

# Global Employment Lawyer

## Global Employment & Labor Quarterly Review

Grow | Protect | **Operate** | Finance

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### Welcome to the third quarterly edition of 2022 of our global employment and labour review.

Picking up on one of the themes from last quarter, we continue to see COVID-19-related restrictions and other measures being phased out (including the end of remaining COVID-19-related pension holidays, additional severance payments and masking requirements), although there are some notable exceptions.

As the page continues to turn on the COVID-19 era, there is a renewed focus towards what might loosely be considered a “business as usual” type labour market agenda, with jurisdictions taking the opportunity to revisit their labour codes and similar legislation.

Another common theme appears to be the embrace and expansion of family-friendly rights and leave, with new rights being introduced or existing rights extended in a number of countries. Minimum wage increases also feature, as do relaxations in the requirements relating to foreign workers in some jurisdictions.

In our “In conversation with” feature, we catch up with Alison Weatherhead, Head of Dentons’ People, Reward and Mobility practice in the UK. 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 third edition of 2022.

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# Legal updates

## Africa

### Kenya

**Prevention of bribery and corruption** – Procedures which prevent bribery and corruption must be put in place by 11 November 2022. Guidelines have been issued to assist employers, including:

- the procedures must be in writing;
- entities are required to assess and map out bribery and corruption risks and develop a plan to mitigate them;
- the procedures must contain sufficient mechanisms to facilitate efficient and effective reporting of bribery and corruption, including procedures on receiving and processing reports;
- entities must provide for training and effective communication; and
- entities must provide for monitoring, evaluation and review of the effectiveness of the procedures.

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### Mauritius

**New employment laws** – On 2 August 2022, the following measures came into force:

- untaken sick leave can be accumulated for workers earning a monthly basic salary equal to or lower than MUR 50,000;
- workers are entitled to 10 days' paid leave to care for a sick child;
- workers are entitled to a 10% increase in petrol allowance;
- the ban on the permanent and temporary reduction of workforce, which has been in force since 1 June 2020, has been extended from 30 June 2022 to 31 December 2022; and
- in cases of unlawful dismissal, the employee can now choose between claiming severance allowance or reinstatement.

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## South Africa

**Private arbitration clauses in employment contracts upheld** – In this case, the employee sought to appeal the decision of the Labour Court (**LC**) which had refused to determine an allegedly automatically unfair dismissal claim on the basis that there was a private arbitration clause (albeit this was in a policy not his employment contract). On appeal, the Labour Appeal Court (**LAC**) agreed with the LC’s finding that the relevant provisions were incorporated into the employment contract and this agreement was binding on the employee. The LAC went on to determine that a private arbitration agreement will be upheld unless there were exceptional circumstances to justify continuing with the matter in the LCs.

This goes against previous common practice and effectively ousts the jurisdiction of public labour forums such as the Commission for Conciliation, Mediation and Arbitration (**CCMA**) and LCs. Where an employer wishes to take advantage of this position, it should ensure that contractual documentation and policies contain appropriate private arbitration provisions.

**Employee not entitled to severance pay when refusing to adhere to mandatory vaccination policy** – In this case, the employer implemented a mandatory COVID-19 vaccination policy in line with South Africa’s Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces (the **Direction**). The employee refused to be vaccinated based on medical, personal and religious reasons, as well as her “constitutional right to bodily integrity” [sic]. Alternative employment could not be secured for the employee, and she was therefore dismissed. The CCMA Commissioner found her dismissal to be substantively fair, as the mandatory vaccination policy was in line with the Direction and implemented after the employer had conducted a proper risk assessment. The Commissioner also found that the employee was not entitled to severance pay because her decision not to comply with the employer’s vaccination policy was unreasonable.

While this is a helpful case for employers, case law on mandatory vaccination policies is developing and dynamic. It remains important for employers to be cognisant of the Direction and any related regulations before implementing anything in the workplace.

**Dismissal for derivative misconduct found to be fair** – Employees hold a responsibility to their employers to act honestly, even if it means such honesty exposes the misconduct of another employee. The dismissal of an employee who failed to report the suspicious conduct of her colleague, in relation to missing monies, was found to be substantively fair by the CCMA. The failure of an employee to inform an employer of their business interests being improperly undermined constitutes derivative misconduct and may result in dismissal.

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## Tunisia

**New rules around domestic workers** – Employers are now required to file a copy of all of their domestic workers' employment contracts with the relevant labour institution. Salaries cannot be lower than the minimum wage applicable in the various sectors. All domestic workers are entitled to paid time off and their employer is required to register the domestic worker with the National Social Security Fund and to pay the relevant contributions.

