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Global Employment Lawyer

Global Employment
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Welcome to the first edition of our quarterly global employment and labour review for 2023. As always, our team of legal experts from across Dentons offices worldwide have been hard at work to bring you the latest developments and updates in the ever-evolving field of employment and labour law and practice.

As we begin this new year, we are excited to share with you our insights on recent changes and updates in employment law, including new regulations and court decisions related to discrimination, equal pay, employee rights and status. In addition, hybrid and flexible working features again as laws and regulations continue to catch up with the dynamic shifts that have taken place in recent years.

As always, our goal is to provide you with timely and informative analysis of the most important developments in employment and labour law from around the world. We hope that you find this edition of our newsletter useful and we look forward to continuing to keep you updated throughout the year.

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Legal updates

Africa

Jordan

Nursery alternatives – Under new rules, employers who are unable to provide a suitable place for childcare in their offices, or close to their offices, and employ a number of employees, who together have at least 15 children (of a specific age) must:

- contract with one or more nurseries in different areas and the employee shall have the right to choose from such nurseries as they find appropriate; or
- contract with a nursery of their choice, provided that the employer contributes to cover financial costs for each child in accordance with specific rules.

It is worth noting that only one parent can benefit from the above provisions, irrespective of whether they work in the same or different institutions.

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Mauritius

Additional remuneration to compensate increase in cost of living – From 1 January 2023, employers in the public and private sector must pay all employees, irrespective of their monthly basic salary, an additional remuneration of MUR1,000. For part-time employees earning less than MUR 10,000 per month, their additional remuneration must be 10% of their monthly basic wage or salary, rounded up to the next rupee.

Revised minimum wage – On 1 January 2023, the monthly minimum wage was increased from MUR10,575 to MUR11,575.

Social contribution income allowance – A social contribution allowance of MUR1,000 is payable by the government to all employees and self-employed individuals earning a monthly income not exceeding MUR50,000, up to June 2023. This allowance is not payable to non-citizens.

Minimum wage payable to interns – Following a notice from the Ministry of Labour, the legal position in relation to payment of the minimum wage to interns has been reinforced. This does not apply where the salaries of interns are prescribed in law, such as employees recruited under the National Training and Reskilling Scheme.

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Nigeria

Employment disputes and agency workers –

Under Nigerian law, the position has always been that, in the event of a dispute, the employee's recourse would be with the employer and not the outsourcing agency. This position is largely based on the principle of privity of contract. However, in a recent court decision, the Court of Appeal recognised that, in the absence of an employment contract between the outsourced worker, no employment relationship can be said to exist between them and can only exist with the outsourcing agency.

New contributions rules – Under a new law, all employers with 25 or more employees are now required to contribute 1% of their payroll to the Industrial Trust Fund (ITF) (employers registered as an approved entity in any of the free trade zones are exempted from ITF contributions). In addition, any employee earning the national minimum wage and above in the public sector, or who is self-employed, must contribute 2.5% of monthly income to the National Housing Fund. However, employees in the private sector may choose to contribute to the ITF.

New government guidelines for banks, insurance and financial institutions –

New guidelines released by the Ministry of Labour and Employment provide industrial relations principles and key terms and conditions of employment to be observed by stakeholders in banks, insurance and financial institutions. The key principles to note are:

- non-permanent employees have the right to be unionised;
- contract staff and non-permanent employees have the right to collectively bargain;
- employers are required to provide opportunities for self-development and career path progression to non-permanent employees; and
- all employees (including contract staff and non-permanent employees) are entitled to an increase in salary on an annual basis.

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China

Beijing sets benchmark for eliminating gender discrimination and protecting women's rights in the workplace

– A punishment discretionary benchmark was published on 13 January 2023. The benchmark is a significant development in the protection of women's rights in the workplace.

The benchmark is applied when employers:

- discriminate against women based on gender or apply differentiated hiring standards for women;
- reduce the wages and benefits of female workers due to marriage, pregnancy, maternity leave, breastfeeding and other related reasons;
- restrict the promotion, evaluation of professional and technical titles and positions, or unilaterally terminate the employment contract or service agreement of female workers; or
- discriminate against women on the grounds of sex when implementing the state retirement system.

In cases of general violations, employers will be fined between 10,000 to 50,000 Yuan, and the punishment will be issued and remain public for three to six months.

For serious violations, namely where the violation causes a serious impact on employees, or two or more violations of the same requirement are committed within a 12-month period, employers will be fined between 30,000 to 50,000 Yuan, and the punishment will be issued and remain public for 12 months.

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Hong Kong

Public hospitals in Hong Kong to issue electronically signed medical certificates only –

From 6 March 2023 onwards, public hospitals in Hong Kong will issue paper (together with a digital copy) medical certificates that carry electronic signatures only. No doctor's signature or chop will be given. The new medical certificates will also carry encrypted QR codes which employers may scan to verify the certificates' authenticity with a view to minimising the chances of forgery.

Under Hong Kong employment law, an employee is entitled to statutory sickness allowance only if the sick leave is supported by an appropriate medical certificate. The Hospital Authority has confirmed that the new certificates will have the same legal effect as traditional signed/chopped certificates. For the sake of clarity, it is recommended that employers update their employee handbooks or policies to clarify that the new medical certificates and traditional certificates with wet ink signatures will both be acceptable for the purposes of statutory sickness allowance.

Refusal to produce proof of expense claims justified summary dismissal –

In a recent case, an employee claimed reimbursement from his employer for expenses incurred during the course of employment. The employer made multiple requests for the employee to explain certain expenses, but he wilfully ignored these requests. The employer summarily dismissed the employee for disobeying its lawful and reasonable orders to explain the receipts and sued the employee for breach of his duties for allegedly forging the receipts. The employee counterclaimed for wrongful dismissal. The court dismissed the employer's claim after finding that the expenses were genuine and proper. However, the court also rejected the employee's counterclaim because he knowingly ignored the employer's requests for explanations, which were held to be lawful and reasonable orders.

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India

Amendment to law governing factories in the state of Karnataka – Karnataka’s government has proposed to extend the maximum working hours for workers working in factories within the state from nine hours to 12 hours per day. The maximum working hours per week will continue to be 48 hours. In addition, Karnataka’s government proposes to permit women to work in factories on night shifts, subject to (among other things) the employer complying with prescribed safety standards, providing transportation facilities with female security guards and ensuring pre-employment screening of all drivers. These amendments will come into effect once published in the official gazette.

Shops and commercial establishments in various states permitted to operate on all days of the year – Labour authorities in the states of Tamil Nadu, Punjab and Andhra Pradesh have granted permission to shops and commercial establishments operating in their state to open for 24 hours, seven days a week, subject to employers complying with certain conditions. These state notifications have been issued with sunset provisions, varying from one to five years.

