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# Global Employment Lawyer

Global Employment  
& Labor Quarterly Review

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Issue 10 • June 2023

**Welcome to the latest edition of our quarterly global employment and labour law newsletter. We are delighted to bring you a comprehensive overview of the ever-changing landscape of employment and labour law and practice.**

In this edition, we aim to keep you informed about recent changes and updates, covering a wide range of topics, including new social and labour codes in various jurisdictions, further scrutiny of so-called gig economy workers and their treatment for tax and employment protection purposes, evolving workplace practices and enhancements to family leave. To name but a few!

Our mission is to deliver timely and insightful analysis of the most significant developments in employment and labour law worldwide. We are committed to keeping you informed and empowered throughout the year, and we hope you find this edition of our newsletter valuable.

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# Legal updates Africa

## Nigeria

**Casual employment** – The current Labour Act does not include a definition for a casual employee or casual work. However, by inference, it had provisions on employment of casual employees by mandating employers not to employ workers for more than three months without the formal acknowledgement of such employment evidenced by a written statement stating the terms and conditions of employment by the employer.

In a recent court matter at the National Industrial Court of Nigeria, a worker was dismissed without notice and without retirement benefits, the Court condemned the employer and held that not giving the worker an employment contract “within three months” of such employment was a breach of the Labour Act.

**New employment bill** – The National Assembly is currently considering a bill to amend the extant Labour Act, which is expected to be passed into law in 2023. The proposed legislation aims to address:

- the casualisation of workers by employers by prohibiting and criminalising the act; and
- the current non-regulation of employment of domestic workers, apprentices, interns and similar workers, by instituting a recruitment agency licencing system.

## Recent decision on wrongful dismissal –

The general rule is that an employer can terminate a contract of employment at any time for a good or bad reason or for no reason at all, provided that the appropriate notice is given or payment is made in lieu of such notice. However, this does not reflect the position of the National Industrial Court, which recently reinforced its position and held that it is unfair for an employer to terminate the employment of an employee without notice and without giving any reason, thereby following international labour practice.

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## South Africa

### **Extension of coverage for employee protections**

– The Minister of Employment and Labour has announced an increase in the annual earnings threshold for the purpose of the Basic Conditions of Employment Act (BCEA). From 1 March 2023, employees who earn annual remuneration below ZAR 241 110.59 (approximately US\$12 652) enjoy full protection under the BCEA.

The effect of the increase in the annual earnings threshold is that, among other things, these employees will now enjoy the protection of the following additional sections in the BCEA:

- limits on working hours;
- overtime pay and pay for work on Sundays;
- meal breaks;
- daily and weekly rest periods;
- limits on night work; and
- public holidays.

Employees below the annual threshold can dispute unpaid amounts and report unfair discrimination to the Commission of Conciliation, Mediation, and Arbitration. Those above the threshold must go to court. Fixed-term employees below the threshold may be considered permanent if there's no justifiable reason for having a fixed term.

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## Uganda

### **Employers must seek consent before paying in lieu of notice**

– The Court of Appeal of Uganda held that an employer must obtain the consent of an employee, at the time of termination, before making payment in lieu of notice (PILON). According to the Court, a PILON clause in an employment contract does not by itself satisfy the notice requirements under the Employment Act. Based on the decision, if an employee does not consent the employer must allow them to continue working until the end of the notice period.

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## China

### **New regulation in China targets social insurance violations and proxy payments**

– On 1 May 2023, China introduced the “Administrative Measures for Social Insurance Fund Supervision and Reporting” which encourages the public to report social insurance violations.

Many employers circumvent the regulations on covering social insurance for workers through the use of social insurance agents. For workers, proxy payments could potentially disrupt on-time claims to the social insurance fund, thereby violating their rights. While for employers, resorting to proxy payments could land them in legal hot water. In addition, employers are held accountable if workers’ compensation claims are rejected due to proxy payments.

The government ramped up its effort to clamp down on these practices with the “Administrative Measures for Supervision of Social Insurance Funds” earlier this year (which made social insurance proxy payments a criminal offence). The latest regulation, introduced on 1 May, takes that a step further by encouraging public reporting to tackle these illicit payments.

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## India

### **Amendment to Karnataka professional tax regime**

– The state of Karnataka has amended the law governing taxation of professions, trades, callings and employment in the state. Further, the amended statute now allows people to pay professional tax as per self-assessment and prescribes revised penalty limits for non-payment.

### **Female employees in Haryana permitted to work night shifts**

– The state of Haryana has permitted female employees to work from 8pm to 6am in certain establishments, subject to certain terms and conditions. The permission has been granted for a period of 1 year to IT and ITeS establishments, banking establishments, 3-star or above rated hotels, 100% export-oriented establishments and logistics and warehousing establishments operating in the state of Haryana. The exemption is, among other things, subject to the establishment ensuring strict compliance with conditions such as security and safety, prevention of sexual harassment, transportation facilities, prior consent, and grievance and complaints procedures.

### **Integration of various services via a single window portal for West Bengal**

– The state of West Bengal has launched a single window portal for investors to obtain various licences, registrations, approvals and similar online. All investors in the state of West Bengal are now required to obtain the above services through the single window portal, instead of the standalone systems of the labour department.

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## Kazakhstan

**New Social Code** – A new code comes into effect on 1 July 2023 which aims to:

- improve the services provided to vulnerable social groups (orphans, disabled individuals, and people who are homeless);
- support women during maternity leave and after they come back to work; and
- develop a pension system.

In connection with the new Social Code, some changes to the Labour code will also be made on 1 July 2023:

- introduction of a four-day work week, which can be put in place by agreement of employer and employee;
- sick leave payments will rise from approximately US\$110 to approximately US\$188 per month;
- employers will be able to hire several employees to perform a single job function together (joint employment). The Social Code provides a specific list of categories of employees allowed to work together (e.g., persons with disabilities, single parents, retired persons, etc.);
- employees will be granted the right to a staggered work schedule (i.e., work on different days of the week with different working hours) provided that, employees do not work over 11 hours.

Certain rules around the “gig-economy” were added, specifically for those working for online platforms.