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## Uganda

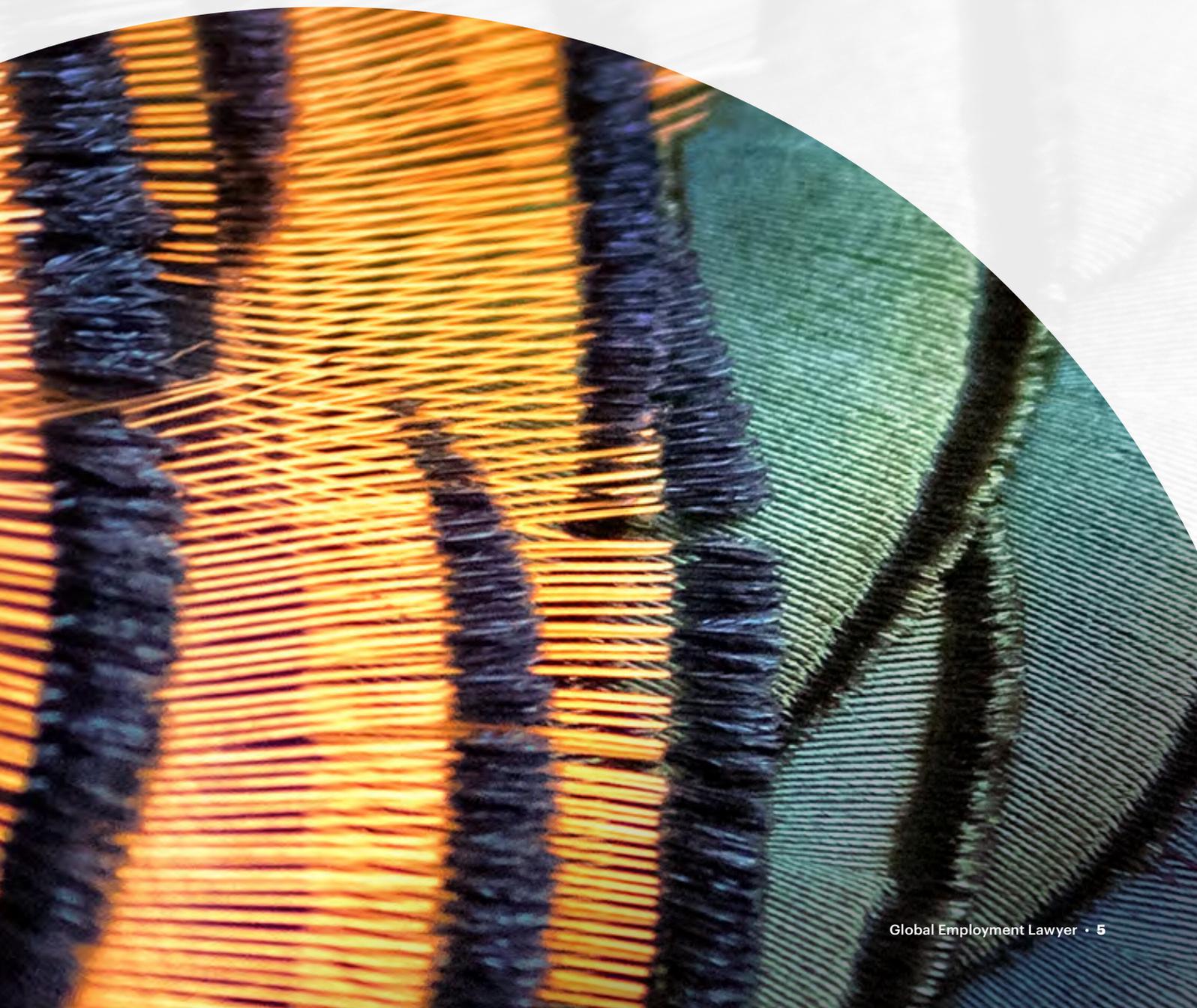
**Changes to the law on social security** – In Uganda, both employers and employees within the private sector are not covered by the government's pension scheme. For employers that are not covered (even if they only have one employee), the law now requires mandatory contributions to the National Social Security Fund (**NSSF**). The contributions are made by employers on behalf of and for the benefit of the employee. Further, whilst before, an employee could only withdraw their age benefits from NSSF upon attaining the age of 50, they can now do so at 45 if they have saved with NSSF for at least 10 years and as long as the sum does not exceed 20% of their accrued benefits.

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# Asia

## China

**COVID-19 guidance** – The Shanghai High People’s court and the Shanghai Municipal Human Resources and Social Security Bureau issued the “Replies to Several Issues Regarding Handling of Pandemic-related Labor Disputes” which provides guidance on employment management during the pandemic. These provide information on:

- using online platforms to carry out employee consultations;
- electronically signing and concluding employment contracts where an employer is unable to do so in wet ink (by pen) due to the pandemic;
- the payment of normal salary where an employee is required to self-isolate or is seeking medical attention due to being infected by or coming into contact with COVID-19; and
- flexible working arrangements in instances where an employee is unable to attend work. This may include arranging for the employee to work remotely or to take paid leave. Where no arrangements can be made, the employer should pay the employee their normal salary for the first month and their living expenses for any further period.

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## Hong Kong

**MPF offsetting mechanism** – On 11 February 2022, after several years of consultation, the Hong Kong government published the “MPF Offsetting Mechanism”. The Mandatory Provident Fund (**MPF**) is a compulsory saving scheme (pension fund) for the retirement of residents in Hong Kong in which all employers must enrol their employees. In broad terms, the main feature of the MPF Offsetting Mechanism is that employers can no longer use the accrued benefits of their mandatory contributions under the MPF scheme to offset against any severance payment and long service payment payable to employees. The MPF Offsetting Mechanism is set to be implemented in 2025.

The Legislative Council of Hong Kong also approved the “MPF Amendment Regulation” on 10 June 2022. This new regulation expands investment choices for MPF scheme members, who can choose to diversify risks by investing in the relevant assets and achieving a better overall asset allocation.

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## Malaysia

### Significant amendments to employment legislation

– A series of amendments to the Employment Act 1955 (**EA 1955**) will come into force on 1 September 2022.

Currently, the legislation only governs workers whose wages do not exceed RM 2,000 per month. There are some exceptions, notably, provisions on pregnancy and maternity, and sexual harassment, apply to all employees irrespective of wages.

However, the government has stated that the EA 1955 will now apply to all employees irrespective of wages. This is expected to come into force simultaneously with the other amendments to EA 1955, which include the introduction of:

- flexible working arrangements, where an employee may apply in writing to vary working hours, days or place of work, and the employer must inform the employee in writing of any approval or refusal of the application, including grounds of refusal;
- a mechanism for dealing with discrimination;
- a mechanism to outlaw forced labour;
- paid paternity leave of seven days per child, limited to five children, for married male employees and paid maternity leave increased to 98 days; and
- maximum weekly working hours of 45 hours.

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## South Korea

**Revised legislation on voting practices** – A new law implements direct, confidential, and anonymous voting practices for employees when electing workers' members (or employee representatives) in workplaces where there is no majority trade union.

**Discrimination protocol** – A new law provides employees with a specific procedure to follow if they have been discriminated or harassed in the workplace on the basis of their gender.

**The Supreme Court's judgment on the peak wage system** – The Supreme Court ruled that a wage peak system, which gradually reduces the wages of employees aged 55 and older while maintaining the retirement age of workers at 61 is void due to age discrimination, if there are no reasonable grounds for having the peak wage system. Each company that currently implements a wage peak system must review the effectiveness of its wage peak system against the criteria set out by the court and consider ways to minimize legal risks.