Applying test of criminal proceedings to departmental enquiry against employees –

In a recent ruling, the Supreme Court of India held that the standard of proof for departmental proceedings against employees is a “preponderance of probability” which is lower than the standard of proof for criminal proceedings, where the case has to be proved “beyond reasonable doubt”.

Work from home permission extended in Special Economic Zones (SEZs) –

The central government has issued a recent notification granting permission to units to allow certain categories of employees within SEZs, including employees of units providing information technology (IT) and IT enabled services, to work from home. The permission has been granted, subject to certain conditions.

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Indonesia

Amendments to law regarding outsourcing and minimum wages – The government enacted new legislation in response to a court decision where it was decided that the Job Creation Law was valid on the condition that rectification takes place within two years from the date of the court decision. This period of rectification ends in November 2023.

The issuance of this new legislation does not end the challenges that the Indonesian government is facing in its attempt to perfect the Job Creation Law. Rather, it is the first step of plenty of procedural and administrative work that lies ahead, including approval by the House of Representatives. Without that approval, the new legislation must be revoked and the Job Creation Law would become permanently unconstitutional.

The amendments that have been made in the new legislation are related to manpower and it is important to note:

- the provision regarding outsourcing which was previously in the Manpower Law but was deleted by the Job Creation Law has now been reinserted in the new legislation. It is expected that regulations implementing the new legislation will exclude any work related to the core business of the employers from the work that can be outsourced; and

- the introduction of a new provision whereby in certain conditions (such as a pandemic) the government can set a different formula, as outlined by the new legislation, to determine minimum wages. This new provision may help employers manage costs while protecting workers' wages.

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Singapore

Flexible working arrangements – It was announced in the 2023 Singapore National Budget that the push for flexible work arrangements for Singapore workers would continue. As part of ongoing efforts to support work-life harmony, the tripartite guidelines on flexible work arrangements will be implemented next year. This will require employers to consider staff requests for such arrangements fairly and properly.

Progressive Wage Credit Scheme – The Progressive Wage Credit Scheme was introduced in 2022 to provide transitional wage support for employers to adjust to mandatory wage increases for lower-wage workers covered by local requirements, as well as to encourage employers to voluntarily raise wages of lower-wage workers. Under the scheme, the government will co-fund wage increases of eligible resident employees from 2022 to 2026.

Central Provident Fund – Contributions to employees will be raised from the monthly salary ceiling of S\$6,000 to S\$8,000 by 2026. Employees who are earning above S\$6,000 will benefit from this change. This increase will be carried out over four years, starting from this year. However, there will be no change to the CPF annual salary ceiling, which includes contributions from additional wages.



Other CPF changes include higher CPF contribution rates for senior workers and the CPF transition support for lower-income platform workers.

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South Korea

Bill to revise Union and Labour Relations

Adjustment Act introduced – The bill includes key provisions such as expanding the concept of “employer”, expanding the scope of labour disputes, and limiting liability for damages in illegal labour disputes. Should this bill become law, it is expected to bring significant changes to labour-management relations. The passage of the revised bill in the full session of the National Assembly will be closely watched.

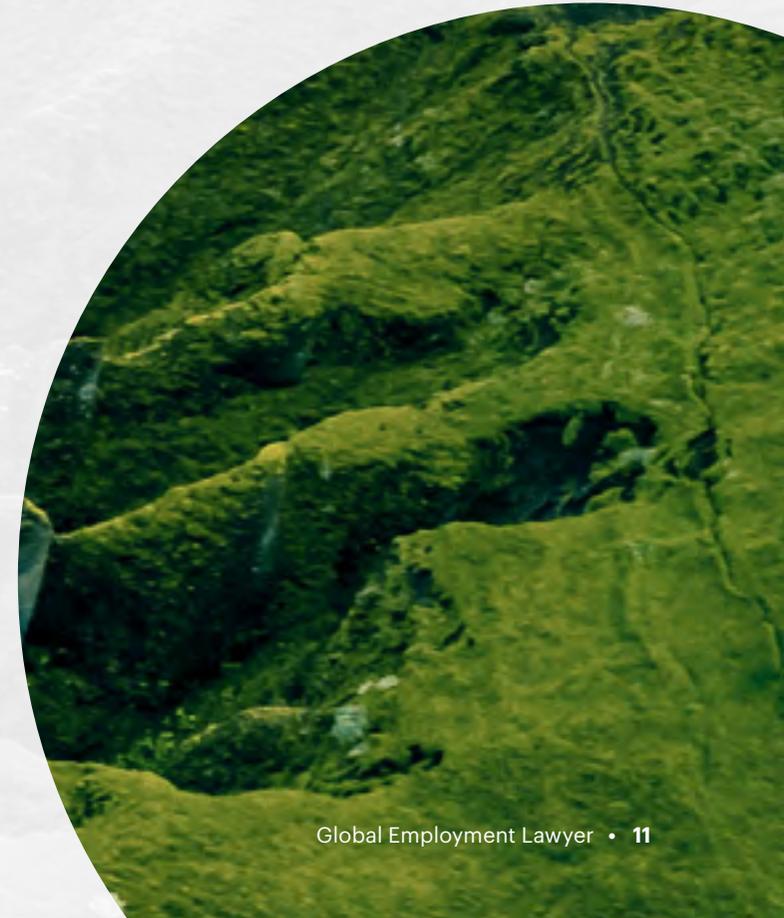
Decision on “employer” status – On 12 January 2023, the Seoul Administrative Court issued a ruling on a case that questioned whether a freight transportation company’s refusal to negotiate with the nationwide courier labour union, to which the delivery drivers of the company’s pick-up points were affiliated, constituted unfair labour practices. The court rejected the plaintiff’s argument that it was not an “employer” in relation to the delivery drivers at the pick-up points, stating that the plaintiff, as a freight transportation company, was in a position to substantially and concretely govern and determine the working conditions of the delivery drivers at the pick-up points. The plaintiff was therefore considered to be an “employer” under the Trade Union and Labour Relations Adjustment Act. This ruling is expected to have a significant impact on the ongoing debate in Korea regarding the “employer” status of so-called “originating contractors”.

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Taiwan

Taiwan Labour Union Act amendment – This amendment increased fines for employers involved in unfair labour practices from NT\$100,000 to NT\$500,000. It also added a provision regarding the disclosure of names and other relevant information of employers implicated in illegal behaviours. In addition, the fine for employers who fail to fulfil their obligations in compliance with the ruling was raised from NT\$200,000 to NT\$1 million.

