

# Global Employment Lawyer

## Global Employment & Labor Quarterly Review

Grow | Protect | **Operate** | Finance

Issue 6 • June 2022

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### WELCOME TO THE SECOND QUARTERLY EDITION OF 2022 OF OUR GLOBAL EMPLOYMENT AND LABOUR REVIEW

More than two years has gone by where the COVID-19 pandemic has affected every corner of the global economy. The virus is already fast becoming a distant memory in most countries as the population rejoice in returning to normal. However, challenges still lie ahead for employers; the pandemic has changed the way employees want to work forever, the emergence of the digital nomad mentality is gaining traction with those who are able to work remotely. Both employers and employees must continue to find ways to accommodate a new way of working together. The boom of the gig economy continues and this is likely to give rise to more labour disputes and litigation around the world.

In this review, we provide a brief summary of the key employment and labour law changes that will have an impact on employers and employees around the globe.

In our “In Conversation with” section, we introduce Andy Pushalik, partner and head of the Employment and Laour group in Canada. We conclude with a round-up of relevant Dentons news and upcoming webinars or events that may be of interest.

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

## IN THIS ISSUE

### Legal updates

#### **03** **Africa**

ANGOLA  
KENYA  
MAURITIUS

#### **05** **Asia**

CHINA  
HONG KONG  
INDONESIA  
KAZAKHSTAN  
SOUTH KOREA  
UZBEKISTAN  
VIETNAM

#### **10** **Australasia**

AUSTRALIA  
NEW ZEALAND  
PAPUA NEW GUINEA

#### **13** **Central And South America**

ARGENTINA  
CAYMAN ISLANDS  
CHILE  
COLOMBIA  
COSTA RICA  
ECUADOR  
GUYANA  
HONDURAS  
NICARAGUA  
PERU  
URUGUAY

#### **20** **Europe**

FRANCE  
GERMANY  
HUNGARY  
ITALY  
NETHERLANDS  
SLOVAKIA  
SPAIN  
TURKEY  
UNITED KINGDOM

#### **25** **Middle East**

JORDAN  
UNITED ARAB EMIRATES

#### **26** **North America**

CANADA  
UNITED STATES OF AMERICA

#### **28** **In conversation with...**

#### **30** **Dentons news and events**

# Legal updates

## Africa

### ANGOLA

**Positive action in recruitment** – A new presidential decree established a legal regime to encourage the hiring of unemployed citizens, young people and people with disabilities, and to promote voluntary regularization of social security debts, while emerging as an innovative measure to promote employment.

**Home working regulation** – Another presidential decree established how home working should be regulated. Home working can only take place (i) by written agreement between the worker and employer in the form of an addendum to the employment contract or (ii) where there is no prior employment relationship, the written contract must include such option. Additionally, the worker is entitled to work from home if their duties allow it in specific conditions, including but not limited to if they have a high-risk pregnancy or other serious health issues, if they care for a child under the age of five, or if they have special needs etc.

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### KENYA

**Background checks** – Employers are now only allowed to request background check documents once an offer of employment has been made. Employers can withdraw a job offer where the prospective employee:

- cannot provide the necessary documents; or
- the documents provided do not satisfy the mandatory background checks.

**Kenya considers an employee's right to disconnect** – Proposals are being considered to allow employees to have a right not to be contacted by their employer outside their agreed working hours, i.e. the "right to disconnect". According to the proposals, an employer with more than 10 employees should develop a policy on the right to disconnect, which covers the following:

- circumstances under which an employer may contact an employee during out of work hours;
- use of electronic devices to send or receive information, messages or any digital work-related communication during out of work hours;
- circumstances under which the right to disconnect may be waived; and
- the nature of compensation for employees who work during out of work hours.

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## MAURITIUS

**Ban on reduction of the workforce** – The ban on the permanent and temporary reduction of the workforce has been extended from 31 December 2021 to 30 June 2022. The ban does not apply to the following employers:

- employers exempted by the government, which includes Air Mauritius Limited, Airmate Ltd and Emirates; and
- employers whose applications for financial assistance as a result of COVID-19 have been rejected.

**Leave relating to COVID-19** – An employee who tests positive for COVID-19 or is ordered to self-isolate is entitled to be paid, but it will be calculated against any future paid leave (such as annual or sick leave).

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# Asia

## CHINA

**Integration of arbitration and litigation** – The government has improved the feasibility to integrate arbitration and litigation of labour disputes.

- On 21 February 2022, the Ministry of Human Resources and Social Security and the Supreme People’s Court issued the regulation on strengthening the connection between Arbitration and Litigation of Labour and Personnel Disputes.
- The previous regulation for Handling Arbitration Cases on Labour and Personnel Disputes stipulated that, if a mediation agreement is achieved through the arbitration commission for labour and personnel disputes, both parties must jointly apply to the people’s court for judicial confirmation of the agreement.
- The newly issued regulation clarifies that, if a mediation agreement is reached under the guidance of an arbitration commission for labour and personnel disputes, the parties involved may apply for either arbitral review or judicial confirmation for the mediation agreement. If an application for review of a mediation agreement is rejected or not confirmed by the arbitration commission for labour and personnel disputes, then under some specific circumstances the parties involved may file a lawsuit directly to the people’s court for judicial review.

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## HONG KONG

**COVID-19 vaccine pass and proposed amendments to the Employment Ordinance** – In view of the fifth COVID-19 outbreak in Hong Kong, the government announced the implementation of a “vaccine pass”. Under the vaccine pass, only those who have been vaccinated can access the majority of premises used by the public unless they fall within one of the two exemptions, namely (a) ineligibility for the COVID-19 vaccine due to age, or (b) unsuitability for vaccination due to health reasons with relevant supporting evidence from a doctor. Together with these stricter restrictions, the government has proposed to amend the Employment Ordinance addressing employment-related issues arising from the pandemic.

Firstly, under the proposed amendments, employees terminated by reason of being unable to attend work because of failure to adhere to the vaccine pass rules will not be treated as having been unreasonably terminated. At this time, the vaccine pass is required to access the majority of premises used by the public. Therefore, the employees who will be affected are those who are required to access public premises to perform their work duties.

