giving the youth of South Africa additional skills to make them more employable in the job market. We will be collaborating with the South African Department of Labour, select clients as well as top recruiters.

LEARNERSHIP PROGRAMME

Our team in South Africa has partnered with Strategic Skills to help fund mostly final year university students with outstanding university fees, so that they are able to obtain their results and move on with their careers.

DENTONS LAUNCHES COMBINATION IN NIGERIA

Dentons has launched its combination with leading Nigerian law firm, Adepetun, Caxton-Martins, Agbor & Segun (ACAS-Law). Being the first of its kind in Africa's leading economy, this is the most exciting African combination the industry has seen, and gives Dentons a presence in the key commercial hubs of Lagos, Abuja and Port Harcourt. Please click [here](#) for more details.

DENTONS OPENS OFFICE IN GRENADA

With locations in more than three times as many countries as its competitors in Latin America and the Caribbean, Dentons' opening in Grenada further fortifies its standing as the first and only Pan-Caribbean law firm in the history of the legal profession. Please click [here](#) for more details.

DENTONS COMBINES WITH LEADING FIRMS IN BOLIVIA AND ECUADOR

We are pleased to announce that our partners have voted to combine with two leading firms in Latin America: Guevara & Gutierrez in Bolivia and Paz Horowitz Abogados in Ecuador. Please click [here](#) for more details.

DENTONS LAUNCHES COMBINATION WITH A LEADING FIRM IN TANZANIA

We are pleased to announce that Dentons has launched its combination with East African Law Chambers (EALC) in Tanzania, furthering its strategy to scale across Africa. Please click [here](#) for more details.