The amendment is intended to effectively deter employers from treating workers in an unfair manner due to their involvement in organising or joining labour unions, participating in union activities or holding union positions.

Labour insurance salary, labour occupational accident insurance and labour pension – In response to the adjustment of the basic (minimum) wage in 2023 and to reduce the burden of insured units, the Bureau of Labour Insurance has taken the initiative to adjust the insured's grade 1 insurance salary from NT\$25,250 to NT\$26,400. This came into effect on 1 January 2023.

The labour insurance salary of the following persons will remain at NT\$25,250:

- part-time workers;
- low-income members of occupational unions;
- disabled people under sheltered employment; and
- trainees of vocational training institutions.

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Uzbekistan

Development in pension accounting – The following changes apply from 1 January 2023:

- the maximum wage rate for calculating pensions has increased from 10 to 12 times Basic Calculation Units (1 Basic Calculation Unit = 300,000 soums, approximately US\$26.4);
- an increase in time counted as work experience from three to six years of the total time spent on maternity leave;
- inclusion in seniority of the time spent on leave to care for a child with disabilities from childhood to 18 years; and
- inclusion in seniority of working time even after a disability pension assignment (I and II groups of disability).

The amount of social tax for individuals who are in labour relations with individual entrepreneurs is sharply reduced. The minimum amount of social tax for individuals who are in labour relations with individual entrepreneurs is reduced from 50% of the Basic Calculation Units per month (approximately US\$13.2 per month) to 1 Basic Calculation Unit per year (approximately US\$26.4 per year) (except for individuals operating in shopping malls and markets).

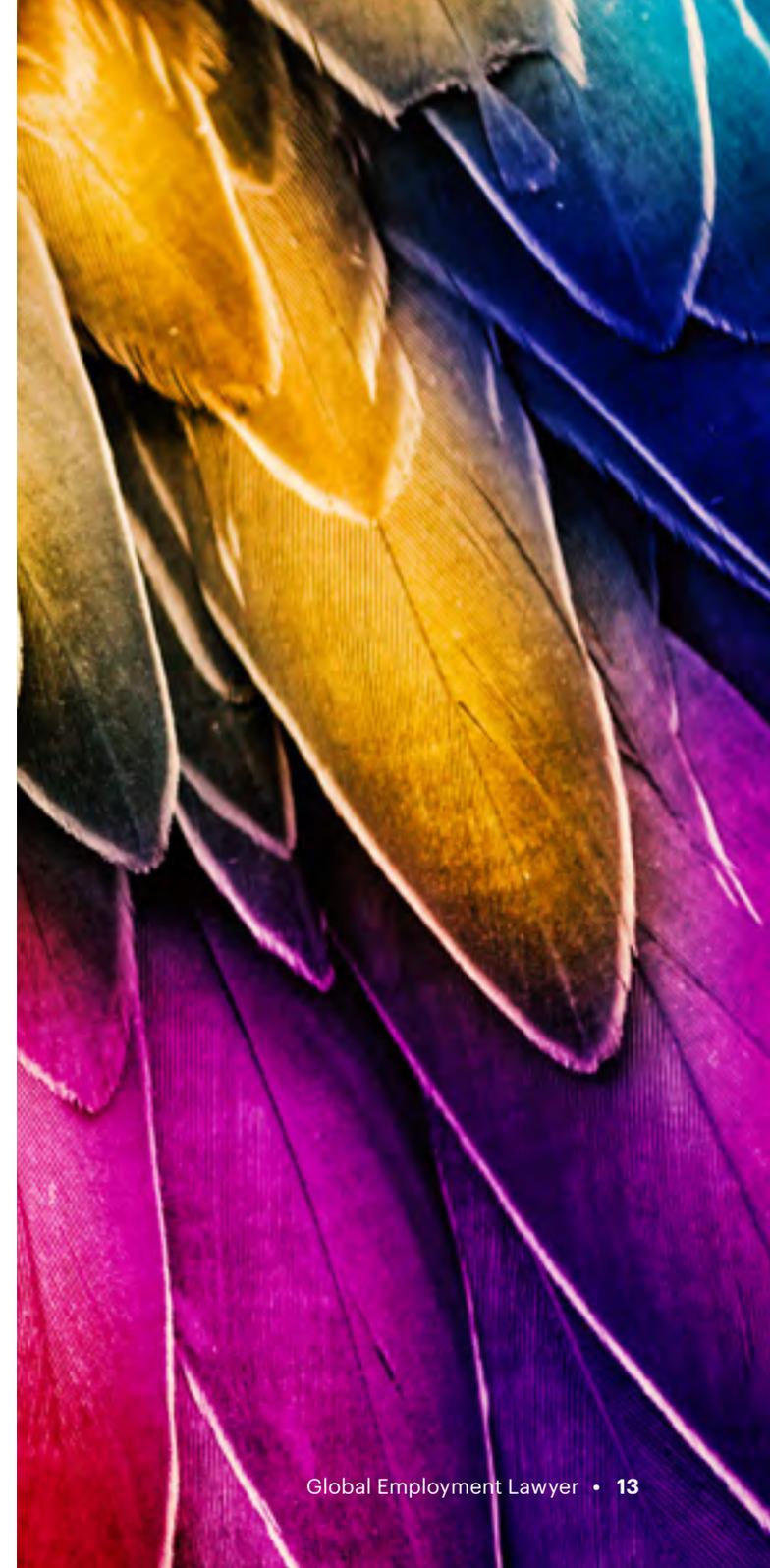
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Australasia

Australia

Privacy and employment records – On 16 February 2023, the Federal Attorney-General released the long-anticipated Australian Privacy Act Review Report 2022 – setting out proposals for sweeping changes to the regime governing the privacy of employees in the workplace. This includes a requirement to act fairly and reasonably when collecting, using and disclosing personal information and a direct right of action to enforce privacy rights.

Professional employees award – Imminent changes to the professional employees award will likely affect employers in the tech and engineering industries. Overtime and penalty payments have been introduced which may require time records to be kept for employees unless they are paid in excess of 25% above the award rate.

Secure jobs, better pay legislation – The new Federal Labour Government has now passed this legislation with the following key elements:

- limiting the use of fixed-term contracts;
- changes to collective bargaining, including the introduction of multi-employer bargaining;
- prohibiting pay secrecy clauses; and
- strengthening laws prohibiting sexual harassment.

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New Zealand

Minimum wage increase announced – The Government has announced that the minimum wage will increase by \$1.50 per hour, to \$22.70 per hour. This change will come into effect on 1 April 2023, and marks the largest annual increase in the last decade.