Second, employees terminated due to their absence from work as a result of complying with government compulsory testing or mandatory quarantine orders will be deemed unreasonably terminated.

Thirdly, an employee who is absent from work by reason of complying with compulsory testing or mandatory quarantine requirements may be eligible for statutory sick leave. A medical certificate or mandatory quarantine order issued by the Department of Health is deemed to be an appropriate medical certificate entitling the employee to statutory sickness allowance under the Employment Ordinance. For determining if an employee is employed under a continuous contract under the Employment Ordinance, such day(s) of absence for complying with compulsory testing or mandatory quarantine requirements will not be regarded as breaking the continuity of the employment period. However, if the employee is subject to compulsory testing or mandatory quarantine requirements due to his/her own serious and wilful misconduct, he/she will not be eligible for claiming statutory sickness allowance. What constitutes serious and wilful misconduct will likely depend on the facts and be subject to interpretation by the Labour Tribunal or the court.

The government has announced plans to implement the above proposed amendments as soon as possible.

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## INDONESIA

### Employment reform: key issues from implementing regulations to the Job Creation Act

#### Background

The government enacted the Job Creation Act (**JCA**) in late 2020. The JCA has amended 82 laws, including the Manpower Law, and repealed two laws. Following the enactment of the JCA, the government rolled out a number of implementing regulations which became effective as of February 2021, one of which deals with foreign workers.

The following are the key new points of the foreign workers regulation:

- **Licensing form for foreign workers**

Under the previous manpower regulations, the form of licensing for the use of foreign workers required a Plan for the Use of Foreign Workers (*Rencana Penggunaan Tenaga Kerja Asing* (RPTKA)) and Permit for Employing Foreign Workers (*Izin Menggunakan Tenaga Kerja Asing* (IMTA)). However, after the enactment of the JCA, the IMTA has been removed from the requirements for the use of foreign workers and currently the only approval required is the RPTKA.

- **Types of RPTKA**

The new implementing regulations have introduced some new types of RPTKA. The RPTKA is divided into several types, including: (i) RPTKA for temporary work; (ii) RPTKA for work for more than six months; (iii) RPTKA without Compensation Fund for the Recruitment of Foreign Workers (*Dana Kompensasi Penggunaan TKA*); and (iv) Special Economic Zones RPTKA (*RPTKA Kawasan Ekonomi Khusus*).



- **Exemption from obtaining permit for the use of foreign workers**

The Manpower Law previously stipulated that exemptions from obtaining permits to employ foreign workers only applied to diplomatic and consular employees. However, the JCA has expanded this exemption by adding directors or commissioners with certain shareholdings, or shareholders in accordance with the provisions of laws and regulations. Moreover, the exemption from obtaining the permit to use foreign workers also applies to a number of other jobs, including jobs related to production activities that are halted due to an emergency, vocational work, technology-based start-ups, business visits and research for a certain period.

- **Sanctions**

In relation to the violations of the rules for the use of foreign workers, the previous Manpower Law stipulated criminal sanctions. Currently, the JCA has replaced these sanctions with administrative sanctions and fines. For example, employers who do not obtain the necessary RPTKA will be fined. Administrative sanctions that may be imposed include, among other things, the temporary suspension of the application process for the ratification of the RPTKA and/or the revocation of the ratification of the RPTKA.

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## **KAZAKHSTAN**

**Part-time work convention** – Subject to sign-off from the President, Kazakhstan will join the Part-Time Work Convention of the International Labour Organisation, which provides for protection of part-time employees, including the rights to salary and social security schemes. Kazakhstani law already provides protection to part-time employers, but joining the convention will further increase compliance and lead to a tightening of the rules.

**Potential changes to employee pay** – Amendments to the Labour Code which aim to increase salaries of employees on an annual basis and regulate the salaries of top management are being considered.

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## SOUTH KOREA

**Employer liability of contractors** – Employer liability between a contractor and its subcontract company's employees has been the subject of continuing controversy since 2010 when the Supreme Court of Korea ruled that Hyundai Heavy Industries Co., Ltd. is considered an employer liable for conducting 'unfair labour practices' against its in-house subcontracted workers. On 24 March 2022, the National Labour Relations Commission reaffirmed this broad interpretation of the relationship by ruling that Hyundai Steel Co., Ltd. refusing to engage in collective bargaining with a labour union which consisted of subcontracted workers constituted an unfair labour practice. This is the second time the National Labour Relations Commission has recognised the wide interpretation of employer status of a contractor.

**Introduction of centralised accident control system** – In January 2022, the Serious Accident Punishment Act came into force to demand greater accountability from corporate actors by imposing heavier punishment in the event of a large-scale accident. In order to manage uncertainty and fear created by the newly-enacted legislation, Dentons Korea has partnered with INEAST, a system integration establishment and consulting company, and developed centralised accident control software. The software allows oversight in complying with various obligations stipulated in the new legislation by providing an overview of the proper implementation of the company's health and safety status at a glance. The software is expected to significantly reduce the legal risk currently exerted on the companies by providing supporting evidence and proof when defending against government bodies' inquiries and investigations.

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## UZBEKISTAN

**Easement of work permit acquisition** – A foreign national is allowed to work in Uzbekistan only by obtaining a special permit for carrying out labour activities (work permit) issued by a state authority. The following easement for obtaining a work permit will be implemented:

- from 1 July 2022, it will not be necessary to obtain a work permit for carrying out labour activities in Uzbekistan if a foreign specialist will work remotely (online) outside Uzbekistan;
- from 1 March 2022, the requirement for the submission of a certificate on HIV infection absence established for foreign nationals while applying for a work permit in Uzbekistan is abolished.

**Ensuring the sanitary and epidemiological well-being of the population** – An employer has the right not to admit an employee to work in the following cases:

- an employee avoids compulsory medical examination or fails to comply with the recommendations issued after such examinations;
- an employee refuses to undergo preventative vaccination (in the absence of contra-indications for health);
- there is a threat of quarantine and spread of other dangerous infectious diseases.