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## South Korea

### **Custodial sentences underscore the need to comply with health and safety obligations –**

Earlier this year the Serious Accidents Punishment Act (SAPA) came into force. This law governs the penalties imposed on business owners, management executives, public officials, and corporations that operate businesses, facilities, public-use amenities, public transportation, or handle materials or products that pose risks to human health. The SAPA specifically addresses instances where these entities have breached their safety and health responsibilities, leading to human casualties.

In a case heard on 6 April 2023, involving a tragic accident where a subcontracted worker fell to his death at a nursing hospital construction site, both the prime contractor representative and the prime contractor corporation faced charges for neglecting to ensure safety and health. The court determined that the victim's death resulted from a breach of duties under the SAPA. However, the court also acknowledged that there were contributing factors to the accident, such as the widespread practice among construction workers of indiscriminately dismantling safety railings. As a result, the prime contractor representative was sentenced to one year and six months in prison with a suspended execution for three years, while the prime contractor corporation received a fine of KRW 30 million.

Subsequently, on 26 April 2023, another court sentenced a prime contractor representative to one year in prison for violating SAPA and the Occupational Safety and Health Act (OSHA), in relation to the death of a subcontracted worker at an outdoor worksite. The court ordered the representative to be detained. The direct employer of the deceased worker, the subcontractor representative, was sentenced to six months in prison with a suspended execution for two years.

These cases are anticipated to significantly influence the future application and interpretation of the SAPA and OSHA. As a result, CEOs and management executives of companies operating in South Korea must make diligent efforts to thoroughly review and comply with their legal obligations regarding health and safety measures.

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## Taiwan

### **New wage payment date agreement guidelines –**

The Ministry of Labor has issued new guidelines aiming to establish reasonable wage payment date agreements between workers and employers. The guidance also outlines the timeline for promotion by local competent authorities.

### **Labor insurance rights and protections for workers reporting for work or resigning on holidays –**

To ensure the financial security of labourers, the Labor Insurance Act provides measures to protect their rights and benefits even when they report for work or resign on holidays. The Ministry of Labor has clarified that if a worker reports for work or resigns on a holiday between 17:00 and 24:00, or on a day when work is suspended due to local government regulations, the employer must ensure that labour insurance coverage commences or concludes on the specific date of reporting for work or resignation, protecting the worker's rights and interests.

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## Uzbekistan

**New Labour Code** – On 30 April 2023, a new Labour Code came into force. The new Labour Code is based on the equality of labour rights, prohibition of discrimination, freedom of labour, illegitimacy of worsening the legal status of an employee and introduces a number of innovations to labour legislation. Important changes include:

- protection of personal data. Previously, provisions on the protection of personal data of the employee were absent. However, the new Labour Code fully regulates general requirements for processing, storage and protection of personal data of employees;
- permission for retirees to work. Previously, employers were obliged to terminate employment contracts with retirees indicating that reaching the age of retirement was one of the grounds for termination of the employment contract. However, the new Labour Code excludes this provision and guarantees the labour rights of retirees;
- extension of labour leave. The new Labour Code extends the minimum duration of labour leave from 15 working days to 21 calendar days;
- settlement of relations with certain categories of employees. The new Labour Code includes the regulation of labour relations for certain categories of employees. These categories include those who work remotely, seasonal workers, temporary workers, domestic workers, workers hired by individual entrepreneurs and others (medical workers, foreign workers, drivers); and
- calculation of severance. Severance payments will be calculated by reference to length of service and average salary. Ranging from 50% of average monthly salary (0-3 years' service) to at least 200% average monthly salary (over 15 years' service).

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## Vietnam

**Benefits to employees working in dangerous conditions** – New regulations have been introduced which bring in new compensation for employees working in dangerous conditions, including those working in conditions where the hygiene standards of the Ministry of Health are not met. The value of compensation available ranges from 13000 VND to 32000 VND. Separately, benefits are to be included in salaries rather than being paid in cash.

**Vietnam recognises COVID-19 as an occupational disease** – As of April 2023, Vietnam has recognised COVID-19 as an occupational disease. New regulations provide guidance on the diagnosis and assessment of COVID-19. Employees in certain occupations who are at greater risk of contracting COVID-19 at work, such as those working in the health industry between February 2020 and March 2023, will be entitled to the compensation afforded by the occupational disease regime.

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# Australasia

## Australia

### **New dispute mechanism for flexible work arrangement and parental leave extension refusals**

– On 6 June 2023, the new Fair Work Act jurisdiction to dispute refusals of requests for flexible working arrangements and extensions to unpaid parental leave will commence. The Fair Work Commission has indicated that the new dispute mechanism will operate in the same way as other dispute mechanisms under the Fair Work Act.

**Commencement of other “Secure Jobs, Better Pay” powers** – A number of the legislative amendments made in December 2022 are set to formally commence on 6 June 2023 including:

- the limit on the use of fixed term contracts;
- the introduction of multi-employer bargaining; and
- penalties for the use of pay secrecy clauses.

**Zombie agreements** – Employers are reminded that they also must inform employees of the impending termination of any “zombie” enterprise agreements (some 100,000 agreements made before the Fair Work Act which are still in existence), and the consequent reversion to the relevant Award, by 6 June 2023.

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## New Zealand

### **COVID-19 related wage reduction not justified –**

The Employment Court has found that an employer unjustifiably disadvantaged its employees by reducing their wages by 20% without consultation due to financial difficulties caused by COVID-19. The Court acknowledged the hardships on employers but noted that the employee had their own financial obligations.

### **Timeframe for raising sexual harassment**

**grievance likely to be extended –** The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill is set to have its third reading and history shows bills are rarely rejected at this point. This extension only applies in cases where there is a sexual nature as opposed to other forms of bullying or harassment. It will not apply retrospectively.

### **Bill introduced to clarify intentional withholding of wages as theft under the Crimes Act –**

The Crimes (Theft by Employer) Amendment Bill was introduced to Parliament on 6 April 2023. If passed, it would create a new offence punishable by fine or imprisonment which captures employers who intentionally do not pay monetary entitlements owed to their employees. This continues the trend of new bills seeking to protect vulnerable employees.

### **No statutory right to strike for pay equity –**

In a recent case relating to a proposed strike, the full Employment Court held that there is no right to strike under the Equal Pay Act 1972. As the proposed strike related to a pay equity claim rather than bargaining for a collective agreement, it was unlawful.

