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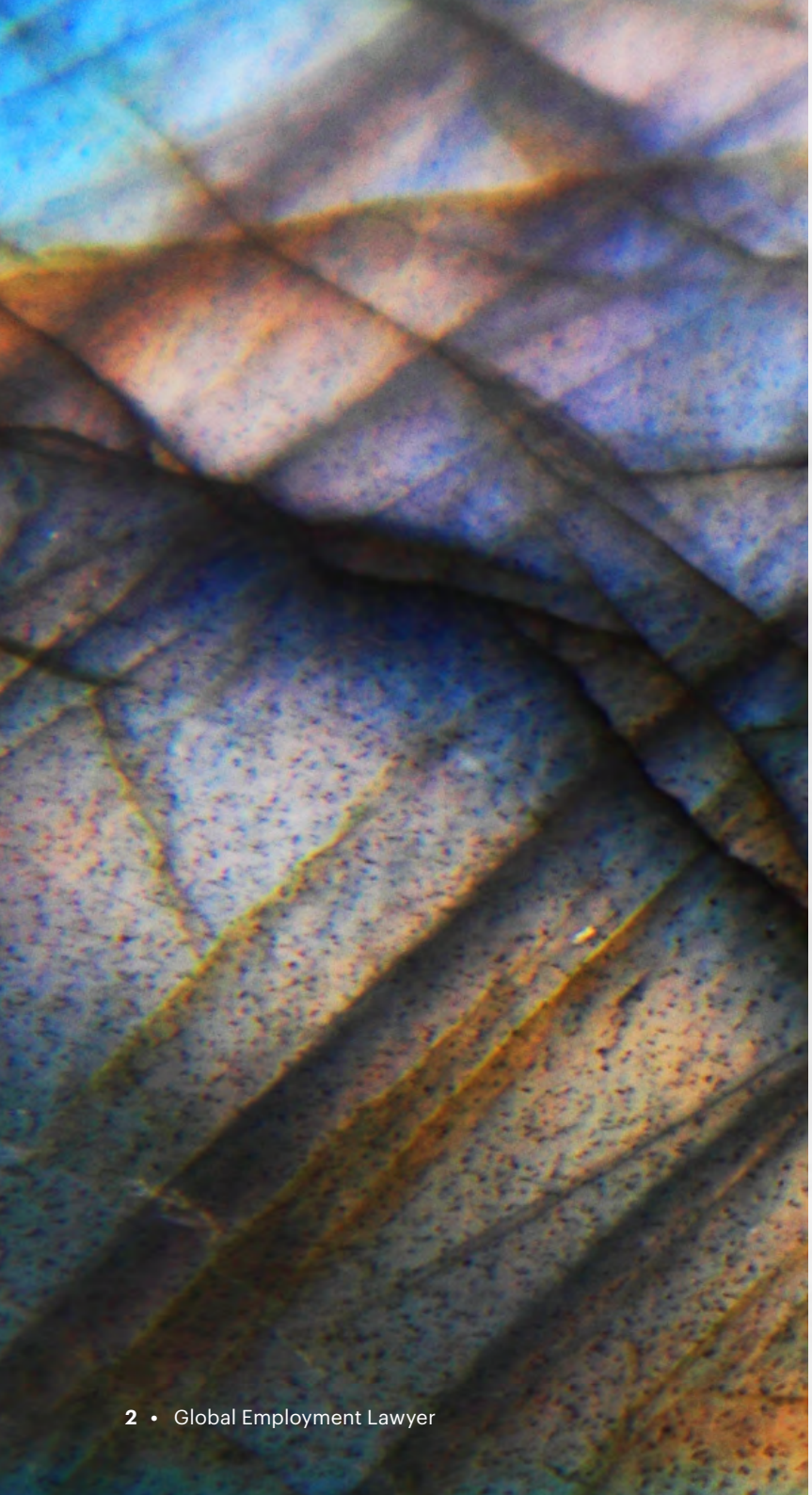

Welcome to the 2024 third quarter edition of our global employment and labour law newsletter. In this issue, we bring you the latest developments and trends shaping the world of work across the globe. Our international team of specialists has carefully curated key legal updates from a variety of jurisdictions to help you navigate the complex landscape of workplace regulations.

We explore a diverse range of topics, including developments in sexual harassment protections in the UK, the Netherlands, Guatemala and Canada, wide ranging changes to employment law in Australia, the latest update on non-competes in the USA and the validity of lock-in clauses in India. We also explore advances in telework regulation in Guatemala and Peru plus a strategy for reducing liability in disputed dismissal cases in Germany, along with further insights from our contributors elsewhere.

As always, our goal is to provide you with valuable, timely insights that support your business in staying compliant and competitive in today's dynamic global economy. We hope you find this edition informative and insightful.

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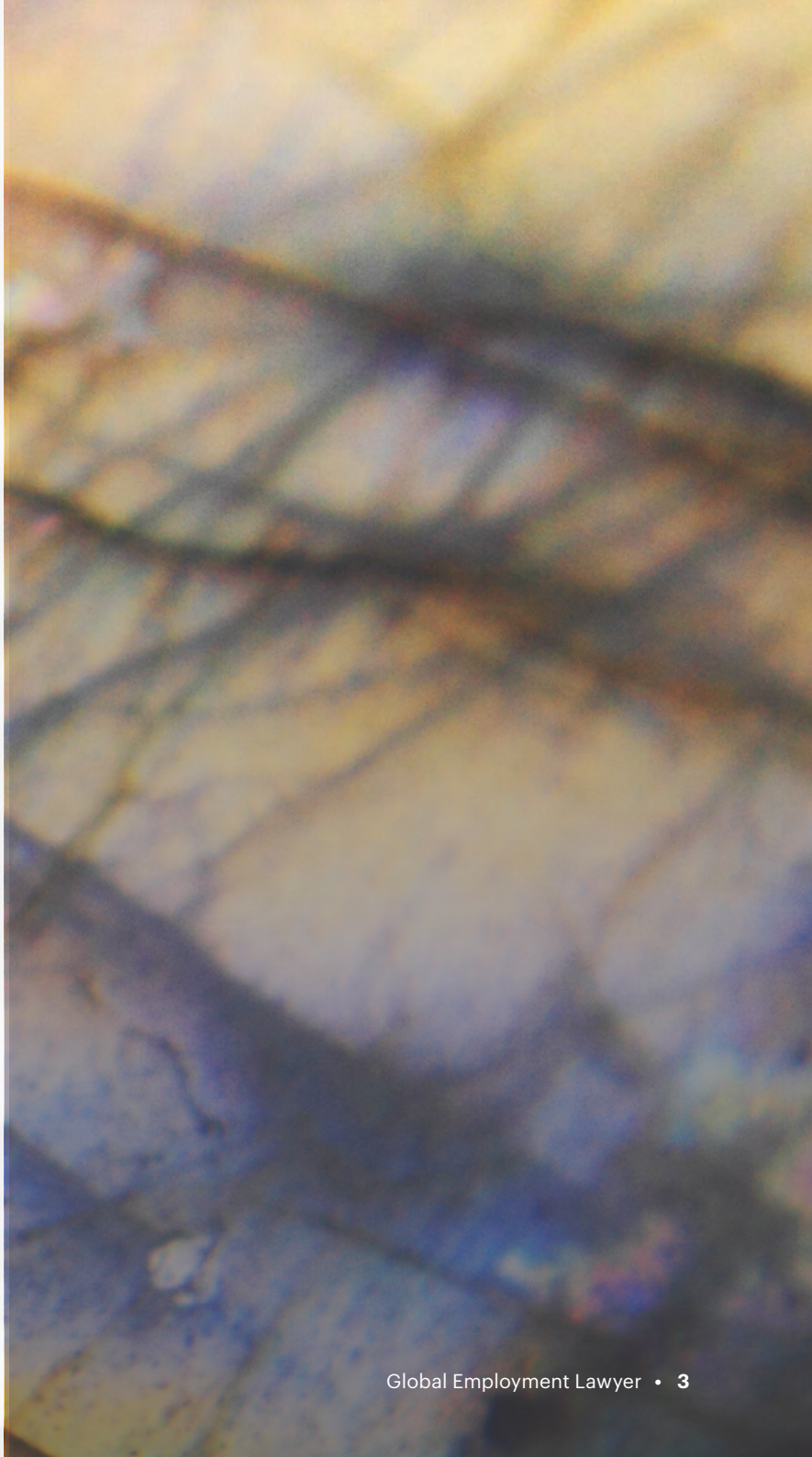

Legal Updates
Africa

Angola

The (un)constitutionality of capping interim salary payments – The new General Labour Law includes, among other things, a rule setting a maximum limit of up to six months' salary between dismissal and the court's decision (interim salaries) when the legal process or compliance with the court decision extends beyond six months. In a decision dated 4 July 2024, the Court of Appeal of Benguela has determined that this limit violates the principle of fair compensation in the Constitution, on the basis that it does not ensure full compensation for the damages suffered by the employee due to any unlawful dismissal.

The court concluded that setting maximum limits devalues the seriousness of the dismissal and unjustly rewards the defaulting employer by significantly reducing the financial burden associated with the unlawfully dismissed employee. In addition, this practice could be used as a strategy to reduce personnel costs and exert pressure on employees for indirect dismissal. The court emphasised that once a dismissal is declared unlawful, the employment contract must be considered retroactively in force, obligating the employer to pay all the remuneration the employee would have received from the time of dismissal until actual reinstatement.

Additionally, the court noted that the maximum limit on interim salary payments based on the size of the company violates the constitutional principle of equality, as the basic condition of any dismissed employee is the same – loss of employment and the right to remuneration from the time of dismissal. The new General Labour Law addressed this unconstitutionality by eliminating the stratification criterion for companies in setting the limit for interim salary payments.

Finally, the court suggested that a future legislative amendment could establish a timeframe for the payment of interim salaries by the employer, with the creation of a public entity responsible for covering the remaining period, thereby ensuring fair compensation for the employee and financial sustainability for the employer. Until this changes, the employer must bear the payment of interim salaries until effective reinstatement, without limit. The court acknowledged that this interpretation might change if the Constitutional Court rules on the constitutionality of the maximum limit established by the General Labour Law.

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Nigeria

New national minimum wage approved – The federal government has approved a new minimum wage for Nigerian workers. This was confirmed in the statement issued by the Minister of Information on 18 July 2024. The Nigerian national minimum wage establishes the baseline earning threshold for workers in both the public and private sectors. As a statutory requirement, all employers of labour are required to comply with the new threshold and amend their remuneration arrangements accordingly.

"No work, no pay" policy – The National Industrial Court upheld the "no work, no pay" policy of the federal government in a suit filed against the Academic Staff Union of Universities. In its judgment, the court determined that it was within the right of the federal government to withhold the salaries of workers who embark on industrial action. The court stated that the "no work, no pay" rule enforced by the federal government against members of the Academic Staff Union of Universities who went on strike last year was legal.

Court of Appeal upholds data privacy – In a Court of Appeal decision, it was determined that an employee is entitled to the protections provided by the Nigeria Data Protection Act. The Court of Appeal decided that personal data protection under the Nigeria Data Protection Regulation falls under the right to privacy guaranteed by the Constitution.

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South Africa

No two ways about two-pot system – On 21 July 2024, the president of South Africa assented to the Pension Funds Amendment Bill which, among other things, enables the implementation of the two-pot retirement system as part of the broader framework of Pension Funds Law in South Africa.

The two-pot system comprises a retirement component and a savings component (pots) which receive contributions. From 1 September 2024, one third of contributions will be allocated to the savings component and two thirds will be allocated to the retirement component. A member of a fund will be able to access the savings component at any time with no maximum withdrawal limit imposed. However, a minimum withdrawal amount of ZAR 2,000 is in place and members are only allowed one withdrawal in a tax year. Fund members cannot make withdrawals from the retirement component and cannot have access to this component upon resignation from employment. The retirement component can be accessed in the form of an annuity at retirement age.

Importantly, fund administrators have to amend their rules and adjust administrative frameworks in order to give effect to the two-pot system before the new legislation takes effect on 1 September 2024. In addition, the Financial Sector Conduct Authority (**FSCA**) has extended the deadline for fund administrators to submit outstanding rule amendments to 31 July 2024. Failure to submit on time will result in the approval and registration of fund withdrawal rules being subject to FSCA service level agreements, resulting in further delays for fund members in being able to access portions of their retirement funds.

Considering the above, retirement funds need to ensure that their rules accord with the new two-pot retirement system and are approved by the FSCA. Similarly, retirement funds need to update their administration systems and allocate the seed capital into the savings pot before any withdrawals can take place. Large volumes of applications in the initial stages of implementation may result in some delays.

Medical certificates in the workplace – In a recent case, an employee submitted an irregular medical certificate to justify her absence from work. She was subsequently charged and dismissed for misconduct. The matter was referred to the Commission for Conciliation, Mediation and Arbitration which found the dismissal to be substantively unfair.

The case reached the Labour Appeal Court, which found it concerning that an employee, who may unknowingly go to what appears to be a doctor's normal medical practice and is booked off sick, could be dismissed if it turns out that the doctor was either not qualified or unregistered. The court stated that employees cannot be expected to conduct an investigation into whether a doctor is qualified, on suspension or, for some or other reason, not entitled to practise as a doctor. This obligation lies with doctors and the relevant regulatory body – not members of the public.

