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# Global Employment Lawyer

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**Welcome to the fourth quarterly edition of 2022 of our global employment and labour review. As the end of the calendar year draws closer, we have taken a moment to reflect on another busy year. It is interesting – and in many ways heartening – to see that our quarterly updates contain reference to “COVID-19” less and less. The pandemic undoubtedly upended and caused lasting changes to the world of work, but we are seeing the removal of remaining restrictions, with a focus instead on regulating the changes that were thrust into the workplace.**

Another common theme in this edition is that many jurisdictions have taken the opportunity to revisit their labour codes and similar legislation – these legislative changes include domestic responses to a number of EU directives but also amendments to immigration, health and safety, and pension rules all around the world. Another trend appears to be

the enhancement of legal protection for certain categories of workers, specifically women, disabled employees and workers without fixed hours, with new rights being introduced or existing rights extended in a number of countries. The use of fixed-term contracts also features, as do minimum wage increases in some jurisdictions.

In our “In conversation with” feature, we catch up with Davide Boffi, a partner in our Milan office and the Europe Head of Dentons’ Employment and Labour group. We conclude with a round-up of relevant Dentons news and upcoming webinars and events.

If you have any feedback on the content, please do let us know. In the meantime, we hope you enjoy reading this final edition of 2022 and wish you all very happy holidays – we will be back with our next edition in the first quarter of 2023.

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# Legal updates

## Africa

### Nigeria

**Termination of employment in the oil and gas industry** – A recent National Industrial Court decision upheld the “Guidelines for the Release of Staff in the Nigeria Oil and Gas Industry 2019” which requires the written approval of the Minister of Petroleum Resources prior to the termination of an employee’s employment in the oil and gas industry. This contrasts with a prior decision which determined that such prior consent was not required. At present, there are therefore two conflicting decisions. Whilst an appeal has been filed at the Court of Appeal against the most recent court decision, the judgment subsists until it is overturned or set aside. Consequently, companies operating in the petroleum industry in Nigeria should currently seek the consent of the Minister before terminating, suspending or dismissing any of their employees to avoid sanctions for non-compliance.

**Global employment** – The Ministry of Interior recently released the circular “Revised Handbook on Expatriate Quota Administration” for 2022. Amongst other changes, the Revised Handbook makes it mandatory for the national identification number of expatriates and their Nigerian understudies to be submitted within six months

of approval. In practical terms, this means that companies granted expatriate quota positions must ensure that their expatriates and Nigerian understudies obtain their national identification number. In addition, expatriate quota grants for companies have been reduced from 10 years to seven years.

**COVID-19 measures** – The Nigeria Centre for Disease Control has relaxed COVID-19 restrictions. Places of worship, businesses, stadiums and other sports venues can now operate at full capacity. The capacity limitation on public places such as hotels, restaurants and gyms has also been lifted. With respect to the private sector, companies can resume normal work for all staff in all offices. However, the guidelines continue to recommend the use of face masks in closed offices.

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## South Africa

**Vicarious liability for sexual harassment and assault** – A recent court decision held an employer jointly liable for the actions of its employee in respect of sexual harassment and assault.

The complainant claimed damages against the acting principal of the school she attended after proving that he sexually assaulted her while she had been a student. The court determined that she had succeeded in proving that the acting principal committed a wrongful act in the form of sexual assault which caused her physical and psychological harm.

The court also determined that the Department of Education, as the acting principal's employer, was under a legal duty to vet the acting principal before employing him to ensure that he had the qualifications to teach children and that he was suitable and fit to work with them.

**Defamatory statements by employers may lead to damages** – A recent court decision determined that both an internal communication and media statement made by an employer regarding an employee were defamatory and could potentially undermine the employee's reputation as a high-ranking executive in the eyes of her colleagues.

In this case, the employer announced to approximately 15,000 of its employees that an employee would be suspended with immediate effect. A year later, the suspension was lifted and the employee remained on paid leave. Employees were not updated on the suspension withdrawal.

Six months later, the employee's employment contract was terminated with immediate effect.

Subsequently, the employer published a media statement which referenced the employee in particular, stating that she had been suspended for alleged misconduct and that her contract ought to have been terminated on the expiry of a five-year term.

The employee challenged the fairness of her dismissal and the court ordered the employer to reinstate the employee retrospectively. Thereafter, the employee brought a claim against the employer for damages, alternatively loss of earnings, arising from the publication of the internal and media statements. According to the employee, the statements were wrongful and defamatory.

The court held that both the internal and media statements were defamatory.

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## Tunisia

**Social security agreement between Switzerland and Tunisia** – This agreement, which is effective from 1 October 2022, does the following:

- co-ordinates the social security systems of both countries concerning old age, death and disability;
- guarantees equal treatment and easy access to benefits for insured persons;
- permits the payment of pensions abroad;
- permits Tunisian nationals, who leave Switzerland permanently, to waive their right to a pension and request reimbursement of their old age and survivors' insurance contributions; and
- promotes economic exchanges between the two countries and avoids double taxation.

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## Uganda

### Proposed bill to amend the Employment Act

– A private members' bill has been tabled before parliament. If it passes, the bill will introduce several ground-breaking amendments to the law, including the following:

- repeal of the requirement that an employer with more than 25 employees must have a written sexual harassment policy;
- prohibition of mistreatment, harassment and violence against an employee;
- a formula for the calculation of severance allowance in such instances where the amount is defined by contract;
- protection of breastfeeding mothers by, among other measures, introducing breastfeeding breaks and breastfeeding stations at work; and
- greater protection to migrant workers through the introduction of comprehensive provisions regulating recruitment, employment and monitoring of migrant workers.

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## China

**Protection of female employees** – Legislation has recently been enacted which comes into effect on 1 January 2023. Among other things, this legislation stipulates that if an employment contract expires during a female employee's pregnancy or maternity leave, the period of the employment contract shall automatically be extended to the end of the maternity leave period. Maternity leave is a period of at least 98 days (158 days or more in some cities) that begins 15 days prior to childbirth.

However, pursuant to existing labour contract law, an employment contract should, if it expires during the lactation period (which is a period of one year following childbirth and covers a part of the maternity leave period after childbirth), then the employment contract shall be extended to the end of the lactation period.

Obviously, these provisions do not align when an employment contract expires at a point of time after the maternity leave but still within the lactation period. There is therefore some uncertainty as to for how long the employment contract should be extended.

Ordinarily, the new law should prevail over the older law. However, labour contract law is a special type of law concerning employment contracts. This means that it is not currently possible to say which law prevails over the other.