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## Taiwan

**Sickness leave and COVID-19** – Under a new law, once a worker has been diagnosed with COVID-19 and a competent health authority has asked the patient to quarantine, the worker must be offered paid sick leave by its employer and is required to stay at home to quarantine.

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## Vietnam

**Minimum wage** – There has been a substantial increase in regional minimum wage in July 2022 where salaries have gone up 6% on average.

**Support for employees in poverty** – Individuals living in poor areas and / or with very low salaries will be supported Vietnam if they choose to leave to work in another country. Such support will include:

- language and basic skills lessons; and
- food, clothes and work uniform budgets.

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# Australasia

## Australia

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

– The government introduced a bill in July 2022 providing for the introduction of two weeks' paid domestic and family violence leave. This bill is likely to become law later this year and will require employers to recognise and implement this new form of paid leave.

### **New federal government agenda**

– The federal government is implementing all of the recommendations of the Sex Discrimination Commissioner's "Respect@Work" report. These will include improved job security and improved gender pay equity, will extend the powers of the Fair Work Commission to gig workers, will criminalise "wage theft" and will amend the definition of "casual worker" to reinstate the common law definition.

**Gig and contract workers** – The Queensland state government has introduced laws which (if passed) will fundamentally change the regulation of workers in the courier industry, including in respect of minimum remuneration, working conditions, collective bargaining, unfair termination and unfair contractual terms.

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## New Zealand

**Changes to whistleblowing legislation** – New legislation governing protected disclosures was introduced in July 2022. The purpose of the legislation is to promote the public interest by facilitating the disclosure and timely investigation of serious wrongdoing in or by an organisation, and by protecting people who disclose such wrongdoing. The new law extends the definition of "serious wrongdoing" to cover behaviour that poses a risk to the health and safety of any individual, and allows whistleblowers to report serious wrongdoing directly to an appropriate authority at any time.

**New public holiday celebrated** – For the first time, on 24 June 2022, New Zealand observed Matariki as a public holiday. Matariki is the name for the Pleiades star cluster in the native Māori culture, and signals the Māori New Year. A public holiday will be held in June or July each year to observe and acknowledge Matariki, bringing the total number of legislative public holidays in New Zealand to 12.

**Uber employment status challenge** – In line with similar international challenges, one of New Zealand's biggest unions, E tū, has made a formal request for the Employment Court to classify Uber drivers as employees, rather than independent contractors.

**Members of religious community found to be employees** – Three former members of the Gloriavale Christian Community, described as a self-sustaining community operating under a key belief that all things should be "held in common", were found to be employees of their community.

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## Papua New Guinea

**New national employment policy** – The first ever 10-year National Employment Policy (**NEP**) was launched by the government. The goals of the NEP are to reduce poverty through developing local labour industries, improve working conditions and employment security, enable social inclusion, reduce discrimination in the workplace and offer sustainable and paid employment opportunities. To accomplish these goals, the NEP calls for the review of all local employment laws and structural reforms and defines the key roles and responsibilities of stakeholders. The NEP emphasises that it is the duty of every employer to ensure compliance with its content.

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# Central and South America

## Argentina

**End of mask requirement in Buenos Aires** – In June 2022, the mandatory use of facemasks in enclosed public places (such as workplaces) was scrapped. It remains a recommendation.

**End of additional severance compensation for termination without cause** – The requirement to pay an additional severance compensation in cases of termination without cause ended in June 2022. This additional compensation was a temporary measure established during the pandemic.

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## Cayman Islands

**End of pension holiday** – In March 2020, in response to the COVID-19 pandemic, the government introduced a “pension holiday”. It aimed to act as an economic stimulus by exempting employers and employees from paying into statutory pension plans. This meant that businesses would make savings, as would employees who were subject to mandatory pension deductions from their wages. The “pension holiday” will end on 1 October 2022 and mandatory pension payments will restart.

Employers will have to make the necessary adjustments to their pay-roll policies and relay relevant information to their staff. Until the end of the holiday period, employees’ voluntary pension contributions can still be paid if the employer and employee agree to this.

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## Chile

**40-hour work week** – The Ministry of Labor and Social Security has approved the “40-hour Seal” certification, which is awarded to companies of any size or industry that implement a working week of 40 hours or less. To benefit from the certification:

- at least 80% of employees must have entered into an employment contract where they are not required to work more than 40 or less than 30 hours per week;
- the company must not have received a sanction for violating fundamental rights; and
- all payments of employee social security contributions must be up to date.

The awarding of the certification garners positive public attention and reputational benefits to employers, showing a general trend towards encouraging a greater work/life balance.

**Extension of maternity leave** – In response to the increasing cost of living, the Chilean government has introduced an extension to maternity leave for those whose leave period ends between 1 May 2022 and 30 September 2022. This benefit will be granted on a full-time basis, and offers new parents a maternity leave extension of up to 60 continuous days, provided that the leave period is not extended beyond 30 September. Employees who make use of this will also be entitled to an extension in maternity pay, equivalent to the length of the extension taken.

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## Costa Rica

**Changes to paternity leave, special care leave and adoption leave** – New regulations have come into force amending parental leave rights. These include:

- introducing paid leave for the child’s biological father of up to 2 days a week during the first 4 weeks of the child’s life;
- introducing paid leave for the child’s biological father or primary caregiver where the child’s mother passes away during her maternity leave; and
- extending adoption leave entitlements so that either parent (regardless of gender) is entitled to paid leave. For single-parent adoptions, the individual is entitled to up to 3 months’ leave. Where two parents wish to take leave, this 3 month period may be shared.

### **Foreign employees working from Costa Rica**

– Foreign professionals who work remotely from Costa Rica are now legally entitled to stay in the country for up to one year. This can be extended for a further year. Such individuals can benefit from tax exemptions on the importation of computer, IT, telecommunication or similar equipment and on their profits, and will not have to comply with formal and material duties required by the tax authority.