This case emphasises the need for employers to conduct thorough investigations, before putting a charge to an employee. The judgment raises the bar for employers to provide proper evidence that an employee has fabricated a medical certificate, or acted fraudulently in any way, to justify an employee being dismissed.

Employers are encouraged to put policies in place to assist employees in avoiding medical practices and/or practitioners that are not compliant with the necessary laws and regulations.

As an aside, it is worth noting that, under South African law, employees may also obtain medical certificates from traditional healers, provided that the traditional healer is registered with the Interim Traditional Health Practitioners Council of South Africa.

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Asia

China

Extension of retirement age – On 21 July 2024, the Decision of the Central Committee of the Communist Party of China on Further Deepening Reform and Promoting Chinese-Style Modernisation (the **Decision**) was published. Among other things, the Decision advocates for the gradual extension of the statutory retirement age, emphasising a voluntary and flexible approach to ensure the steady and orderly implementation of this reform. The Decision sets the goal of achieving this by 2029.

Currently, China's Labour Law and Labour Contract Law do not prescribe a specific retirement age. Instead, the retirement age is primarily determined by departmental rules and normative documents issued by relevant government agencies under the State Council. Under these regulations, the retirement age for men is set at 60 years. For female employees, the retirement age varies according to role: female workers retire at 50, while female cadres retire at 55. However, given that the concept of "cadres" is largely historical in the context of labour law, the distinction in practice is often based on whether the employee holds a managerial position.

While the Decision does not carry the force of law, it serves as a significant guiding document issued by the Communist Party of China. As such, it is expected to exert considerable influence on future legislative developments within China's legal framework. It is therefore reasonable to anticipate that specific legislation addressing delayed retirement will likely be enacted within the next five years to regulate the detailed implementation of this reform.

As the implementation of delayed retirement progresses, the required duration for social security contributions will concurrently increase. Employers may consequently face a heightened burden with respect to social security contributions. A significant challenge for employers will be to balance ensuring that employees receive their entitled social security and welfare benefits while effectively managing operational costs.

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Hong Kong

Launch of eMPF platform – The Mandatory Provident Fund (**MPF**) system will undergo a significant reform with the launch of the eMPF platform in June 2024. This digital platform aims to simplify MPF administration for employers, employees and trustees by centralising processes such as enrolment, contributions, portfolio management and benefit withdrawals. Replacing paper-based submissions and individual trustee systems, the eMPF platform will enhance user experience, boost operational efficiency and lower administrative costs.

For employers, the eMPF platform will simplify the management of MPF contributions with features such as multiple online payment options, automatically populated contribution reports and automated calculations. It will also make it easier to enrol employees by providing comprehensive digital records and instant updates on their enrolment progress. Furthermore, employers can manage employee terminations and submit applications for offsetting severance payments or long service payments directly through the system.

For employees, the eMPF platform provides a more efficient way to oversee and manage their MPF portfolios through a unified interface, instead of relying on bank statements issued by trustees. The platform facilitates online requests and speeds up the process for fund transfers, withdrawals and changes, removing the need for paper forms. It also enables smoother consolidation of MPF accounts, particularly when making career transitions.

The platform is being rolled out in phases, with MPF trustees scheduled to be onboarded gradually through 2025. Once onboarded, all MPF-related administration will be managed through the eMPF platform, streamlining the process for both employers and employees.

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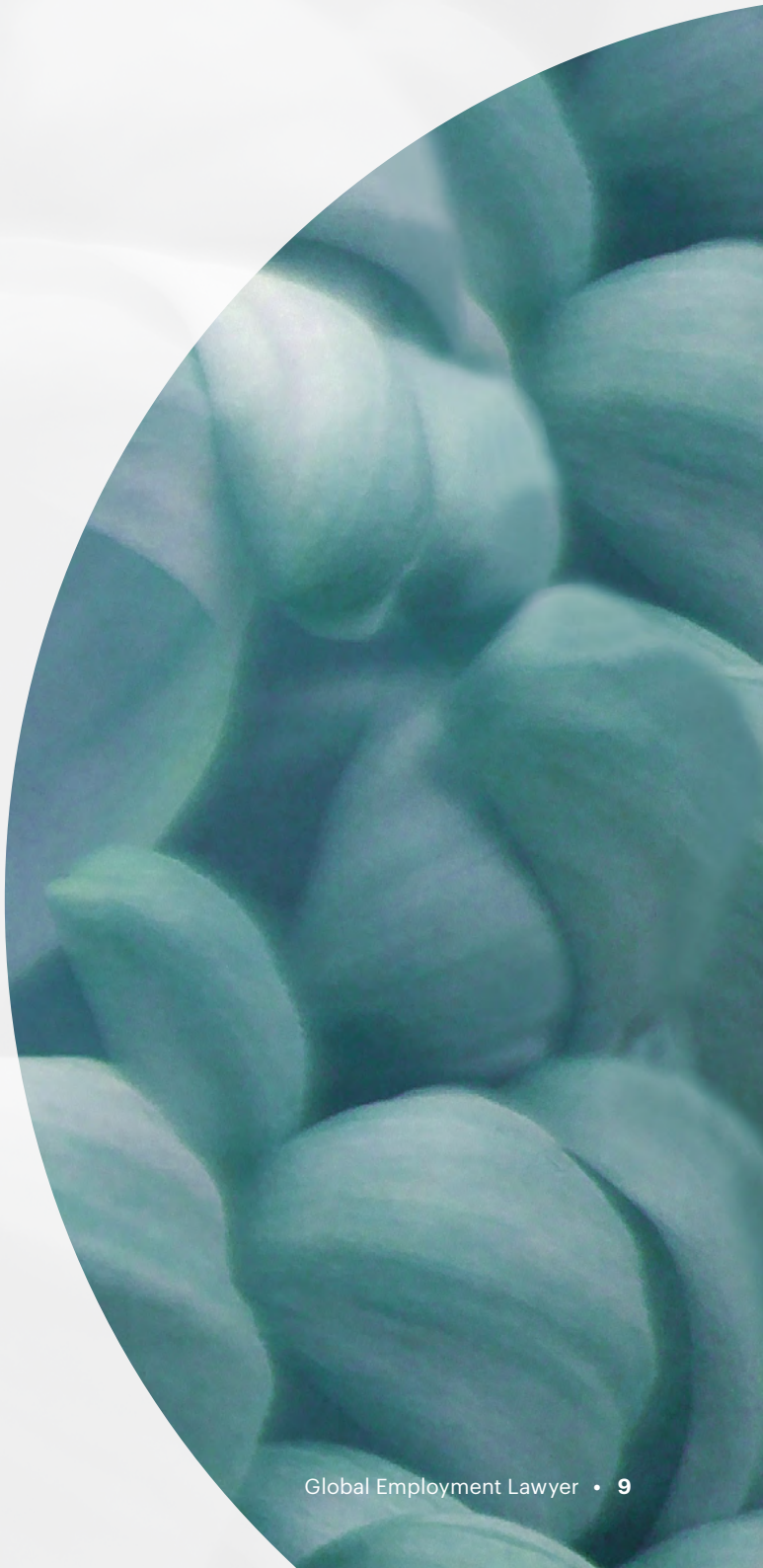

India

Registration of establishments in Tamil Nadu – On 2 July 2024, the government of Tamil Nadu issued a notification enforcing the provisions of certain Acts requiring, among other things, all employers in the state of Tamil Nadu with 10 or more workers to apply for registration of their establishment in the prescribed form. Existing establishments with 10 or more workers are required to register within one year from 2 July 2024 and establishments employing 10 or more workers after 2 July 2024 are required to apply for registration within six months from the date of commencement of business.

Lock-in period clauses valid – The Delhi High Court recently considered the validity of lock-in period clauses restricting employees from leaving the employment of the employer for a certain period after joining and whether such clauses violate the fundamental rights enshrined in the Constitution of India. The court noted that, in employment contracts, the terms to which the employees agree, such as lock-in period, pay fixation, emolument benefits, etc. are usually the subject matter of negotiation. Such clauses in an agreement are usually decided upon voluntarily and entered into by the parties by their own individual consent and volition. The court also noted that this type of clause in employment contracts may in fact be necessary for the health of the employer institution, as it provides the required stability and strength to the employer institution and its framework.

Timeline for obtaining gratuity insurance in Karnataka – On 4 July 2024, the government of Karnataka extended the time period for employers to obtain a valid gratuity insurance policy (required to fulfil their statutory gratuity obligations to eligible employees) from 60 days to six months for existing employers. The revised extended timeline expired in July 2024.

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Indonesia

New guidelines for industrial relations – In commemoration of Labour Day on 1 May 2024, new guidance has been introduced to support harmonious industrial relations based on Pancasila values. This guidance is designed for workers, employers and the government to foster effective and cooperative workplace relationships. The guideline include six key principles:

- prioritising the common interests of employers, employees, society and the government;
- cooperation between employees and employers as mutually dependent partners;
- functional relationships and task distribution;
- emphasising the family-based philosophy;
- creating business tranquillity and work peace; and
- improving welfare.

The guidance is to be adopted by all employers into their internal work conduct and policies.

New maternity and paternity rights – A new law, enacted on 2 July 2024, focuses on enhancing the welfare of mothers and children by introducing new rights for working parents, as follows:

- maternity leave period: Can be extended up to three months if medically necessary. Working mothers are entitled to full wages for the first four months and 75% of their wage for the fifth and sixth month;
- paternity leave: Working fathers are entitled to up to two days of paternity leave, with the possibility of extending this by an additional three days or as agreed with their employer;
- workplace facilities: Employers must support working mothers who breastfeed by providing healthcare facilities, lactation rooms and daycare services; and
- adjustment of workload and working hours: Companies should adjust the workload and working hours of working mothers while also considering company productivity targets.

These changes may necessitate updates to existing manpower policies, including company regulation or collective labour agreements.

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Amendments to occupational health and safety regulations – New legislation, effective from 1 June 2024, expands the scope of occupational health and safety law, increases penalties, enhances employee protection and imposes additional duties on employers. Key changes include:

- wider applicability: The legislation now covers all workplaces, including public services and statutory authorities, with limited exceptions;
- extension of duties: Responsibilities now include ensuring the health and safety of contractors, subcontractors and their employees, not just direct employees;
- additional obligations: Employers must develop emergency procedures, conduct risk assessments and implement control measures;
- appointment of safety coordinators: Employers with five or more employees must appoint an occupational health and safety coordinator;
- increased penalties: Fines for breaches have been increased to RM 500,000, with higher penalties also for other offences in the legislation; and
- extended liability: Company directors and other key personnel can now be jointly and severally liable for company offences.

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Singapore

Paternity leave and shared parental leave – New employment policies on paternity leave and shared parental leave affecting employers and employees were announced on 18 August 2024 and will come into effect from 1 April 2025:

- paternity leave: From 1 April 2025, four weeks' paternity leave will become an entitlement for eligible employees. This will mean that employers must offer four weeks' paid paternity leave. This is an increase from the current mandatory two-week entitlement, with an optional additional two weeks; and
- shared parental leave: A new arrangement of shared parental leave will be introduced. This is to be implemented in two stages. For the first stage, employees with babies born from 1 April 2025 (or with an estimated date of delivery of 1 April 2025) will be entitled to six weeks' shared parental leave. For the second stage, from 1 April 2026, shared parental leave entitlement increases to 10 weeks. This will replace the current scheme of shared leave which allows husbands to share four weeks of their wife's 16-week maternity leave entitlement.

These entitlements will be available to eligible employees only, in accordance with existing guidelines, and will also be subject to the prevailing caps.

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South Korea

Minimum wage increase – It has been announced that the minimum wage for 2024 will be KRW 9,860 per hour, an increase of KRW 240 (2.5%) from the previous year's minimum wage of KRW 9,620, or KRW 2,060,740 per month based on a 40-hour working week (209 hours per month). The minimum wage for 2024 will apply to all businesses or workplaces that employ one or more workers on a full-time basis, regardless of the type of business.

The range of bonuses and benefits that count towards the minimum wage has been increased. In 2023, for bonuses paid regularly at least once a month, only an amount exceeding 5% of the monthly equivalent of the minimum wage could be counted towards the minimum wage and, for fringe benefits, only an amount exceeding 1% could be counted towards the minimum wage. However, from 2024 onwards, the "full amount" of bonuses and benefits paid regularly at least once a month can be counted towards the minimum wage.

Working conditions for direct-hire temporary agency workers (seconded workers) – If certain requirements are met, an employer may be required to directly hire temporary agency workers who have been seconded to the employer. The relevant Act stipulates that, if an employer directly hires a temporary agency worker, the working conditions of the temporary agency worker must be the same as those of the employer's workers performing the same or similar work as the temporary agency worker or, if there are no such workers performing the same or similar work, the working conditions must not be lower than the existing working conditions of the temporary agency worker.

Recently, the Supreme Court has ruled that if none of the employer's employees perform the same or similar work as the temporary agency worker, the employer and the temporary agency worker can autonomously establish working conditions within the scope of the existing working conditions. If the employer refuses to directly hire the temporary agency worker and fails to independently set these conditions, the court may step in and apply working conditions that would have been reasonably established, taking into account the following factors:

- type and value of the work conducted by the temporary agency worker;
- employer's system of working conditions (such as the wage system according to employment type or job category);
- legislative purpose of the relevant Act;
- concept of equity; and
- working conditions applied to other temporary agency workers directly employed by the employer.