**Organizations hiring people with disabilities will be provided with benefits** – Starting from 1 January 2022, private sectors hiring people with disabilities will receive a monthly subsidy of 1.5 Basic Calculation Units (currently 405,000 soums, is approximately US\$36) per employee for six months.

**The new Labour Code passed the stage of Senate approval** – The new Labour Code has been approved by the Senate of Oliy Majlis. It will be passed in a few stages, i.e. signing by the President of the Republic of Uzbekistan and official publication left for the new Labour Code to enter into force. It is expected that the new Labour Code will have a broader scope. In particular, it will regulate issues such as discrimination in labour relations, official investigations and collective labour disputes, professional training, retraining and advanced training of employees, etc.

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## VIETNAM

**Adjusted regulations regarding the working hours and extra hours of seasonal workers** – From February 2022, the working hours and extra hours of seasonal production workers and custom-made jobs workers will be increased. The maximum total number of standard working hours and extra hours remains 12 hours per day, but will increase from 64 hours to 72 hours per week. The maximum total extra hours will increase from 32 hours per month to 40 hours per month.

**Increase overtime hours to 60 hours per month** – From 1 April 2022, upon the employer's demand and with the employee's consent, an employer who is permitted to assign employees to work overtime for up to 300 hours per year may assign the employee to work overtime for more than 40 hours but not exceeding 60 hours per month.

**Support Vietnam workers who work overseas** – Starting from 21 February 2022, financial support (up to a maximum of VND 30 million) will increase to VND 5 million for employees working abroad. This is applicable if they are forced to return home early due to labour accidents, illnesses or diseases that prevent them from continuing to work abroad. The employee's relatives will be granted up to VND 40 million, up from VND 10 million previously, if the employee dies or goes missing while working abroad.

**Housing rent support for employees** – This is applicable to employees working in enterprises, industrial parks, export processing zones or key economic regions who have been renting a room or a home from 1 February 2022 to 30 June 2022. They will enjoy a support of VND 500,000 per month for a duration of three months. For those who are renting a room or a home from 1 April 2022 to 30 June 2022, and returning to the labour market, a support amount of VND 1 million per month shall be applied for three months.

**The threshold of brokerage fees under a brokerage contract** – A broker's organisation or an individual shall be entitled to receive a brokerage fee as agreed by the parties under a broker's agreement not exceeding 0.5 months of the employee's contract salary for every 12 working months. In the case of a labour contract with a working term of 36 months or more, the threshold of brokerage fees under the brokerage contract shall not exceed 1.5 months of the employee's contract salary.

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# Australasia

## AUSTRALIA

- **Australia's general election** – Following the Labor party's victory in the general election, focus will turn on Labor's employment law proposals which included the following: legislation to criminalise wage theft;
- "same job, same pay" policies, where workers doing the same job and the same shifts are paid the same. This would significantly impact industries which rely on labour hire firms, like construction;
- legislation to provide for more job security for gig workers; and
- policies to close the gender pay gap including:
  - o Fair Work Commission empowered to order pay increases for workers in low-paid, female-dominated industries; and
  - o legislating for companies with 250+ employees to publicly report their gender pay gap data; and
  - o prohibiting pay secrecy clauses and giving employees the right to disclose their pay.

On a more local level, new South Australian Premier Peter Malinauskas has announced industrial reform in South Australia including:

- following Victoria, Queensland and the ACT in criminalising wage theft;
- introducing industrial manslaughter laws (in line with most other jurisdictions); and
- labour hire licensing reforms.

## Primacy of contract in distinguishing independent contractors from employees

– In two recent decisions, the High Court of Australia has provided more certainty for businesses when engaging independent contractors. For at least the past two decades, businesses engaging contractors have faced the risk of such contractors later making claims for employee entitlements to which contractors are not entitled, such as annual leave. Many contractors have been successful in such claims even though they have provided services under a contract stating they are engaged as a contractor.

The High Court has found that, where the parties' relationship is comprehensively committed to a written contract and those terms reflect a relationship of principal and contractor, regard must only be had to the contract. The way in which the parties' relationship works in practice is not an inquiry that a court must make in determining the central question of whether or not a person is a contractor or employee.

Businesses who use independent contractors in Australia should take this opportunity to review their contracts to ensure that all essential terms are included in the contract, and expressly state that the contract is the entire agreement between the parties.

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## NEW ZEALAND

**Legislation for fair pay agreements progressing through Parliament** – The Fair Pay Agreements Bill has been introduced to Parliament and already passed its first reading. The Bill will introduce the Fair Pay Agreement system, a mechanism that allows for bargaining between employers and employees to set binding minimum terms and conditions across an industry or occupation. It is currently in the Select Committee stage, with submissions being accepted, and is expected to pass all stages in 2022.

**Move away from mandates** – A rapid shift away from mandatory COVID-19 vaccination requirements is under way, in the light of evidence of the Omicron variant's reduced severity and much higher prevalence in the community. Employers have been advised by the health and safety regulator WorkSafe that mandates are no longer a suitable first response to managing COVID-19 in most workplaces. This follows a recent High Court decision that the order imposing a vaccination mandate on police and defence force workers was unjustified. Mandates remain lawfully in place for certain workers in high-risk industries, including the corrections and health and disability sectors.

**When employees are “working” during overnight stays** – A recent Employment Court decision has discussed the legal test used when evaluating whether or not employees are considered to be working overnight. In this case, part-time cabin crew employees staying overnight at a location other than their home base were not considered to be working. The court confirmed that a requirement to be away from home is not enough in itself to constitute working time, and that a rule which stipulates that employees are not to be contacted except for in limited circumstances points away from a finding of “work”.

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## PAPUA NEW GUINEA

**Measures taken to protect employment** – Papua New Guinea has been in a declared State of Emergency (SOE) since March 2020. During the SOE, the PNG government enacted and passed the National Pandemic Act which appointed an SOE Controller and allowed for the SOE Controller to impose measures governing international and domestic travel, provincial coordination, burial of deceased persons, customs duties, testing, surveillance, businesses and social events, mandatory non-pharmaceutical interventions and public transport restrictions.