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# Central and South America

## Argentina

### Ministry of Labor issues notes requesting registration before telework register –

The Argentinian Ministry of Labor has begun requesting that companies register their use of telework, including:

- the software or the platform used by the employer to perform teleworking; and
- the list of employees doing telework.

Employers must update the register with any new telework employment contracts on a monthly basis and inform the relevant trade union organisation. Companies are not required to report their commercial activity. The registration can be made online through the Ministry of Labor's official website.

### New collective bargaining agreement to regulate electronic security –

A new collective bargaining agreement (CBA) was signed by the Commerce Union and the Argentine Chamber of Electronic Security to regulate obligations of employees and employers whose main activity is the sale, installation and maintenance of electronic security systems. The main points of this new CBA include the following:

- this new CBA is an annex to the Commerce CBA No. 130/75. The labour categories, basic and additional salaries will be equivalent to those established in the CBA No. 130/75;

- electronic security companies paying higher salaries than those established in the new CBA, will pay the difference between the basic salary and the higher salary as a “company additional” payment;
- in addition to the leaves agreed in CBA No. 130/75, the new CBA includes additional leaves such as: (i) leave of absence due to a gender violence situation; (ii) leave of absence for non-biological fathers; and (iii) leave of absence for adoptive and/or non-biological mothers.

### Bills proposing reduction of working hours limit –

Two bills have been brought before the Congress proposing reductions to the maximum weekly working hours limit of 48 hours. One bill proposes a weekly limit of 40 hours, with the other bill proposing a greater reduction to 36 hours.

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## Bolivia

**Regulatory package promulgated** – As is usual at this time of year, the President has enacted a regulatory package that implements various changes in Bolivian Labor Law. In summary, the regulations issued by the Executive branch are as follows:

- an increase of 3% in the basic salary of employees in the private sector and a 5% increase in the national minimum wage (i.e. from Bs 2.250 (approximately US\$328) to Bs 2.362 (approximately US\$339));
- Mother's Day and Father's Day leave entitlements; and
- a requirement for employers to authorise leave for general and professional training for employees who are students at universities and certain other institutions (subject to qualifying criteria and conditions).

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## Chile

**Changes to working time** – On 26 April 2023, a law reducing the ordinary working week from 45 to 40 hours was published. This law reduces the working week in a gradual manner to:

- 44 hours in April 2024;
- 42 hours in April 2026; and
- 40 hours in April 2028.

Additionally, this law contemplates other modifications, such as:

- the right of working parents of children up to 12 years old to have a total band of hours within which they may anticipate or delay the start of their work by up to one hour;
- the weekly maximum of 40 hours may not be distributed in more than 6 or less than 4 days (currently it is 5 days); and
- the possibility for the parties to agree that overtime hours may be compensated by additional holiday.

**Bill to increase the minimum wage** – On 24 April 2023, the Bill to readjust the minimum wage, announced and promoted by the government, entered the Chamber of Deputies. Its objective is to readjust the minimum monthly income to the following amounts by the corresponding dates:

- CLP\$440,000 (approximately USD\$547.58) by May 2023;
- CLP\$460,000 (approximately USD\$572.47) by September 2023; and
- CLP\$500,000 (approximately USD\$622.25) by July 2024.

It is likely that although the Bill will eventually be approved, it will not be approved with the speed expected by the government.

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## Costa Rica

**Unregistered independent employees** – Starting from 8 May 2023, unregistered independent employees have two years to voluntarily approach the Social Security Administration and regularise their status. By doing so, they can benefit from a retroactive statute of limitations of four years for paying any contributions they owe to social security. However, if the two-year period elapses without an unregistered independent employee coming forward to register, the statute of limitations will be ten years.

**Public sector framework** – On 10 March 2023, the Public Employment Framework Law came into force for the public sector. Its purpose is to ensure efficiency and effectiveness in the provision of public goods and services, to protect subjective rights in the exercise of the public function and to establish, for equal employment, identical conditions of efficiency, position, working hours and conditions, as well as equal salary, which provide wellbeing and a dignified existence for public employees.

**National employment program** – The Costa Rican government has signed a decree which will strengthen the services provided by the National Employment Programme (PRONAE). The PRONAE will extend its services to focus on increasing the number of women and young people in work. The objective is to reduce disparities and promote social inclusion.

**COVID-19 vaccine no longer mandatory** – Going forward access to the vaccine will continue to be available, but most employees will be able to choose whether or not to have it. The COVID-19 vaccination will be mandatory only for public employees and health care professionals involved in the direct care of patients in both the public and private sectors. Employers will not be able to sanction employees who do not want to be vaccinated or have not completed their previous vaccination schedules. Likewise, it will not be possible to request being vaccinated as a requirement during recruitment processes.

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## Ecuador

**Family leave reforms** – A new law came into force 12 May 2023 which increases family leave periods. Some of the objectives of this law are to guarantee and promote paternal co-responsibility and to guarantee the labour stability of women who are pregnant, giving birth, post-partum and breastfeeding. In summary, the law includes the following main reforms:

- paid paternity leave is increased from 10 to 15 days;
- unpaid leave for childcare is increased from 9 to 15 months;
- breastfeeding period will last for 15 months following maternity leave; and
- adoption leave is increased from 15 to 30 days.

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## Guatemala

**New regulation establishes a regionally differentiated minimum wage** – The new regulation considers macroeconomic disparities between regions, with “CE1” encompassing the department of Guatemala and “CE2” covering the rest of the departments. This regulation takes into account workers’ and families’ needs, overall wage levels, cost of living, social security benefits, standard of living and economic factors. Several aspects were considered for the minimum wage adjustment, including inflation, GDP growth, population growth, productivity, and the difference between real income and the fixed minimum. The Governmental Agreement 353 addresses the economic challenges by setting minimum wages based on economic districts for agricultural, non-agricultural, maquila, and export activities. The intention is to incentivise economic decentralisation, promote development in other regions, and create employment opportunities that can improve quality of life and purchasing power, while reducing poverty.

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## Honduras

**End of COVID-19 rules** – The Biosecurity Manuals and Protocols related to the COVID-19 pandemic and applicable to government offices, public service centres, and private companies have been suspended. However, the mandatory use of masks or face coverings will still be enforced in places and spaces where adequate physical distancing cannot be guaranteed.