In our view, it is highly important to protect the rights and interests of female employees. At the same time, against the backdrop of the pandemic, the law must balance the protection of female employees and the promotion of economic development for employers.

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## Hong Kong

**Penalties for occupational safety and health (OSH) offences to be enhanced** – The Hong Kong government is currently discussing amending the legislation to increase the penalties for OSH offences. The proposed amendment would see employers who commit serious OSH offences fined as much as HK\$10 million and jailed for a maximum of two years upon conviction. Courts are also required to consider the turnover of convicted entities in deciding the amount of fines. Employers in high-risk industries like construction are strongly encouraged to further enhance worksite safety standards.

**Arbitration clause in employment contracts** – In a recent case, the Hong Kong Court of First Instance confirmed the enforceability of an arbitration clause in an employment contract. One of the issues was whether the dispute fell within the exclusive jurisdiction of the Labour Tribunal. The court held that it has discretion to refer a dispute to arbitration on request if there is no sufficient reason why the parties should not be referred to arbitration in accordance with their agreement and where the requesting party was ready and willing to do so. In this particular case, the dispute involved the vesting and redemption of certain shares which the court considered to be more complex and not within the exclusive jurisdiction of the Labour Tribunal and thus could, and should, be referred to arbitration in accordance with the parties' agreement.

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## Singapore

**New overseas networks and expertise pass** – A new work pass is being introduced that will allow high-earners and high-achievers to live in Singapore. This will be available from 1 January 2023, with details on the application process to be released closer to that time. The key terms of the pass are as follows:

- individuals with outstanding achievements in arts and culture, sports, science and technology, and academia and research, will be eligible for the pass;
- applicants will need to earn a fixed monthly salary of at least \$30,000 within the last year or earn a fixed monthly salary of at least \$30,000 under their future employer based in Singapore;
- the pass has a duration of five years, and subsequent renewals of five years (subject to meeting the renewal criteria) are applicable;
- spouses of pass holders can also obtain a letter of consent to work; and
- this pass permits the holder to concurrently start, operate and work for multiple employers at any one time and a new pass will not be needed if the holder changes jobs.

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## South Korea

### Expansion of industrial accident compensation insurance

– In Korea, industrial accident compensation insurance ensures timely compensation when a worker suffers injury, illness, disability or death during work, regardless of the employer’s negligence. Traditionally, only certain workers were covered. This has now been extended to cover certain:

- distribution and delivery drivers;
- delivery truck drivers; and
- car carrier/grain specific item transport cargo owners.

Until now, occupational accident compensation insurance was only allowed to be purchased for those who provide labour for the operation of a business on a regular basis. However, since the exclusivity of service requirement will be abolished from July 2023, the scope of occupational accident compensation insurance has also expanded to benefit those who provide services to several businesses.

### Recent Supreme Court decision on the scope of employee dispatch

– Legislation limits the type of work which can be done by “temporary placement of workers” (aka dispatched workers) and requires the employer to directly employ the dispatched workers if the work exceeds the legislatively allowed scope.

On 27 October 2022, the Supreme Court held that two companies should directly hire their respective employees in a dispatch relationship. This decision is significant because it is the first to recognise a direct employment relationship:

- where the working process does not directly use conveyor belts; and
- between the company and the secondary subcontractor’s employees.

Therefore, employers should review their current subcontractor relationships to ensure there is no potential risk of direct employment obligations arising in the future.

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## Taiwan

**Amended regulations for occupational safety and health equipment and measures for a safer and healthier workplace** – Amended regulations require that:

- employers ensure mobile elevating work platform (**MEWP**) operators are qualified; roads inside working areas be equipped with safety protection mechanisms; and the forms of protected delivery service be expanded in order to protect workers' safety and health in response to the growing range of goods being delivered through delivery service;
- employers appoint qualified personnel to operate MEWPs. This requirement will not come into effect until 1 January 2024, in order to give businesses sufficient time to send workers to receive training and ensure the safety of operators during operation; and
- employers install mechanisms sufficient to prevent falling of vehicles and machines and injury to workers.

## **Migrant domestic workers pay increase** –

The wage increase proposal for housework migrants was passed on 10 August 2022. The proposal recommended an increase from NT\$17,000 per month to NT\$20,000 per month, which applies to all migrant domestic workers on new or renewed contracts. As for migrant domestic workers still on existing contracts, the wages in their existing contracts apply.

## **Basic wage (minimum wage) increase** –

From 1 January 2023, the minimum monthly payment will increase from NT\$25,250 to NT\$26,400 and minimum hourly pay will increase from NT\$168 to NT\$176. This is the seventh consecutive year in which the minimum wage has increased since 2016.

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## Uzbekistan

**New version of the Labour Code** – The new code comes into force on 30 April 2023 and significantly expands on the previous code. Among other things, the new code includes the following:

- maximum statutory employment term in a fixed-term employment contract reduced from five to three years;
- partially paid leave introduced. The issue of granting such leave, its payment and duration are to be decided by the parties' agreement in the employment contract;
- new groups of people for which a probationary period cannot be included in the employment agreement have been added, such as employees under 18 years old, and single fathers raising a child under the age of three (this right already existed for women);
- “job offer” concept introduced. Once an individual is sent a job offer, the employer cannot withdraw the offer until after the specified term (if the term is not specified, the employer cannot withdraw until after one month); and
- stages of recruitment procedure introduced. The employer must follow the following steps: familiarisation with an employee, conclusion of an employment contract, issuance of an order on hiring and entering the information on employment in the workbook and online system called “Unified National Labour System”.

**Favourable working conditions created for disabled individuals, women and medical students** – The government has:

- approved a list of professions recommended for persons with disabilities;
- reformed centres for employment and health promotion for women; and
- given specific rights to work to graduate students of bachelor degree programmes in medical specialities.

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## Vietnam

**Working hours of gas maintenance workers** – With effect from 9 September 2022, employees working in the operation, maintenance and repair of gas distribution pipelines and gas works shall work in shifts of up to 12 hours per shift and the maximum working session is seven days. The organisation of overtime must be agreed upon by the employee and the number of overtime hours must not exceed 300 hours in a year.

**No longer reducing unemployment insurance premiums for employers** – The policy to support the reduction of unemployment insurance premiums for employers in order to share difficulties due to the impact of the COVID-19 pandemic expired on 30 September 2022. Accordingly, the unemployment insurance premium will return to 1% of the monthly salary fund of employees who are subject to unemployment insurance.

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# Australasia

## Australia

### **Paid family and domestic violence leave –**

The federal government legislated for the inclusion of two weeks' paid domestic and family violence leave per annum as part of the National Employment Standards. This will come into effect for businesses with at least 15 employees in February 2023 and for small businesses in August 2023.