Although the PNG government has strongly urged employers, whose operations have been affected by the pandemic, to reconsider laying off employees, to the extent of verbally directing the National Labour Department to closely monitor and take action against such acts by employers, there is very little assistance from the government to subsidise the ongoing costs to keep employees employed, especially those employed in the private sector.

Because the relationship between an employer and its employee is, in most cases, governed by a written contract of employment or by written labour laws, common rules and employment awards (made by a tribunal established under local legislation), courts are cautious when examining these relationships. However, they try to strike a balance between employer and employee when disputes arise.

The practice by private sector employers observed presently is less reliance on the ability of the government to assist financially and more a closer look through policies, employment contracts and general local labour laws, for the purposes of amending, editing, changing etc, to see how best to cater for retaining hard-working employees whilst simultaneously maintaining ongoing operating costs.

**Vaccination Efforts** – Although there is no current local law that makes vaccination mandatory on all citizens, a number of employers, occupiers of (office space) buildings and business houses have, in complying with their common law duty to provide and maintain a safe working environment that is without risk to the health of their employees, visitors to their offices etc, required that (mainly) their employees be vaccinated and show proof of vaccination prior to returning to work.

Coined the “no jab, no job” policy, disgruntled employees who have been terminated because of this requirement from their employers have since asked the local courts in PNG to review and declare the position taken by their employers as unconstitutional, citing a breach of their freedom of choice and freedom of employment. These proceedings have not yet reached the substantive hearing stage.

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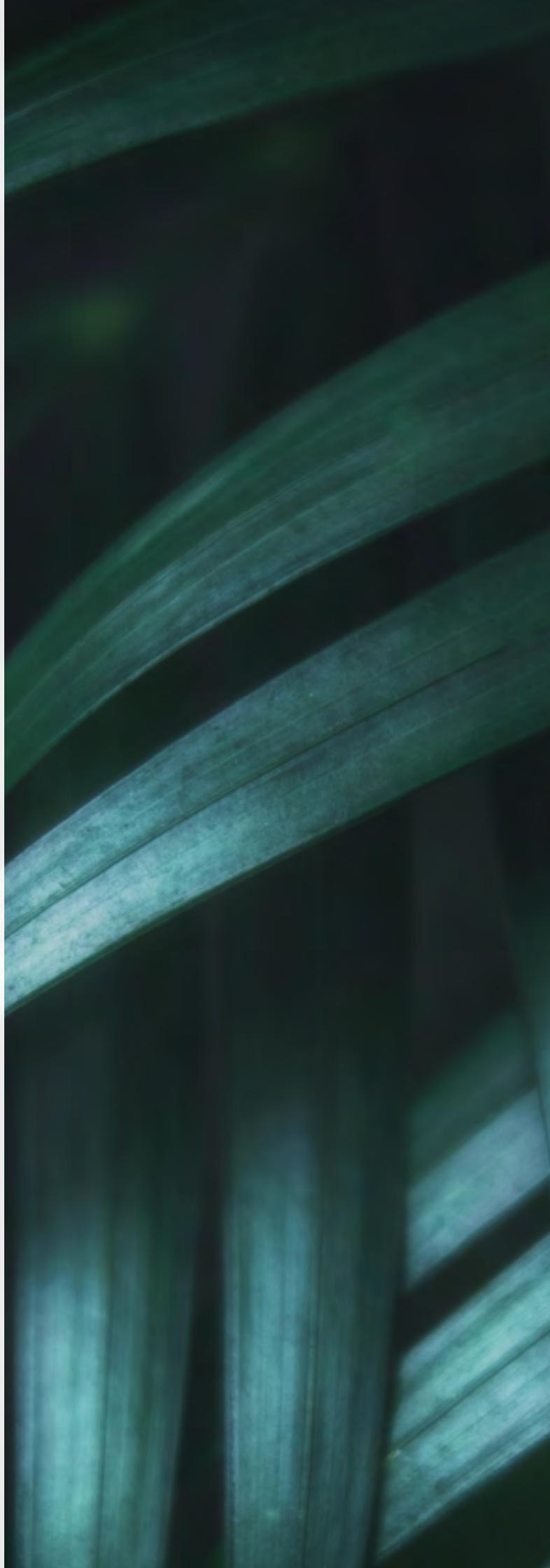
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# Central And South America

## ARGENTINA

**COVID-19 regulations** – According to new regulations, employees that have tested positive but did not require hospitalisation may return to work without having to show their employer a negative test result if the positive test is 10 days old or if they were fully vaccinated. Asymptomatic workers that are fully vaccinated or already have had COVID-19 can return to work by adopting preventative measures even if they have been in close contact with someone that was positive.

The two-metre social distancing rule and the requirement to wear a face mask in workplaces has been lifted. Vulnerable workers are now required to show a medical certificate to keep working remotely.

**Nurseries in the workplace** – A new decree establishes that companies with more than 100 employees working in their premises are now required to provide nurseries for their workers' children aged between 45 days and three years old. Employers may outsource nursery services and may also decide to provide these services together. Employers that do not implement these measure face serious fines and penalties.

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## CAYMAN ISLANDS

**Final extension to pension holiday** – To combat the economic impact of COVID-19, the Cayman Islands government introduced a “pension holiday” at the beginning of the pandemic in March 2020. The pension holiday sought to combat the financial strain put on employees and employers alike by the effects of the global COVID-19 outbreak and to act as an economic stimulus by exempting employers and employees from paying into the mandatory statutory pension plans. Voluntary pension contributions can still be paid if both the employer and employee agree. The pension holiday has since been extended several times, and in March 2022 the government issued a final extension notice through to 30 June 2022. Employers should be ready to make the necessary adjustments to their payroll policies and relay relevant information to their staff.

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## CHILE

**New immigration law** – This new law establishes the duties and obligations of migrants allowing a safe, regular and responsible migration. It also establishes several new types of visa so that there is transparency in relation to the reasons why foreigners enter the country and puts in place a process allowing long-term visa holders to receive an identity card from the first day of arrival.

**Minimum wage** – The Treasury, Labour and Economy authorities reached an agreement with trade unions to increase the minimum wage by 14.3%, the highest adjustment in 25 years.