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## Ecuador

**Violence and harassment at work** – The ratification of the international ILO Convention 190 on Violence and Harassment in the World of Work has now entered into force. Ecuador has thereby undertaken to put in place the necessary measures, including laws and policy reforms, to ensure its effective implementation. As part of this, the Ministry of Labor has issued a Protocol for the Prevention and Attention of Cases of Discrimination, Workplace Harassment (**Protocol**) which is a workplace policy to prevent violence and harassment in the workspace. The Protocol is a mandatory workplace policy for all employers in Ecuador that must be approved and implemented.

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## Honduras

### Repeal of hourly employment in Honduras

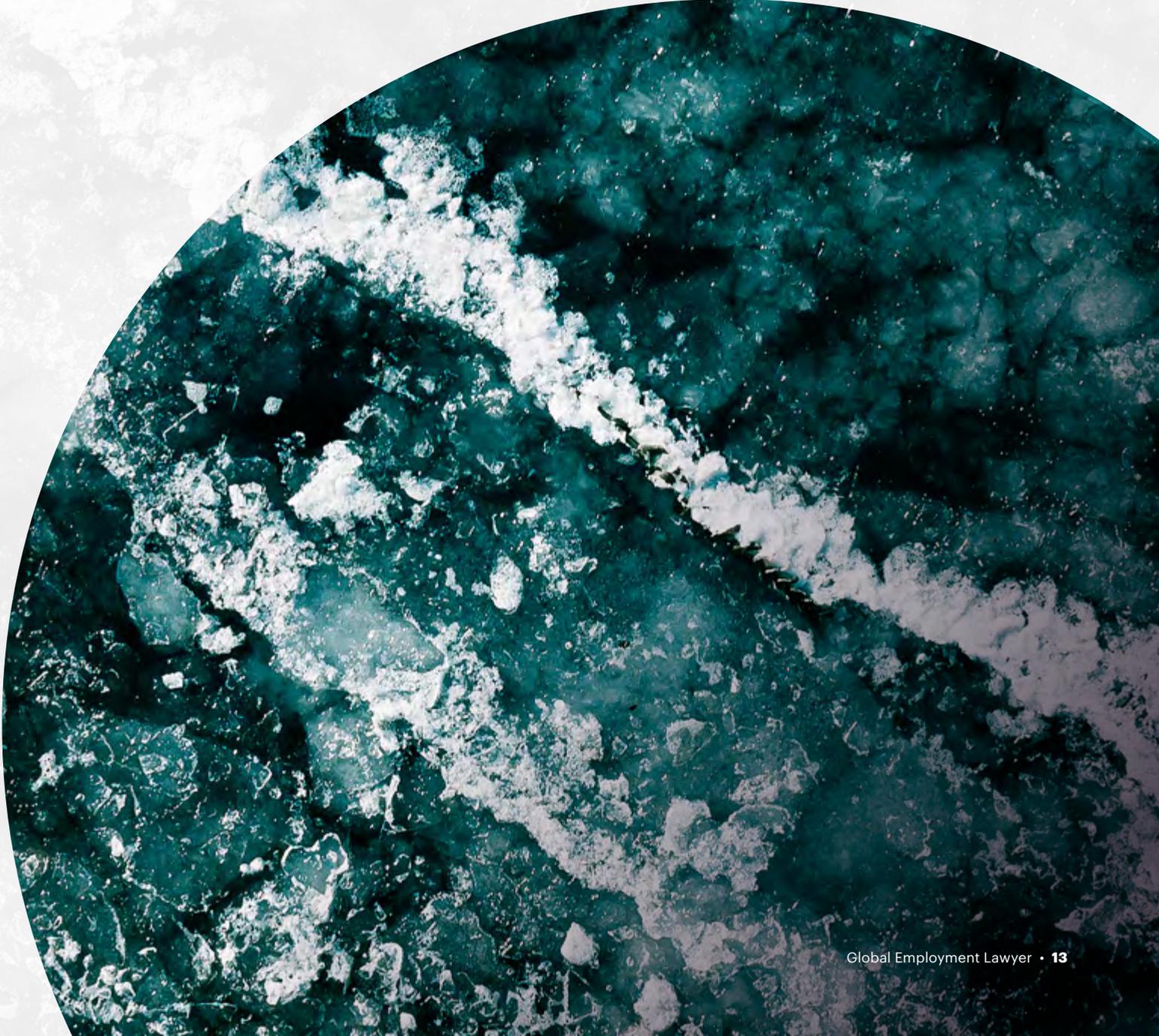
– On 28 April 2022, the Honduran congress repealed a law that allowed employers to hire individuals on an hourly basis.

As of June 2022, the only legal methods for hiring workers in Honduras are:

- indefinite term contracts;
- fixed term contracts; or
- by contract for a specific project or service.

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## Peru

**Changes to outsourcing regulations** – Since August 2022, companies may choose to outsource their “main activities” but are no longer able to outsource “core activities”. Any company that outsources “core activities” will be subject to fines by the Labor Authority and will be required to incorporate all of the outsourced employees into its own payroll. A clear definition of “core activities” has not been provided and will fall to be determined on a case-by-case basis. In general terms, core activities are likely to include (among other things) activities corresponding directly to the company’s corporate purpose, activities that identify the company to its clients and activities that account for the company’s largest sales. Employers would be well advised to audit any current or proposed outsourcing arrangements and seek specific advice where the activity in question could fall foul of these new rules.

**Strengthening of unions** – In July 2022, unions were given more powers under Peruvian law. Changes include:

- the possibility of unions to be formed at any level considered applicable by the employees;
- strikes to be permitted outside of the context of a negotiation for any reason set forth by the employees; and
- a restriction that benefits cannot be extended from the collective bargaining agreement to non-unionised employees.

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## Uruguay

**Employment promotion** – Between June and October 2022, employers will receive U\$ 5,000 (Uruguayan pesos) per employee hired between the age of 30 and 44 (being the age range that has suffered most from unemployment caused by the pandemic).

**Legal identity for unions** – The Uruguayan parliament is passing a new law that will require unions to have a legal identity.