**Secure jobs, better pay legislation** – The new federal government has introduced new employment legislation which is likely to pass (albeit with some potential amendments) in late 2022 or early 2023. The key elements to the proposed legislation include:

- providing a process to dispute an employer's refusal to allow flexible work arrangements such as working from home;
- limiting fixed-term contracts to two years or two consecutive contracts (thereafter permanency will be required);
- changes to collective bargaining including the introduction of multi-employer bargaining;
- introducing gender equity as a goal of the legislation;
- prohibiting pay secrecy clauses; and
- strengthening laws prohibiting sexual harassment in the workforce.

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## New Zealand

### **Four Uber drivers declared to be employees**

– The Employment Court issued what could be considered a landmark decision, declaring four current and former Uber drivers to be employees rather than contractors. As employees, the drivers are entitled to minimum wage, holidays and sick pay, and can raise personal grievances against Uber.

The judgment found that the relationship between Uber and the drivers was “characterised by a significant degree of subordination and dependency”, and that the drivers were “integrated into the Uber business during those times they were driving”. The Chief Judge of the Employment Court considered that the drivers were supporting Uber’s business and could not be considered to be running their own business, both of which pointed towards a status of employment. Uber has indicated that it will appeal the decision.

### **Fair pay agreements legislation passes –**

The controversial Fair Pay Agreements Act has received royal assent, and the bargaining system which it provides for will come into force on 1 December 2022. The legislation provides a framework for bargaining between representatives on behalf of employees and employers to set minimum employment terms across an entire industry or occupation. It will implement a similar system to the awards regime in Australia.

Fair pay agreements will set out a variety of minimum employment terms including standard hours, minimum pay rates, training and development, and leave entitlements. Once negotiated and confirmed, the agreements will last between three to five years. In certain situations, the Employment Relations Authority may fix the terms of a fair pay agreement.

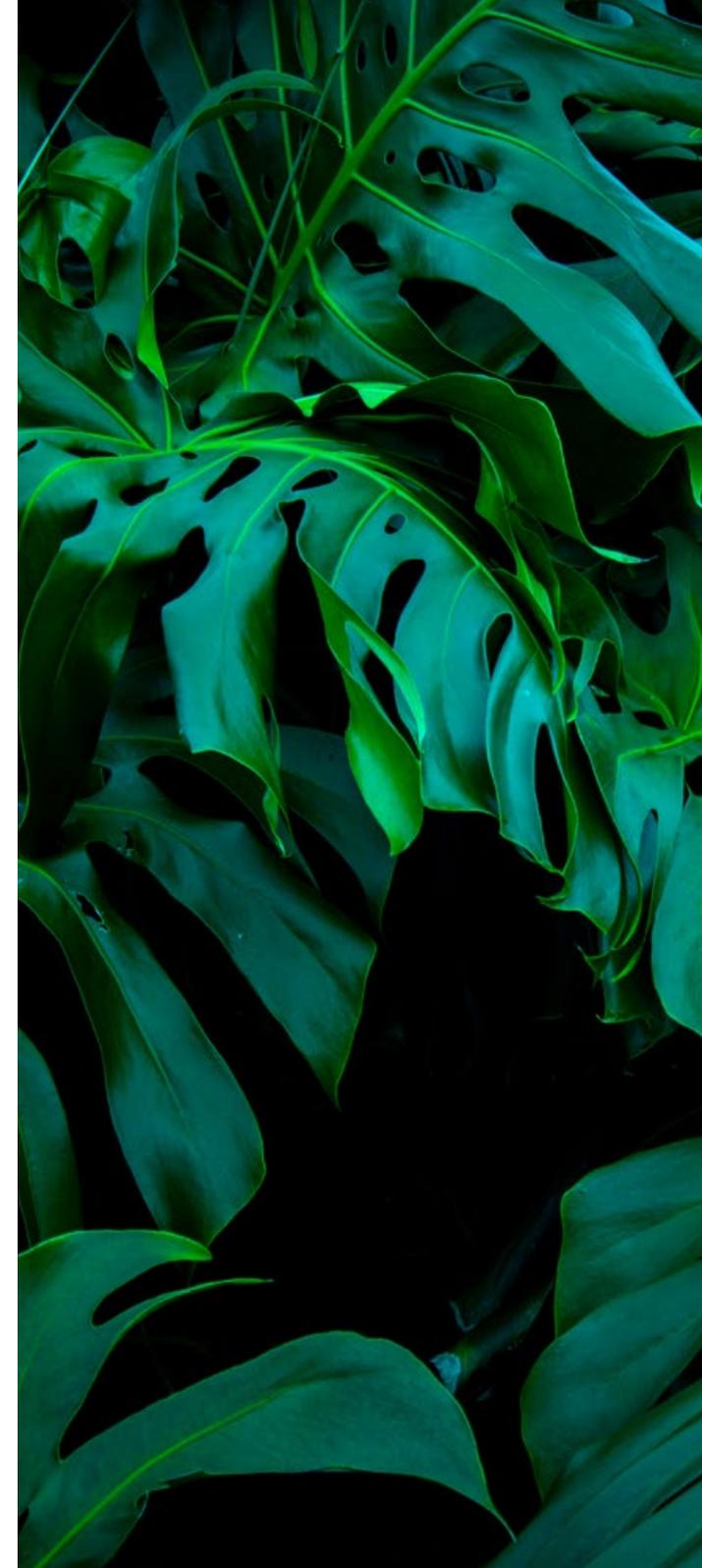
### **Progress on bill giving employees more time to complain about sexual harassment**

– The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill is designed to extend the time available for employees to raise a personal grievance that involves an allegation of sexual harassment from 90 days to 12 months. At the select committee stage, the bill and its proposed amendments were unanimously approved by the Education and Workforce Committee, and the bill is now moving to its second reading.

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# Central and South America

## Argentina

**New register of companies using telework** – Employers which allow employees to work from home must register:

- the software or the platform to be used by the employee to work from home; and
- the list of employees working from home. This information must be sent to the relevant trade union organisation.

The registration procedure is already available and can be done online through the Ministry of Labour's official website.

**Interest rates applicable to labour claims** – Regarding the calculation of interest rates for labour claims handled by national labour courts, the National Labour Chamber of Appeals has introduced an annual capitalisation of interest, which is calculated from the date on which the defendant was served notice of the claim until the date of payment. This rule applies to all labour claims in process in which final judgment has not yet been reached.