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## COLOMBIA

**New COVID-19 measures** – Save for public transport, nursing homes, medical centres and schools, the requirement to wear a face mask and other COVID-19 measures in closed places, such as workplaces, has been lifted in regions where 70% of the population is fully vaccinated and at least 40% have received their booster. In spite of that, the country's health emergency status has been extended until 30 June 2022.

**Remote working** – In specific and unexpected circumstances, private sector employees can now be allowed to work from home. Employees can also agree with their employer to work flexibly if they are the sole caregiver of minors under the age of 14 or an individual with special needs.

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## COSTA RICA

**COVID-19 measures** – Whilst the mandatory use of face masks and the requirement to socially distance remain in force, several sanitary measures were lifted which include the existence of a health pass, the requirement to isolate when fully vaccinated and the mandatory insurance payments required for non-vaccinated individuals.

**New parental leave regulation** – Earlier this year, a bill introduced new regulations on parental leave in the private sector. Adoption and paternity leave have been extended and a special care leave has been granted to an employee whose partner dies while giving birth or shortly after childbirth. This leave applies to the employee (regardless of gender) who proves that they will be in charge of the new-born. This new bill also clarified issues around employees' right to breastfeed at work and expressly prohibits employers from requesting employees to take pregnancy tests.

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## ECUADOR

**New law on personal data** – A new law, on data protection and the proper and safe handling of personal data, which largely reflects the guidelines outlined by the European Union's GDPR, came into force last year. Companies that do not implement the new measures by May 2023 will face sanctions and may be fined up to 1% of their turnover.

**Workers to receive percentage of employer's net profits** – An amendment to the Labour Code established that workers should receive 15% of the company's net profits. 10% is divided equally between all workers and former workers; the remaining 5% is delivered to the workers and former workers depending on how many dependants they have and their ages.

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## GUYANA

**Overtime requirements** – Clarification has been provided on overtime arrangements for employees, including those in the oil and gas sector, in particular:

- any hours above 40 hours and five days per week are considered overtime;
- employees have the right to be paid for overtime and providing additional time off is not a substitute for pay;
- employees who work 12 hour shifts should be paid overtime for any time exceeding eight hours; and
- overtime hours are to be paid at a minimum of time and a half (150%), and higher on specific public and religious holidays.

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## HONDURAS

**Minimum salary for 2022 and 2023** – New minimum salary levels were just introduced for 2022 and 2023. These changes are effective from 1 January 2022, meaning that the adjustments need to be backdated.

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## NICARAGUA

**Increase in minimum wage** – Nicaragua has a government-mandated minimum wage, and no worker in Nicaragua can be paid less than this mandatory minimum rate of pay. Whilst most countries have a nationwide minimum wage, Nicaragua's minimum wage is set for nine different economic sectors. On 1 March 2021, more than 200,000 workers have had a 3% adjustment in their salary.

Under Nicaraguan law, minimum wage had to be adjusted every six months in accordance with economic growth and accumulated inflation in Central America. However, it has now been decided that there should only be an annual adjustment instead of a semi-annual one, in order to allow for more consistency in salaries.

Rates for 2022 are currently being reviewed by the government and are bound to increase, which will have a direct impact on employees and employers.

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## PERU

**COVID-19 measures** – Every employee is required to get three doses of the COVID-19 vaccine (two regular shots and the booster shot) to provide on-site services. Employees that fail to provide proof of vaccination are required to provide services via remote working and, if this is not possible due to the nature of the service provided, an unpaid leave of absence will be granted until vaccination is completed.

**Limits to outsourcing** – Companies' right to outsource specific activities has been reduced: a third party is no longer allowed to perform a company's core activities on its behalf. Companies have until 23 August 2022 to comply.

**Increase in minimum salary** – The minimum salary in Peru increased on 1 May 2022.

**Changes to the labour law** – Draft modifications to the labour law have been published. These include: changing the definition of a group company; decreasing the amount of scenarios in which fixed-term contracts can be used; and reducing the number of employees required in a company so that they can form a union.

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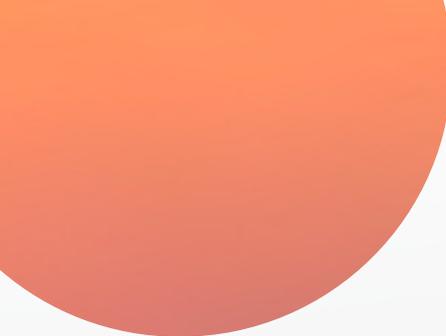
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## URUGUAY

**The end of the health emergency status** – At the start of April 2022, a new law was passed revoking the health emergency law introduced in March 2020. This law casts doubt on whether employers can require employees to wear masks in the workplace and states that some of the benefits that have been given to both employers and employees in the health emergency law will gradually come to an end.

**New home working rules** – In March 2022, the government passed a new law which includes specific rules around hybrid working and remote working. It also acknowledges a right to disconnect, something that is brand new in Uruguay.

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# Europe

## FRANCE

### **Fair dismissal when employees move away** –

The Court of Appeal found that it was fair for an employer to dismiss an employee that had moved away and was now living at a significant distance (five hours' drive) from his office without the employer's agreement as it did not enable the employer to fulfil its health and safety obligation. Consequently, the employer's decision to dismiss the employee did not contravene Article 8 of the European Convention on Human Rights, which protects the free choice of personal residence.

**New rules on risk assessment** – The rules for drawing up, updating, storing and making available risk assessment paperwork have changed.

**Gender Equality Index** – Since 2019, companies with more than 1,000 employees became subject to gender pay gap duties. The first sanctions have now been imposed on companies whose index has not reached 75 points during the past three years. It is worth noting that the sanctions can and have been as high as 1% of the employer's total monthly payroll, and apply as soon as one month after the labour inspection office issues a formal notice.

**New COVID-19 measures** – The requirement to wear a face mask and other COVID-19 measures in the workplace, such as having a health pass, have been lifted.