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## Mexico

**Voluntary Labor Verification Program (VELAVO)** – VELAVO was introduced on 20 April 2023 as an alternative to labour inspections. Instead of being inspected at random, employers can voluntarily seek to demonstrate compliance with labour obligations through the VELAVO. The objective of the programme is to ensure that workers in Mexico are treated appropriately, receive the necessary training and education and that their health and safety is safeguarded. Employers that decide to participate in the VELAVO will not be randomly selected for inspection as long as their results under the programme are satisfactory.

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## Peru

### Enhanced protection for people with diabetes –

From 5 May 2023, employers must:

- avoid discriminating against individuals suffering from diabetes (whilst recruiting and during employment);
- develop concrete actions for the prevention of diabetes, such as incorporating water, fruit and healthy products in lunchrooms and other areas;
- generate work environments that promote healthy practices to prevent diabetes among their employees; and
- support the dissemination of information and knowledge provided by the Ministry of Health on aspects related to the change towards healthy behaviours that reduce the risk of acquiring diabetes.

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## Uruguay

**New register for organisations** – Organisations of employees and employers can now be assigned legal status by registering in the new Register of Organisations of Employees and Employers, which was created by the Ministry of Labour and Social Security. If an organisation opts to register, it will:

- be required to uphold civil rights and obligations and be able to represent the organisation in court, except for those cases in which their interest is highly personal;
- be able to demand the employer retain and deposit the union fees of its affiliates;
- be able to oblige the grant of necessary information for collective negotiations.

Registration is optional and does not prevent any union from participating in strike measures nor representing other workers in areas of collective negotiations.

### Right to be absent from work because of

**pregnancy** – Pregnant women, both in private and public sectors, whatever the nature of their employment relationship, can take four hours off work each month, to attend pregnancy appointments. In the same manner, spouses and partners are entitled to take four hours off work each month, to accompany their significant other. This time will be considered as time effectively worked and will be remunerated accordingly.

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## Venezuela

**New labour benefits introduced** – On 11 May 2023, Venezuela announced an increase in certain labour benefits. This included the Nutrition Benefit for all public and private employees which will be a minimum amount of \$40 payable in Bolívares.

**National Assembly enhances protection for people with autism** – On 24 April 2023, a law was enacted that protects the labour rights of people affected by autism, including the promotion of equal opportunities, non-discrimination and the assignment of work according to their capacities.

**Payment of salary in foreign currency must be properly documented** – The Social Chamber Cassation of the Supreme Tribunal of Venezuela recently determined that payment to employees must be made in local currency (Bolívar) unless the parties have expressly agreed otherwise. The employee in this case offered emails and bank transfers as evidence of payment of the salary in foreign currency. However, the court decided that those documents could not be interpreted so as to modify the employment contract which clearly stated that the salary was to be paid in Bolívares, nor could the evidence form an independent agreement.

**New law on disabled employees** – The Special Law for Disabled Employees has been enacted which will protect labour rights for disabled employees. In addition, it further develops the general principles in the Constitution and existing labour legislation in terms of non-discrimination, promotion of equal opportunities and increased accessibility to technology. The law establishes that any worker with a child or pupil with a disability in their family may not be dismissed without prior authorisation from the Labor Inspector Officer. Under the law, 5% of all staff in both public and private entities must be people with disabilities. Finally, the law creates a national registry for workers with disabilities, a legal obligations clearance certificate and a new stamp to recognise employers' good standing concerning this law and other regulations for the protection and integration of disabled people.

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**EU Pay Transparency Directive** – The Directive sets out minimum standards for promoting pay transparency and establishing enforcement mechanisms to be adopted by EU member states. Among other things:

- it will require EU companies to disclose information that makes it easier for employees to compare salaries and expose gender pay gaps;
- if there is a gender pay gap of 5% or more, employers must carry out a joint pay assessment in co-operation with workers' representatives;
- employers must inform job seekers about the starting salary or pay range of advertised positions before interview, and must not ask candidates about their pay history;
- once in a role, workers will have the right to request and receive information about average pay levels categorised by sex, plus the criteria used to determine pay and career progression, which must be objective and gender neutral;

- member states must put penalties in place for employers that breach the rules; and
- workers who suffer gender pay discrimination will be entitled to compensation, including recovery of back pay and related bonuses/ payments.

Member states will have until 7 June 2026 to implement the requirements of the Directive.



## France

### **Consequences of setting variable remuneration objectives too late**

– It is important to properly define targets and commission plans for employees. When setting objectives for variable remuneration, two main rules should be followed: (i) objectives must be achievable and realistic based on market trends and challenges; and (ii) they must be communicated to the employee at the beginning of the year or reference period. There may be exceptions to the second rule in specific circumstances, such as (among other things) company restructuring or reorganisation, which can justify late objective setting.

Previously, unjustifiably late objectives were deemed unenforceable against the employee, and courts determined the amount of variable compensation awarded based on previous agreements, the employee's performance and case-specific circumstances. While employers were sometimes required to pay 100% of the objectives, the sanction was not automatic, and courts could order partial payment.

However, in an unpublished decision, the Supreme Court has ruled that if objectives are set late, they are unenforceable, entitling the employee to claim the full maximum target bonus. Additionally, if the variable component is significant, the employer may face the risk of a constructive dismissal claim if the targets are not set, leading to a breach of the employment contract.

To mitigate these risks, it is essential to establish personal objectives and targets well in advance of the reference period, allowing employees to monitor their performance effectively and avoid related issues.

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**Germany**

**New legislation on the protection of whistleblowers will come into force in June 2023**

– The implementation of EC-Directive 2019/1937 has long been overdue as reported in our recent Reviews. The German Federal Parliament (Bundestag) passed the bill in December 2022. However, the German Federal Council (Bundesrat) representing the federal states had blocked the new legislation in February of this year. On 9 May 2023, the two parliamentary bodies were able to reach a compromise. In particular, the draft act no longer contains an obligation for employers to enable anonymous whistleblowing reports. Further, the maximum fine was reduced from EUR100,000 to EUR50,000. Following this compromise, both the Federal Parliament and the Federal Council accepted the draft and it should now come into force in June 2023.