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## Venezuela

**Criminal check** – As of 20 July 2022, the Law on the Registration of Criminal Records expressly prohibits employers from running criminal checks or requesting criminal records as part of a requirement for a job application (this prohibition was previously implicit).

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# Europe

## **EU Directive on transparent and predictable working conditions**

– This Directive aims to harmonise information about essential aspects of the working relationship and working conditions across Europe to ensure greater transparency and safety in the workplace. The key obligations for member states under this Directive are:

- probationary periods cannot (except in exceptional circumstances) last more than six months;
- employees must receive a certain amount of information on the essential aspects of their work, at an early stage and in writing;
- there should be legal and effective measures to prevent abuse of zero-hour contract work;
- employees should be allowed (except in exceptional circumstances) to take up another job with another employer; and
- employees should receive free training if needed.

The deadline for implementing the Directive was 1 August 2022 but only Estonia, Finland, Germany, Ireland, Italy, the Netherlands, Sweden and Poland have implemented it so far.

Once adopted in their member state, employers operating in the EU will have to comply with the additional obligations. For those who breach these obligations, there will be penalties.

Since the UK has left the EU, it will not be implementing the Directive and employers operating both in the UK and the EU will need to be aware of the differences. For example, in the UK, probationary periods are not regulated, are purely contractual and often up to the employer – this will no longer be the case in the EU.

## France

**EU Directive on transparent and predictable working conditions** – This Directive has not yet been transposed into legislation in France. A draft transposition law was adopted by the Council of Ministers on 6 May 2022, but the procedure is still ongoing. It is worth noting that the transposition of this Directive will include minor modifications of French legislation since France’s law is already compliant on most points. The main amendments will be the:

- right to information for a private or public sector worker on certain essential conditions of employment;
- creation of some new substantive rights for a private sector worker and a contractual public sector staff member; and
- introduction of a number of new criminal sanctions in the Labor Code.

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## Germany

**Germany’s push for transparent and predictable working conditions** – In Germany, the implementation of the EU Directive on transparent and predictable working conditions came into force on 1 August 2022 and amended several pieces of legislation. Such amendments have far-reaching consequences for employers and violation of the new law will be punishable by fines. As a result of these amendments, employment contracts will have to be adapted. For example, employment contracts must now contain a description of the employee’s tasks, detailed information on working time, breaks and rest periods, shift work and information on starting an action against unfair dismissal.

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## Italy

### Transparent and predictable employment conditions

– The Italian government has approved draft legislation to implement EU law on “transparent and predictable” employment conditions. Once implemented, employers will need to provide employees with detailed information including:

- the identity of the parties, including any co-employers;
- the workplace of the employee;
- job classification and level;
- the employee’s commencement date;
- the type of employment relationship (e.g. fixed term);
- the length of the probationary period (which must not exceed 6 months);
- training entitlement (if any);
- holiday entitlement and entitlement to other paid leave;
- procedure and notice period in the case of termination by either party;
- salary information including the method of payment;
- normal working hours and overtime terms;
- collective bargaining agreements/collective agreements; and
- the relevant social security and insurance entities including the forms of social security protections ensured by the employer.

**Criteria for certification of gender equality** – On 1 July 2022, a decree was published which sets out the necessary criteria for businesses to achieve a gender equality certification. It identifies the following six areas, which assist in demonstrating that a company is inclusive and promotes gender equality:

- culture and strategy;
- governance;
- human resources processes;
- opportunities for the growth and inclusion of women in the company;
- equal pay for all genders; and
- protection of parenthood and work/life balance.

**COVID-19 prevention protocol** – On 30 June 2022, a new “Shared protocol for the regulation of measures to combat and contain the spread of COVID-19 virus at the workplace” between trade unions, employer associations and the Italian government was signed. The measures and guidelines contained within the document cover several topics such as the type of information employers must provide to employees, workplace sanitation and remote working. As a result, employers now have clear guidelines on how to implement health and safety measures within the workplace in order to limit the spread of COVID-19.

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## Netherlands

### EU Directive on transparent and predictable employment conditions

– The Netherlands implemented the Directive on 1 August 2022. Employers are now subject to a number of new obligations which may require amendments to be made to employment agreements. Such changes include:

- clauses in contracts where an employee is prohibited from working for another business without permission are void unless the clause can be justified based on an objective ground;
- additional obligations on employers regarding information they must provide to employees in the employment agreement. These include certain details in respect of holiday entitlement, the duration and conditions of any probationary period, how salary is made up, any applicable social security insurances, the location of the usual place of work, any necessary training and processes used in the event of dismissal;
- employees with variable work patterns (for example, those who are employed on a zero-hours basis) are able to refuse work if the employer does not give them at least four days' notice before the work has to be performed. Such employees are also able to request a job with more predictable and secure conditions of employment; and
- employers must offer training which is required by law or by collective agreement free of charge.

**Dutch parental leave** – As of 2 August 2022, paid parental leave for the first year of the child has increased to nine weeks. Parents will receive 70% of their daily wage. The Dutch Employee Insurance Agency pays this benefit to the employer. Employers do not have to top up an employee's pay to 100% during such leave, unless this is set out in collective or individual arrangements, or company policy.

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## Poland

### Various incoming changes to employment law

– The following significant changes are expected:

- a new law 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. The new law is expected to come into force in the autumn of 2022;
- a new law 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 working conditions and the EU Directive on whistleblower protection. The new laws are due to be implemented in early 2023. When implemented, these laws may have a significant impact on the enforceability of existing non-compete clauses. Therefore, employers imposing non-compete restrictions on their employees should verify whether the scope of the non-compete clauses falls beyond the permissible legal limits. If it does, employees may try to challenge such clauses before the labour court; and
- in the context of the implementation of national whistleblower protection laws, employers who have already implemented whistleblower policies should get ready to review 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 less than 250 employees is to be extended by another two months). Whistleblower policies will be mandatory for employers with more than 50 employees.

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## Romania

**Reduction in earnings support** – Employees of companies that report earnings at least 20% lower than their previous earnings due to the ongoing conflict in Ukraine, and who have had their employment contracts suspended, can obtain 75% of their base salary from the government. This is capped at 75% of the average gross salary at a national level. This benefit also applies to employees of companies that are subject to international sanctions.