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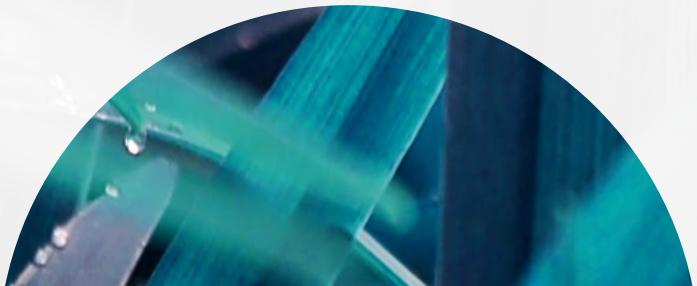

Taiwan

Option to postpone retirement – A significant change in labour regulations now allows workers to negotiate with their employers to postpone retirement beyond the age of 65. This amendment, effective from 31 July 2024, represents a major shift in how retirement is managed, offering greater flexibility for both employers and employees. Previously, the law mandated that workers could not be forced to retire before 65, providing a degree of job security for older workers. With the new amendment, however, employees who wish to continue working past this age now have the legal right to do so, provided they reach an agreement with their employer.

For businesses, this change is particularly valuable as it enables them to retain experienced, older employees who can contribute significantly to the company's success. For employees, it provides an opportunity to secure their financial stability by extending their careers. However, it is crucial for employers to ensure that any agreements to delay retirement do not lead to reduced pay or unfavourable working conditions, unless there are clear, justifiable reasons. Non-compliance with these conditions can result in penalties, including fines ranging from NT$300,000 to NT$1.5 million and public disclosure of the employer's name.

Additionally, the Ministry of Labor encourages both employers and workers to negotiate terms that exceed the minimum standards set by the Labor Standards Act. This approach allows for more tailored agreements that can better meet the specific needs of different industries and individual businesses.

Strengthening anti-discrimination measures – Taiwan remains committed to ensuring equal treatment in employment, with a strong focus on preventing discrimination based on age, gender or disability. The government has reinforced laws that prohibit any form of discrimination in hiring, promotions, salaries and other employment practices. Despite these efforts, age discrimination continues to be an issue, with surveys indicating that a small but significant percentage of both men and women experience unfair treatment based on their age.

To combat this, the Ministry of Labor is actively promoting awareness and enforcement of anti-discrimination laws. Workers who believe they have been discriminated against can file complaints with local authorities, who are required to investigate and take action if necessary. Employers found guilty of discriminatory practices face substantial fines and public exposure.

The Ministry of Labor uses a variety of channels, including social media, seminars and educational materials, to spread awareness and encourage compliance, aiming to foster a work environment that is fair and equitable for all.

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Uzbekistan

Workers with family responsibilities – Uzbekistan has ratified an ILO Convention which applies to male and female workers with family responsibilities for dependent children and these responsibilities restrict their ability to train, access, participate or advance in economic activities. The provisions of the Convention also apply to workers who have responsibilities for other immediate family members who are genuinely in need of care or assistance.

The Convention applies to all branches of economic activity and to all categories of workers. The document stipulates that family responsibilities alone cannot serve as grounds for termination of labour relations.

The Convention also establishes that, in order to establish genuine equality of treatment and opportunity for male and female workers, all measures consistent with national conditions and capabilities must be taken so that:

- workers with family responsibilities are able to exercise their right to free choice of employment; and
- their needs regarding conditions of employment and social security are taken into account.

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Vietnam

New regional minimum wage policy – On 30 June 2024, the government issued a Decree establishing new regional minimum wages, effective from 1 July 2024. These wages represent the lowest level employers can offer and serve as the foundation for wage negotiations and payments to employees.

This minimum amount applies to individuals working under employment contracts governed by the Labor Code, working within enterprises, cooperatives, farms, households, individuals, and other Vietnamese organisations that employ staff under contracts. It also covers as foreign organisations operating in Vietnam.

The applicable minimum wage varies across four regions, each based on local living standards:

- region 1 includes urban areas of Ha Noi and Ho Chi Minh City;
- region 2 covers rural areas of Ha Noi and Ho Chi Minh City, as well as Can Tho, Da Nang, and Hai Phong;
- region 3 applies to cities and districts in Bac Ninh, Bac Giang, Hai Duong, and Vinh Phuc provinces; and
- region 4 encompasses the remaining localities.

This decree marks the second increase in regional minimum wages within four years, following the previous adjustment that took place in July 2022 in response to the economic effects of COVID-19.

Under the new decree, the minimum wage will rise by 6%, ranging from VND 200,000 to VND 280,000 per month, depending on the region. This new policy underscores the government's commitment to guaranteeing a minimum living standard for workers while driving labour productivity, economic growth, and business competitiveness.

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Australasia

Australia

Significant changes to employment laws – Major changes to Australia's primary employment legislation came into effect on 26 August 2024, including:

- right to disconnect: An employee can refuse to monitor, read or respond to contact (or attempted contact) from their employer or third parties related to their work, outside ordinary working hours, unless the refusal is unreasonable. Importantly, employers are not prevented from attempting contact – the new right is a protection for employees refusing to respond unless the refusal is unreasonable. Whether a refusal is unreasonable will require consideration of various matters, including the reason for the contact, whether the employee is compensated to remain available to work outside ordinary hours, their level of responsibility and their personal circumstances. This change commences on 26 August 2025 for small business employers;
- casual employment: Under the new definition of "casual employee", a person is a casual employee if there is an absence of a firm advance commitment to continuing and indefinite work and the employee is entitled to a casual loading. Consideration needs to be given to the real substance, practical reality and true nature of the employment relationship. This is a change from the previous definition, which had a focus on the terms of the employment contract. There is also a new pathway for casual employees to make a choice to convert to permanent employment. This is not mandatory and casual employees can elect to remain casual;
- new definitions of "employee" and "employer": These are relevant for determining whether an individual is an employee or an independent contractor. The totality of the relationship must be considered, including the real substance, practical reality and true nature of the working relationship. This is a significant departure from the previous law, which placed primacy on the terms of the contract. Employers will need to consider how the contract is performed in practice;
- unfair terms in services contracts: Independent contractors who believe their contract contains an unfair term can now apply to the Fair Work Commission to have all or part of the contract set aside, amended or varied; and
- gig economy and minimum standards for contractors: The Fair Work Commission can now set minimum standards for some gig economy workers and road transport contractors. These workers can also now challenge unfair deactivation or termination of their engagement.

Changes still to come include:

- wage theft: From 1 January 2025, it will be a criminal offence for an employer to intentionally engage in conduct that results in an underpayment to employees. This includes mandatory superannuation payments. Penalties include imprisonment of up to 10 years for individuals involved in the offence. This could potentially include CEOs, board members, payroll officers, and finance managers;

- temporary Skilled Migration Income Threshold: From 1 July 2024, the Temporary Skilled Migration Income Threshold (**TSMIT**) increased to A$73,150, affecting new nominations from this date. Employers must ensure foreign workers are paid at least the TSMIT or the Annual Market Salary Rate for equivalent positions, whichever is higher. This change does not impact existing visa holders but will affect new applications; and
- rights for temporary sponsored work visa holders effective: From 1 July 2024, changes were introduced to the condition on some sponsored temporary work visas requiring a visa holder to only work in the occupation and for the employer for which the visa was granted. Visa holders can now temporarily work outside this condition for up to 180 days in a single period, and up to 365 days in total across their visa period in order to allow time to find a new sponsor, apply for a different visa or leave Australia. This extends the previous 60-day period.

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New Zealand

Protecting employees from threats – A recent decision by the Employment Court confirmed that an employer's health and safety obligations go beyond the usual generic steps to protect staff performing core duties. Where an employee is experiencing threats and harassment connected to their public profile associated with their work, the employer must take proactive measures to support and protect the employee. This may require putting in place personalised security arrangements. The employer's failure to do so in this case resulted in a breach of the employer's health and safety duties.

Court of Appeal confirms status of app drivers to be employees, not contractors – In a pivotal decision, the Court of Appeal held that the real nature of the relationship between a ride-hailing app and four of its drivers was one of employment. As a result, these workers are entitled to statutory employment rights including sick leave, annual leave and the minimum wage. This case sets an important precedent for workers in the gig economy, particularly those performing short-term app-based work.

Unions establish the importance of contractual process requirements – In two recent cases, unions challenging large-scale redundancy exercises have successfully brought them to a halt. They raised proceedings alleging failures by the employer to adhere to contractual clauses requiring employee engagement in advance of a formal proposal for change being developed. In both cases, the Authority and Employment Court ordered the employers to re-engage and comply with the relevant clauses.

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Central and South America

Argentina

Interest for labour credits – The National Supreme Court (**CSJN**) recently overturned a decision by the National Labor Court of Appeals (**CNAT**) regarding the calculation of interest on labour credits. The CNAT had used a method established in a resolution which applied the Reference Stabilisation Coefficient rate plus a fixed annual rate of 6%. The CSJN found this method "arbitrary" because it deviated from the powers granted by the Civil and Commercial Code to the judges and led to an excessively high interest calculation (it increased the amount awarded in the first instance judgment by approximately 20,000%). The case will be remitted to the original court for a new ruling. The CSJN had previously addressed similar issues in the *Oliva* case earlier in 2024.

Changes to labour regulations – In July 2024, the Congress approved a new law which includes, among other things, the following key labour-related matters:

- private sector employers can participate in a labour amnesty programme to correctly register previously unregistered or improperly registered employment contracts (such as incorrect salary or hiring dates). The regulations for this amnesty are still pending;
- fines for the improper registration of employment contracts have been eliminated;
- a new, simple, fast and electronic system for labour registration will be established;
- service agreements entered into by individuals will not be presumed to be employment contracts if official invoices are issued;
- the probationary period has been extended from three to six months. Collective bargaining agreements may provide for the extension of this period to eight months in companies with six to 100 employees, and to 12 months in companies with no more than five employees;
- specific grounds for dismissal have been added, related to employees' active participation in blockades or illegal occupation of workplaces;
- judges may increase the severance compensation for dismissal without cause by 50% to 100% in cases of discriminatory dismissal;
- collective bargaining agreements may provide for the replacement of the current severance compensation scheme with a special severance fund; and

- a new category of "independent workers with collaborators" has been created. These may hire up to three collaborators to provide services. The independent worker and the collaborators will be engaged in an autonomous relationship. No employment contract will be deemed to exist between them or with the people hiring the services.

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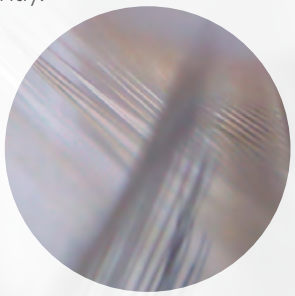
Bolivia

Winter schedule – In the first week of June 2024, the Bolivian government issued a Supreme Decree which established the winter schedule for the working day in all work centres. The Ministry of Labor has the power to annually determine the dates and considerations of the winter schedule.

New regulations of Law 1468 – On 11 June 2024, the Ministry of Labor published a Ministerial Resolution which, among other things, approved new regulations that make changes to procedures for restitution of labour rights, payment of outstanding wages and compliance with union status.

One key change is that both employer and worker have the right to reply and rejoinder in public hearings. Modifications introduced in the new regulations were made to protect and restore workers' rights such as labour stability, prohibition of unjustified dismissal etc. more efficiently.



Leave for fathers – A Supreme Decree dated 19 June 2024 grants working fathers who are solely in charge of children up to one year of age, one hour's leave during the working day. This benefit is granted if the mother has passed away, is severely disabled or in critical condition, or if the minor is under sole care of the father by means of a judicial declaration.

This benefit seeks to safeguard the caring, preservation of health and the best interests of the child.

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New occupational health and safety regulation – On 27 July 2024, the Ministry of Labor issued new regulations on preventive management of occupational risks for a safe and healthy work environment.

This decree, which repeals its predecessors, details the responsibilities that employers must fulfil to protect the health and lives of their employees.

It is important to note that the new regulation maintains many of the previous measures, but also includes new elements.

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Sexual harassment law – In June 2024, a new law was enacted, adopting measures for the prevention, protection and handling of sexual harassment in the workplace and higher education institutions in Colombia. As a result, all employers must create or update their internal sexual harassment prevention policies, including protocols that meet the minimum requirements outlined in the law.

Notably, the law has a broad scope and covers interactions between employees, agents, employers, contractors, interns, trainees and others, considering them part of the labour context for this purpose, regardless of the nature of their relationship. This extends much further than the existing labour harassment law, creating some regulatory gaps that are expected to be addressed through future regulations from the Ministry of Labor.

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Reduced costs for small businesses – From 19 June 2024, and as a result of the approval of a new amendment to the regulations for the insurance of small businesses, owners of small businesses, as well as small and medium-sized producers, will benefit from reduced insurance costs for their employees, as well as their contributions to the Family Welfare Fund, during the first four years.

This is because, as a result of the amendment, employers must now pay an amount that is calculated based on the actual salary of their employees to insure them. Previously, employers had to pay insurance to their employees, based on a minimum fixed amount which was often a higher amount than the real salary received by employees, which, therefore, made insurance more expensive.

In addition, small businesses with fewer than five employees will be automatically granted this benefit, eliminating the need for the employers to apply for it. This amendment generates an opportunity for the growth and development of local small businesses, as well as for small and medium-sized producers, because the costs they must incur will now be lower.

Subsidies for retired employees – On 20 June 2024, regulations were repealed which had provided that insured individuals who continued working and became ill or had an accident would not receive the sick leave economic subsidy to which they were entitled. This subsidy is awarded to all other employees by law.