Highest ever penalty ordered for breaches of employment standards – The Employment Court has ordered a total penalty amount of \$1.55 million against a group of companies and an individual who did not provide several migrant employees with minimum employment entitlements various times over a four-year period. This is the highest penalty ever awarded for employment breaches.

Bill introduced to make sharing of parental leave easier – The Parental Leave and Employment Protection (Shared Leave) Amendment Bill was introduced to Parliament on 8 December 2022. If passed, it would allow paid parental leave to be split between spouses or partners, provided that the total paid parental leave taken by the couple does not exceed the maximum provided for a single primary carer. Spouses or partners would also be able to take parental leave at the same time.

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Central and South America

Argentina

Obligation to provide nurseries at the workplace becomes effective on 23 March 2023

The Argentinian government has introduced new legislation which grants employees the benefit of maternal facilities and nurseries for their children. According to the new law, companies with 100 or more people working on their premises must provide nurseries at the workplace for their workers' children aged between 45 days and three years old. Employers may outsource nursery services and may also provide these services together with other employers.

Collective bargaining agreements may replace the provision of nurseries by reimbursing nursery costs to the employees. Such reimbursement will be considered as a non-remunerative payment.

Any non-compliance with this new law will be considered "a very serious labour infraction" and may result in fines from the relevant authority.

Increase of the Mandatory Minimum Wage (MMW)

The MMW was increased to ARS69,500 (approximately, US\$336), as of March 2023.

Although the MMW is usually exceeded by the salaries in the private sector and those established in collective bargaining agreements, the MMW is normally used to determine other parameters (e.g. caps in severance payments to senior executives).

Peer negotiations and salary increase agreements

The Commerce Union agreed a 22.9% salary increase to be paid in two accumulative instalments (13% in February and 9.9% in March) as part of the revision of the 2022-2023 salary agreement. This agreement had to be revised since inflation rates exceeded the percentage agreed last year. With this new increase, employees will receive an annual increase in their salary of 101% for the 2022-2023 period.

The Commerce Union represents the largest number of employees and the agreements entered into by this union may be taken as a reference for agreements in other activities.

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Bolivia

Procedure for the restitution of labour rights

– Following a ministerial resolution issued in November 2022, the Ministry of Labour (MOL) issued a protocol to deal with complaints of employees regarding unjustified dismissals. This protocol allows employees to have a faster response from the MOL, as well as to obtain a Labour Court decision in a much shorter timeframe.

Return to discontinuous working schedule – In March 2023, the MOL issued a ministerial resolution that states that the working day shall return under a discontinuous schedule. This means that the working day shall now have a lunch break. The ministerial resolution states that employers can agree with employees the start and end times according to the nature of the employer's services.

Regarding lunch breaks, Article 49 of the Bolivian Labour Law provides that the working day must have one or more breaks, which shall not be less than two hours in total per day.

Employers that wish to retain a continuous work schedule must submit a request letter to the MOL.

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Chile

New bill to reduce working hours – A new bill to reduce working hours from 45 to 40 hours per week (in phases over a number of years) was recently approved. The government has pushed for the bill's approval, and it is expected to become law in May 2023.

Reporting of false medical leave –

The government has launched a campaign to encourage employers to report any suspicion of false medical leave, for which it has set up an electronic portal specifically for this purpose.

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Colombia

Labour reform bill – The national government is currently working on a labour reform bill, the draft of which was formally filed to Congress the week commencing 20 March 2023. The bill includes the following main aspects:

- increase in the surcharge for work on Sundays and holidays;
- night work hours to be from 6pm;
- maximum working hours will be eight hours per day and 42 hours per week, and the employer will continue granting the family day;
- apprenticeship contracts to be regulated by labour legislation;
- increase in paternal leave from two to 12 weeks;
- measures to guarantee labour stability (termination of employment agreement only by exercising a just cause). Employees terminated without just cause will be entitled to claim reinstatement to the job or payment of severance under higher amount rules. There will also be a specific judicial process to obtain authorisation to terminate employees under special protections not to be dismissed;
- there will be no statute of limitations applicable to social security contributions;
- creation of special requirements for contracting third parties or third party providers (e.g. independent contractors, outsourcing, temporary services agencies etc.);

- regulation of work through digital platforms; and
- collective labour law – new rules for the negotiation stage, the prohibition of collective pacts, new conditions applicable to and during strikes, association rights and fines, arbitration tribunal powers, special protections and treatment of leave.

Health reform bill – The Ministry of Health presented and filed this bill in Congress for its legislative approval process. This reform has five components, one of which is modification to the labour regulation of the healthcare of employees.

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Costa Rica

New regulation on temporary residencies –

On 23 February 2023, a new law came into force which simplified immigration procedures for non-Costa Rican citizens who wish to invest their capital or extend their businesses in Costa Rica. This regulation provides that:

- investor applicants must make investments in Costa Rica of not less than US\$150,000;
- foreign income earner applicants must demonstrate with a document issued by any banking institution that, for not less than two years, they will receive an income for a monthly, permanent and stable amount of not less than US\$2,500; and
- pensioner applicants must demonstrate with a document issued by the competent authority that they receive a pension for life of not less than US\$1,000 per month. Those who qualify in any of these subcategories will be eligible for tax incentives.

Private sector minimum salary increase for the first semester of 2023 –

As of 1 January 2023, the minimum wage increased by 6.62% for private sector employees, and domestic service minimum wage increased by 2.33962%. The minimum wage increase also means that the amount of salary that cannot be garnished increases. Therefore, garnishment calculations must be adjusted.

Increase to social security contributions

percentage – From 1 January 2023, employer and employee social security contributions increased to 26.67% and 10.67%, respectively.

Amnesty of interest, surcharges and fines by the Social Security Administration (SSA) –

From 14 December 2022 to 14 December 2023, employers and independent contractors may request amnesty with the SSA. The amnesty excludes the principal debt of the social security contributions and medical expenses, and it is only applicable to periods prior to 14 December 2021.

Statute of limitations for independent contractor social security contributions –

On 12 December 2022, the Costa Rican Legislative Assembly approved a bill to reduce the statute of limitations period for social security contributions for independent contractors from 10 to four years. The second (final) debate will take place in the coming months and, if approved, will be transferred to the Executive for the President to sign it as a new law.

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Ecuador

Women in the workforce – A new law came into force on 20 January 2023 which creates incentives and public policies that promote the participation of women in the economic, labour, educational, social and political environment of the country. Under this law, employers must submit several documents to the government such as equality plans (for employers with more than 50 employees), policies and procedures which implement concrete measures to prevent sexual harassment and harassment based on sex at work.