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## GERMANY

**Health and safety** – Basic protective measures in response to COVID-19 are no longer mandatory in workplaces. Instead, it is up to companies themselves to determine what measures should be put in place to protect the health and safety of their workplace. Employers need to take into account local infection numbers and activity-specific hazards.

**Trade union plans** – Trade unions, in response to the new government formed by the Social Democratic Party, are proposing significant changes to labour law in Germany. The proposed changes include: a requirement to make termination agreements subject to notification requirements to certain statutory bodies; and to increase employee representation on supervisory boards of corporations and limited companies by lowering the entry requirements for employees.

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## HUNGARY

**Home working arrangements** – During the state of emergency in Hungary in 2021, temporary rules were brought in concerning remote working arrangements. These temporary arrangements are now permanent for teleworkers:

- an employment contract should include provisions and agreement on remote work; and
- the default position is that a teleworker shall work from home on two-thirds of the working days in a year and shall only work in the employer's premises for a maximum of one-third of the working days in a year. Parties must expressly agree to vary the default position.

**New residence permit for digital nomads** – Since January 2022, a new type of visa is available for third country nationals working remotely in Hungary. The visa provides the right to live and work remotely for a maximum of two years and is only available to those who:

- have a verified employment relationship in a country other than Hungary or own shares in a company in a country other than Hungary whilst performing their work from Hungary using an advanced digital technology solution;
- meet the general conditions for staying in Hungary for more than 90 days within any 180-day period and are not subject to any disqualifications; and
- do not pursue any gainful activity in Hungary and do not hold any shares in any Hungarian company.

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## ITALY

**Gender equality** – Gender equality in the workplace to bridge the pay gap between men and women represents one of the main goals contained in Italy's National Recovery and Resilience Plan. Important guidelines were recently published, which include a set of shared practices aimed at achieving gender equality in companies, based on specific Key Performance Indicators through which actions aimed at promoting and protecting diversity and equal opportunities in the workplace are measured.

According to the guidelines, which are not mandatory, companies should implement the principles of gender equality with the aim of not only increasing the number of women in the workplace, but also ensuring equal career opportunities, equal economic treatment, adequate work-life balance conditions, as well as a workplace that rejects stereotypes and discrimination, and instead offers a culture of diversity and inclusion.

### **Guidelines for the restart of economic and social activities**

– Guidelines for the re-opening of economic and production activities and to simplify the rules on COVID-19 were published in April 2022. The guidelines include measures applicable to all economic and social activities and contain measures concerning, among others, the use of COVID-19 certification and face masks.

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## NETHERLANDS

**Major reform of Dutch pension system** – All pension arrangements with employees in addition to contracts with pension providers will need to be renewed following major reforms. The changes will take effect from 1 January 2023 and the deadline for transition to the new scheme is 1 January 2027, at the latest.

**Amendment to template employment agreement and staff handbook** – New laws, coming into effect in August 2022, will result in significant changes to the employment relationship in the Netherlands, including:

- an extension of the employer's information obligations towards the employee;
- a prohibition on the employer to include a clause in the employment agreement that restricts employees from carrying out work for others in their personal time, unless justified by an objective reason;
- a prohibition on the employer to include a clause in the employment agreement whereby the employee must repay study costs if the employment agreement is terminated, insofar as the study costs related to a study are considered mandatory;
- the right of the employee to request more predictable and secure employment conditions after 26 weeks of labour.

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## SLOVAKIA

**Crisis in Ukraine** – The government has simplified the requirements for the employment of Ukrainians in Slovakia. Those with the newly-established status of “temporary refugee” are able to be employed without the need for any additional work permits. Furthermore, asylum seekers who are citizens of Ukraine, including their family members, can enter into an employment contract before the expiration of nine months from the commencement of their asylum claim (from June 2022 this should be reduced to six months).

**Health and safety in the workplace** – The rules in relation to health and safety in the workplace have been amended in order to make them more practical, incorporate systemic changes and reduce the administrative burden. The amendment will become effective from January 2023.

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## SPAIN

**Draft law on whistleblowing** – The aim of the law on whistleblowing is to guarantee the protection of employees who report or inform on fraud or corruption, prohibiting any type of retaliation against them. The new draft law covers the following issues:

- the protection of employees reporting the offence;
- the regulation of information systems; and
- the obligation to have internal reporting channels for companies. (Companies with more than 50 employees will be obliged to establish an internal whistleblowing channel.)

**Monitoring an employee's computer** – A court has ruled that the installation of a monitoring device on an employee's personal computer may involve an "excessive" monitoring measure. However, it does not violate the employee's right to privacy, nor does it constitute an infringement of any other fundamental right.

**Ignoring an email during holidays does not justify dismissal** – A court has ruled that an employee is not obliged to respond to work emails while on holiday because they have a right to disconnect.

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## TURKEY

**Monitoring WhatsApp** – A Turkish tribunal recently decided that employers must respect employees' rights to their personal data. Monitoring cannot harm an employee's fundamental rights and freedoms, and employers must inform their employees on any monitoring activity.

### **Implementation of the International Labour Law**

– This new law has amended the type of policies companies must implement when they engage international staff, how staff work permits should be monitored as soon as they are employed and an employer's responsibility in making sure that the relevant procedures are followed to prevent illegal working.

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## UNITED KINGDOM

**No time limit on “workers” seeking compensation for unpaid annual leave** – The Court of Appeal recently (*Smith v. Pimlico Plumbers Ltd* [2022]) ruled that individuals who are deemed to be “workers” (which is a hybrid category in the UK – somewhere in between employee and self-employed status) would be entitled to claim holiday pay for any taken but unpaid leave going back to the start of their engagement. Therefore, there is no time restriction on how far back a worker can claim holiday pay for any taken but unpaid leave. Employers who engage independent contractors could be significantly impacted by this decision, particularly those that operate in the gig economy. An independent contractor who is deemed to be a “worker” could at the point of termination claim for holiday pay for their entire engagement (in circumstances where they have been denied the right to paid leave).

Employers should consider auditing their workforce to identify any independent contractors who would most likely be classified as workers and consider what action, if any, should be taken to mitigate risks of holiday pay claims.

