

# Global Employment Lawyer

## Global Employment & Labor Quarterly Review

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### WELCOME TO THE THIRD QUARTERLY EDITION OF 2021 OF OUR GLOBAL EMPLOYMENT AND LABOUR REVIEW.

A year and a half into the COVID-19 global pandemic, many countries are still grappling with the devastating impact of the pandemic as it rages on, while governments around the globe are rolling out vaccine programmes in the hope of achieving herd immunity and a return to normality. In this review, we provide a brief overview of the key developments around the world on employment and HR related issues. Governments around the world have started to put in place laws and regulations to protect against loss of employment as a response to the rising unemployment rate created by the pandemic, with the implementation of measures prohibiting dismissal or providing for compensation for dismissed employees. Several jurisdictions have raised the minimum wage and relief measures for struggling employers are continuing around the world. New laws and regulations have started to emerge to govern remote working arrangements and to help

employers navigate the tricky issue of mandatory vaccination requirements for staff. We continue to see the strengthening of sexual harassment and discrimination laws around the globe.

2021 has seen a rise of ransomware attacks, with data privacy and cyber security issues becoming a priority for employers. We expect to see further legal development in this area in the coming months as employers and employees contemplate what is the new norm after long periods of working from home, and a new campaign to get staff back into the office.

In our "In Conversation With" section, we introduce Joanie Zhang, the leader of our China Region's Labour and Employment Group. We conclude with a round-up of relevant Dentons news and upcoming webinars or events that may be of interest.

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

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## IN THIS ISSUE

**03**

Legal updates: **Africa**

**05**

Legal updates: **Asia**

**11**

Legal updates: **Australasia**

**13**

Legal updates: **Central  
and South America**

**19**

Legal updates: **Europe**

**23**

Legal updates: **Middle East**

**24**

Legal updates: **North America**

**26**

**In conversation with...**

**27**

**Dentons news and events**

**29**

**Regional developments**



# Legal updates

## Africa

### MAURITIUS

The National Budget Speech 2021/2022 (the Budget) was presented by the Minister of Finance and Economic Development on 11 June 2021.

**Extension of Wage Assistance Scheme and the Self-Employed Assistance Scheme** – The government has announced in the Budget that it has extended these schemes (which provide financial support to employers in the tourism sector) until September 2021.

**Small Medium Enterprises (SMEs)** – The Minister of Finance announced in the Budget that the government will continue providing a monthly salary compensation of MUR 375 per employee for SMEs for the financial year 2021/22.

**Severance allowance** – A key amendment to the main act governing employment laws in Mauritius has been announced (but not yet published), which sets out that workers earning more than MUR 50,000 and employed on fixed-term contracts will not be entitled to a severance allowance if paid a gratuity or compensation at the end of their contract.

**Mandatory vaccination for employees of specified institutions** – As of 21 June 2021, vaccination against COVID-19 will be mandatory for employees working at educational or health institutions (or, alternatively, they must show evidence of a negative RT-PCR test result which is not more than seven days old).

However, this will not apply if two government medical officers have certified that an employee at such institutions cannot be vaccinated for medical reasons.

**More work opportunities for non-citizens** – All international students enrolled in a recognised educational institution in Mauritius will automatically benefit from a 20-hour-per-week work permit and a 10-year renewable Young Professional Occupation Permit upon graduation (extended from three years).

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## UGANDA

**Termination of employment contracts without reason** – A recent decision by the Court of Appeal of Uganda has expressly reiterated that employers have a right to terminate an employee's contract without giving a reason for termination. However, an employer must give the employee notice of termination or payment in lieu thereof.

In this decision, the Court of Appeal made a distinction between termination and dismissal. The court concluded that an employer is only required to give reasons in cases of dismissal and not termination. Dismissal, unlike termination, occurs when employees are discharged by reason of verifiable misconduct on the part of the employee.