Teleworking and disconnection from work –

New guidelines have been issued that regulate teleworking and the right to disconnect from work. Under these new guidelines, employment contracts that have teleworking modalities must be registered with the Ministry of Labour (within 15 or 30 days, depending on the circumstances); all workers who work remotely must enjoy at least 12 continuous hours of disconnection from work (except workers with trust functions); and employers must implement a disconnection policy.

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El Salvador

Reforms to El Salvador's pension system – In January 2023, new laws came into effect, with the main objective of creating new regulation for the pension system in El Salvador and a new pension system regulator.

The new regulations include the following:

- employer contribution rate increased by 1%, with the new rate being 8.75%;
- maximum payable pension rate is limited to US\$3,000;
- the contribution cap to the pension fund is eliminated;
- a retired person who continues in an employment relationship must continue to contribute to the pension fund. However, the amount contributed will be returned annually to the retired person in the month of their contribution anniversary; and
- creation of the new Salvadoran Pension Institute, which will be responsible for the protection of the contributors' rights and regulating pension funds.

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Honduras

Increase to the National Minimum Wage (NMW)

– The increase was approved in 2022 and published in the official gazette, with the adjustment to NMW for 2022 and 2023 fixed in percentages according to the size of the companies by number of employees. For 2023, an adjustment equal to the percentage of inflation, recorded as of December 2022, shall be applied.

On 8 February 2023, the Secretary of State in the Offices of Labour and Social Security and the Tripartite Commission agreed the rate of increase in accordance with the inflation index presented by the Central Bank of Honduras, which at the close of the year 2022 was 9.8%. Therefore, for all companies, the salary increase for 2023 is 9.8%.

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Mexico

Collective bargaining agreements legitimation

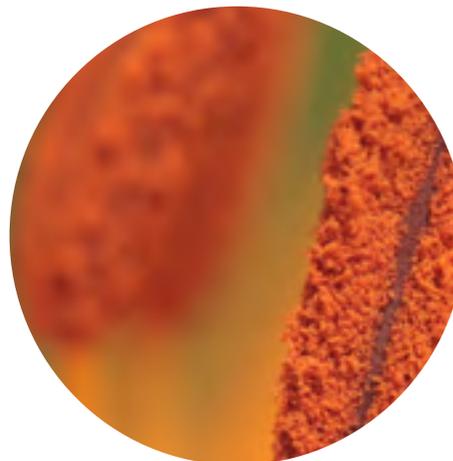
– Labour authorities confirmed the deadlines for the legitimation of collective bargaining agreements, indicating 1 May 2023 as the time limit to register legitimation consultation events. All collective bargaining agreements that fail to be registered before this date will be terminated. Meanwhile, the date for legitimation consultation events registered before 1 May of this year will expire on 31 July 2023. It is important to mention that this clarification was issued and published due to rumours on the extension of the deadlines.

Official Mexican standard on telework

– On 15 July 2022, the Ministry of Labour and Social Welfare published a draft standard regarding health and safety standards for telework. In this regard, on 3 March 2023, the National Consultative Committee for Standardisation of Safety and Health at Work approved the changes to the project published in July 2022 after a public consultation period. Although publication in the Federal Official Gazette is still pending, it is important to follow up on it to ensure compliance with specific regulations related to telework.

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Peru

New teleworking law – Under the new law, among other things, employees have the right to expense internet and energy costs when working from home and, unless otherwise agreed, have the right to “digitally disconnect”. Employers have 60 days to adopt the new law, with this period of time expiring on 27 April 2023.

Extension of family assignment – Currently, employees whose wages are not regulated by collective agreements, and who have children under the age of 18 or between the ages of 18 and 24 who are students, are entitled from their employer to be granted the equivalent of 10% of the minimum wage on a monthly basis, as a family allowance. As of March 2023, this benefit was extended to employees who have children over the age of 18 years who have a severe disability.

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Venezuela

Progressive use of digital signature and technology in judicial procedures – A recent decision from the Constitutional Chamber of the Supreme Tribunal of Justice affirmed the use of electronic signatures and other technological instruments that comply with applicable law.

Choice-of-forum provisions – A recent decision from the Political Administrative Chamber of the Venezuelan Supreme Tribunal of Justice held that parties in an employment contract may enter into a choice-of-forum provision in favour of a foreign jurisdiction to hear any dispute arising out of an employment relationship. However, the autonomy of the parties is limited to choosing:

- the place where the service is rendered;
- the place where the employment relationship terminates; or
- the defendant’s domicile.

New entrepreneurship waivers – The executive branch waived the registration or filing costs of new start-ups with certain labour agencies such as the Social Security Institute (health and pension benefits), the National Institute of Training and Socialist Education (education and training), the Mandatory Saving Fund for Housing (fund for acquisition of housing) and the Labour Ministry. The new entrepreneurs must be duly registered before the National Registry of Entrepreneurships.

Unionised workers protest for higher salaries –

Unionised workers primarily employed in the education sector plan to continue their protests throughout March. Retirees also request higher remuneration and other social benefits.

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Czech Republic

Amendment to the Labour Code 2023 – The highly anticipated amendment to the Labour Code is working its way towards becoming law. This amendment is expected to fundamentally impact the HR processes of the vast majority of employers.

Updates have been made to the draft Labour Code concerning, in particular, the proposed new regulation of the rules on working from home. The current version of the draft no longer includes the list of mandatory provisions on the elements of a “work from home” agreement, giving more room for autonomous regulation.

The draft still retains the employer’s right to unilaterally order home working if a public authority deems it necessary, but has removed the obligation to allow home working at the request of certain protected groups of employees, such as parents caring for children.

Under the draft, employees will be reimbursed for the costs associated with working from home, either:

- to the extent that the employee has demonstrably incurred them; or
- by a lump sum reimbursement (CZK2.80 per hour of work).

Which one to use will either need to be agreed by the parties or determined by the employer in an internal regulation.

The amendment to the draft also includes the following:

- a modification of the regime of agreements for work outside an employment relationship –agreements on performance of work and on working activity whereby workers are granted some of the protections of employees in employment relationships (e.g. annual holiday leave);
- a change to the rules on sending and distributing documents, which simplifies the electronic service of documents; and
- explicitly allowing the electronic conclusion of employment contracts and other employment documents.

Given that the amendment is still in the early stages of the legislative process and the controversial nature of some of its points, it could still be amended. We are therefore closely monitoring its progress and modifications. Please do not hesitate to contact us should you have any questions on this or other issues.