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# Middle East

## JORDAN

**Automatic renewal requirements** – Employers are obliged to automatically renew the employment contract of fixed-term workers where the contract expired on or after 30 April 2020 and had previously been renewed at least three times. Relevant contracts were to be renewed for a period equal to the last period of contract or until expiry of the law. It has been clarified that these requirements do not apply to those appointed after 30 April 2020.

**COVID-19 restrictions eased** – Restrictions placed due to COVID-19 have been relaxed so that:

- places of worship may operate at full capacity; and
- businesses, including hospitality businesses, can operate at full capacity.

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## UNITED ARAB EMIRATES

**New labour law** – The new labour law came into force on 2 February 2022. The key changes include:

- validity and enforceability of non-compete clauses;
- certain categories of employees to be exempted from non-compete restrictions;
- employees' rights to carry over unused annual leave to the next year is capped at 50% of annual leave entitlement; and
- introduction of the concept of part-time employment and part-time employees' gratuity calculation scheme.

**Green visa** – A new law providing further details regarding the new visa and residency rules was issued. The new rules will be implemented in September 2022.

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# North America

## CANADA

**Right to disconnect** – Ontario is the first province in Canada to introduce the “right to disconnect”, following international jurisdictions such as France, Italy and Spain.

As of 2 June 2022, all employers with 25+ employees in Ontario must implement a policy “with respect to disconnecting from work”.

Ontario defines “disconnecting from work” as “not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work”. However, there are no requirements for the contents of these policies, and the only requirements are:

- employers with 25 employees or more as of 1 January of any year require this policy – including those with part-time and casual employees;
- where an employer has multiple locations in Ontario, all employees at every location count towards the 25 threshold;
- all employees must be provided with a copy of this policy within 30 days of the policy being prepared, or updated; and
- employers must retain a copy of this policy for three years after the policy is no longer in effect.

Dentons Canada’s Employment and Labour group has developed a ready-to-use **Ontario Disconnecting from Work Policy template** that can be easily integrated into an employee policy handbook as is (or updated with scenarios specific to the employer’s organisation). We are pleased to make it available to any employer who requires such a policy for a flat fee of CA\$1,000.

It also includes a highly requested FAQ document and complimentary amendment to the policy, should the government publish any regulations prior to 2 June 2022 that will impact the current drafting of the policy.

You can request the template via [this intake form](#).

**Electronic monitoring** – Ontario also recently introduced the requirement for employers with 25+ employees to have a written policy with respect to electronic monitoring of employees. “Electronic monitoring” is not defined, but the policy must contain:

- a description of how and in what circumstances the employer may electronically monitor employees; and
- the purposes for which information obtained through electronic monitoring may be used by the employer.

Dentons Canada is developing a standard, legally compliant policy with respect to electronic monitoring of employees. The policy will be available in the coming months.

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## UNITED STATES OF AMERICA

### Prohibition of forced arbitration of sexual assault

– Previously, an arbitration agreement could specify that an arbitrator, not the courts, could decide whether a dispute involved sexual harassment or sexual assault. However, as of 3 March 2022, for any new claim that arises after 3 March 2022, the courts alone must decide whether such a dispute involves sexual harassment or sexual assault.

Now, alleged victims will have the choice to reject mandatory arbitration of such claims and to repudiate waivers of their right to litigate such claims in joint, class or collective actions. Employers should review their arbitration agreements, including those with class and collective action waivers, to incorporate carve-out clauses for sexual harassment and assault claims.

### Significant minimum wage increases trending

**across US** – 21 states raised their minimum wages effective 1 January 2022: Maine (US\$12.75), Vermont (US\$12.55), Washington (US\$14.49), Montana (US\$9.20), Minnesota (US\$10.33), Illinois (US\$12.00), Michigan (US\$9.87), New York (US\$13.20), Rhode Island (US\$12.25), Massachusetts (US\$14.25), South Dakota (US\$9.95), Ohio (US\$9.30), New Jersey (US\$13.00), California (US\$15.00), Colorado (US\$12.56), Missouri (US\$11.15), Virginia (US\$11.00), Maryland (US\$12.50), Delaware (US\$10.50), Arizona (US\$12.80) and New Mexico (US\$11.50). The increases range from a US\$0.22 inflation adjustment in Michigan to a US\$1.50 per hour raise in Virginia, the equivalent of an annual increase ranging from US\$458 to US\$3,120 for a full-time, full-year minimum wage worker. Other states (Hawaii, Connecticut, Florida, Nevada and Oregon) and the District of Columbia have minimum wage increases scheduled to occur later in 2022.

### Employment authorisation automatically extended

– Effective 4 May 2022, the US Citizenship and Immigration Services has increased the automatic extension period for employment authorisation documents (**EAD**) for certain non-immigrants for up to 540 days from the initial date of EAD expiration. This rule is temporary and expires on 27 October 2023.

This rule only applies to those EAD categories already eligible for automatic extension. For a list of those categories and further information, see <https://www.uscis.gov/eadautoextend> or contact your Dentons attorney.

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# In conversation with...

IN THIS EDITION WE TALK TO **ANDY PUSHALIK**, DENTONS PARTNER AND REGIONAL LEAD OF DENTONS CANADA EMPLOYMENT AND LABOUR GROUP.



## Tell us a bit about yourself.

I am a partner in Dentons' Toronto office and the National Practice Group Leader for the Canadian labour and employment group. I joined one of Dentons' legacy firms as a summer student and have been with the Firm ever since. I am fortunate to have a broad-based labour and employment practice covering all aspects of labour and employment litigation, including wrongful dismissal matters, grievance arbitrations and restrictive covenant disputes. I also advise companies and their boards on sensitive human resources matters, including discrimination and harassment complaints and workplace investigations.

My wife and I have three children under the age of 10 so we spend a lot of time chasing them. Like many other parents, virtual school gave us a good glimpse into our kids' day-to-day life. It also showed us that our kids can navigate virtual meetings better than us!

## What is that you like about Dentons?

I really embrace our philosophy of being a global challenger brand that is re-imagining the practice of law. From client service to the career development of our team members, we are relentless in finding creative ways that make us a destination of choice for people and clients around the world.