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## CHINA

### **Unavoidable increase of compliance cost caused by implementation of the three-child policy**

– On 31 May 2021, the Political Bureau of the Communist Party of China Central Committee held a meeting which focused on improving the population structure and dealing with the ageing population. The meeting deliberated and approved the Decision on Optimising the Fertility Policy to Promote the Long-term Balanced Development of Population, and officially announced the implementation of the three-child policy. China's population policy has experienced a change from family planning to conditional second-child policy, and then to universal second-child policy. The introduction of the three-child policy marks a fundamental change to China's birth control policies. From an employment law perspective, the three-child policy will have a significant impact on maternity leave and the protection of women's rights and interests in employment.

At present, China's statutory maternity leave includes leave for pre-natal examination, maternity leave and breastfeeding leave. In addition to the statutory 98 days' maternity leave, some provinces and cities also give parents additional incentive maternity leave. For example, women can enjoy 30 days' incentive maternity leave in Beijing, and their spouse can enjoy 15 days' paternity leave. In Shanghai, women can enjoy 30 days' incentive maternity leave, and their spouse can enjoy 10 days' paternity leave. In Guangdong Province, women can enjoy 80 days' incentive maternity leave and their spouse can enjoy 15 days' paternity leave.

For employers, the three-child policy will inevitably increase labour costs, and the legal risk associated with the mismanagement of female employees arising out of pregnancy, childbirth and breastfeeding will also rise. Therefore, employers will face pressure on how to reduce such costs and risks while complying with the law.

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## HONG KONG

### **Privacy Commissioner for Personal Data (PCPD) issues Practical Guidance notes relating to working from home (WFH) arrangements –**

Privacy Commissioner for Personal Data (PCPD) issues Practical Guidance notes relating to working from home (WFH) arrangements – As remote working arrangements are now prevalent, the PCPD has issued a set of Guidance Notes to provide practical advice to organisations, employees and users of video conferencing software to enhance data security and the protection of personal data privacy. In particular, the PCPD recommends that organisations:

- review their existing policies and practices, make necessary adjustments and provide sufficient guidance to their employees in relation to the transfer, remote access and handling of data during WFH arrangements;
- provide sufficient training and support to their employees for WFH arrangements to ensure data security (covering awareness about cybersecurity threats and data security techniques, such as password management);
- safeguard the data stored in electronic devices provided to employees (such as ensuring that all work-related information in the devices is encrypted); and
- implement security measures for remote access to their corporate networks (including implementing network segmentation and using multi-factor authentication for connecting to VPN).

A copy of the Guidance Note can be downloaded here: [Protecting Personal Data under Work-from-home Arrangements: Guidance for Organisations.](#)

### **Government grants quarantine exemptions to fully vaccinated SFC-licensed firm executives –**

Fully vaccinated senior executives of SFC-licensed firms travelling from and returning to Hong Kong may apply for exemption from full compliance with the compulsory quarantine arrangements, if the travel is primarily for the purpose of managing group entities for which the executives have responsibility. Each firm can sponsor up to two returning and two visiting executives each month. Exempted executives will still be subject to quarantine but are able to leave

the designated quarantine location for approved activities (e.g. for managing the firm).

[Details of the scheme can be found here.](#)

### **New law prohibiting breastfeeding harassment and discrimination came into force on 19 June 2021 –**

The amendments to the Sex Discrimination Ordinance (Cap. 480) which prohibits discrimination and harassment on the ground of breastfeeding gives protection to breastfeeding women in the context of employment, education, provision of goods, facilities or services, disposal or management of premises and clubs, and government activities. Employers may be held vicariously liable for the acts of workplace participants unless it can show that reasonable steps have been taken to safeguard its workforce against discrimination and harassment.

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## INDONESIA

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

Employment reform: key issues from implementing regulations to the Job Creation Act – The government enacted the Job Creation Act (JCA) in late 2020. The JCA has amended 82 laws, including the Labour Law, and repealed two laws. Following the enactment of the JCA, the government rolled out a number of implementing regulations which became effective in February 2021. Key points of the implementing regulations include:

**Employment contract** – Previously, the total period for Temporary Employment Contracts (often called PKWT) along with their extensions and renewal was a maximum of three years. The new implementing regulation of the JCA provides a longer maximum period of five years and is extendable only for certain work types.