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## Chile

**Telework for pregnant employees and extension of maternity leave** – From 15 November 2022:

- employers must offer pregnant employees the ability to telework during any time that the government declares certain states of emergency or similar. If the nature of the employee's role is not compatible with teleworking, the employer (with the employee's agreement and without reducing her salary) should assign her tasks that do not require contact with the public or third parties, provided that this is possible and does not involve any detriment to the employee; and
- for employees whose maternity leave ends at any time from 1 October 2022 onwards, their leave is extended from the day following the original end of the maternity leave, for a maximum period of 60 continuous days (provided that leave may not extend beyond 31 December 2022).

**Reform of the pension system** – On 9 November 2022, the government submitted a bill to modify the current social security pension system. The reform proposes a mixed public/private system and envisages the creation of social security financed by employers' contributions. The main impact for employers is that their mandatory contribution, currently 10%, will be increased by a further 6%. Please note that the Chilean congress has not yet approved this bill and it is subject to further modifications.

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## Colombia

**New rules on homeworking** – The principal changes are as follows:

- employers must adopt a teleworking policy;
- employers can adopt “hybrid working” models where their employees only work from home a few times a week but not every day;
- it is possible to pay the employee a monthly amount for the use of his/her own appliances (e.g. computer, etc.);
- the Labour Risks Authority may carry out health and safety verification visits to the workplace virtually;
- employers must guarantee the right of employees to disconnect from work and must provide training on the risks of not doing so; and
- it is no longer mandatory but voluntary to offer the employee a monthly allowance to cover costs associated with public utilities (energy, internet, telephone, etc.) incurred by homeworking.

**New immigration regulations** – The Ministry of Foreign Affairs issued new visa regulations. The principal changes are:

- visa applications abroad may only be submitted from the country of which the applicant is a national or in a third country where he/she is established with a temporary or permanent residence permit;

- the following categories are created in the type of visitor visa: seasonal agricultural worker, digital nomad, TLC entrepreneur, promotion of internationalisation, for unforeseen cases. In addition, the category of rentier is included, which was previously included in the migrant visa type;
- the following categories are created in the migrant visa type: Andean migrant, promotion of internationalisation and stateless person. Likewise, the categories of direct foreign investment and for being the father or mother of a Colombian national by birth, which were previously included in the resident visa type;
- the category of application of the temporary protection status for Venezuelan migrants is created in the type of permanent resident visa and the accumulated times of permanence of some categories are modified; and
- the term of studies for visa applications has been increased from five to 30 calendar days, and it may be extended if required by the immigration authorities.

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## Costa Rica

**Reform to the minimum contribution base for health and pensions** – As of 7 September 2022, regardless of the salary amount reported to social security, the minimum contribution must correspond to the minimum reference income of the independent employee, being defined as the minimum contribution base for all employees, whether they are on regular payroll, independent or voluntary insured employees who contribute to social security. The amendment also introduced the possibility for employers to acknowledge a proportion of the contribution, when it is lower than the minimum contribution base. For example, when an employee has proportional quotas with multiple employers, under no circumstances may the sum of them exceed one quota per month; therefore, if the employee works part-time, they will require two months to cover an entire quota.

**Private sector minimum salary increase** – Minimum wage will increase by 6.62% for private sector employees, effective 1 January 2023. In addition, a 2.34% increase will be applicable to those working in domestic services. The minimum wage increase also means that any salary that cannot be garnished increases – therefore, garnishment calculations must be adjusted.

**Increase in social security contributions related to disability, old age and death (IVM) –**

From 1 January 2023, employers and employees will have to pay an additional 0.17% for social security contributions. Therefore, the total monthly payments that employers and employees must make for social security contributions will change from 26.5% to 26.67% and from 10.5% to 10.67%, respectively.

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**Ecuador**

**Identifying disabilities** – The Ministry of Health has reported that the identity document of a person will be the only type of document that enables or certifies their disability status. The disability certificate, issued by the Ministry of Health or the National Council for the Equality of Disabilities, remains valid until 31 December 2023.

**Regulations for the promotion of health at work**

– The purpose of these new regulations is to control the promotion of health within the workplace, both in the public and private sector. The regulations are only applicable to workplaces with up to 25 employees. Inspections at workplaces will begin in 13 months to verify the implementation of the regulations.

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**El Salvador**

**Increased fines for breach of the Labour Code**

– On 31 October 2022, the El Salvador congress released a reform that increased the value of fines for violations of labour rights by the employer which, according to the number of employees, can now be up to US\$4,380.

**Breastfeeding room** – Employers are required to assign an exclusive area for the purpose of allowing working breastfeeding mothers to be able to breastfeed their child or express milk. The area must be comfortable, private, hygienic and accessible.

**Break to breastfeed or express milk –**

After maternity leave, mothers are entitled to a one-hour daily break in the working day for a period of six months, in order to be able to breastfeed her child or express milk. This break is in addition to breaks for lunch and/or to rest.

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## Guatemala

### **Online platform for migrant workers –**

Guatemala has launched an online platform which allows employers, refugees, refugee status applicants and foreign nationals to apply online for permission to work legally in Guatemala.

With the use of the new online platform, the time period for issuing a work permit for foreigners, requested by their employer, has reduced from approximately five months to 30 days.

### **First employment scholarship programme**

– The aim of this programme is to increase the employment of young people between 18 to 24 years old. Under the programme, the Ministry of Labour will contribute 51% of the salary of successful candidates and the employer will cover the other 49%.

Labour contracts under this programme are for specific temporary duties and for a specific period of four months. Once the four months have passed, the employer can hire the worker on a formal basis, acquiring full labour obligations. Candidates must apply for the scholarship online.

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## Honduras

**Temporal protection status** – Temporal protection status in the US (i.e. temporary immigration status provided to nationals of countries that are confronting an ongoing armed conflict, extraordinary or environmental disaster) has been extended until 30 June 2024 for current beneficiaries. Hondurans will continue to be beneficiaries if they properly re-register during the registration period.

**Part-time employment law** – A new bill will be discussed in the National Congress of Honduras in the upcoming months. If the bill becomes law, it would allow companies to hire part-time employees (between 18 and 34 hours) which is currently not possible.

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## Peru

**Modifications to COVID-19 measures in the workplace** – Until August 2022, only employees that could demonstrate that they had received the full dosage of COVID-19 vaccines (two doses and a booster shot) were allowed to work on-site. In addition, until October 2022, all employees were required to wear face coverings while providing services. With the ending of the state of emergency in the country, these requirements are no longer mandatory.