**Increase in minimum salary** – Employees within the agriculture and food industry will benefit from a pay rise following the introduction of a new minimum salary threshold.

### **Companies investigated for “no-poach” practice**

– Seven automotive companies are under investigation for agreeing to abstain from hiring employees or former employees of their competitors.

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## Slovakia

**Amendments to the labour code** – The amendments detailed below will come into force in October 2022:

- an obligation on the employer to provide the employee with written information on its payment terms, notice period and leave entitlement within the first month of employment;
- a right granted to the employee to request a transfer to another form of employment and an obligation on the employer to provide the employee with a written reasoned answer;
- a prohibition on the employee from performing other gainful activities outside its working hours;
- the possibility of providing information to the employee in electronic form;
- the possibility of requesting flexible forms of work for childcare purposes; and
- the introduction of paternity leave by separating it from parental leave.

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## Spain

**Waiving non-compete clauses** – A tribunal decided that, provided that the parties had agreed in writing (usually in the employment contract) that the company, on the termination date, could opt not to enforce the covenant, the company will be entitled to unilaterally declare that the covenant will not be enforced. Employers sometimes do this in circumstances where they decide that they do not want to pay the requisite compensation for the covenant. Following this decision, it is advisable to include express wording in the contract to state that, where an employee voluntarily leaves the company, the company can withdraw the non-compete clause and no compensation will have to be paid. Having said that, as this is a tribunal decision that has not yet been ratified by the Supreme Court, the cautious approach may be to state that the company may withdraw the clause by paying the employee a lower amount. If in doubt, specific legal advice should be obtained. If the clause already exists, we would suggest that it is amended by mutual agreement between the parties (in writing).

**Accidents that occur while remote working considered occupational accidents** – A court has ruled that a heart attack suffered by an employee while working from home must be considered an occupational accident since the accident took place during the employee's working time. The impact of this decision on employers is that health and safety policies must apply to employees who work remotely. To this end, specific provisions must be included in the employment contract stating that the company's health and safety services will assess whether the employee's workplace meets the health and safety legal requirements. In addition, and as a part of complying with health and safety law, companies must provide their employees with training related to health and safety risks.

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## Turkey

**Interim increase in minimum wage** – On 1 July 2022, in light of the economic situation, an interim increase of the minimum wage was agreed and will be valid until 31 December 2022.

**Increase in statutory severance compensation**  
– Depending on the fulfilment of specific conditions, employees are entitled to a severance compensation upon termination of their employment. The calculation is based on 30 days' salary for each year of service, which is subject to an upper limit which was increased in July 2022.

**6 month service period for reinstatement claim**  
– A tribunal decided that the length of time that an employee was placed on unpaid leave by the employer during the COVID-19 pandemic should be taken into consideration when calculating whether the minimum 6 month service period is fulfilled to become eligible to file a reinstatement lawsuit. The employer's right to place employees on unpaid leave was introduced by the Turkish government to support employers during the pandemic.

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## United Kingdom

### **Gender critical beliefs protected from discrimination**

– The Employment Appeal Tribunal has determined that the belief that a woman is defined by her sex (known as a gender critical belief) is capable of amounting to a protected philosophical belief. Employers should therefore not subject employees to any detriment (such as passing them over for promotion or dismissing them) simply because they hold that belief. At the same time, employers will recognise that a balance needs to be struck between employees’ freedom of expression and the need to establish a safe and inclusive working environment for transgender employees. This is a tricky and evolving area and specific advice is generally advisable to ensure the right balance is struck.

**“Long COVID” can be a disability** – An employment tribunal has determined that an employee whose symptoms of “long COVID” significantly affected his daily life is to be treated as disabled under UK discrimination law. Employers have a duty of care towards employees who are suffering with a disability and, among other things, might have to make reasonable adjustments for such employees so they are not put at a disadvantage compared with others who are not disabled.

**Paid holiday for part-year workers cannot be pro-rated** – The Supreme Court has confirmed that the legal entitlement to 5.6 weeks’ paid holiday per year applies to all workers in full, even if they are on zero-hours contracts or if they only work during term time (such as teachers). Any days not worked must be ignored from the calculation. This is likely to impact many employers with so-called atypical workers and these businesses are advised to review the way they currently carry out holiday calculations.

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# Middle East

## Saudi Arabia

**Saudisation scheme** – The national scheme is designed to increase the employment of Saudi nationals in the private sector. The government has recently issued new policies in line with this scheme, including:

- as of 8 May 2022, additional professions including secretarial, translation services, stock keeper and data entry are limited to Saudi nationals only, with a minimum wage set at SAR 5,000 for stock keepers and translators; and
- as of 9 June 2022, new private sector employers are exempted from paying an employee's outstanding government fees including, work permit fees, expatriate fees, and fines incurred due to delays in renewing residency permits, and the onus now falls on the previous employer to cover these.

The above measures will increase the significance of the contractual relationship between companies and international employees while facilitating job mobility. However, employers will need to be aware of the following:

- the Saudisation system (Nitaqat) governs the hiring of foreign workers. Depending on the industry

and number of employees, Nitaqat mandates that employers in the private sector employ a minimum proportion of Saudi citizens;

- not all categories of employees are covered by Saudi labour law. For example, this includes domestic and agricultural workers, some seafarers, athletes and coaches at clubs and sports unions. The aforementioned types of employees are subject to other regulations. There is currently no indication as to whether the labour law reform will apply to these types of employees; and
- non-compete clauses can be included in employment contracts so that companies can continue to safeguard their corporate interests. Saudi labour law expressly permits non-compete provisions, provided that the relevant legal requirements are met. Employers have one year from the date of the violation of the non-compete clause to file claims for damages.

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## United Arab Emirates

### **Issuance of a new visa and residency regulation**

– The government has introduced a new set of visas for expatriates, including new options for employment visas. The main reason for this change is to provide employees holding a certain level of qualification (i.e. bachelor degree and above) a greater level of flexibility to change jobs within the local market. Certain categories of employees will have the option of not linking their visa to their employers, and subsequently will avoid any restrictions or inconvenience upon changing jobs. The rules will come into force from 5 September 2022.