With this change in the regulations, retired persons who decide to work will now have greater protection because, in the event of leave due to an accident or illness, they will receive the subsidy that corresponds to them by law, as with any other employee, thereby generating a greater incentive for them to grow and develop at work. Similarly, it is also beneficial for companies to be able to hire retired employees, as this workforce normally brings with it many benefits, including experience and stability, as well as a unique perspective and valuable problem-solving skills.

Paid leave for medical appointments related to newborns – The Ministry of Labour has issued guidelines regarding the management of paid leave for medical appointments related to newborns and their mothers and/or caregivers.

Previously, the Labor Code provided that, after the conclusion of maternity leave, employers should grant paid leave to employees for medical appointments related to the care of their newborn, the mother or the caregiver, as well as for obtaining breastfeeding certificates. However, the length of this benefit was not specified precisely, which has created uncertainty.

The new guidelines consider that this type of leave should be extended in parallel to the breastfeeding period (i.e. for at least the first 12 months of the child's life). In addition, the period may be extended if justified by medical needs, according to medical criteria.

Understanding and applying these guidelines will enable employers to operate within the current legal framework, protecting their company from sanctions and ensuring proper management of paid leave.

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Guatemala

Advances in the regulation of telework – The absence of clear regulation on teleworking has led to several problems, leaving workers vulnerable to precarious working conditions, lack of access to social benefits and insufficient protection against harassment and discrimination. Without proper regulation, labour disputes may arise and employers can struggle to manage remote workforces effectively.

A key initiative addressing this gap is the proposed telework law, which aims to establish a legal framework to regulate this work model. Two new bills, already reviewed by the Labour Legislative Commission, propose three telework modalities: autonomous, mobile and supplementary, tailored to meet the needs of both workers and employers. This law is essential in ensuring that teleworkers enjoy the same rights and responsibilities as in-person employees, including access to training and professional development.

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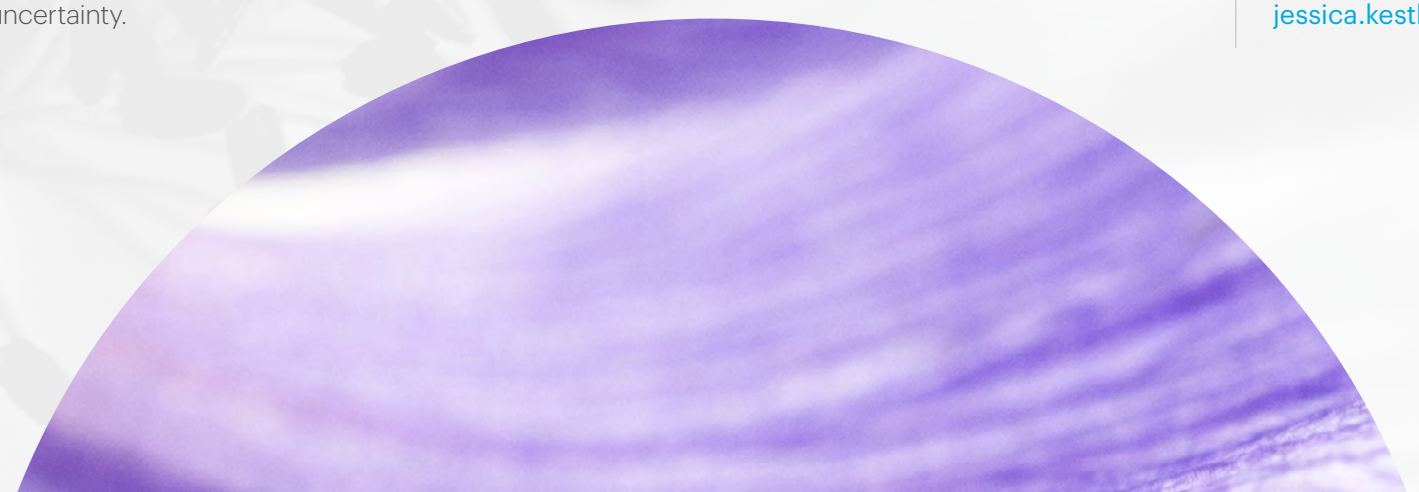

Mexico

Wellbeing pensions – On 1 May 2024, the president of Mexico published a Decree focused on receiving, managing, investing and distributing resources contributed for the benefit of the Mexican Institute of Social Security, with the aim of providing financial supplements to workers who reach the age of 65 and whose pensions are equal to or less than MX$16,777.68. The financial supplement will ensure that such workers' pensions equal their last salary, up to the aforementioned amount. This amount will be updated annually based on the estimated inflation rate.

Eligible workers will be able to claim the financial supplement from 1 July 2024, provided they have received their pension ruling or grant. This is conditional upon the workers having commenced contributions in accordance with applicable social security laws.

The fund will not impose a direct financial burden on employers, as the wellbeing pensions will be financed through resources from unclaimed individual accounts of workers, along with additional funding from the federal government.

However, the fund serves as an incentive for workers to continue working until the age of 65. This may lead to changes in productivity and employee turnover within the retirement age range, due to the natural replacement of the workforce. Therefore, it is recommended that organisations assess the potential impacts on their labour liabilities.

Reform to human trafficking law – On 7 June 2024, the Mexican government announced an amendment to the Human Trafficking Law to classify overtime work that exceeds statutory limits as a form of labour exploitation.

Under the terms of the Human Trafficking Law, labour exploitation is defined as the unjustifiable economic, or other form of, benefit obtained unlawfully through another person's labour, subjecting them to degrading practices that violate their dignity. Such abusive practices incorporate "working hours that exceed legal limits".

In light of these developments, employers must carefully consider the maximum work hours permitted under labour law. The standard maximum working week is set at 48 hours; for mixed shifts, the limit is 45 hours per week (7.5 hours per day), while night shifts are capped at 42 hours per week (seven hours per day).

Regardless of the payment of overtime and fines, the labour exploitation crime is prosecuted "ex officio", which means that there is no need for the affected party to report it, and any person or any authority (such as the Ministry of Labor and Social Welfare) that has knowledge of alleged illegal overtime work may report it. Those accused are considered "alleged responsible(s)" and will be subject to preventive prison during the process. Anyone within a company's chain of command may be liable.

The Human Trafficking Law imposes penalties of three to 10 years of imprisonment, along with fines ranging from MX$5,000 to MX$50,000. Penalties are escalated to four to 12 years of imprisonment and fines ranging from MX$7,000 to MX$70,000 if the affected individuals belong to indigenous or Afro-Mexican communities.

In light of these changes, employers are encouraged to take proactive steps, including:

- reviewing current working hours in anticipation of potential legal reforms aimed at reducing them;
- evaluating the risks associated with existing work shifts; and
- auditing all employment documentation relevant to working hours.

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Peru

Amendments to the Telework Law – On 22 July 2024, legislation amending the Telework Law was published. The main proposed changes include:

- a prohibition on deducting pay from teleworkers who cannot work due to power outages or lack of internet service, provided these issues are properly documented;
- an obligation on employers to identify hazards and assess risks if there is a change in the teleworker's usual work location, as unilateral self-assessment is not possible;
- an obligation to include active breaks as part of occupational health and safety measures;
- the possibility of labour sanctions on teleworkers who engage in personal activities during work hours without justification; and
- a requirement for the telework contract to include conditions for the removal of confidential documents from the employer's premises.

As of now, it remains for the Executive Branch to amend the Telework Law's regulations within the 90-calendar-day period set by the mentioned law.

Mandatory electronic notification for Ministry of Labor procedures – Through a Supreme Decree, it has been established that notifications for administrative actions from the Ministry of Labor and Employment Promotion must be carried out via electronic mailbox.

All documents issued within an administrative procedure that need to be communicated to stakeholders, such as economic opinions, conciliations, decrees and coercive collection notices, will be notified electronically. The Ministry of Labor and Employment Promotion is required to provide users with a free electronic mailbox, which will serve as a mandatory digital address.

The Ministry is expected to publish a Ministerial Resolution within 90 business days detailing the supplementary provisions for obtaining the electronic mailbox and the timeline for the progressive implementation of the system.

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Amendments to paternity benefits – A new statute was passed introducing a series of amendments to the current paternity benefits granted by the Social Security Bank:

- progressive extension of the period of paternity leave for both dependent and independent workers of the public and private sector. From 1 January 2026, a dependent worker's paternity leave will be extended to 17 calendar days and an independent worker's paternity leave will be extended to 20 calendar days;
- extension of the period of paternity leave to 30 calendar days in the cases of multiple births, birth weight below 1.5 kilogrammes as well as cases of complicated or premature births;
- recognition of the unwaivable nature of paternity and maternity leave of dependent workers of the public and private sector; and
- creation of a 30-day stability period upon an employee's return to work, during which they cannot be dismissed. If an employer dismisses an employee during this period, the employee will be entitled to a special severance payment equal to three months' pay. However, employers will be exempt from paying this special severance if the dismissal is due to serious misconduct or if the reason for dismissal is not directly or indirectly linked to the paternity leave.

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NGOs workers – A bill regulating non-governmental organisations (**NGOs**) was passed on 15 August 2024. The bill introduces additional requirements for the operation and creation of NGOs and other non-profit entities. NGO employees would be required to file an affidavit with a disclosure of their assets before the General Controller of the Republic. The bill is still pending sanction from the President before becoming a binding law.

Exchange rate applicable to payments in foreign currency – The Social Cassation Chamber of the Supreme Tribunal of Justice (**STJ**) has issued two judgments, with differing outcomes, in cases related to the payment of salary and labour benefits in foreign currency, as well as the interest rates applicable for late payments of these obligations:

- in the first case on 23 July 2024, the STJ ruled that when calculating interest for late payments of employment obligations in foreign currency, judges or experts appointed by courts must convert the foreign currency amount into local currency (bolivars) using the exchange rate as at the date of employment termination. Interest should then be applied to this bolivar amount based on the rate published by the Central Bank; and
- in the second case on 7 August 2024, the STJ upheld the general rule that any difference resulting from payment of salary and labour benefits in foreign currency could be paid in local currency, using the exchange rate applicable at the time of actual payment, unless the parties agreed otherwise.

The STJ has not provided clear guidelines for these cases, leading to uncertainty regarding employment obligations involving foreign currency.

Shareholders responsible for compensation for workplace accident – On 7 August 2024, the STJ considered a case involving a workplace accident and ruled that compensation should be paid in US dollars. Key takeaways are as follows:

- a judgment for US$350,000 was awarded, even though the lawsuit was calculated in petros, a state-backed cryptocurrency that was terminated in January 2024. This decision was made to ensure the indemnity maintains its real value, considering the significant devaluation of local currency; and
- individuals that are shareholders of a company may be held accountable for salary, employment rights and benefits, and other compensation owed to the employee for the employment relationship.

Jurisdiction criteria – In a ruling published on 14 August 2024, the STJ determined that parties may voluntarily relinquish jurisdiction over employment cases to foreign courts. This decision is similar to a 2023 case involving the Embassy of Saudi Arabia, where the court deemed a jurisdictional challenge inadmissible because the labour dispute did not affect essential principles of Venezuelan public order.

In the current case, the worker was neither hired in Venezuela, nor did their employment end there. The dispute was settled through a settlement agreement in a Chilean court. The STJ reasoned that there were no significant connections to Venezuela and that, by signing the settlement agreement in Chile, the parties had implicitly accepted Chilean jurisdiction. According to international private law, the STJ ruled that employment rights were not a matter of public interest in this context and therefore upheld the parties' relinquishment of jurisdiction.