Despite the longer maximum above, the new regulation has introduced a new obligation for the employer of PKWT-based workers where the employer is now required to pay compensation to the employee at the end of the PKWT or upon the completion of the work. The compensation will depend on the length of the employment and will only be given to those who have worked at least one

month continuously. However, foreign workers are not entitled to this compensation.

**Outsourcing** – While the JCA still recognises the existence of outsourcing companies, it has removed the limitation on the types of work and services that could be outsourced. This has made it debatable as to what type of work can be outsourced, since the current implementing regulations are still effective and have not yet been repealed or amended.

**Overtime** – The new implementing regulation allows longer overtime hours from the previous maximum of three hours per day and 14 hours per week to four hours per day and 18 hours per week. However, it does not include certain sectors and types of work, which will be further regulated in a separate sectoral Ministerial Regulation.

**Termination of employment** – The new implementing regulation introduces some new reasons for termination and a new calculation for severance packages. The new regulation also introduces “emergency” reasons that enable the employer to immediately terminate employees which are similar to the “Serious Offences” that the Labour Act had provided for, but the Constitutional Court later declared contrary to the 1945 Constitution and consequently does not have any binding legal force.

**Protection against loss of work** – The JCA adds a provision on protection against loss of work as additional social security which will be given to employees upon termination of employment.

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## KAZAKHSTAN

It is expected that amendments to the Kazakhstan Labour Code on remote working (the Draft Law) will be adopted soon (it is currently being considered by the Parliament’s Senate).

In addition to the existing conditions of remote working, the Draft Law proposes a number of new rules to regulate remote working. As such, the Draft Law contains the following new provisions:

- remote working can be agreed on a regular or temporary basis, or a combination thereof;
- when hiring an employee on the basis of a remote working regime, the employer must establish a procedure of employer/employee interaction

that allocates a specific time for performance of work duties and a separate time during which the employee can respond to telephone calls, emails and address the employer’s enquiries; and

- in order to protect the employer’s confidential information in the remote working arrangement, an agreement for protection of the confidential information can be signed with the employee.

The Draft Law proposes to permanently establish the employer’s right to transfer employees to remote working by a unilateral decision for the duration of emergencies. In this case, the employee should receive full salary in exchange for maintenance of a full workload, as agreed in the employment agreement.

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## MYANMAR

**Movement restrictions** – Since the announcement of the state of emergency on 1 February 2021, the authorities have imposed a curfew from 8.00pm to 4.00am across the nation due to nationwide protest, and a few townships in Yangon and the Mandalay region are subject to martial law after crackdown by security forces. Public gathering of more than five people is prohibited. Security forces (both policemen and soldiers) can be seen on the streets during both day and night, and are entitled to inspect mobile phones of civilians or search their personal belongings. The curfew period has been revised to 10.00pm to 4.00am in NayPyiTaw, Keng Tung and Yangon. Employers need to take note of the curfew hours, and ensure that they allow employees sufficient time to travel back to their homes before the curfew starts, as well as not to require their employees to move around during curfew hours.

**International travel remains restricted** – As part of the precautionary restrictions to control the spread of COVID-19, the Ministry of Health and Sports (MOHS) has extended the temporary restrictions for visitors from all countries until 30 June 2021 to prevent the risks of importation and spread of COVID-19. In this regard, flights out of Myanmar continue to be limited to relief flights only. Persons travelling into Myanmar by available relief or special flights (subject to requisite visas and approvals) will have to undergo

quarantine upon arrival in Myanmar. The number of days of quarantine depends on the country from which the person has travelled, and his or her travel history. In this regard, employers should note that transfer of employees into or out of Myanmar are subject to these limitations.