The government has indicated that it will continue to promote the voluntary use of face coverings and vaccination. It should also be noted that, as the state of sanitary emergency is still in place, other restrictions and obligations remain in force (such as the need to have a plan for the prevention and control of COVID-19 in the workplace).

**New teleworking law** – In response to new ways of working brought about by the pandemic, Congress has introduced a new teleworking law. Under this new law, employees are entitled to payment for internet and light services (unless otherwise agreed) and a right to digital disconnection. The new law also enables employers to unilaterally require teleworking in exceptional force majeure situations.

### **Leave for passing of family members –**

Employees in the private sector will now be entitled to five days' leave for the passing of a family member, which includes partners, parents, children and siblings. The regulations have yet to expressly confirm whether this will be paid or unpaid leave (although employees in the public sector already receive this benefit as paid leave).

### **Extension of family allowance –**

Employees whose wages are not regulated by collective agreements and who have children under 18 years (or between 18 and 24 years if successfully studying at university or for a technical career) are entitled to a monthly family allowance equal to 10% of the minimum wage (currently S/ 102.50). From November 2022, this benefit will be extended to employees who have children over the age of 18 years with a severe disability (subject to certain conditions and exceptions).

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## **Uruguay**

### **New rules for companies with five to 50**

**employees** – A new decree states that it might no longer be mandatory for such “small” companies to engage a health and safety and a medical professional as long as they have a “prevention of labour risks” plan prepared by an appropriate specialist in place.

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## **Venezuela**

### **New homeworking rules –**

Once the rules come into force, for employees wishing to work from home, employers must provide for home office costs and reimbursement of expenses required for work (such as internet and electricity, among others). Employers must keep a record of their employees working from home, and their employment contracts must include working from home provisions.

### **Applicable interests –**

The Supreme Court has determined that, when there is a payment due in foreign currency because of an employment relationship, the interest applicable shall be that determined by the Central Bank of Venezuela for Bolívars.

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# Europe

**EU Directive on transparent and predictable working conditions** – We reported on this Directive in last quarter’s edition (see [here](#)). To recap, the Directive aims to harmonise the information provided to employees across Europe to ensure greater transparency and safety in the workplace. Under the Directive, reference to a national collective labour agreement is no longer sufficient, for example. Instead, a detailed set of clauses and information must be included in every employment contract. Once the requirements are implemented by the relevant member state, employers operating in the EU will have to comply with the obligations and requirements of this new law, with penalties for breach.

The deadline for member states to implement the Directive was 1 August 2022. Although the deadline has passed, some member states have yet to comply. In addition, the requirements have been implemented in different ways in different jurisdictions (as is often the case with the implementation of an EU Directive).

Dentons Employment and Labour group is therefore pleased to share its new interactive tracker. This tracker provides a summary of the implementation status in various member states and provides details of the new requirements as applicable in each different jurisdiction. The tracker enables comparisons between member states, highlights any local law areas that differ from or go beyond the provisions of the Directive and provides drafting tips to help adapt employment contracts as necessary. You can access the tracker [here](#).

## Germany

**New legislation on the protection of whistleblowers** – In the first quarter of 2023, the German government plans to introduce legislation implementing the so-called whistleblowing directive. This implementation is long overdue – it was required by December 2021 – and the delay has already triggered infringement proceedings against Germany. The new law is designed to strengthen the rights of whistleblowers beyond the level of protection established by German labour courts. In particular, whistleblowing employees will not be obliged to seek an internal solution for their complaints before they turn to governmental agencies. Employees are highly protected against dismissal and any other form of reprisal as long as they report in good faith that there has been a breach of law. Works councils will also probably have additional rights under the new law.



### **New ruling on recording working hours –**

In September 2022, the Federal Labour Court determined that employers must systematically record the working hours of their employees. The ruling comes as a surprise as express regulations only state that overtime hours need to be recorded. The court followed a prior ECJ ruling and held that the German government had failed to implement the EC Working Time Directive. However, instead of waiting for the German legislator to introduce a new law, the court derived the obligation to record working hours from existing health protection laws. Experts are still waiting for the court's reasoning which is expected by the end of this year. We anticipate that this ruling will have far-reaching effects, especially for trust-based working time models such as remote working.

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## **Hungary**

**EU Directives** – The bill implementing the Directive on transparent and predictable working conditions and the Directive on work-life balance for parents and carers into Hungarian law are about to be adopted.

The bill contains amendments to the Labour Code which will extend paternity leave, provide for parental leave, entitle parents with young children to apply for certain flexible working conditions and allow for five working days per year to take care of a relative.

There will also be changes to implement the EU Directive on transparent and predictable working conditions (please see our interactive tool for further details, as discussed above).

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## Italy

**Measures to prevent company closures and collective dismissals** – Significant changes have been made to collective dismissal procedures. With effect from 1 January 2023, companies that:

- employ at least 250 employees;
- are not in a situation of financial/economic crisis; and
- that want to shut down a plant or close a branch in Italy with dismissals of at least 50 employees,

must follow a preliminary procedure in addition to the ordinary one. This overall procedure can last up to 255 days (i.e. more than eight months), during which the employer cannot serve any dismissal notices and must pay the employees' salary.

**Agile working** – The deadline for companies to fulfil new employers' information obligations on agile working (i.e. working flexibly and choosing when and where the supply of services will take place) has been extended to 1 December. Employers will need to enter into individual agile working agreements with each employee who will work in this way. Such agreements should cover:

- the starting date of the agile working period;
- any changes related to ongoing agile working periods;
- the modification of the agile working agreement to anticipate the agile working period; and
- the withdrawal from agile working in case of early termination.

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## Luxembourg

**Tax consequences for cross-border commuters** – Due to various tax treaties, there are some challenges for cross-border commuters (who represent more than 45% of the working population of Luxembourg) when it comes to how they are taxed if they work outside Luxembourg for more than a specific amount of days per year. In particular, the rules are very different if the employees are from Belgium, France or Germany. From 1 July 2022, the normal tax rules (without the COVID-19 exceptions) will apply again and employers must make sure that these complex rules are followed.

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## Netherlands

### New bill regarding entitlement to salary and protection from dismissal during illness –

Currently, employees who reached the state pension age and fall ill have a right to continued salary payments and are protected from dismissal for a period of 13 weeks after their initial date of illness. The proposed bill will shorten the 13-week period to a six-week period. This change is supported by a review conducted by the Dutch government which confirmed that there are no signs that shortening the 13-week period will, in practice, have a negative impact on the employability of younger employees.

If the bill passes, the government plans to provide for the new bill as of 1 January 2023, but with an effective later date (the proposed date is 1 July 2023).