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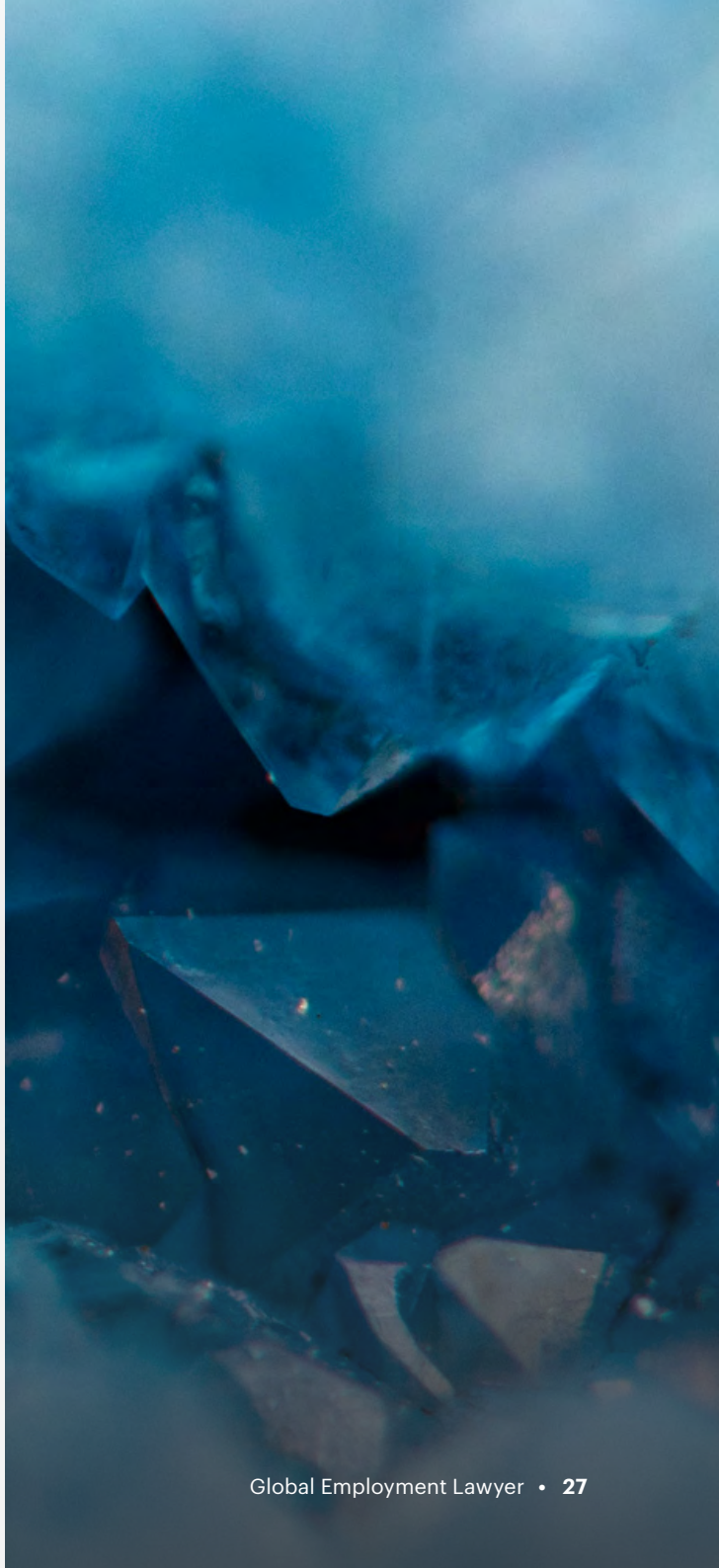

Europe

Czech Republic

New work agreement obligations – From 1 July 2024, employers in the Czech Republic are subject to new obligations in relation to employees who perform work based on an agreement to complete a job (Czech: *dohoda o provedení práce* (**DPP**)).

The following changes apply:

- employers are now obliged to register, in the register of insured persons maintained by the Czech Social Security Administration (**CSSA**), employees who perform work on the basis of a DPP contract without participation in sickness and pension insurance;
- employers, who have so far employed only uninsured employees on a DPP contract basis, had to register in the CSSA Employer Register by 31 July 2024, at the latest;
- as of 1 August 2024, employers are obliged to regularly report the income of all individual employees performing work based on a DPP contract to the local social security administration office; and
- the amount of insurance contributions and taxation for employees working on DPP contracts will remain unchanged until the end of 2024. They are still subject to sickness and pension insurance only in those calendar months when their countable income exceeds CZK 10,000 (€400).

Other changes in the area of agreements on work performed outside an employment relationship will follow from 1 January 2025. Employers will be able to apply the "notified agreement scheme", under which a higher limit for participation in insurance and payment of premiums can be used for DPP contracts. Otherwise, similar conditions will apply to the DPP as for employment or agreements on working activity.

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New tactical approach in dismissal cases – If a dismissal is determined to be invalid at the end of (lengthy) litigation in German labour courts, the employer is obliged to pay outstanding salary to the employee (known as "default salaries"). This typically includes salary from the end of the notice period until the conclusion of litigation. The amounts can be substantial, especially if the case extends to a second or third court instance. The risk of having to pay default salaries is a key argument for employees when requesting high severance payments.

However, more recently the Federal Labour Court has approved a tactical approach that effectively reduces this risk. This should now become standard practice in any litigation regarding protection against dismissal.

In the relevant cases, employers have successfully refused to pay default salaries by arguing that the employee maliciously failed to earn other income. The court agreed that employees are required to apply for "reasonable" job opportunities. To compel employees to apply and shift the burden of proof for this "malicious failure" onto them, employers can send job postings to dismissed employees. Employees must respond to these offers and explain in court whether they applied. If they ignore the job offers, they risk forfeiting their claim to default salary. This approach puts significant pressure on employees to seek new employment. As a result, employers are advised to invest time in searching for appropriate job offers, such as through online job boards and recruitment platforms.

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Changes in occupational safety and health regulation – Currently, in accordance with the Hungarian Labour Code, responsibility for the implementation of occupational health and safety requirements lies with the employer. The employee's fitness for the job for which they are considered must be examined free of charge before taking up work and on a regular basis during the life of the relationship.

Effective from 1 September 2024, following the amendment of the Hungarian Labour Code, employers will be exempt from the obligation to conduct occupational health and safety examinations free of charge, except when mandated by law or if the employer requires such examination.

The amendment of the Occupational Health and Safety Act will also be effective from 1 September, according to which, in cases provided for by law or at the employer's discretion, fitness for work shall be decided on the basis of a medical examination provided for by law (and, as such, will no longer be mandatory). This shall not be applicable if the legislation governing the employment relationship provides for a specific requirement of medical fitness for the employee concerned.

The requirement of a medical fitness test must be verified on a case-by-case basis according to the position in which the employee is employed, as regulated by a decree of the Ministry of Interior effective from 1 September 2024. The regulation lists 12 cases where a fitness examination remains mandatory.

Immigration rules – A new amendment came into force on 1 July 2024. Three types of permits are affected by the amendment:

- occupation-based residence permit;
- migrant worker's residence permit; and
- a National Card.

In the case of the occupation-based residence permit and the migrant worker's residence permit, as of 1 July, the government is responsible for determining which countries' nationals may apply for these permits. There is currently no restriction based on the nationality of the applicant, but it is possible that the government will issue a separate decree specifying which nationals of which countries will be eligible to apply for an occupation-based residence permit or a migrant worker's residence permit. With regards to the National Card, the amendment to the legislation provides that the government will determine which nationals of which countries' can apply for such a permit, so it is expected that the National Card will no longer be available only to Serbian and Ukrainian nationals.

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First case on new right to request remote and flexible working – The first case was determined recently by the Irish Workplace Relations Commission (**WRC**) under the new statutory right to request remote and flexible working legislation, which has been in place since 7 March 2024. The WRC clarified that it does not have jurisdiction to consider the merits of a refusal, but rather only the failure to follow the prescriptive process in considering such requests. Essentially, the required process is that the employer must consider the request having regard to its needs, the employee's needs and the requirements of the relevant WRC code of practice, and that the request must either be approved or refused in writing within four weeks (or a further period not exceeding eight weeks if the employee has been notified in writing).

The WRC found in favour of an employer who had in place a hybrid working policy and considered the relevant request in line with it, refusing a request to work remotely beyond the two days permitted under that policy. Employers should review their policies and ensure that systems are in place to deal with the new statutory requests.

Enhanced parental leave – From 1 August 2024, the duration of parental leave increased from seven to nine weeks. Qualifying employees are entitled to take this leave within the first two years of a child's life (or of a child's placement, in the case of adoption). Employers are not required to pay employees during this leave (although it is open to them to do so). However, employees may be entitled to receive parental benefit from the relevant governmental department. Employers should consider updating their policies in relation to this enhanced entitlement.

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

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Social security contribution compliance – From 1 September 2024, new regulations came into effect to enhance the voluntary regularisation of social security contributions, streamline communication with the National Social Security Institute (**INPS**) and strengthen penalties for non-compliance. Below are the key highlights:

- incentives for voluntary regularisation: Companies that voluntarily regularise missed or late contributions within 120 days of the original payment deadline will benefit from reduced penalties. The standard civil penalty, typically calculated at the official reference rate (currently 4.25%) plus 5.5 points, will be reduced to the official reference rate only, with a maximum cap of 40% of the unpaid contributions;
- new communication channel with Social Security Authority: A new information exchange system between the Social Security Authority and employers will be tested, allowing businesses to access relevant data for determining their contribution obligations. This system, pending approval by the Ministry of Labor, aims to prevent irregularities and facilitate the resolution of potential issues before they result in penalties;
- penalties for non-compliance: The existing penalty regime remains unchanged for non-compliant companies. In cases of missed contributions, penalties will be calculated at the official reference rate plus 5.5 points. For cases of intentional contribution evasion, the penalty will be 30% of the owed amount per year, capped at 60%; and
- remote inspections by INPS: INPS will now conduct remote inspections using data from various sources to verify compliance, particularly concerning outsourced labour. If irregularities are found, INPS may issue notices via certified email.

These measures are designed to encourage timely compliance and provide clearer communication between employers and INPS, while maintaining strict penalties for those who fail to meet their obligations.

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Sexual Offences Act and Confidential Advisors Act – On 1 July 2024, the Dutch Sexual Offences Act came into force providing further protection for the victims of sexual violence and sexual harassment. This could have an impact on workplace harassment because victims will be able to report rape and sexual assault in more situations than previously. For example, sexual harassment (including through social media) as well as sex chatting are now considered a criminal act. Further, the criminalisation of sexual acts no longer depends on coercion or violence, but on the absence of voluntariness. Employers should check whether their company code of conduct in relation to sexual harassment needs updating to reflect these changes.

Relatedly, the proposed Confidential Advisors Act, which is pending before the Dutch Senate, aims to amend the Working Conditions Act. If enacted, it would require employers to appoint a confidential advisor to address issues such as bullying, sexual harassment and discrimination. Employers will need to select a confidential advisor (either internal or external) with input from the works council or staff representative body. The advisor will have a duty of confidentiality and their role will include supporting and advising employees. Appointed advisors will be protected against any dismissal related to their role.

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New pensions law - From 1 September 2024, a new law regulates old age, early retirement, disability and survivors' pensions, bringing significant changes to the public pension system:

- The main changes include setting the retirement age at 65 for both men and women. All genders now have a standard retirement age of 65, with a minimum contribution period of 15 years and a full contribution period of 35 years. Women can benefit from a reduction in the standard retirement age based on their number of children.
- The pension calculation method is also being updated. Pensions will now be determined by multiplying the total number of points earned by the insured person by the reference point value, currently set at RON 81. The National House of Public Pensions will carry out the recalculation automatically, without the need for retirees to submit a request. If the recalculated pension amount is lower than the current pension, retirees will continue to receive the higher amount.
- Contribution periods exceeding 25 years will be rewarded with additional points, referred to as stability points.
- For early retirement, individuals who have at least five additional years of service beyond the full contribution period can retire up to five years earlier than the standard age (i.e. at age 60).
- People insured in the public pension scheme who meet the conditions for old age pension eligibility may choose between receiving an old age pension and continuing to work, with the employer's annual agreement, until the age of 70.

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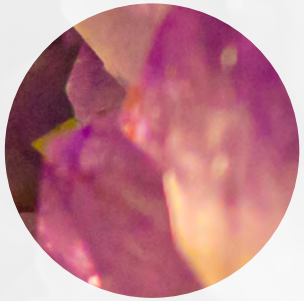

Slovakia

Contractor's obligation to pay salary to subcontractor's employees – If a subcontractor fails to pay its employees on time, those employees can request their salary (up to the statutory minimum wage) directly from the contractor who hired the subcontractor. This applies only when the subcontractor's employees perform certain types of manual (blue-collar) work. Employees must submit their claim in writing within six months of the missed payment date. The contractor can then seek reimbursement from the subcontractor for any payments made to the employees. Previously, this rule only applied to postings within the EU and to the temporary assignment of employees. The new regulation takes effect on 1 August 2024.

Fictitious self-employed persons – The government aims to address the issue of fictitious self-employment, where individuals formally provide services under a business licence but are effectively in an employment relationship. Plans have been announced to amend laws and strengthen the powers of labour inspectorates. Experts believe inspections will focus on sectors such as IT, project agencies, marketing and advertising. If an employer is found to be using fictitious self-employed workers, they may face severe penalties for illegal employment, including fines of up to €200,000, bans on participating in public procurement and subsidy applications, restrictions on employing non-EU citizens and even criminal sanctions in extreme cases. Employers also risk additional financial liabilities (tax, social security and health insurance) and reputational damage, as those in breach will be listed in a public register of illegal employers.

Important milestone for IT sector – After more than three years of negotiations, a collective bargaining agreement was signed for the Slovak subsidiary of a major IT company in August 2024. The agreement provides mainly for extra severance payments and social benefits for employees. It will be effective until 31 January 2028. The trade union considers this an important milestone for the whole IT sector in Slovakia (where collective bargaining agreements are not that common). This may therefore create pressure for other IT players in the future.