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## SINGAPORE

### **Wages of cleaners to increase from 2023 under Singapore's Progressive Wage Model:**

- The government has recently announced an increase to the baseline wage floor for cleaners with effect from 2023 until 2028. Annual increments (some close to 20%) have been announced.
- The announcement comes as part of a move to bring low wage workers' salaries closer to the median wage in Singapore, and also to recognise the increased importance of cleaners during the pandemic.

While Singapore does not have minimum wage legislation, the Progressive Wage Model does introduce minimum wages to low wage workers in the cleaning, landscape and security sectors, with wage increments linked to increases in productivity and standards. The government has also announced that negotiations for increasing wages of workers in the cleaning, security, lift and escalator sectors are underway and likely to conclude in the second half of 2021.

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## SOUTH KOREA

### **Housekeeping workers are entitled to certain employment rights**

– In May 2021, the National Assembly passed a new law that guarantees housekeeping workers (workers who provide cleaning, laundry, nursing and childcare services, etc.) basic employment rights, such as annual leave, severance pay and four major social insurances. In Korea, the Labour Standards Act provides protection for employees in general, but such protection did not previously apply to housekeeping workers.

With the new law, housekeeping service providers will be able to obtain a certificate from the government, which would provide housekeeping workers who are employed by such service providers certain rights as an "employee", such as minimum wage, social insurance, severance pay and paid annual leave. Obtaining the certificate is not mandatory but companies are incentivised by tax reliefs and social insurance support. Since it has been almost 10 years when the law was first drafted, the passing of this law is seen as an essential step towards establishing a healthier labour market and work environment in the housekeeping sector.

### **Removal of restrictions on those who may join a trade union**

– Until recently, Korean labour law prohibited unemployed individuals, retirees and laid-off workers from joining and participating in company-level trade unions and trade union activities, respectively (note that unemployed individuals, retirees and laid-off workers were already allowed to join and participate in industry-level trade unions). Such interpretation of the law meant that, unlike industry-level trade unions, individuals who have been unfairly dismissed or have retired were unable to join a company-level trade union. This restriction was considered to be not only an infringement upon an individual's constitutional right to organise and engage in collective bargaining or other collective actions, but also contradicts various International Labour Organisation Conventions.

The revised labour law, which became effective on 6 July 2021, removed such restrictions, which means that unemployed individuals, retirees and laid-off workers will now be able to join trade unions and participate in trade union activities, albeit with some restrictions.

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## TAIWAN

### Taiwan expands COVID-19 bailout package and employment wage subsidies

– Taiwan expands COVID-19 bailout package and employment wage subsidies – Taiwan’s Premier announced that a sweeping NT\$260 billion (US\$9.4 billion) COVID-19 relief package, which is known as “Stimulus 4.0”, would be directly sent to qualifying individuals as from 4 June 2021. The government expanded employment wage subsidies and emergency loan programmes for COVID-19-impacted enterprises. Self-employed people who are significantly affected by the pandemic, such as taxi drivers, are also eligible to apply for the latest round of relief:

- Employers severely affected by the pandemic (i.e. those with revenue losses of 50% or more) could apply for employment wage subsidies of up to NT\$20,000 (US\$720) for each of their employees in May and June 2021.
- Emergency loan programmes of NT\$100,000 (US\$3,600) for each employee will remain in place.
- Agricultural and fishery workers could apply for a subsidy of at least NT\$10,000 (US\$360) per person.
- Creative industry workers who are self-employed or who have no definite employer, such as taxi drivers and tour bus drivers, tour guides and tour group leaders are to receive a subsidy of NT\$30,000 (US\$1,085) distributed over three months.

- Coaches, commentators, referees and other workers in the sports industry, as well as community college lecturers, are to receive up to NT\$40,000 (US\$1,450).

Taiwan’s Ministry of Labour estimated this Stimulus 4.0 scheme would benefit around 1.85 million employees in Taiwan.

### Easing of rules on rest between work shifts amid COVID-19 surge (effective on 8 June 2021)

– Taiwan’s Ministry of Labour announced that four key industries (namely, manufacturing, wholesale, general retail and warehousing sectors) will be temporarily exempted from a local labour regulation which mandates workers must receive a statutory minimum of 11 hours rest between shifts. The easing of rules will remain in effect until the nationwide Level 3 COVID-19 alert is lifted.