**Right to unilaterally determine place of work not limited to Germany**

– In a recent decision, the Federal Labor Court held that the employer's right to unilaterally determine the employee's place of work is not limited to the territory of Germany. In this case, an airline had decided to close down its operations in Nuremberg (Germany) and to relocate the plaintiff to Bologna (Italy). The court ruled in favour of the airline, determining that the employment contract did not specifically exclude the possibility of a cross border relocation. Further, the judges accepted that the airline had made its decision using reasonable discretion, i.e. taking into account the legitimate interests of both parties. Given that the Nuremberg base had been closed down and that there was no other German base where the plaintiff could be deployed, the family situation of a pilot could not prevail.

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## Italy

### Significant labour discipline amendments –

On 5 May 2023, urgent measures for social inclusion and access to the job market (so-called Labor Decree) came into force. Key changes for the private market include:

- institution of a new Inclusion Allowance as a measure to counter poverty, fragility and social exclusion of disadvantaged segments of the population through paths of social inclusion, as well as training, employment, and active labour policy. The economic benefit is equal to €6,000 per year and will be payable for 18 months (renewable for an additional 12 months) subject to certain conditions. Significant contribution benefits are available to employers who hire beneficiaries of the Inclusion Allowance;
- amendments to occupational health and safety regulations, including an obligation for employers to appoint an occupational doctor when required by a risk assessment, to provide specific training on the use of work equipment and the extension of sanctions for non-compliance;
- the rules on fixed-term employment-contracts, which can now be extended for a duration of more than 12 months in certain circumstances, provided that they do not exceed 24 months;

- some of the information required to be provided under the Transparency Decree may be replaced by a simpler reference to the national collective bargaining agreement; and
- incentives to hire young or disabled workers, by exempting employers who hire such workers from certain taxes for 12 months.

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## Netherlands

### Employment status of delivery riders –

On 24 March 2023, the Supreme Court ruled that Deliveroo riders in the Netherlands are employees despite having entered into contracts as independent contractors. This ruling will have an impact on independent contractors and companies hiring those workers.

For both tax and civil law purposes the requirements for paid employment are currently as follows:

- the labour is performed personally;
- there is a relationship of authority (hierarchy), where the employer determines how the work must be performed and the employee has to comply with the employer's instructions;
- the employee receives remuneration for the work that exceeds an expense allowance; and
- If any of these requirements are not met, there is no employer-employee relationship and no wage tax/employee insurance obligations for the employer.

In relation to the personal performance requirement, the Supreme Court ruled that the fact that the riders were allowed to get someone to replace them, which points towards independent contracting, did not stand in the way of finding an employment agreement. The court took into account the fact that the practical importance of the replacement option for the riders was minor. The same applied to the freedom to work or not to work.

Regarding the second requirement of authority, the Supreme Court clarified that a court may also look at whether the work being performed is organisationally embedded, i.e. whether the work forms part of the company's core activities, and is therefore part of the normal business of the employer's company.

This new case law makes it necessary to reassess current contracts with self-employed persons to ensure there is no uncertainty about the qualification of the labour relationship. We would be happy to assist you in this process and we can always provide more information to you or your HR teams about this subject.

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**Slovakia**

**Mandatory changes to wages and benefits –**

Effective from 1 June 2023, there will be an increase in wages and benefits for weekend and night work (rates vary depending on the day/time being worked, the regularity of such work and whether it is high risk).

There is also a change in the maximum hours under the work activity agreement (520 hours per calendar year), provided that it is for the performance of seasonal work pursuant to the Slovak Labour Code.

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**Spain**

**Trade Unions cannot indefinitely block the implementation of the Equality Plan –**

Companies with a workforce of more than 50 employees must implement an equality plan, which must be negotiated with the trade unions (if no employees' representatives exist in the company). The High Court of Justice of Andalusia has ruled that if a company has called to engage with the trade unions and the trade union does not respond to the call within the next ten days, the company may implement its proposed plan.

Sanction for the use of cameras with audio recording for labour control purposes – The Spanish Data Protection Agency has ordered a company to pay EUR5,000 for using a video surveillance camera with audio recording without informing employees and other affected individuals. The surveillance system recorded their conversations in the workplace infringing the GDPR and another relevant data protection law. The recording of conversations was not justified where it was not related to the employees' compliance with their obligations or duties.

Remote on-call duty for telephone paging is not effective working time – The Supreme Court has ruled that on-call duties performed by employees on Sundays and holidays when the company is open for business are not considered effective working time.

Generally, if the employee's on-call duty allows them to be anywhere (without needing to be within a reduced distance radius) and they can freely manage their personal, family and social time, as long as they can guarantee telephone communication and the possibility of going to the work premises, such hours will not be considered effective working time.

In this case, the Supreme Court considered that, if limitations are required by the company, as long as they do not reach a sufficient intensity to reduce the employee's freedom to develop their personal, family and social life, on-call time will not be considered effective working time and only the time the employee spends answering the calls will be considered effective working time.

### **Employees must have the opportunity to present defence arguments prior to termination**

– A Catalonian court has determined that a misconduct dismissal was unfair because the company had not given the employee the opportunity to argue their defence before the dismissal letter was delivered and the termination was effective. This was the case even though the employer had good reasons for the misconduct dismissal.

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## **United Kingdom**

**Proposed reforms to non-compete, holiday pay and TUPE** – The government has launched proposals to:

- remove certain record keeping requirements in relation to working time;
- introduce rolled-up holiday pay and merge the basic and additional leave entitlements into one;
- remove the requirement to consult with employee representatives on a TUPE transfer, where the employer has fewer than 50 employees and those affecting less than 10 employees; and
- restrict the length of non-compete clauses to three months.

The stated aim of the Working Time Regulations and TUPE reforms is to reduce the administrative burden on businesses. The merging of basic and additional annual leave entitlement into one could pave the way for a change in how employers calculate holiday pay (potentially moving away from the requirements of EU law to include payments such as overtime and commission). The time limit on non-compete clauses would be a particularly substantial change, especially in sectors where it is not uncommon to see six or twelve month restrictions currently.