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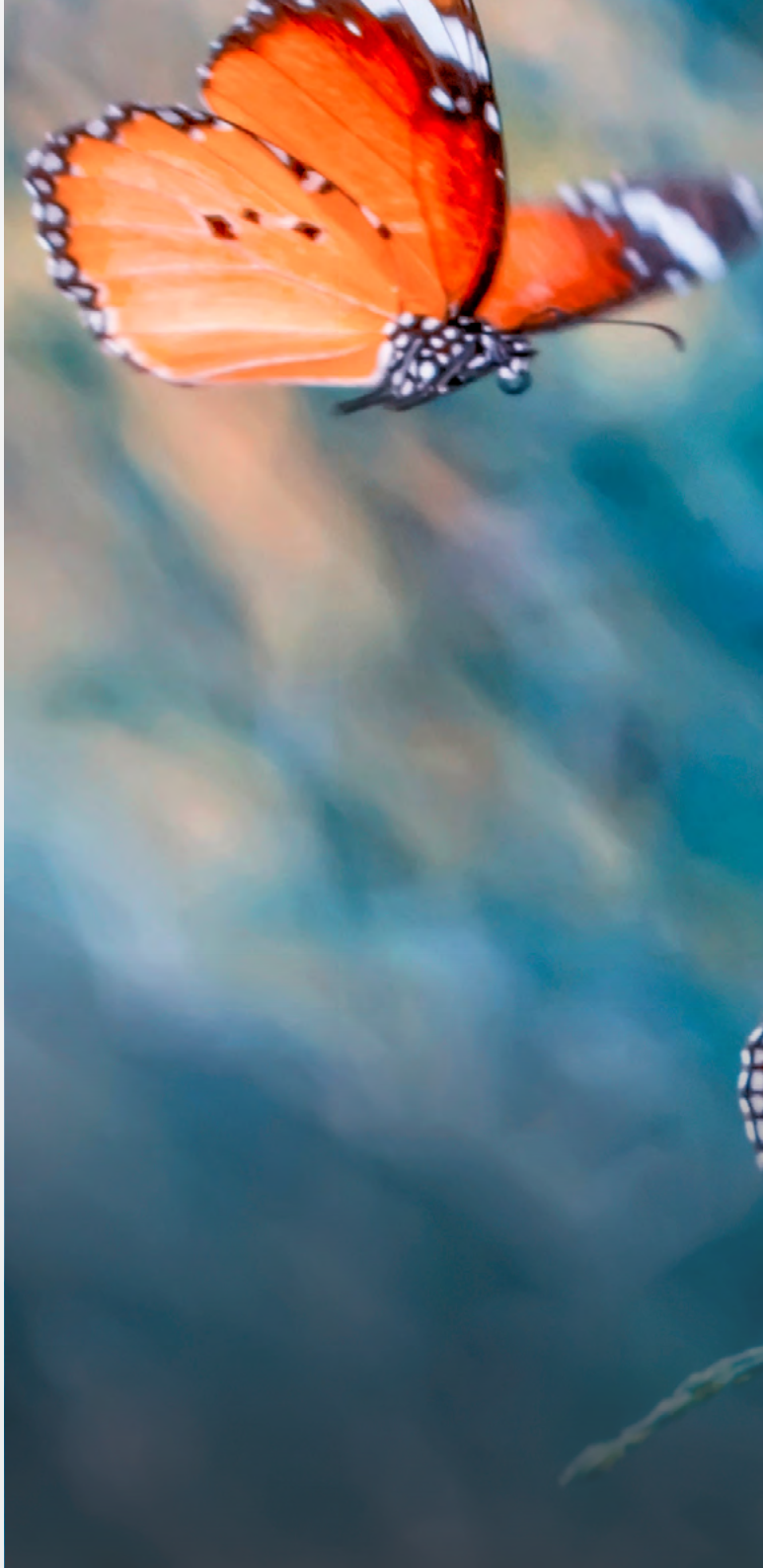

Spain

New gender parity law – In August 2024, the Spanish Parliament enacted a new parity law requiring companies with more than 250 employees to ensure at least 40% representation of each gender on their boards and decision-making bodies. This measure aims to promote gender equality in business and reduce the gender gap in top management. Companies have three years to meet this requirement, with non-compliance sanctionable by substantial fines and restrictions on public procurement. The legislation also offers incentives for companies that surpass 50% female representation.

The new parity law also includes important modifications to the Workers' Statute. One of the most significant changes is the removal of two cases where dismissal was automatically deemed null and void – specifically when employees requested adjustments to working hours for family reasons or took five days' leave due to a family member's illness or surgery.

Previously, dismissals in these situations were automatically ruled null and void by the courts. Following the new law, employees must now evidence a link between their request for these permissions and the reason for termination stated in the termination letter. If the termination is unrelated to these requests, employees will no longer be automatically protected and courts may rule the dismissal either fair or unfair.

Given this change and the potential for varied court interpretations, it is strongly recommended that companies terminating employees who requested such permits provide a well-documented and justified termination letter to prevent claims of retaliation by the employees in court.

Severance compensation under review – In 2012, the European Commission warned Spain that its severance compensation formula, based on salary and seniority, resulted in excessively high payouts. Consequently, Spain revised the formula, reducing severance from 45 days' salary per year to 33 days' salary.

On 29 July 2024, following a complaint by a major Spanish trade union, the European Committee of Social Rights (**ECSR**) declared that Spain's current severance compensation system does not meet European Social Charter standards. The ECSR found that the current formula is insufficiently dissuasive and does not adequately compensate employees for unfair termination. This allows employers to dismiss employees with minimal compensation, even without legal justification.

In response, the Ministry of Labor has indicated that Spanish regulations need to be updated to align with ECSR recommendations. Ongoing political discussions are exploring how to revise the severance calculation, considering factors such as employee age, job prospects and personal circumstances.

Currently, some courts are incorporating additional factors into severance calculations beyond the legal formula based on seniority and salary. This approach raises concerns about the accuracy and consistency of compensation amounts, as it could lead to significant variability in severance pay depending on the court's discretion. This uncertainty means companies may struggle to predict termination costs, unlike the more straightforward system based solely on seniority and salary.

Probation terminations count towards collective dismissal threshold – On 27 June 2024, the National Audience ruled that a company must reinstate 28 employees terminated during their probationary period, as these terminations should have been carried out as a collective dismissal. This decision follows a Supreme Court ruling from 23 September 2021, which stated that terminations during a probationary period of up to 90 days count towards the threshold for collective dismissal procedures.

The National Audience found that terminating more than 30 employees in 90 days, including the 28 probationary terminations, constituted a hidden collective dismissal. As a result, the terminations were declared null and void, requiring the company to reinstate the employees and pay accrued wages from the termination date.

The ruling emphasises the need for careful planning and assessment when conducting large-scale terminations within a 90-day period to avoid triggering collective dismissal procedures.

Weekly rest period cannot overlap bank holiday – All employees are entitled to a weekly rest period as well as 14 annual public holidays.

On 9 July 2024, the Supreme Court ruled that the minimum weekly rest days should not overlap the 14 annual public holidays, overturning an earlier ruling. The court determined that both weekly resting periods and public holidays have the same objective of contributing to workers' rest. When weekly rest periods coincide with public bank holidays, the company must compensate the affected workers.

Employers should be aware that allowing this overlap without compensation is not legal, even if a company's collective agreement permits it.

Terminating employment during sickness leave – Case law generally treats terminations during or after sickness leave as automatically null and void unless the company provides strong evidence showing that the termination is based on legal grounds, such as disciplinary issues or redundancies.

On 23 May 2024, the High Court of Justice of Andalucía clarified that terminations during sickness leave are permissible if the company provides compelling evidence that the termination is unrelated to the employee's leave. Terminations will not be deemed null and void solely based on the employee being on sickness leave.

In this case, an employee was terminated for redundancy three days after reporting a medical appointment. The company cited organisational reasons but failed to provide sufficient evidence in the termination letter. The court found the termination to be retaliatory and therefore null and void, ruling that it violated the employee's constitutional rights. The company was ordered to reinstate the employee and pay accrued salary plus damages.

This ruling highlights the importance of drafting a well-supported and evidence-backed termination letter, especially when the employee is in a protected situation like sickness leave.

Court upholds remote work denial – On 14 May 2024, the High Court of Justice of Castilla y León dismissed an employee's appeal to work remotely for family reasons. The company had denied the request, arguing that their main client prohibited remote connections and lacked the necessary licences.

The court upheld the company's decision, ruling that its rejection was based on valid organisational and operational reasons. The employee's argument regarding personal and professional life balance was outweighed by the company's need to maintain client relationships and operational needs.

This judgment confirms that companies can deny remote work requests for family reasons if they can provide strong organisational and production justifications. Each case must be evaluated individually.

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United Kingdom

Major employment law reforms – The newly elected Labour government promised a wide range of employment law changes in its election campaign which were summarised in its "Deal for Working People". Key reforms include (this is not an exhaustive list):

- creation of a new single status of worker (replacing the current two-tier status of employees and workers);
- protection against unfair dismissal to become a day-one right (removing the current two-year qualifying period) subject to probationary periods;
- parental leave to also become a day-one right plus changes to bereavement and carer's leave (including paid carer's leave), and increased protection from dismissal for workers returning from maternity leave;
- addressing "exploitative" zero hours contracts by ensuring contracts reflect employees' typical hours, providing notice for shift changes and compensation for cancelled shifts;
- plans to strengthen so-called fire and rehire protections with a new statutory code to protect workers from disadvantageous terms, plus changes to the trigger for collective redundancy consultation;
- repealing minimum service level laws for strikes, simplifying union recognition and balloting, and allowing workplace access for union members; and
- banning unpaid internships subject to limited exceptions.

To bring about these changes, a new Employment Rights Bill was promised within 100 days of election success (i.e. by 12 October 2024). Once the bill is introduced, it will then take some time to pass through the legislative process – for a bill of this nature, a timeframe of six to nine months might be expected. Some of the reforms are also likely to need additional secondary legislation and some may not even make it into the bill (for example, consultation has been promised on the single status of workers).

This means it is unlikely anything will change for employers immediately. However, if the overall programme is implemented as proposed, this would represent the biggest overhaul of employment law in a generation. Employers may wish to start auditing their processes, policies and contractual terms and begin considering how they will accommodate the changes.

Duty to prevent sexual harassment – On 26 October 2024, a new legal duty comes into force requiring employers to take reasonable steps to prevent sexual harassment of employees:

- the new duty is proactive, aimed at preventing future incidents of sexual harassment rather than just responding to them. Tribunals can increase compensation by 25% for breaches and the Equality and Human Rights Commission can enforce this duty, even without an employee complaint;
- the new duty only applies to sexual harassment (although the defence of taking "all reasonable steps" to prevent harassment based on any other protected characteristics will still be available); and
- what is reasonable will vary from employer to employer and will depend, among other things, on size, resources and the nature of the workplace.

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Supreme Court rulings on termination – The Supreme Court has issued various important rulings regarding the legality of terminating employment contracts:

- employee-initiated terminations: Even when an employee voluntarily terminates their employment contract, the termination can be challenged if it is found that the employee acted under unlawful influence or pressure from the employer;
- violation of company policies: While company policies may be clearly communicated and understood by employees, a violation of these policies does not automatically justify termination. In a recent case, a bank's policy prohibited employees involved in money-related activities from gambling. The court ruled that terminating an employee for off-duty gambling, which did not impact job responsibilities, was unlawful; and
- compensation for wrongful termination: The court recently awarded an employee compensation for wrongful termination in an amount equivalent to 25 times the employee's monthly salary.

Considering these rulings, employers must carefully consider the legal implications of terminations and ensure they are conducted fairly and lawfully. Even if circumstances might seem to justify a termination, the potential for legal challenges and significant compensation awards necessitates a thorough review to ensure compliance with labour legislation.

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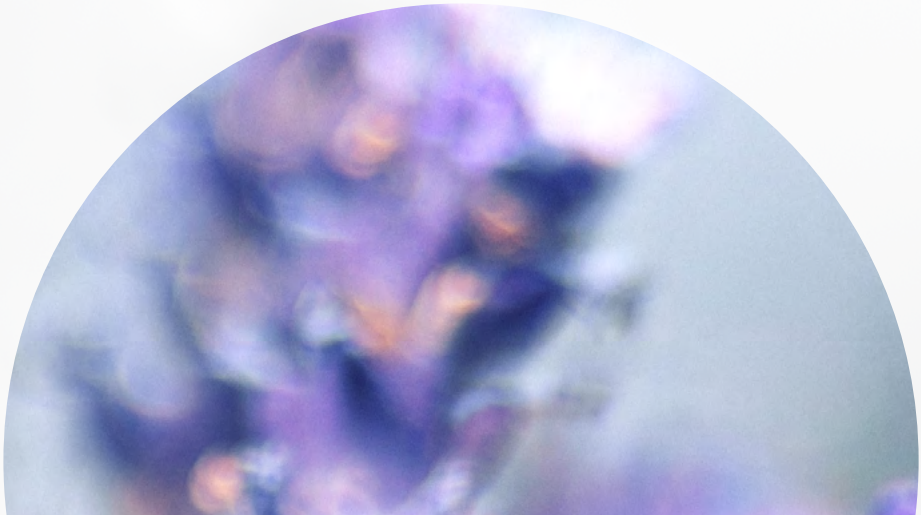

Kuwait

Work permit fees and transfer rules – New legislation effective 1 June 2024 increases the additional fees for work permits required for all employees in Kuwait to KWD 150 (approximately US$490). Total employee count must be assessed on a need basis and individually authorised by the Public Authority for Manpower. Certain categories of employees are exempt from this requirement.

The transfer of an employee recruited with a work permit from one employer to another is permitted before the completion of three years for a fee of KWD 300 (approximately US$982).

This legislation does not apply to government contracts and projects, as well as registered small and medium-sized enterprises.