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Germany

Update on new whistleblower legislation

– As reported in our last edition, the German government planned to introduce legislation implementing EC-Directive 2019/1937 in Q1/2023. The implementation is long overdue – awaited since December 2021. The German Federal Parliament (*Bundestag*) passed the bill in December 2022. However, the German Federal Council (*Bundesrat*) representing the federal states blocked the act in February 2023, mainly on the basis that the new regulations would impose disproportionate burdens on small and medium-sized businesses. On 15 March 2023, the federal government introduced a new version of the draft legislation which, according to government officials, no longer requires formal approval by the Bundesrat. It is not clear when the Bundestag is going to hold its vote on the modified bill. Also, it remains unclear if and how the Bundesrat will object to the new vote, which leaves the timeline for its implementation in limbo.

Landmark decision on equal pay – In a landmark decision, the Federal Labour Court reinforced the gender equal pay principle. The employer had hired the female plaintiff who had accepted the offered salary of €3,500 per month. However, the plaintiff found out that a male co-worker who was simultaneously hired for the same job received a monthly salary of €4,000. In court, the employer tried to use a commonly accepted argument i.e. that, in contrast to the plaintiff, the male employee had not accepted the lower offer and had negotiated the higher payment. Whilst the employment tribunal and the employment appeal tribunal held in favour of the employer, the Federal Labour Court made it very clear that equal pay is not subject to individual negotiation. As a result, the plaintiff won her claim for outstanding salary payments.

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Hungary

New amendments to the Hungarian Labour Code

– New rules entered into force on 1 January 2023 which relate to transparent and predictable working conditions and work-life balance for parents and carers. Under these new rules, employers' obligations have been broadened – they must now provide employees with detailed written information on working hours, training opportunities and on potential termination of the employees' employment.

Provisions on paternity leave and parental leave were also introduced. Fathers are entitled to 10 working days' leave, to be taken (at the latest) by the end of the second month following the birth or adoption of their child. Overall, employees are entitled to a total of 44 working days of parental leave up to the age of three of their children.

In addition to this, there have also been substantial amendments regarding probationary periods in fixed-term employment contracts, and flexible working conditions.

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Italy

Contribution exemptions for those who hire young employees and women

– The Budget Law for 2023 has introduced new labour-related measures that benefit employers who hire young people up to 36 years of age and women facing employment disadvantages. The exemption allows employers to avoid paying 100% of the employer's contributions, up to a maximum of €8,000 annually. The exemption does not affect the retirement benefits of the employees, as the difference will be paid by the state. If the employee's salary means contributions would exceed the maximum threshold of €8,000, employers will only need to pay ordinary social security contributions for the excess amount. The provision applies to all employers, except for those in the financial sector.

For the hiring of young people, the exemption can last up to 36 months, or 48 months for certain regions and production units. It can also apply when transforming fixed-term contracts into open-ended employment contracts. The exemption is only applicable if the hired individual has never been employed under an open-ended employment contract before, including with other employers.

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Extension of Dutch whistleblowing legislation

– On 18 February 2023, the revised Dutch Whistleblowing Act entered into force, which further protects reporters of wrongdoing (whistleblowers), including freelancers, volunteers, trainees, shareholders, contractors, etc. from being disadvantaged by their employer. Some of the amendments will apply immediately, others from 17 December 2023.

This act applies to employers who have at least 50 employees. Please note that self-employed individuals no longer count towards this numerical criterion and trainees and volunteers only count insofar as they receive remuneration for their work.

The amendments include the following:

- the burden of proof with regard to any disadvantage following a report will now be on the employer;
- going forward, a disadvantage includes any form of disadvantage, including threats of and attempts at disadvantaging the employee;
- a report by a whistleblower can now also relate to a "suspicion" of wrongdoing instead of concrete wrongdoing and a report can be made externally to the competent authorities without having to report internally first; and
- stricter requirements for (internal) whistleblowing policies.

With the new law taking effect, employers are strongly advised to amend their whistleblowing policies as soon as possible, so that they comply with the new rules.

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The intergenerational equity mechanism – The Intergenerational Equity Mechanism, also known as MEI, is a new social security contribution that came into effect on 1 January 2023 and will be applicable for the next 10 years. It consists of an additional contribution of 0.6% to the employees' gross salary. From this amount, 0.5% will be paid by the company and 0.1% by the employee.

This new contribution arose as a result of pension reform to increase the social security funds in order to try to ensure the payment of the public retirement allowances as a consequence of the impact of the baby boom generation between 2032 and 2050, taking into account the expected reduction of social security incomes.

The Social Security, in its RED Newsletter Bulletin, has stated that this special contribution rate will not be applicable to employees in pre-retirement or early retirement situations, or to internships.

Temporary disability – A new act has been enacted to amend, among other things, the "Law on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy". This regulation sets out new special situations of temporary disability due to debilitating menstruation; interruption of pregnancy, whether voluntary or not; and pregnancy from the 39th week. For employees under the age of 21, no minimum service with the employer is required to be found "temporarily disabled". During the incapacity period, temporarily disabled employees are entitled to social security contributions and social security public allowance. These changes will come into force on 1 June 2023.

European Whistleblowing Directive – The new law on the protection of whistleblowers and anti-corruption has come into force. It implements Directive (EU) 2019/1937, commonly known as the Whistleblowing Directive. The purpose of this law is to grant adequate protection against retaliation suffered by individuals who report certain breaches. The law covers a wide range of whistleblowers, including public or private employees, self-employed individuals, shareholders, or anyone rendering services for contractors. The law must be implemented by 13 June 2023, or by 1 December 2023 for companies with fewer than 249 employees.

Lower severance compensation for employees over 60 years old in a collective dismissal procedure is not discriminatory – The Supreme Court has ruled that employers are allowed to reach an agreement where employees aged over 60 years old will receive a lower severance compensation than other employees, provided that such compensation is over the statutory severance compensation amount.

Additional severance compensation for unfair dismissal – The High Court of Justice of Catalonia has ruled that, in case of unfair dismissal and in exceptional circumstances only, the severance compensation for unfair termination can be increased notwithstanding the maximum amounts set out by law. The metrics to assess the damages are not listed. This ruling therefore creates uncertainty for employers when assessing the economic risk of carrying out a termination.

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United Kingdom

New industrial action bill – The proposed Minimum Service Levels (Relevant Services) Bill allows the UK government to set regulations for minimum service levels during strikes in essential services, including health, transport, education, fire and rescue, border control, and nuclear decommissioning and radioactive waste management services. If the bill is passed, employers will be able to provide a work notice to the relevant union identifying required workers and tasks during a strike. Unions will lose immunity from tortious liability if they do not take reasonable steps to ensure compliance. Workers identified in a work notice who nonetheless participate in a strike will lose their automatic protection from dismissal. This bill appears to have superseded the Transport Strikes (Minimum Service Levels) Bill (which we reported on in our last edition) which is no longer progressing through Parliament.