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## Poland

**Changes to employment law** – Various changes are upcoming, including:

- a new law (expected in 2023) will permanently introduce remote work. Under the new law, remote work will generally require the consent of both parties but, in certain cases, it may be a unilateral decision by either the employer or the employee;
  - a new law (expected in 2023) will be introduced to give employers the right to check employees for alcohol and/or drug abuse. Currently, if an employer suspects that an employee is drunk or under the influence of drugs, the only thing they can do is to call the police and ask them to conduct a sobriety check;
  - Poland is also in the process of passing national laws which will implement the EU Directive on transparent and predictable working conditions (please see our interactive tool for further details, as discussed above) and the EU Directive on work-life balance for parents and carers. The new laws are due to be implemented in 2023. In relation to the latter directive, these changes will introduce new leave for employees and other solutions related to work-life balance and predictable working conditions for employees;
- Poland is also in the process of passing national laws, which will implement the EU Directive on the protection of persons who report breaches of Union law (the so-called whistleblower directive). Employers who have already implemented whistleblower policies should get ready to review these for compliance with the new laws, as there may be inconsistencies to address. Employers without whistleblower policies should begin to work on putting these in place as soon as possible, as the new law is to come into force two months after its publication. The deadline for employers with at least 250 employees is to be extended by another two months. The deadline for employers with at least 50 employees and fewer than 250 employees is to be set on 17 December 2023. Whistleblower policies will be mandatory for employers with more than 50 employees; and
  - due to the current economic situation, a new law (expected this year) will introduce a higher kilometre rate for use of an employee's private car for business purposes.

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## Slovakia

**Labour Code changes** – With effect from 1 November 2022, the Labour Code has been amended:

- to implement the EU Directive on transparent and predictable working conditions (please see our interactive tool for further details, as discussed above); and
- to provide for 28 weeks' paid paternity leave (extended to 31 weeks' for single fathers and 37 weeks' for two or more newborns).

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## Spain

**Right to work from home** – A recent tribunal decision confirmed that, where an employee makes a request to work remotely to improve the compatibility of her family and professional life, the employer must provide solid organisational and production arguments in order to be able to refuse the request.

**Personal use of company property** – In a recent case, the court determined that, if an employer wishes to no longer allow its employees to use company property (such as laptops) for their personal use, they must consult with the employees' representatives beforehand and be able to justify the change (here the employer had concerns in relation to the employees' right to privacy).

**Use of CCTV images as evidence to dismiss an employee**

– In a recent case, the Supreme Court ruled that recording an employee through a surveillance camera could be used as valid evidence even though the employee was not informed of the recording as:

- the company did not need the employee's express consent to use the images in this way as they were aware of the existence of the CCTV which were there for a lawful reason. Indeed, the installation of the surveillance cameras was a justified measure to prevent theft, allowing potential offenders to be discovered and their conduct punished;
- this is an appropriate and necessary measure, due to the lack of other less intrusive means to achieve this purpose. In addition, it is a proportionate measure in accordance with the aims pursued.

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## Turkey

### **Employers monitoring employees' WhatsApp messages**

– In a recent case, the employer reviewed an ex-employee's company mobile phone with the purpose of gathering customers' contact information. However, during this review the employer noticed WhatsApp messages between the ex-employee and a current employee which included humiliating statements about the employer and other employees. Based on this, the current employee was terminated without any compensation. The Constitutional Court held that, considering that WhatsApp can be used for personal reasons, obtaining messages from the concerned employee while monitoring another employee's mobile phone is a violation of the right to privacy and freedom of communication of the concerned employee.

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## United Kingdom

**Industrial action** – New legislation has come into force which:

- significantly increases the liability of trade unions for unlawful industrial action, up to a maximum of £1 million for the largest unions (previously £250,000); and
- removes restrictions on the use of temporary workers when industrial action is taking place. This means that employers can now engage agency workers to cover the work of striking employees. Although controversial, the practical impact could be more limited as employers will still need to ensure any temporary workers have the necessary skills and/or qualifications. Such workers may not be readily available.

In addition, in response to a series of rail strikes, further legislation was put forward which aims to ensure a minimum level of transport services during industrial action. It does this by providing that trade unions will lose their immunity from liability if they fail to ensure that the staff needed to provide this minimum service level do not participate in strike action. It has not yet been officially confirmed whether the new Prime Minister will support the legislation and therefore uncertainty remains.

**Vanishing EU law** – Proposed new legislation will move the UK away from “retained EU law” much more aggressively than previously anticipated. It includes various tools for the government to change the content and operation of retained EU law. In addition, a sunset clause would automatically

revoke all EU-derived subordinate legislation at the end of 2023. There are thousands of pieces of in-scope legislation – many of them employment related – and it is very hard to accurately assess the potential impacts as it currently stands.

The legislation must pass through the usual mechanisms and parliamentary voting processes before it becomes law. As part of this, the potential impact on the Brexit trade deal must be considered, because it gives rise to a possible end to the “level playing field” of employment protections. This could lead to sanctions, including tariffs from the EU. The new Prime Minister seems less keen on pushing ahead but clarity is needed and awaited.

### **Carer's leave, pregnancy and maternity**

– The government is supporting new legislation which, if passed, would:

- create a new entitlement of one week's unpaid leave per year for employees who are providing or arranging care for dependants with long-term care needs; and
- give the Business Secretary the power to make regulations extending the protections against redundancy currently offered to women actually on maternity leave to cover a longer period during and after pregnancy.

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# Middle East

## Jordan

**Children's rights** – The Child Rights Law enforces new rights for children including but not limited to health care, education and protection from forced labour. In particular, this law includes a prohibition on subjecting children to economic exploitation by way of forcing them to work or beg.

**Severely disabled persons exempt from paying work permit fees** – The Ministry of Labour has outlined conditions and procedures that persons with severe disabilities must fulfil in order to be exempt from paying work permit fees when employing non-Jordanian workers. Such conditions include but are not limited to:

- the disabled person must be Jordanian and must hold a national number;
- the person must be severely disabled;
- the type of severe disability must be determined by an approved medical report indicating that the person with severe disability has an urgent and permanent need of care from others in their day-to-day life;
- the severely disabled person's, their guardian's or custodian's income must not exceed 3,500 Jordanian Dinars per month. In the event that there is more than one person with a disability in the family, their income must not exceed 7,000 Jordanian Dinars per month; and
- the severely disabled person must not be a beneficiary of the services provided by residential care centres.