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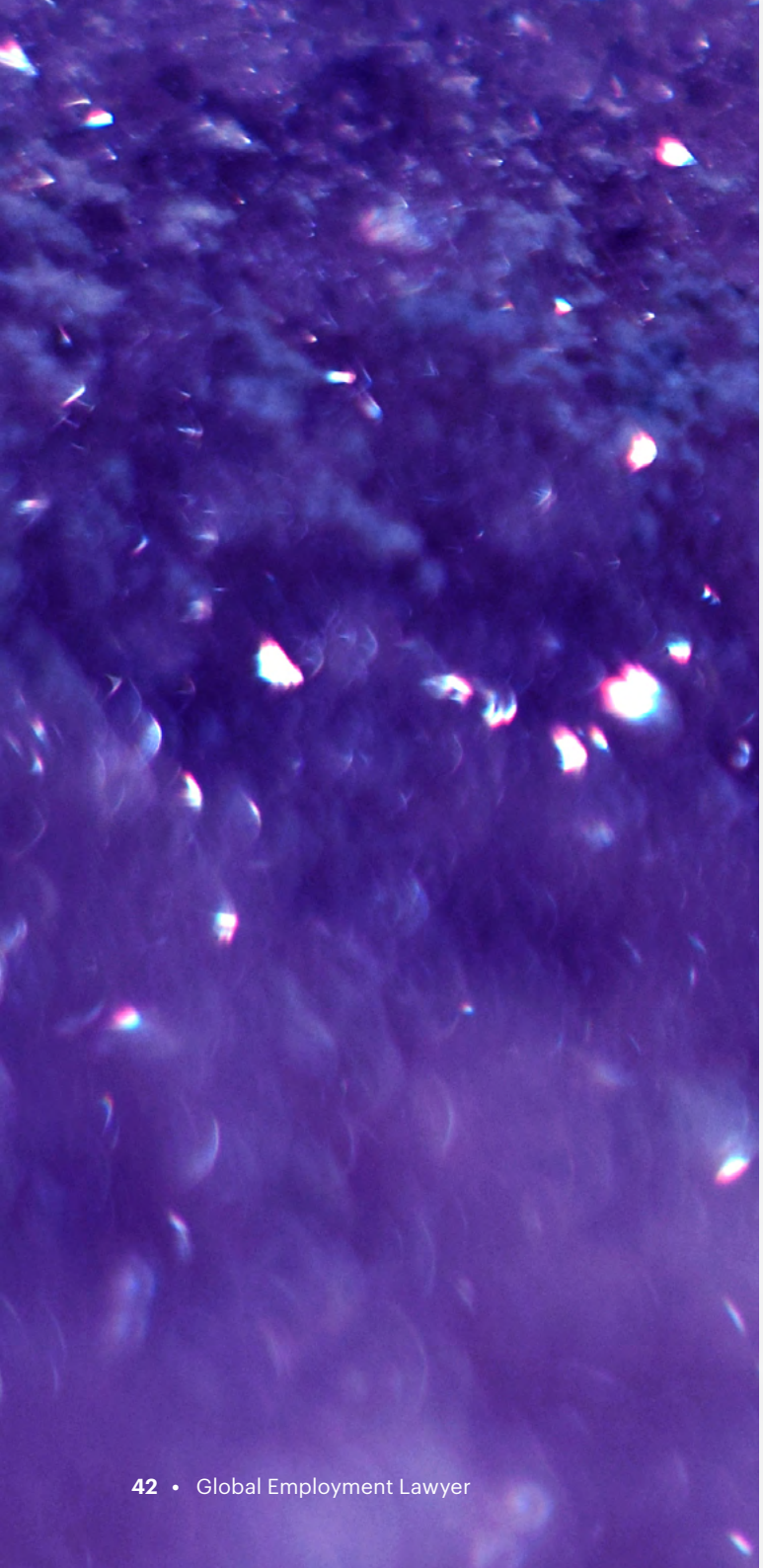

Saudi Arabia

Social insurance changes – New social insurance legislation has been introduced which applies to new employees. Existing employees will remain under the old laws, but they will be subject to the new retirement ages with some exceptions.

Key changes include raising the statutory retirement age from 58 to 65 and increasing the contribution period for early retirement from 25 to 30 years. These changes will be phased in based on employees' age and service at the time of the amendments.

Employees who are 50 Hijri years or older, or have 20 or more years of contributions as of the amendment date, will continue under the previous laws.

Extending waiver of fees imposed on expatriates – The initiative on waiving fees for expatriate workers in the industrial sector has been extended to 31 December 2025. This extension follows the expiration of a previous five-year fee waiver for industrial workers. In 2019, the Saudi government implemented fees for expatriate workers to encourage the hiring of Saudi nationals. However, to stimulate industrial investments and support the goals of Vision 2030, the government waived fees for expatriate workers in the industrial sector for five years, starting 1 October 2019.

Reorganisation of work permits – The Ministry of Human Resources and Social Development (**MHRSD**) is working to finalise a draft scheme that divides work permits into three categories based on skill levels. The MHRSD is coordinating with the Ministry of Investment to address its concerns and observations regarding the potential impact of this scheme on the investment environment. In June 2024, the MHRSD presented a draft amendment to the executive regulations of the Labour Law proposing this division. The scheme categorises work permits and visas into highly skilled, skilled and basic levels.

Labour Law amendments – Recent amendments to the Labour Law have been proposed which would take effect 180 days after their publication in the Official Gazette. The amendments introduce significant changes which will have a substantial impact on employers operating in Saudi Arabia. Key changes include the following:

- the Ministry has the authority to deny work permit renewals, not only for violations of Saudisation requirements, but also for any other breaches of labour regulations. Employers must ensure strict compliance with all labour regulations, including Saudisation requirements;

- prior to the amendment, if an employment contract of a non-Saudi employee did not specify its duration, the duration of the work permit would be deemed to be the duration of the contract. The amendment changes this to stipulate that if the contract does not specify the term, it will be deemed to be one year from the start date. If the employee continues working after this term, the contract automatically renews for a similar term;
- the employer's responsibility has shifted from simply "preparing" Saudi workers to developing a comprehensive "training and qualification" policy. This implies a more strategic approach to skill development. Employers must develop a comprehensive training and qualification policy to ensure Saudi workers are adequately skilled. The law now allows the Minister to set any percentage of Saudi workers whom employers must train, removing the previous fixed percentage and the requirement for a minimum number of employees;
- the amendments aim to provide more structure, validity and clarity to training contracts, focusing on clear objectives, defined roles and performance-based evaluation. Training contracts must be more structured, valid and clear, with defined objectives, roles and performance evaluation;
- the Ministry will create a model form for each type of employment contract. Employers can use the model forms provided by the Ministry for different types of employment contracts;
- the period for indefinite contracts which are terminated by the employee shall be 30 days instead of 60 days. The reduction of the notice period for indefinite contracts terminated by the employee from 60 to 30 days allows employers to adjust their termination policies accordingly;
- there is a new rule regulating resignation of employees;
- employers may, with worker consent, grant compensatory paid leave in lieu of overtime wages, with specific details outlined in the regulations;
- a new entitlement to three days' leave with full pay in the event of the death of a brother or sister of the worker; and
- extending maternity leave from 10 weeks to 12 weeks.

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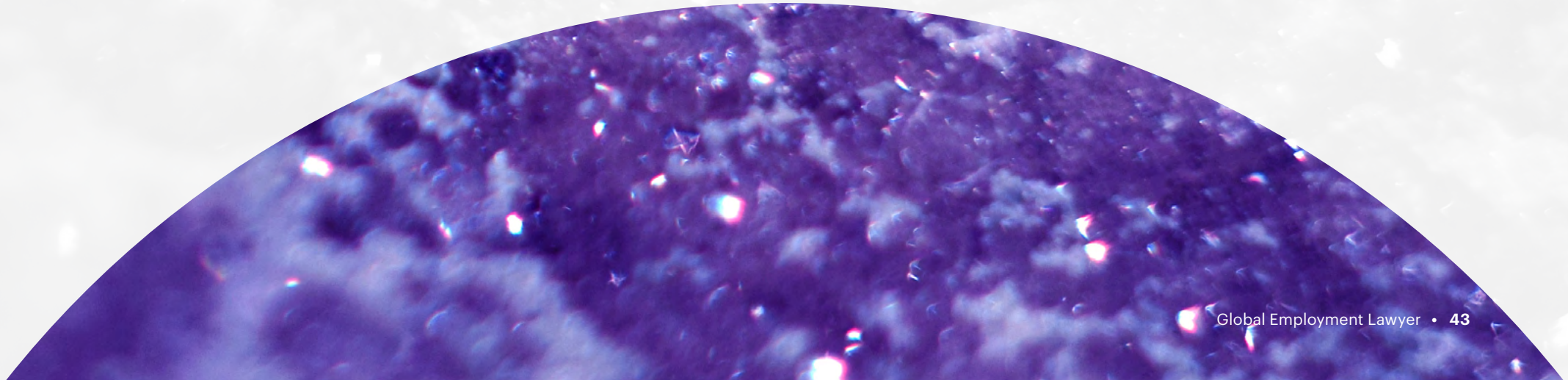

Türkiye

Short-time working – A new regulation on short-time working, effective 1 March 2024, replaces the old rules and introduces the following key amendments:

- employers may also file an application for a short-time working regime in case of a general epidemic;
- the short-term working period cannot be less than four weeks for a workplace, except for employees who were included in the scope of the short-time working regime but whose employment is terminated, transferred to another workplace of the same employer or the employment agreement is suspended;
- the length of the short-time working period that is applied in a workplace or a part of the workplace cannot be less than one third of the normal weekly working hours of the workplace. As for an employee, the new regulation provides that the length of the short-time working period of the employee who is subjected to the short-time working regime can be less than one third of the normal weekly working hours, provided that it is not zero;
- the decision of the board of directors of the Turkish Employment Agency is not required for short-time working regime applications based on a compelling reason arising from an earthquake, fire, flood, landslide, epidemic, mobilisation and similar situations where the workplace is directly physically affected;
- in order for an employee to be eligible for short-time working allowance, the employee must have been a party to an employment agreement for the last 120 days prior to the start date of the short-time working period and unemployment insurance premiums must have been paid for at least 450 days within the last three years; and
- the scope of situations where the short-time working allowance will cease or be suspended is extended.

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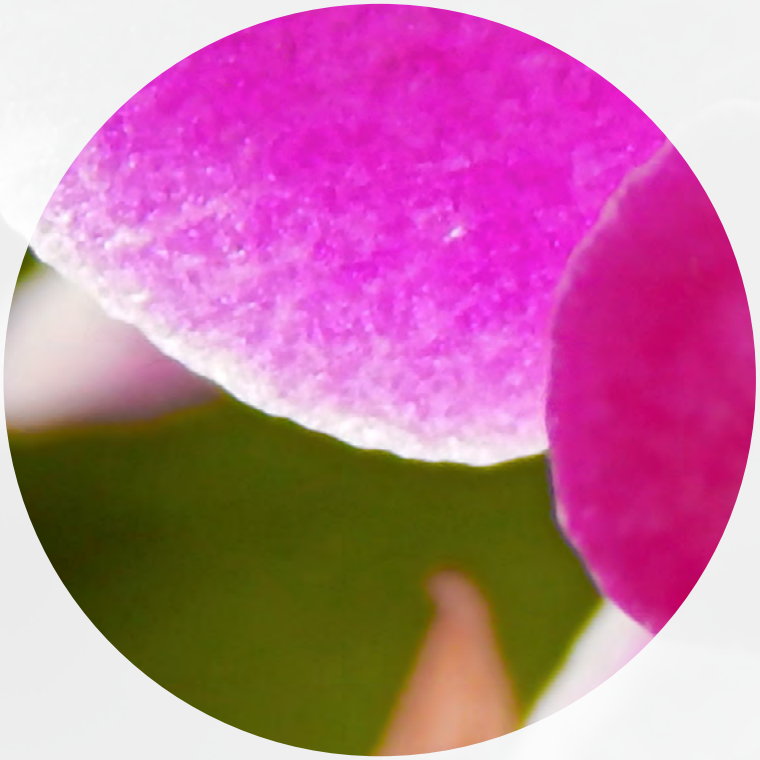

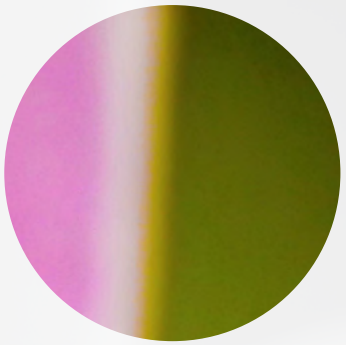

United Arab Emirates

Amendment to Labour Law –
From 1 September 2024, the Labour Law was amended in relation to the statute of limitation to which employment claims are subject and the applicable fines for violating certain provisions of the law.

- statute of limitation: The statute of limitation period was increased from one to two years. In addition, the statute of limitation period will start to count from the employment relationship termination date instead of the due date of the claimed entitlement;
- work permit rules violation: The fine that an employer may be subjected to for hiring an individual without obtaining the appropriate work permit, or for allowing their employees to work for other employers, was increased. Previously, the fine used to range between AED 50,000 and AED 200,000. This has increased to a minimum of AED 100,000 and up to a maximum of AED 1 million; and
- fake employment: A new fine was introduced which will be applicable to employers defrauding the employment regulations by obtaining work permits for individuals who are not actually working for them. This fine will range between AED 100,000 and AED 1 million per violation. In addition, in the event the fraudulent arrangement has resulted in the employee receiving any benefits or subsidisation from any governmental authority, the employer will be liable to refund the authority such benefits and/or subsidisation and will not have the right to claw back these amounts from the alleged employee.

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Protection against sexual and psychological harassment – On 27 March 2024, Quebec adopted the Act to Prevent and Fight Psychological Harassment and Sexual Violence in the Workplace. This Act amends several Quebec laws, including the Act respecting labour standards, the Act respecting industrial accidents and occupational diseases, and the Act respecting occupational health and safety with the aim of ensuring a better protection for employees against sexual and psychological harassment in the workplace.