New predictable working bill – The UK government has announced its support for the Workers (Predictable Terms and Conditions) Bill. The proposed legislation aims to address “one-sided flexibility” by giving workers and agency staff the right to request a more predictable work pattern. Employers would be able to reject applications based on statutory grounds.

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Middle East

Saudi Arabia

Saudisation system (Nitaqat) – The Ministry of Human Resources and Social Development (MHRSD) announced the second phase of the Nitaqat programme in January 2023. The programme is viewed as a major step towards strategic transformation in Saudi Arabia's labour market. This second phase aims to increase the organisational stability of private sector companies. It includes a three-year localisation plan to provide clarity and transparency by linking the Saudisation percentage to the number of employees at a company, rather than a system of classifying companies into specific fixed sizes. As part of the Saudisation system, from March 2023, further professions will be restricted to Saudi nationals in an aim to provide 33,000 job opportunities. The MHRSD has also announced that the sales outlets of seven business activities will be 70% Saudised. Employers will need to consider the roles in their companies going forward, and those that can only be occupied by Saudi nationals.

New categories of workers introduced into the labour system – The MHRSD Musaned electronic recruitment platform now permits the hiring of workers in 13 new professions, including female private drivers, private tutors and home guards, which were previously unlisted.

Increased use of amicable settlement

procedures – The MHRSD has fully automated, through its website, its dispute settlement service, and had achieved a reconciliation rate of 73% in labour disputes by the end of 2022. The average duration of labour disputes has also been reduced from 40 days to five working days. Under the new system, all labour offices in Saudi Arabia have a period of 21 days to amicably settle a dispute and, if no settlement is reached, the case can then be submitted to the local courts.

Flexible visa system for foreign nationals in

Saudi Arabia – The Qiwa platform which provides electronic services for the MHRSD now has the option for short-term work visas for foreign workers for up to 90 days per year, per visa issuance. Employers who wish to avail themselves of this option need to be at least classified as Medium-Green in Nitaqat. Each employer is permitted 50 such visas, which are renewable but non-transferable.

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Income tax exemption regarding electricity, natural gas and other heating expenses of employees

– Monthly payments of a maximum of TRY1,000 (approximately €49) that employers will make to employees between 9 November 2022 and 30 June 2023 for their electricity, natural gas and other heating expenses, in addition to their existing salary, shall be exempted from income tax and shall not be included in the amount of income used to determine social security premiums.

Increase in statutory minimum wage – The Minimum Wage Determination Commission increased the statutory minimum wage to TRY10,008 (gross) (approximately €497) and TRY8,506.80 (net) (approximately €422) per month. This amount will be valid until 31 December 2023.

Increase in statutory severance compensation ceiling – In Turkey, calculation of statutory severance compensation is based on 30 days' salary for each year of service, which is subject to a ceiling. The ceiling for the statutory severance compensation was increased to TRY19,982.83 (approximately €993). This is valid between 1 January 2023 and 30 June 2023.

Introduction of measures during the state of emergency declared in 10 earthquake-hit provinces – The Presidential Decree that was published in the Official Gazette on 22 February 2023 introduced some measures in the field of labour and social security during the state of emergency declared in 10 earthquake-hit provinces. These include:

- facilitated application procedure to short-term working allowance;
- termination ban for employers;
- cash wage support; and
- extension of statutory periods with respect to the collective bargaining agreement processes.

Introduction of law on early retirement – With effect from 3 March 2023, individuals who were insured for the first time on or before 8 September 1999 will be eligible to receive a retirement pension without fulfilling the age requirement, provided that they fulfil the relevant conditions. Furthermore, employers who rehire employees, within 30 days, who resigned for receiving the retirement pension may benefit from a reduction in the employers' contribution to the social security support premium for the relevant employee.

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United Arab Emirates

Unemployment insurance scheme – Following the introduction of the unemployment insurance scheme in the UAE, further details were released and confirmed by the authorities. Employees working for companies operating out of free zones were added to the categories exempted from registering into the unemployment insurance scheme. Further, the deadline to register into the scheme has been extended until 30 June 2023. An employee who fails to register will be subject to an AED400 fine. Failing to make contributions in a timely manner can trigger an AED200 fine. These fines will be imposed on the employee and not the employer, as the obligation to register with the insurance scheme falls on the employee. The employer's role is limited to reminding the employees of their obligation to register.

Employees who have completed 12 months of registration in the unemployment insurance scheme will be eligible to monthly compensation equivalent to 60% of their basic salary capped at AED20,000 per month upon losing their job. The maximum period of compensation will be three months per claim. The total period of compensation an employee may receive throughout his entire employment in the UAE will be capped at 12 months.

In addition to the 12-month registration requirement, for the employee to receive compensation, the employment termination must not be related to gross misconduct or resignation. Further, an employee who is violating the immigration rules may not be eligible to receive compensation either.

Employment contract updating deadline – The grace period granted under the new labour law to convert all existing unlimited term contracts into fixed-term contracts was supposed to expire on 1 February 2023. However, the authorities decided to extend that grace period until 31 December 2023.

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United States of America

State-to-state disparities in the law complicate issues for employers – While the regulations that impact businesses in the US are generally slow to change, state (and local) governments are active in implementing changes to the laws that govern employment. These changes, which can happen and take effect quickly, often impact an employer even if a business only has one employee in a given state. The variety of employment regulations from state to state, and the speed with which they are changing, make it more important than ever for employers to understand the employment-related laws in effect in any given state. For example:

- Non-compete agreements – The Federal Trade Commission is considering regulations that would restrict the majority of businesses across the US from contractually prohibiting employees from any post-employment competition, typically referred to as a “non-compete” agreement. If enacted, this regulation would change the landscape of non-competes significantly. Currently, there is no federal legislation on this topic. Rather, employment non-competes are regulated on a state-by-state basis. A growing number of states (at least a dozen) have all-out bans or limitations on whether and when an employer can require an employee to enter into a non-compete agreement. [See here for more information on the federal regulation.](#)

- Paid sick leave – Currently, there is no federal legislation in the US that requires an employer to provide employees with paid sick leave. At the most recent count though, 14 states and the District of Columbia have mandatory paid sick leave laws. Two additional states (Maine and Nevada) have laws that require an employer to provide paid time off that is not limited to sick leave.
- Legalisation of cannabis – Medical and recreational use of cannabis remains illegal under federal law. However, medical use of cannabis has been legalised in 39 states and the District of Columbia. Recreational (also called “adult-use”) has been approved in 21 states and the District of Columbia. While employers can prohibit employees from using cannabis in the workplace or while on the job, a number of cities and seven states have laws in place that currently (or will soon) protect the employment rights of recreational cannabis users. [See here for more cannabis-related information from Dentons US.](#)

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In conversation with...