**Key pension changes** – Several changes to pension tax rules were announced in the Spring Budget 2023 and represent the most dramatic changes to pensions tax in almost a decade. The most significant change is the abolition of the lifetime allowance charge (which currently incurs a tax penalty on pensions savings above a certain amount) while the annual allowance for most people will also increase from £40,000 to £60,000. The changes apply to all pension savings and will apply from the 2023/24 tax year.

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# Middle East

## Jordan

**Minimum wage for 2023 and 2024** – Minimum wage for both Jordanian and non-Jordanian nationals is now set at 260 Jordanian Dinars per month. Exceptions to this rate include those in the textile business, and non-Jordanian homeworkers including maids, cooks, gardeners and the like.

**End of Defence Law** – The Defence Law came into force in response to the COVID-19 pandemic in an effort to mitigate the adverse effects of the virus, especially with regards to employment and health and safety. As of 7 May 2023, the Defence Law no longer applies. This is likely to cause a large increase in the number of employment claims brought before the courts in Jordan as now employers are free to dismiss their employees with or without cause, subject to due compensation – something that had been made much more difficult under the Defence Law.

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## Saudi Arabia

**New professions introduced into the Saudization system** – Saudization is a policy whereby companies doing business within Saudi borders are required to hire Saudi nationals on a quota basis. The list of businesses/roles that need to implement Saudization has now expanded and includes project management, procurement, sales, outlets providing services for shipping activities and freight brokers, women's decorating and sewing. Non-compliance may result in statutory penalties.

**Second quarter of documenting employment contracts on the Qiwa portal** – This initiative to document employment contracts on the Qiwa portal aims to protect the rights of both employers and employees by ensuring compliance with labour laws and accurate representation of contractual terms. Employees can accept, reject, or request modifications to their contracts through the MHRSD Qiwa platform. Once agreed upon, the MHRSD will ratify the contract, considering it officially documented. The portal also allows employees to easily update their contract information and verify its authenticity electronically. In the second quarter, employers are now required to record contracts for 50% of their employees, following the earlier requirement of 20% in the first quarter, with a further increase to 80% in the third quarter.

### **Introduction of a three-month temporary work visa**

– Saudi Arabia has launched a new three-month temporary work visa service. The visa can be obtained quickly, is electronic and valid for one year. The visa can also be extended for an additional three months. Notably, foreign nationals applying for this visa are not required to obtain a work or residence permit.

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### **Turkey**

#### **Mandatory mediation filing applies to more cases**

– Under Turkish law, individuals seeking to file certain types of lawsuit must file an application to a mediator first. The types of case where this is required include reinstatement lawsuits and certain types of employer and employee lawsuits.

From 1 September 2023, parties to an employment relationship will also be required to file an application to a mediator before bringing:

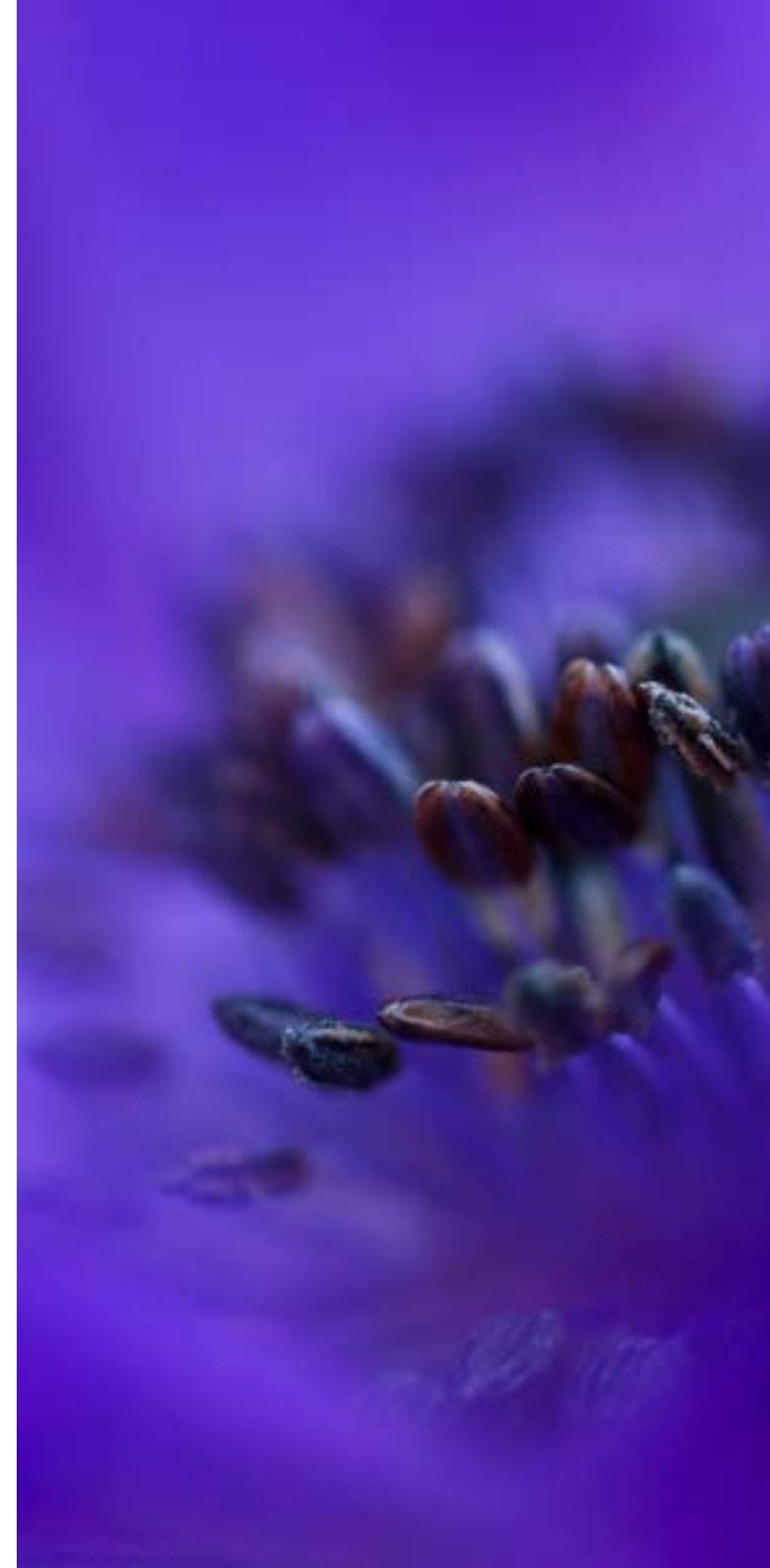
- actions for annulment of objection;
- negative declaratory actions; and
- restitution lawsuits related to employee or employer receivables and compensation based on the Labour Law, individual labour agreements or collective labour agreements.