In Canada, we have used our brand as our inspiration for developing innovative software programs that automate certain aspects of our clients' human resources functions.

Of course, none of these exciting projects are possible without great people. I work with fun and smart colleagues across Canada and around the world who are committed to being the best law firm on the planet. And that is a pretty cool thing.

## What developments do you expect to see in 2022?

Much has been written about the issue of employee "burn out". I expect that this will continue to be a theme as employers navigate the return to office phase of the pandemic. In Canada, the Ontario provincial government recently introduced a law requiring employers with 25 or more employees to implement a disconnecting from work policy. We recently convened a [global webinar](#) on this topic. This new Ontario law does not provide employers with a lot of guidance

about what should be included in the policy. However, the law does define "disconnecting from work" as not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages so as to be free from the performance of work. No doubt there will be a learning curve as employers implement these policies this year.

Another issue to keep an eye on is the increasing tension around employee free speech. Our media feeds are filled with issues that often trigger a passionate response from all corners of our society. These debates often move from the kitchen table to the boardroom to the Internet. This can create challenges for employers requiring a nuanced response that respects everyone involved.

## What activity is at the top of your "Bucket List"?

Does watching the Toronto Maple Leafs finally win the Stanley Cup count?

## What do you enjoy doing outside work?

I grew up in a small town on the shores of Lake Huron (the second largest of the Great Lakes and the fourth largest lake in the world by surface area). In the summer, we try to spend our weekends at our family cottage surrounded by our extended family and friends. There are few things better than spending time watching sunsets and eating s'mores by the bonfire.



# Dentons news and events

## GLOBAL SOLUTIONS

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

Click [here](#) to access the full guide

**ESG: Global Solutions Hub** – ESG issues are currently at the forefront of corporate thinking, as a source of risk and opportunity. The regulation around ESG is coming thick and fast and finding global answers to what is required, market by market, is something with which Dentons is uniquely equipped to help. We understand that addressing the ESG agenda requires cross-practice perspectives to be integrated and solutions to be holistic – and this is what we offer. To find out more about how we can help you address your specific ESG queries or challenges

Click [here](#) to access the hub

## EVENTS

**Webinar insights programme** – Many of our clients receive regular invitations to training sessions and webinars on legal topics. This is different. This programme is about providing you with access to insights and knowledge that we hope will empower you – that are not connected to regulation and legislation, but are connected to leadership, market trends, operations and people. There are also a number of programmes to address your personal development.

Click [here](#) to access the full guide

## DENTONS NEWS

**The world's largest law firm to combine with Zaanouni in Tunisia** – Dentons' combination with Zaanouni Law Firm and Associates would further accelerate Dentons' momentum to become the leading Pan-African law firm owned and controlled by Africans, across 17 locations on the continent.

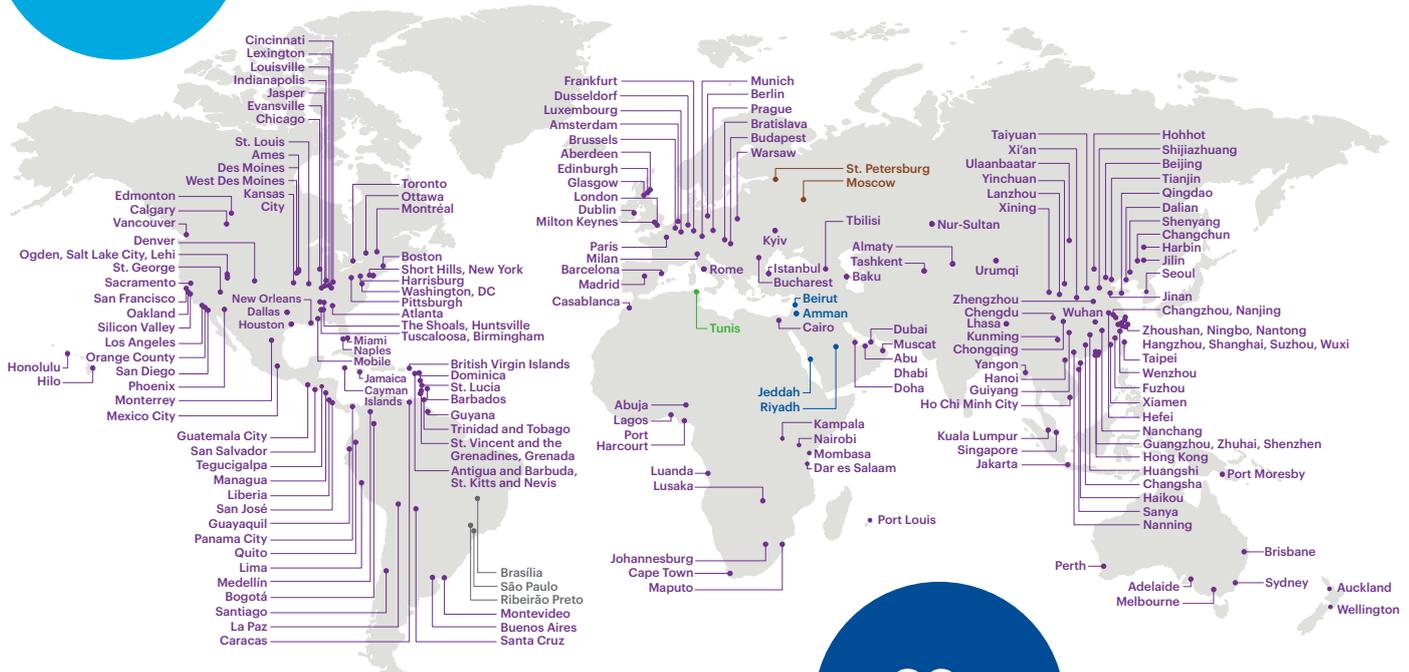
Click [here](#) to access the full guide





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



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.

**80+**  
countries



**12,200+**  
total number  
of lawyers

**20,000+**  
Total number  
of people

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## Middle East

## United States of America

## **ABOUT DENTONS**

Dentons is designed to be different. As the world's largest law firm with 20,000 professionals in over 200 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you.

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