**Recruitment of foreign workers** –The Ministry of Labour has also outlined conditions and procedural matters in connection with the recruitment of foreign workers. These include but are not limited to:

- release of non-Jordanian workers;
- notification of absconding (leaving work);
- cancellation of a non-Jordanian worker's work permit; and
- replacing workers.

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## United Arab Emirates

**Unemployment insurance scheme** – Enrolment in this insurance scheme will be mandatory for all individuals working in the private sector or for the UAE federal government, with few exceptions. Employees must enrol themselves or they will be subjected to fines.

The purpose of the scheme is to provide employees who lose their jobs with a monthly payment for a maximum period of three months, or until they secure a new job, whichever occurs first. For an employee to be eligible for this compensation, he must have completed a period of 12 months of enrolment in the scheme and not have been terminated based on disciplinary grounds.

**Cap on length of fixed-term employment** –

The previous cap of three years has been removed and parties can now agree on whatever period they consider suitable, as long as it is for a fixed period that can be renewed or extended upon expiry.

**Emiratization quotas** – From 1 January 2023, all private sector entities operating within the UAE mainland will be required to have at least one Emirati employee for every 50 skilled expatriate employees. In the event of non-compliance, the entity will have to pay the authorities a contribution of AED 6,000 per month against every Emirati they did not hire.

**Deadline for updating employment contracts** –

The grace period granted under the new labour law to convert all existing unlimited term contracts into fixed-term contracts will expire on 1 February 2023. Although the law itself refers to a potential extension of that grace period, presently there is no indication that such grace period will be extended.

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# North America

## Canada

**New guidelines on pension** – The Canadian Association of Pension Supervisory Authorities recently released draft guidelines on how registered pension plan administrators should approach environmental, social and governance (**ESG**) issues when making decisions about investment.

The guidelines confirmed:

- there is potential for ESG factors to provide valuable insight into investment risks and opportunities. The plan administrator’s responsibility as a fiduciary is to act prudently to identify all risks and opportunities that may impact the plan, including ESG factors; and
- plan administrators may determine it is consistent with their fiduciary duty to use ethical or impact-investing considerations as a deciding factor between otherwise equivalent investment options — that is, options that provide equivalent expected risk-return results.

The inclusion of ESG-focused funds in a pension fund can be consistent with the fundamental obligation to select funds in the best interests of plan members which has now been clearly confirmed.

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## United States of America

**New mandatory workplace notice** – The US Equal Employment Opportunity Commission requires employers with 15 or more employees to physically post a notice in the workplace to advise employees regarding their rights under anti-discrimination laws. A new mandatory poster has been issued, entitled “Know Your Rights”.

The new poster informs employees about discrimination based on race, sex, national origin, age, disability and other protected classifications. It also includes significantly updated language stating that sexual harassment is a prohibited form of employment discrimination and that sex discrimination includes discrimination based on pregnancy, sexual orientation and gender identity. Notably, the new poster also has a QR code, which employees can use to locate instructions for how to file a charge of discrimination. Covered employers are required to display the new notice effective immediately.

### **Revised “Joint Employer” standard proposed**

– In September 2022, the National Labour Relations Board issued a Notice of Proposed Rulemaking to replace the Joint Employer Status final rule, adopted in 2020 under the Trump administration. When two separate corporate entities are determined to be a joint employer, both can become subject to collective bargaining obligations even though only one of the entities is unionised. The 2020 final rule narrowly defines joint employment status to only apply to those entities that exercise substantial direction and immediate control over certain essential terms and conditions of employment. The new proposed rule would revert back to prior common law standards and ease the burden for employees and unions to demonstrate that separate entities are joint employers.

### **New proposed independent contractor rule issued**

– In October 2022, the US Department of Labour released a proposed rule to change the test for determining whether a worker is an independent contractor or an employee covered by minimum wage and overtime requirements. The new proposed rule would rescind and replace the current rule, which has only been in place since last January. The Department of Labour and federal courts have historically applied a multi-factor test to determine the “economic reality” of whether a worker is an employee or a self-employed independent contractor. The new proposed rule takes an expansive view of the definition of an employee based on the totality of the circumstances. If adopted, the new rule will likely result in more workers, including those in the gig economy, being classified as employees entitled to minimum wage and overtime pay.

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# In conversation with...

In this edition, we talk to **Davide Boffi**, who is a partner in our Milan office and the Europe Head of Dentons' Employment and Labour group. Davide advises clients on the full range of national and international employment and labour law matters. He has been practising for more than 20 years and joined Dentons in 2018, after spending many years in other renowned Italian firms. Davide leads a team of nine professionals in Italy and in his Europe leadership role he co-ordinates more than 100 professionals operating throughout the region.



## **Davide, what motivated you to join Dentons?**

I can perfectly remember the day when I was asked to join Dentons. I was initially reluctant to leave my previous firm but, as soon as I heard that the firm that approaching me was Dentons, I immediately understood the importance of the call. I had already been collaborating with Dentons' employment group for a number of years, before Dentons Italy was established. I was therefore already familiar with the Dentons European Employment team, and I liked what I had seen! As soon as I arrived at the firm, I found everything that I had hoped for: interaction, international breadth, innovative view and gaze to the future.

## **You have been recently appointed as new head of the Europe Employment group. What is the group like, and what are its plans going forward?**

We are an active group. Most of the team have known each other for many years and we try to work collaboratively together as much as we can. We are always excited to extend a very warm welcome to new joiners.

Looking forward to the next few years, we need to continue to work closely and find further efficiencies in order to consolidate our position in the European market. We are a great group, we know what we need to do to meet the challenges ahead, and we are committed to achieving this together!

## **From the challenges thrown up in recent years (by the pandemic and the current crisis in Ukraine, to name a few) to the opportunities arising from local and international markets, the Europe team is assisting its clients throughout the region on a variety of complex matters. What developments do you expect to see in the near future? And which challenges in particular do you expect to assist clients with?**

The pandemic and the recent crises (including the energy crisis) in some ways postponed the repositioning of some global

corporations worldwide. However, the time has probably now come and we are already seeing reorganisations which are impacting workforces across Europe. We are well placed to support our clients in these difficult times. Not only in relation to the definition of their strategy but also regarding any necessary negotiations with works councils, trade unions and any public authorities involved in restructuring processes.

At the same time, flexible ways of agile and remote working have quickly and irrevocably changed the way employees (and many employers) view the world of work. Increasingly, clients are seeking support in drafting policies, negotiating agreements and similar, with a view to creating a more flexible, but efficient, modality of performance. This also includes a greater focus on international mobility. We must be ready to assist and anticipate these needs as they continue to develop and evolve.