Regional developments

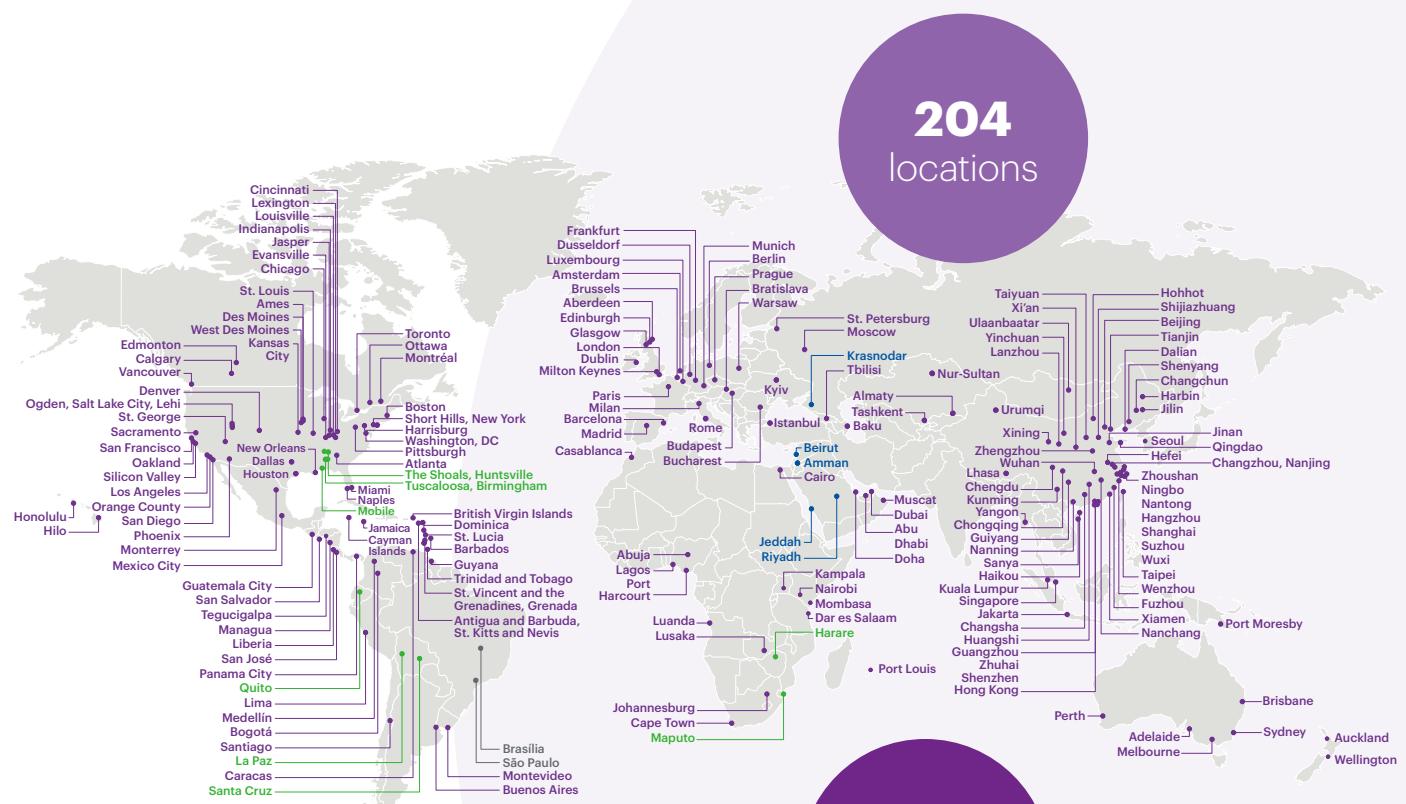
SOUTH KOREA

Dentons Lee welcomes **Woon-Bae Jeon** and Attorney **Yong-Moon Kim** to its team. Woon-Bae Jeon is a former high-ranking public official at the Ministry of Employment and Labour and joins as the Firm's adviser for employment and labour cases. Woon-Bae Jeon is one of the nation's prominent experts in labour and employment, having acquired in-depth expertise and extensive first-hand practical experience while working as a public servant, including as head of the Planning and Coordination Office at the Ministry of Employment and Labour, executive officer of the Presidential Office for Labour-Management Relations, chairperson for the Seoul Regional Labour Relations Commission and Head of the Employment & Labour Training Institute. Yong-Moon Kim is a highly regarded expert attorney in employment and labour law with more than 15 years of experience. Before joining the Firm, Yong-Moon Kim acquired his in-depth expertise in labour relations while working at Yoon & Yang LLC (2006-2008) and Lee and Ko LLC (2009-2021) and he currently serves, on a pro bono basis, as an external adviser on a number of important committees .

UAE

Shiraz Sethi has joined the Firm's Dubai office, bolstering our employment capabilities across the Middle East. Shiraz will assume the role of Regional Head of Employment, bringing a wealth of experience to the position. With more than 10 years of expertise in the Middle East, Shiraz is known for his contentious and non-contentious employment experience and advises multinationals and local companies on all aspects of UAE labour law and DIFC employment law issues. Prior to joining Dentons, Shiraz served as Regional Managing Partner and Head of the DWF employment practice. He has also been instrumental in the development of key legislation related to UAE labour laws, including drafting the commentary of the DIFC Employment Law, amendments to the DIFC and ADGM employment laws, drafting the DMCC COVID-19 guidelines and appointment to the working committee to draft the DIFC Presidential Directive. Shiraz is also ranked in Chambers and Legal 500. He is one of the region's foremost thought-leaders on employment law, appearing on various media platforms including Dubai One, CNBC News and Dubai Eye radio, contributing to news outlets such as Gulf News, The National and Khaleej Times, and authoring articles for Lexis Nexis Middle East, The Oath and Thomson Reuters. In assuming his new role at Dentons, Shiraz is joined by Employment and Labour Legal Manager, **Ali Al Assaad**, also formerly of DWF. Ali has more than seven years of experience in advising on employment matters and has advised and represented a considerable number of clients in employment disputes.

Dentons Employment and Labor Practice has over 450 employment, immigration, and benefits lawyers operating in all our offices around the world. Our coordinated legal strategy is specifically designed to help multi-national businesses maintain a consistent corporate culture and comply with local employment and labor laws, while avoiding the need to hire separate counsel in each jurisdiction. As a result, multi-national businesses in all industry sectors regularly engage and rely on Dentons' lawyers to create and implement policies and strategies designed to ensure compliance with local employment and labor laws, advance and facilitate the corporate culture of the organization, and help minimize the risk of costly employee disputes.



Locations in purple represent Dentons offices.
Locations in blue represent associate firms, offices and special alliances.
Locations in green represent approved combinations that have not yet been formalized.
Locations in gray represent Brazil Strategic Alliance.



12,000+
total number
of lawyers

20,000+
Total number
of people

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ABOUT DENTONS

Dentons is the world's largest law firm, connecting top-tier talent to the world's challenges and opportunities with 20,000 professionals including 12,000 lawyers, in more than 200 locations, in more than 80 countries. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and award-winning client service challenge the status quo to advance client interests.

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