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## United Arab Emirates

**Unemployment insurance scheme** – Following the introduction of the unemployment insurance scheme in the UAE, further amendments have been introduced:

- employees working for companies operating out of freezones, and employees working for semi-government companies, are now required to register in the unemployment insurance scheme; and
- for individuals employed prior to 28 February 2023, the deadline to register into the scheme is 30 June 2023, while employees commencing employment after 28 February 2023 will have a period of four months to register. An employee who fails to register will be subject to a fine of AED400. Furthermore, failing to make the contributions in a timely manner can trigger an AED200 fine. These fines will be imposed on the employee and not on the employer, as the obligation to register with the insurance scheme falls on the employee. The employer's role is limited to reminding the employees of their obligation to register.

**Emiratization quotas** – The Emiratization quota is increasing from 2% to 4%. This means that all private sector entities operating within the UAE mainland, with a headcount of 50 employees or more, will be required to have at least two Emirati employees for each 50 skilled expatriate employees they have. Any number less than 50 will be rounded up to the next 50 (e.g. having 60 skilled employees will be

considered as having 100 skilled employees). In the event of non-compliance, the entity will have to pay the authorities AED7,000 per month against every Emirati they did not hire. Emiratization evasion schemes will trigger a fine of AED100,000 and the fine will be increased to AED500,000 for repeat offenders.

This increase is being implemented in two stages. During the first stage (ending on 30 June 2023), the employer's obligation will be limited to achieving a 3% rate. The 4% rate will be the target during the second stage (starting from 1 July 2023 until 31 December 2023).

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# North America

## Canada

**Recent case law provides mixed signals to employers on layoffs** – The chaotic early days of the pandemic exposed how difficult it can be to implement temporary layoffs in Canada. Now some new case law provides mixed signals to employers as to how to navigate both recalls and the issue of mitigation.

General legal background on layoffs:

- the fact that temporary layoffs are permitted under the relevant employment standards legislation does not mean that the common law permits the layoff;
- layoffs will be permitted if there is an implied or express term of the employment agreement.

In a recent case the Ontario Court of Appeal clarified what is necessary for an employee to condone a temporary layoff:

- condonation requires a determination, viewed objectively, that the employer would believe at the time that the employee consented to the change;
- an employer must establish that an employee has condoned the change;
- a signature on a layoff letter will not be sufficient to demonstrate condonation if it only acknowledges receipt of the terms of the layoff;

- an employee's failure to object to the layoff does not constitute condonation – i.e. silence from the employee does not necessarily mean condonation; and
- condonation in a layoff context requires a positive action such as express consent to the layoff.

As with any termination, constructive or otherwise, employees who have been laid off have an obligation to mitigate any damages that the employee may have suffered. That said, recent case law suggests that an employee's refusal to return to work (without backpay) will not constitute a breach of their duty to mitigate.

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## United States of America

**National Labor Relations Board moves towards “employee friendly” policies** – The NLRB makes this move by ordering the following:

- severance agreements. Employers may not offer employees severance agreements that require employees to broadly waive their statutory rights. Specifically, broadly worded confidentiality, non-disclosure and non-disparagement clauses in severance agreements are per se unlawful. Such provisions in severance agreements unlawfully restrict an employee’s rights to engage in protected concerted activity. Simply offering employees such an agreement is unlawful. In practice, this applies retroactively to agreements already entered into and such provisions may be null and void (although the entire severance agreement is not null and void). Additionally, a broad interpretation of this principle has been directed. Supervisors, however, are treated differently under the law, and severance agreements with confidentiality or non-disparagement clauses are not unlawful when presented to supervisors;
- discipline for “abusive” employee conduct. Workers who engage in profane speech or conduct in the context of workplace activism and union-related activity are protected from adverse employment actions so long as the behaviour does not rise to a level of “extreme behaviour”. In order to safeguard their statutory rights, employees must be given some leeway

for their behaviour while engaging in protected concerted activity. This impedes an employer’s ability to discipline and ultimately terminate employees for outbursts that violate employer codes of conduct and similar policies. This also raises potential conflict between an employer’s duty to take prompt corrective action in response to racial or sexual harassment in the workplace and protecting such misconduct;

- penalties for repeat violators. Employers who are repeat violators of labour laws, including those who engage in bad faith bargaining, are subject to harsh remedies. The remedies may include a broad cease-and-desist provision requiring that a “Notice and Explanation of Rights” be posted, read aloud to employees in the presence of an agent and offending supervisors, mailed to employees’ residences, or published in local publications of broad circulation. Remedies may also require the employer to permit on-site visits by an agent to ensure compliance with its order and to order the employer to reimburse a union for costs and expenses incurred in collective bargaining and to reimburse employees for any loss of earnings.

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# In conversation with...

In this edition, we take the opportunity to talk to one of our co-editors, **Purvis Ghani**. Purvis is a partner based in the London office. He is also Global Chair of the Employment and Labor group at Dentons and a member of the People, Reward and Mobility practice in the UK.

Purvis has particular expertise in advising on international employment and cross-border matters, business transfers and TUPE, discrimination, whistleblowing, employment status, outsourcings and high-value tribunal litigation. Purvis has considerable experience advising and working on global employment projects, involving more than 50 countries. He is also highly regarded for his strategic input, and ability to cut through issues and provide pragmatic solutions. Purvis was involved in drafting sections of



the Employment Statutory Code of Practice for the Equality Act 2010 and more recently co-authored chapters in the fourth edition of one of the leading texts on restrictive covenants, “Employment Covenants and Confidential Information: Law, Practice and Technique” by Selwyn Bloch QC and Kate Brearley.

## Purvis, what excited you about joining Dentons back in 2019? What keeps you excited about Dentons today?

Dentons’ global presence was the primary driver for me joining in 2019. At the time, I couldn’t get my head around the sheer size of the firm. But it was hugely exciting to join the largest law firm which could service the needs of companies that had a presence in multiple countries. For my clients, it was an opportunity to offer them a high-quality full service across the world.