**A number of EU directives have been introduced recently, aimed at guaranteeing greater transparency and equality as well as mitigating the risk of slavery and forced labour. What impact do you think these measures might have on the market?**

We are fortunate to advise clients who generally already have structures in place to prevent bad behaviour and negative impacts on workers. That said, clients are becoming more and more careful to ensure that they implement any new legislation in the right way. They are keen to ensure they do not infringe employees' rights as well as avoiding any reputational damage. Image and

reputation are becoming ever more important, and appropriate workforce management is an important part of this. It can be summarised in few words: corporate social responsibility.

**Dentons recently celebrated its 10th anniversary, and Dentons Italy turned seven. How has Dentons Europe grown, and what do you expect for the future?**

In just 10 years, Dentons has become a giant in the international legal services market. In Europe, we have experienced unprecedented growth and, despite a pandemic and various international crises, our growth continues to accelerate.

I am proud to be part of this incredible firm. Being an employment lawyer, I am well positioned to appreciate the way in which our people have shown flexibility and resilience. The firm has adapted its mindset to fast developing situations through difficult times. This helps us to anticipate trends and support clients when they need us to help them find the right solutions.

**And finally, tell us something about you! What do you enjoy doing outside work?**

After work, I run, run, run. Sometimes I ride my beautiful Bianchi bike or I climb a mountain. Sport is an important part of me!

# Dentons news and events

## Collective redundancy hub and tracker

Managing a global workforce reduction programme while navigating local law requirements can be a complex process. Leveraging our global legal knowledge from more than 80 countries, and the experience of around 450 professionals operating throughout the world, we are perfectly placed to provide you with tools and insight which are truly global in scope.

We are pleased to introduce our new Global Collective Redundancy Hub, providing access to our collective redundancy webinar series and materials, legal insights and articles as well as our Global Collective Redundancy Tracker. This interactive tool provides quick and easy access to summaries of collective dismissal and redundancy rules in more than 60 countries around the world. You can access the hub [here](#) and the tracker [here](#).

## Crossing the line

In its latest episode, the Slovak investigative show “Crossing the Line” discusses the case of the whistleblower Mária Koránová. Ms Koránová is represented, on a pro-bono basis, by partner Stanislav Ďurica and associate Soňa Kurillová. You can view the episode [here](#).

## In search of a new home

Following the war in Ukraine, many companies from Ukraine, Russia and Belarus are looking for a new home. Whether to avoid sanctions or escape the war, these companies consider a variety of factors when deciding where to go. Slovakia has proven to be a popular destination, as Partner Stanislav Ďurica discusses for CEE Legal Matters in its article “In Search of a New Home”. You can read the article [here](#).

## Australian expansion

Dentons Australia has expanded its national employment and safety practice with the addition of Paul O’Halloran (Partner) and his team Alexandra Terrill (Managing Associate), Kate Macfarlane (Solicitor) and Peter Watkins (Solicitor). Paul and his team specialise in workplace disputes, including employee misconduct, industrial action, reputational risk and union disputes, across a range of industries, including education, religion, health and aged care.

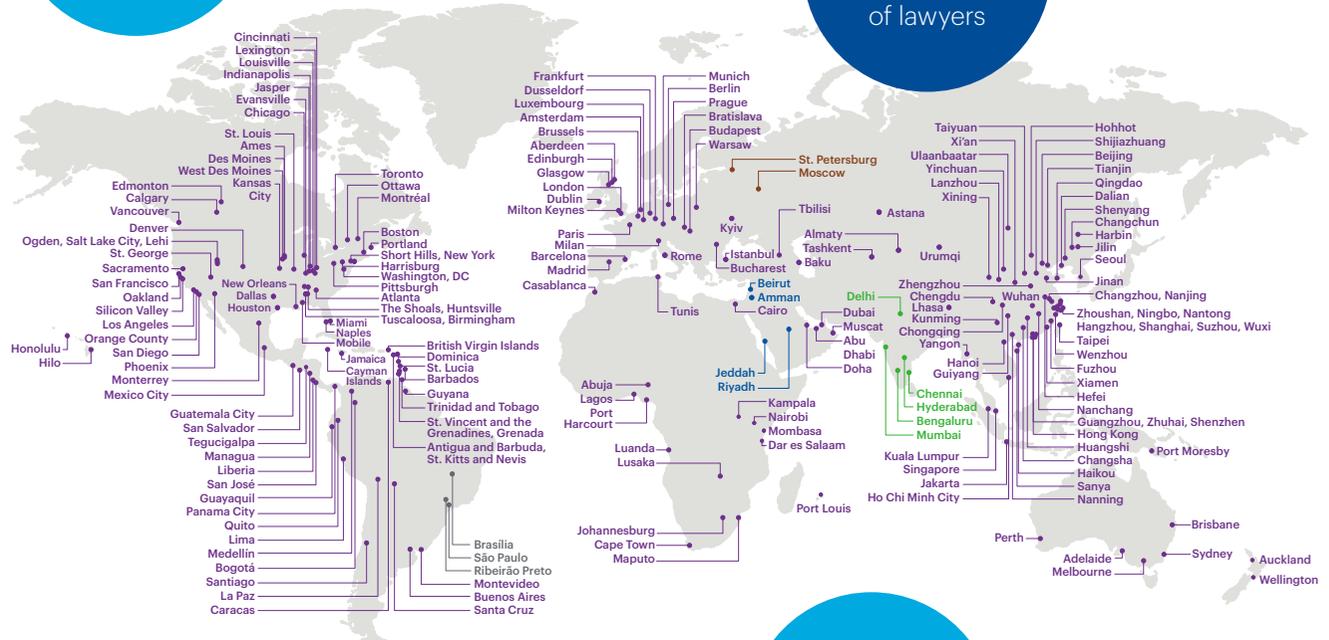
## Podcast series “Perspectiva Laboral”

Dentons Peru took part in a recent episode of the podcast “Perspectiva Laboral” which is brought to you by Dentons Latinoamérica. This podcast series covers a range of employment topics across Latin America and the Caribbean, comparing the different regulations and experiences in each jurisdiction. You can access this episode and the full podcast series [here](#).

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

**200+**  
locations

**12,400+**  
total number  
of lawyers



Locations in purple represent Dentons offices.  
 Locations in blue represent associate firms, offices or special alliances as required by law or regulation.  
 Locations in green represent approved combinations that have not yet been formalized.  
 Locations in gray represent Brazil Strategic Alliance.  
 Locations in brown represent offices from which Dentons is separating.

**21,000+**  
Total number  
of people

**80+**  
countries

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