### **Introduction of an unemployment insurance scheme**

– All employees working for the private sector can subscribe to the scheme. The purpose of the scheme is to provide employees who lose their jobs with a monthly payment for a specific period of time, or until they secure a new job, whichever occurs first.

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# North America

## Canada

**Quebec protects the French language** – French is the official language of Québec. On 1 June 2022, a new law was passed which will have the following main impacts for employers doing business in Québec:

- all offers of employment, transfers and promotions, application forms, working condition documents and training materials must be drafted in French;
- when crucial clauses of an employment agreement are imposed or drafted by the employer without a real opportunity for the employee to negotiate them, and the contract is drafted in a language other than French, it will only bind the parties if they expressly confirm their wish that it be drafted in the other language, after examining the French version;
- all written communications by an employer must be in French provided, however, that it may communicate in another language if requested by the worker;
- prior to requiring an employee to have knowledge of a language other than French, employers will need to assess whether it is actually required in light of the duties to be performed. The number of positions involving such a requirement must be limited;
- from 1 June 2022, these rules have been extended to companies with between 25 and 49 employees. Companies subject to the francisation process shall receive a certification from Office québécois de la langue française (**OQLF**) attesting that the use of French is generalised in their workplace; and
- the new law broadens the powers of the OQLF in connection with inspections and investigations it conducts. It also introduces new civil, administrative and penal sanctions for violations, including the possibility for the government to suspend or revoke permits held by a company in case of repeated violations of the new law.

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## United States of America

**Abortion access affecting employers** – In late June 2022, the US Supreme Court reversed decades of precedent and ruled that there is no constitutional right to an abortion. This enabled many states to immediately put restrictions or outright prohibitions of abortion in place. This poses legal and regulatory issues for employers with insurance benefits covering procedures related to abortion. Some employers have announced new benefits to pay for an employee’s travel to states where abortion access is still lawful. However, many states are criminalising conduct that “aids or abets” abortion, which poses a range of legal and logistic unknowns to employers across the country.

**National Labor Relations Board developments** – The National Labor Relations Board (NLRB) is engaged in an effort to broaden and strengthen union rights, and there have been highly publicised unionisation efforts by workers at big employers like Amazon and Starbucks. Unsurprisingly, the NLRB recently announced a nearly 60% increase in union applications with the NLRB from the same period last year.

**Transgender rights** – In an effort to push back against federal action, 20 states challenged a recent Biden administration initiative that expanded employment discrimination protections to transgender workers. In July 2022, the group had an early win with a federal district court judge issuing an injunction preventing the enforcement of the Biden administration’s guidance. The Biden administration is making a similar push to broaden protections for transgender patients under the relevant legislation.

**Pay transparency push** – The state of New York (the fourth largest state in the US) recently joined the movement to provide more transparency into the wage market. This summer, the state passed a law requiring employers (which have more than four employees) to disclose pay ranges for vacant positions as part of a job advertisement/posting. California, the largest state in the nation, is considering a similar measure.

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# In conversation with...

In this edition, we talk to **Alison Weatherhead**, who is a partner based in our Glasgow office and the Head of the Dentons' People, Reward and Mobility practice in the UK. Alison advises business of all shapes and sizes in the UK and international market, covering the full range of contentious and non-contentious matters encountered by employers. Alison has been practicing for over 20 years, and joined Dentons at the end of 2017, following a merger with a renowned Scottish firm. Alison's UK team consists of six partners and more than 45 employment, pensions, employee benefits and immigration lawyers.



**Alison, what excited you about the merger between your previous firm and Dentons back in 2017? What keeps you excited about Dentons today?**

Three words – Dentons' global platform – it is brilliant to be able to work with clients all round the world, connecting them with colleagues who I know, work with regularly and trust. I have the opportunity to learn about how employment law works and also how workplace cultures and attitudes differ in so many places. Which is both really interesting and really useful in terms of advising clients. I get excited learning new things and becoming a better lawyer – and working at Dentons means the learning never stops!

**You have been recently become the Head of the Dentons' People, Reward and Mobility practice in the UK. What is the team currently focusing on and what are its plans going forward?**

I am loving having the chance to lead such a great team of people. We are focused on making sure we are ready to respond to our clients' needs in the UK and globally as they change. It sounds trite, but businesses and HR professionals are operating in a market which is changing more and more quickly. In the last 12 months alone, we have been dealing with COVID-19, the great resignation, the cost of living crisis, travel restriction changes, four-day working week trials and the right to disconnect, alongside some of the most turbulent periods in trade union relations that I have seen in the last 20+ years of working. We need to make sure we are listening really carefully to what our clients are grappling with and what we hear in the market – and then be nimble and commercial in the way we respond.

In terms of our future plans, it is really important to me that we continue to strengthen our existing client relationships. This means we need to have a high-performing team that is super nimble and passionate about what we do – and I am very lucky as the team is exactly that! We are also looking for opportunities to work with new clients and in new markets – it is always great to learn about new businesses and have the chance to support new people. We are people lawyers – whether our clients have employment, reward or immigration needs – and we are focused on being curious about our clients and ambitious for what we can achieve together.

**From the challenges thrown up in recent years (by the pandemic and Brexit to name a few) to the opportunities arising from local and international markets, the UK team is assisting its clients on a variety of complex matters. What developments do you expect to see in the near future?**

I am excited to watch how two things develop.

The first is the ongoing impact of people's wellbeing on working culture. With COVID-19, employers became more involved in their employees' wellbeing than they had ever been before. I am keen to see how that develops and whether we can start to turn the tide on the level of workplace stress and anxiety. Also, employees are not going to let the world slip back into old ways. Now we have seen the workplace revolution brought about by homeworking, they are going to expect more revolutions which support employee wellbeing. The trials of a four-day working week in many countries across Europe are really interesting. As is how mainstream the idea of having hours when an employee is not allowed to check emails

has become! Workplace culture is going to look and feel much more different in the next 10 years than it has in the previous 20 – I hope! I never imagined periods and the menopause would be something we talk about openly at work. But now we are able to bring our whole selves to work and create a work community where people's professional and personal development are supported. I find this just fascinating.