Although the concept of violence had been formally introduced into Quebec occupational health and safety legislation in 2021, this new legislation represents a significant turning point in the protection of workers, as it considerably expands the legal framework for the prevention and the compensation of harassment and violence in the workplace.

Some of the amendments simply codify existing well-established principles of the case law, notably with regard to the employer's obligation to prevent harassment in the workplace committed by anyone, even if the perpetrator is not one of its employees. Other changes extend employers' obligations and employees' rights and protect in the context of psychological harassment and sexual violence in the workplace.

Notably, it introduces minimum content that employers must address in their policy for the prevention of psychological or sexual harassment in the workplace and a procedure for complaints, provided that this policy will become a mandatory component of the prevention programme or action plan put in place by the employers to prevent sexual violence in the workplace. This amendment creates a direct connection between the legal framework surrounding psychological harassment, covered by minimum labour standards, and the prevention of sexual violence covered by the OHS legislation.

In addition, employees who witness or report harassment will now be protected against reprisals, while employees who are victims will have extended time limits of two years instead of six months to file an employment injury claim and may also be awarded punitive damages as a result of psychological harassment, even if they are compensated for an employment injury resulting from the same events.

Some of the changes made by the Act have been in effect since March 27, 2024, while others have come or will come into force later (e.g. September 27, 2024 in the case of changes regarding the minimum content of the policy).

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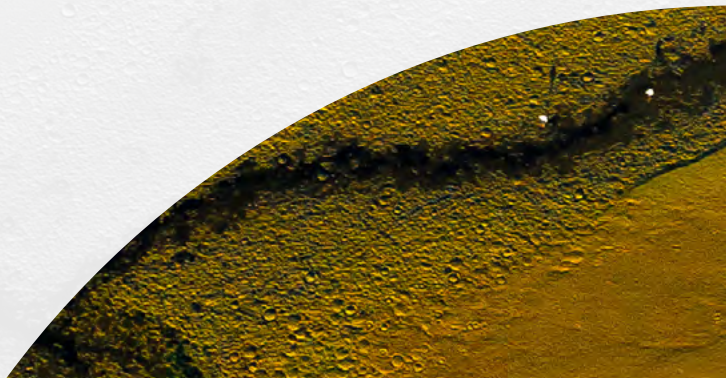

United States of America

Federal Court blocks FTC non-compete rule – In January 2023, the Federal Trade Commission (**FTC**) issued a proposed regulation that prohibited employers from imposing non-compete agreements on workers, with few exceptions. In August 2024, the US District Court for the Northern District of Texas found that the rule constitutes an "unlawful agency action" under the Administrative Procedure Act because the FTC exceeded its statutory authority, and because the Rule is "arbitrary and capricious". Accordingly, the rule was "set aside" and enjoined from taking effect nationwide. This issue is likely to make its way to the Supreme Court, but the FTC rule is no longer an immediate concern for employers.

Guidance on the Pregnant Workers Fairness Act – On 18 June 2024, a final regulation issued by the Equal Employment Opportunity Commission containing extensive interpretive guidance relating to the implementation of the Pregnant Workers Fairness Act became effective.

The Equal Employment Opportunity Commission's interpretive guidance provides that reasonable accommodations may include, among other things:

- making facilities readily accessible;
- job restructuring;
- modified work schedules;
- uniform modification; and
- permitting unpaid leave for recovery from childbirth.

Determination of whether an accommodation is reasonable may require employers to engage in an informal, interactive process. An accommodation request does not need to be in writing and the employee (or their representative) need only communicate the need for an accommodation because of their condition related to pregnancy or childbirth.

Employers should ensure that their policies are up to date and consistent with the Pregnant Workers Fairness Act and accompanying regulations.

Fifth Circuit vacates US Department of Labor's Final Rule – The Fair Labor Standards Act permits employers to take a "tip credit", and pay less than the minimum wage, when paying the wages of any "tipped employee". In late 2021, the US Department of Labor revived and revised the 80/20 guidance and issued its Final Rule by providing that employers can utilise tip credit only so long as 80% or more of the work is tip-producing, and no more than 20% is "directly supporting work". Under the Final Rule, no tip credit can be taken for any non-tipped work.

In August 2024, the US Fifth Circuit Court of Appeals vacated the 80/20 Rule. With the Final Rule vacated, employers should revert to the dual jobs regulation and take tip credit for the work performed by the tipped employee that is part of the employee's tipped occupation.

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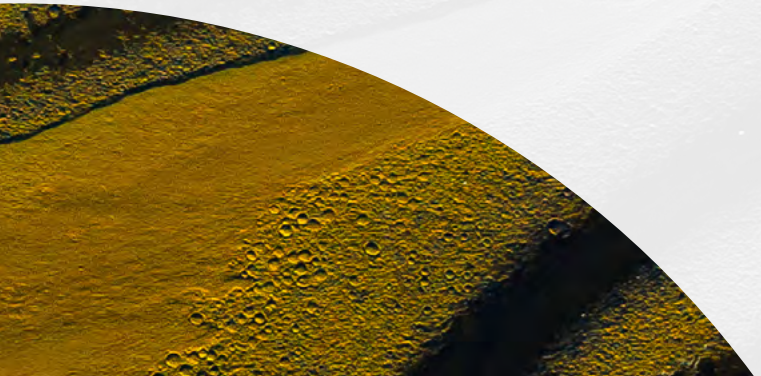


In conversation with...

In this edition, we talk to **Elouisa Crichton**, a partner in Dentons' People Reward and Mobility practice in Glasgow who works on Scottish, UK and international matters.

Elouisa is accredited by the Law Society of Scotland as a specialist in both employment and discrimination law. *Chambers and Partners* ranks her as the Employment Star Associate 2024. *Legal 500* chose her as the Employment Rising Star of the Year 2023 (she is nominated for the same award again this year) and has ranked her as Rising Star in 2022, 2023 and 2024.

Noted by *Legal 500* as having discrimination expertise and being a "specialist in maternity and shared parental leave, gender pay gap reporting, equal pay and gender equality matters", Elouisa is particularly well equipped to assist clients with sensitive sexual harassment matters, criminal investigations connected to employment and institutional bias (including racism, micro aggressions and unconscious bias). She has spoken at various events, including the Employment Law Group, on the practicalities of managing these matters.

Elouisa is an active member of the Employment Lawyers Association pro bono committee and a founding volunteer for the Maternity Action online legal support forum hosted via Mumsnet.

What excited you about joining Dentons?

At Dentons, there really is no limit on the type or scale of work you can get involved in – I love the opportunities and potential to work with some of the world's biggest employers on really innovative instructions.

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

Equality and culture matters have moved up the agenda for many employers. So, it is common to be focusing not just on legal compliance, but going beyond that to support people and be seen as a market leader.

What are you currently focusing on?

Sexual harassment advice, supporting on high-profile sensitive investigations and helping clients get ready for the UK's new proactive duty to prevent sexual harassment. I am also working with Dentons labour law colleagues globally as we prepare our international guide on pay equity and transparency. Often the focus of reporting is on gender but we are seeing moves to include race, disability and other characteristics either as a result of legal changes or clients wishing to take a more holistic approach. My practice is split between commercial employment work and equality/discrimination. This means that I am also working on several corporate matters, staff transfers, redundancy queries and litigation.

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

The recent change in government in the UK has marked a shift in approach to many employment law matters, primarily to strengthen employee rights. I expect we will see more claims as qualifying periods are removed; more trade union and collective activity as rights around strikes and bargaining develop; and a continued shift placing the onus on employers to protect employees from harassment.

What do you enjoy doing outside work?

Family days out around Scotland to visit castles, brave the cold beaches and have fun outdoors. In the summer, I love gardening and barbeques, and in the winter it is all about Sunday lunches with friends, listening to records in the kitchen and family movie nights.

News And Events

From revelation to resolution: whistleblowing and other sensitive investigations

Navigating the complexities that surround whistleblowing and the intricacies of internal or third party investigations can be a formidable challenge, with a myriad of legal, ethical and procedural factors to consider. Against this backdrop, the UK team are pleased to present our new bespoke series designed to equip employers with the knowledge and skills needed to manage these critical issues effectively. This series offers a selection of targeted webinars that delve into the critical aspects of whistleblowing and the investigative process that follows. Further details can be found here.

Employment and safety briefings

The Australian national team hosted several client briefings in August and September across Australia on the Profound Changes to the Fair Work Act on 26 August 2024.

Sexual harassment and employment law update for retailers

The team in Melbourne hosted a targeted event for retailers in August. This event was well received and gained great feedback from some of Australia's largest retailers.

Podcast – Building bad: unpacking the CFMEU saga

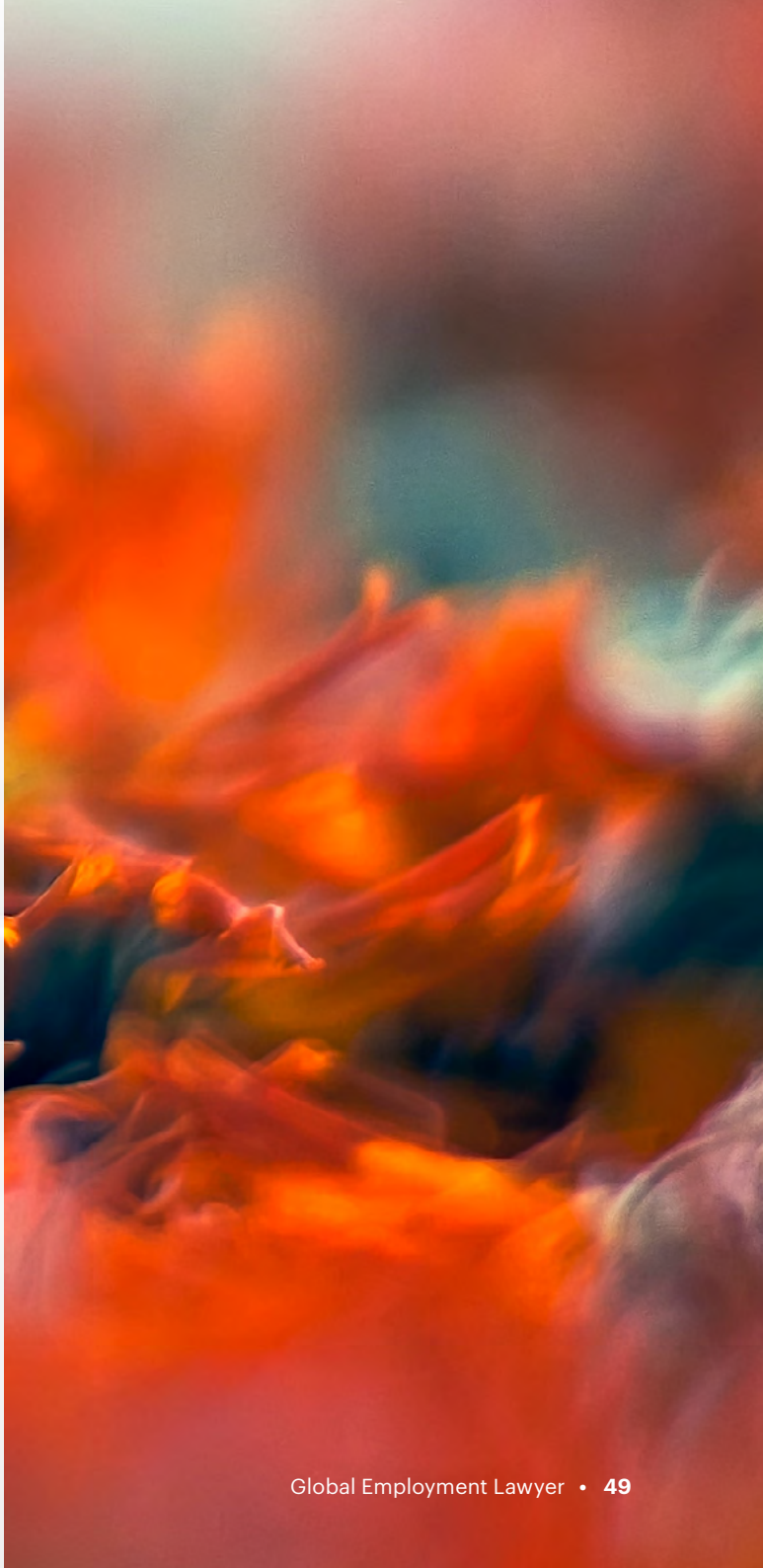
One of our Sydney-based partners, Persephone Stuckey-Clarke, partnered with HR Leaders to launch a podcast which explored the allegations of corruption, bullying and lawlessness at the Construction, Forestry and Maritime Employees Union (**CFMEU**), the fallout from recent revelations, and what businesses can and must learn from such workplace relations matters.

HR Hacks

Following the successful launch of this Australian series last quarter, our second episode (Thriving and Surviving in the Modern Workplace: 30 mins with Tracey Cain) and third episode (Thriving and Surviving in the Modern Workplace: 30 mins with Professor Michael Flood) were equally as successful in July and August.

IR Insights webinar series

This monthly Australian webinar series offers tips, tricks and insights on a range of current topics. This quarter's topics are "Regulators, courts, tribunals and the industrial umpire: important lessons so far in 2024" (24 July 2024), "AI in the workplace: understanding its impact on employment law" (28 August 2024) and "Do we still have a personal life and a professional life?" (25 September 2024). These are now available via podcast – please view here. Please contact us if you would like to join the invitation list.



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ABOUT DENTONS

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