Taking a step back, Dentons is only 10 years old in its current form. So it is relatively young and to now have a presence in 82 countries in the space of 10 years is truly impressive. I continue to be excited with Dentons’ trajectory and expansion into other markets where our clients operate. What I have discovered since my time at Dentons is that despite the size and global footprint, it is genuinely one global firm which is truly collegiate with colleagues from around the world collaborating to deliver for our global clients. I get a real buzz out of that and being able to service clients across the globe with fantastic colleagues and teams is one of the best parts of my job.

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

There is a lot of focus on AI and the impact this will have on the workforce and employment regulations. However, it is still early days and it is difficult to predict how this will all play out. A good example is anti-discrimination laws and the interplay between the use of AI in decision making and the accountability of employers. We are already seeing employers having to change internal policies and regulations to govern the use of AI in the workplace. In the medium to long term, we will see some substantive changes in this area.

The increase in trials of four day working weeks around the world is fascinating, particularly the impact this could have on workforce productivity. Tied to this, I expect to see more countries expand flexible and remote working regulations.

I expect changes in the area of pay equity to continue in many countries, particularly with the recent passing of the EU Pay Transparency Directive. We are seeing more employers voluntarily look at rolling out gender and ethnicity pay equity reporting across their locations. This is a good example of global employers looking beyond what is legally required and what is needed to align with their ESG strategies.

### **You regularly help clients with complex cross border matters involving multiple jurisdictions. Are there any recurrent themes that you have picked up?**

Over the past year we have supported clients on a number of global restructuring and collective redundancy programmes across multiple countries – this was a recurring theme given the economic climate and global downturn over the past year. Another area is the roll out of global bonus and incentive plans across multiple jurisdictions. We have seen many employers looking to roll out one plan in all of their locations, which is not always straightforward! Other themes we continue to see in global projects are the roll out of uniform employment contracts across multiple countries, harmonisation of restrictive covenants and non-competes, and the assessment of independent contractor risk.

### **Are there any new initiatives from the Global Employment & Labor Group in the pipeline?**

Over the past few years, we have introduced a range of information sources and tools for our clients such as a global collective redundancy rules tracker and this Quarterly Review. In the next few weeks, we will be launching country guides. We will initially cover 66 countries and this will gradually increase to cover all Dentons locations. This will be a great tool for clients who want quick answers to common questions that come up during the employment relationship. For example, it will cover questions

around termination, severance, use of restrictive covenants and use of EORs/PEOs amongst many others. It will also be invaluable to companies who are looking to set up in a country and want to understand the employment landscape.

In addition to these resources, we run global webinars focusing on hot topics. This has included collective redundancies, restrictive covenants, independent contractor risks and our latest series covering industrial and labour relations. We plan to introduce bite size videos, which clients can watch at their convenience covering a range of topics relevant to employers who operate across multiple countries.

I always welcome feedback from clients on any other tools and resources they would like to see us roll out – so please do get in touch!

### **What do you enjoy doing outside of work?**

With two kids aged 5 and 8, the textbook answer must be spending time with them! But they are so full of energy all the time, so whenever I get the chance, I love to have some downtime not doing much! Otherwise, I am a total foodie and one of the joys of living in London is the amazing food scene. My oldest son has been known to moan at me dragging him for lunch at one of my favourite restaurants! I also love cooking, which I find therapeutic and a great way to switch off. Throw in a good film and a glass of wine on a Saturday evening and I can't complain!

# News And Events

## **New counsel joins Dentons US in New York**

The Dentons US Employment and Labor practice welcomes [Ned H. Bassen](#) as counsel in our New York city office. Ned has had an expansive employment and labour practice for 50 years, ranging from litigating on behalf of and counselling defence contractors, financial institutions, universities and other non-profit institutions to individuals accused of wrongdoing in connection with employment. His defence in such matters has included, for example, bankruptcy, employment discrimination, unlawful competition, poaching, corporate raiding, misappropriation of trade secrets, non-compete and other restrictive covenants, false claims, employment defamation and arbitration in the US and globally. He also has handled many traditional labour matters.

## **Dentons Kensington Swan announces new Tax practice**

[Bruce Bernacchi](#) has joined the partnership at Dentons, heading its new tax practice group in New Zealand. Bruce brings 27 years of tax law experience with deep experience on a range of employment-related tax issues.

## **IR insights webinar series from Dentons Australia**

This monthly webinar series offers tips, tricks and insights on a range of current topics. For example, the session for May 2023 looked at “A Guide to Managing Psychosocial Hazards in the Workplace: Eliminating Risks and Effectively Dealing with Complaints”. Please contact us if you would like to join the invitation list.

## **Generative AI policy from Dentons Canada**

Dentons Canada is offering a template Generative AI Policy to employers for a fixed fee. Please contact us if you are interested.

## **Dentons Honduras insights from annual conference**

Dentons Honduras Senior Counsel, [Humberto Salgado Rivera](#), attended the Annual IBA Employment and Diversity Law Conference in Buenos Aires, Argentina. The conference highlighted that as the workplace undergoes a redefinition and employment relationships evolve, it is crucial for employers to adapt and look towards the future. By participating in these conversations, we aim to stay at the forefront of developments and better serve our clients. We are committed to providing our clients with strategic guidance and tailored solutions that align with the changing landscape of work.

## **Dentons UK senior associate recognised by IEL**

Senior Associate [Helena Rozman](#) has been recognised by the International Employment Lawyer as one of Tomorrow’s Leaders. Helena was one of just 40 employment and labour law specialists from across the globe to be selected.

## **Dentons Hong Kong to host a refresher course on respect in the workplace**

This webinar is designed for HR professionals and in-house legal counsels in Hong Kong as a refresher course on the fundamental principles of the laws on discrimination, harassment, victimisation, vilification and bullying at the work place, including recent legal developments. We will provide the audience with an update of recent case law that illustrates these principles as well as the importance of handling complaints in the most appropriate way, and provide practical tips and guidance for managers and HR professionals on how best to handle complaints to mitigate against the risk of disputes and litigation. Please contact us if you are interested.

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