The second is trade unions. It is so interesting to watch how the relationships between the trade unions and the employers, the government and the public develop. Trade unions have been around in the UK for more than 150 years – their role in shaping our country in the next few years could be pivotal.

**The UK team loves to innovate. Can you tell us anything about anything new or in the pipeline that you are planning to offer to your clients?**

This is always a hard one to talk about, as so many of the things we change and do better are small, are done in the background and don't sound very exciting. But

cumulatively they have a big impact on the way we work with clients! We have an innovation committee that meets every month, and we focus on how we can do what we do better. This includes looking at how we run employment tribunals, sharing lessons learned and ways to make sure our clients are kept up to date about market intel we get from working with clients around the world. Finding a fix for the pinch points in our team and the things clients don't like is really important to us – and this is our focus for the next six months.

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

I wish I could point to some really cool form of exercise, and I am sure I should say spending time with my family and friends. But my favourite thing to do is read cookbooks and then put what I read into practice. This usually results in me feeding my family and friends at the weekend in extravagant numbers, which makes me look super sociable. But doing so could really just be an excuse to try out all the things I see in the books! That and it gives me a good excuse for a nice long nap on a Sunday afternoon.

# Dentons news and events

## **New podcast series “Perspectiva Laboral”**

Dentons Latin America and the Caribbean are pleased to introduce a new podcast series covering a range of employment topics in the region, comparing the different regulations and experiences in each jurisdiction. Topics include, among others, hiring and termination of employment, vacations, workplace sexual harassment, telecommuting and compliance with labour regulations.

This series provides practical information and trending employment topics that companies should consider when running their business in the region.

Click [here](#) to listen to the podcasts.

## **Global webinar series on post-termination restrictions**

Building on the success of our previous global webinar series, the next topic in this series will take a look at non-competes and other post-termination restrictions that an employer may wish to enforce against outgoing employees (sometimes known as restrictive covenants).

Our experienced speakers will discuss the different types of covenant and, crucially, enforceability as well as providing practical tips, pitfalls and insight into market trends. The series will work its way around the globe, starting with a session looking at the position in the US, Canada and LATAM before moving to other regions.

Further information and updates will be soon available on our dedicated web section on dentons.com at this link [here](#).

## **Global family leave and pay snapshot**

This new publication provides the statutory maternity, paternity, adoption and shared leave and pay, in over 85 countries around the world. Created with contributions from our international team, covering Africa, Asia, Australasia, Europe, the Middle East, North America, Caribbean and South and Central America, each country chart provides a snapshot of leave and pay available when welcoming a child into the family by birth or adoption.

Contact us for assistance with family leave policies and queries.

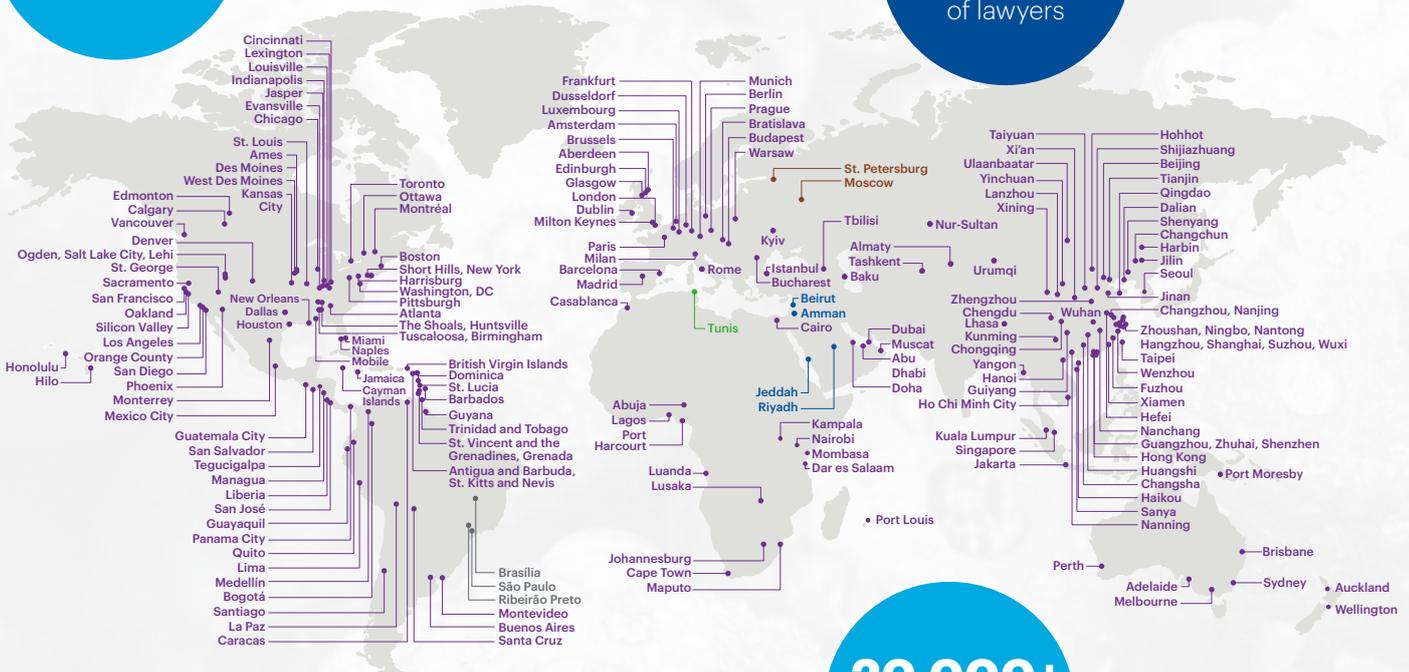
The full snapshot can be found [here](#).



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

**12,200+**  
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.

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

**80+**  
countries

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## **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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