In this edition, we talk to **Vanessa Jacklin-Levin**, who is the office managing partner of Dentons' Johannesburg office and the head of the Dispute Resolution practice group. Prior to joining Dentons, Vanessa started her legal career at Bowmans where she gained years of experience in commercial litigation, commercial law and employment law, with the majority of her experience being acquired in the construction, mining and energy sectors. She decided to leave Bowmans and purchase Bouverer Kobeli Morabe attorneys as a going concern in 2005, where she ran and grew the firm successfully as a partner for more than 12 years. Vanessa and her team joined Dentons at the beginning of 2017. She also leads a number of community and global initiatives within Dentons, including WomenLEAD.



Vanessa, what excited you about joining Dentons back in 2017? What keeps you excited about Dentons today?

In 2017, it was very exciting to join an innovative and truly global law firm. It is very exciting to be able to work for some of the biggest and most interesting global clients. Our team is also very grateful to be connected with a global group of professional and talented employment lawyers – arguably, one of the best global employment law networks in the industry.

On what is your employment team currently focusing and what are its plans going forward?

We are currently focused on assisting a gender justice organisation in a court constitutional challenge where our client is seeking an order declaring section 25 and 26 of the Basic Conditions of Employment Act unconstitutional; an amended definition of “maternity leave” to include “parental” and “care giving leave”; an addition of a new category of “peri-natal leave” together with equal parental leave; and benefits for adoptive and surrogacy commissioning parents. These court proceedings will make new law in South Africa.

Our plans going forward are to continue to advise on current and innovative solutions for our clients.

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

We have picked up on (partial) return-to-office trends across most sectors, although many employers have opted (for a number of good reasons) to implement a hybrid of working from home and working from workspaces. As a result, we are finding that clients seek advice and solutions to manage and increase performance and comply with occupational health and safety, data protection and privacy laws within this hybrid working environment.



What can you tell us about anything new or in the pipeline that you are planning to offer to your clients?

We are developing new training opportunities, on a variety of platforms, for our clients. There is a lot of interest in training on fair and equitable retrenchment procedures (redundancy) due to economic factors.

What do you enjoy doing outside work?

I enjoy spending time reading fiction, walking our large and playful dogs, and travelling, including long road trip holidays with my family to remote locations throughout Africa – we have had many exciting adventures on the road, met interesting people and seen many spectacular places.

Dentons news and events

Are we moving from pandemic to energy-agile working trends?

In the context of agile working, the question arises as to whether employers should contribute to employees' energy costs and, if so, how. In some European countries, such as Poland and Spain, this is a topic that has already made its way to their respective legislative bodies, where discussions are ongoing regarding contributions to employees by their employers to (at least partially) cover relevant energy costs.

Our European offices have published an article considering the position in their respective jurisdictions, which you can access [here](#).

CEE countries extend their protection of Ukrainian refugees

When the Russian military launched its invasion of Ukraine in February 2022, many countries in Central and Eastern Europe (CEE) responded immediately by amending their legal frameworks to provide shelter for Ukrainian refugees. These neighbouring nations not only provided immediate humanitarian help, but also changed their immigration law to allow Ukrainian refugees to work and live in their country.

One year later, with no end to the conflict in sight, many CEE countries have extended their protection of Ukrainian refugees. Our offices in the Czech Republic, Hungary, Poland and Romania have published a summary of the current status of protection, which you can access [here](#).

Dentons Canada publishes Temporary Layoff Toolkit

Most provinces and territories in Canada permit "temporary layoffs", which allow employers to send employees out on unpaid leave when times are tough economically, without having to move to a full termination of employment.

Dentons Canada has recently published a Temporary Layoff Toolkit which outlines the following:

- how employers can quickly implement changes to their workforce to reduce costs and to save jobs through the tool of temporary layoffs;
- the requirements to effect a temporary layoff, the obligations employers owe to temporarily laid-off employees, and the potential liabilities if a temporary layoff is not correctly effected; and

- best practices for handling temporary layoffs, and strategies to mitigate risks associated with temporary layoffs, by jurisdiction.

A copy of the Dentons Canada Temporary Layoff Toolkit can be obtained [here](#).

Global Employment Webinar Series: Managing Collective Redundancies

We have continued our webinar series on collective redundancies with recent webinars focusing, variously, on North America (US and Canada), LATAM (Colombia, Argentina and Chile) and CEE (the Czech Republic, Hungary, Poland, Romania and Slovakia).

In these sessions, we compare the key features of each jurisdiction, describe recent developments and share practical tips. A recording of each of these webinars plus copies of the accompanying materials can be found [here](#).

An aerial photograph of a dense forest with a winding path. The trees are lush green, and the path is a dark, narrow strip that curves through the woods. The lighting is bright, suggesting a sunny day, with some areas of the forest appearing slightly overexposed.

Dentons Budapest hosts another successful Employment Business Breakfast

The main topic at the Employment Business Breakfast at Dentons Budapest on 8 November 2022 was the increasing importance of ESG (environment, social and governance), with all three pillars having an enormous effect on today's workplace. The panellists discussed, among other things, the critical role that labour and employment law plays in identifying and addressing ESG risks and opportunities in various business sectors.

Dentons Lee selected as a "Leading Firm"

Dentons Lee has been selected as a "Leading Firm" in the Labour and Employment sector by Legal 500, which stated that: "Dentons Lee's key partner Yong-Moon Kim has a litigation focus, with extensive experience representing clients in collective bargaining, unfair labour practice claims and Korea-EU Free Trade Agreement related disputes. Following the introduction of the Serious Accidents Punishment Act, the firm has taken steps to bolster its occupational health and safety offering with the establishment of the Safety Management Institute."

Dentons Kensington Swan promotes Renee Butler to partner

Renee Butler has joined partners Charlotte Parkhill, Greg Cain and James Warren in New Zealand's national employment team. Renee, who was included in NZ Lawyers' 2020 list of Rising Stars, leads the workplace immigration team for the firm and specialises in complex employment issues, workplace investigations, and health and safety law.

New senior counsel joins San Pedro Sula office

Jessica Handal joined Dentons as senior counsel in our San Pedro Sula office. She is an expert in corporate and employment and labour matters.

ABOUT DENTONS

Dentons is designed to be different. As the world's largest global law firm with 21,000 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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