This new policy is intended to give the four key industries flexibility in scheduling their workers to meet the strong demand. Under this new policy, the minimum time between shifts for workers in the four key industries would be reduced from 11 hours to 8 hours. However, companies are required to first obtain permission from their employees, either through unions or labour-management meetings, while those with more than 30 employees must also notify the local government. The government estimated this new policy will apply to 490,000 workers in Taiwan.

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## UZBEKISTAN

**Right to an early pension** – Employees whose employment agreement was terminated due to the following reasons are entitled to receive an early pension:

- changes in technology, organisation of production and labour;
- reduction in the volume of work resulting in a change in the number of employees;
- change in the nature of work; or
- liquidation of the legal entity.

The above right is provided subject to official recognition of the unemployed status and possession of the required length of service:

- Men – upon reaching the age of 58 and with work experience of at least 25 years;
- Women – upon reaching the age of 53 and with work experience of at least 20 years.

### **Simplification of the granting of state pension –**

Starting from 1 January 2022, payment and provision of state pensions, social benefits, compensations and other payments financed by the Pension Fund under the Ministry of Finance will be carried out by commercial banks and other specialised organisations. The cost for delivery of such payments may constitute up to 1% of the amount of the paid pension.

From 1 July 2022:

- The requirement to submit documents on employment covering service term, salary, periods of study at a university and military service is abolished. Such documents are obtained through the electronic Unified National Labour System (the System). For citizens who are not working at the time of retirement, the information on work experience is entered into the System according to their work books based on their application to employment promotion centres; and
- the only document required is either a passport or an ID card of the citizen.

### **Ratification of two international conventions**

– Uzbekistan ratified the International Labour Organisation's convention on the Promotional Framework for Occupational Safety and Health on 4 June 2021.

This year, Uzbekistan is also planning to ratify another International Labour Organisation convention – the Maternity Protection Convention (Revised), 1952.

Such ratification will improve working conditions and attract foreign workers, which will lead to economic growth.

### **Compensation for employment agreement**

**termination** – On 1 April 2021, by order of the Ministry of Labour, amendments to the regulation were introduced to clarify that an ex-employee is entitled to an average monthly salary as an additional payment guaranteed by law after the employment agreement is terminated by the employer (e.g., in case of staff redundancy) if the following requirements are met:

- *The ex-employee is still not employed:* Such information is checked for accuracy through [my.mehnat.uz](http://my.mehnat.uz) or QR code (Unified National Labour System) after the second month; and
- *The employee is registered as a job seeker at the district employment agency within 30 days after the employment agreement has been terminated:* Documentary evidence shall be provided on the third month after the employment agreement has been terminated.

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# Australasia

## AUSTRALIA

**Sexual harassment** – In June 2021, the Federal Government introduced legislation in response to the Australian Human Rights Commission 2020 report into sexual harassment. The proposed legislation will protect a larger class of workers from sexual harassment including volunteers, interns and self-employed persons, extends the timeframe for complaint and extends the anti-bullying remedies in the Fair Work Act to allegations of sexual harassment. The Bill will likely be voted on in August 2021.

A new Australian Human Rights Commission report (June 2021) has recommended that company Boards take primary responsibility and accountability for preventing sexual harassment in the workplace, and not HR or the CEO.

**COVID-19 vaccine** – In July 2021 the National Cabinet of the Federal Parliament announced that all residential aged care workers will be required to get a COVID vaccination (first dose required by mid-September 2021). The Cabinet awaits further advice from the Australian Health Protection Principal Committee into other sectors and it is likely mandatory vaccination in the disability sector will follow.

Recent decisions of the Fair Work Commission in the context of influenza vaccinations in the aged and child care sectors have confirmed the right of employers to terminate employees who fail to, or refuse to, have influenza vaccinations. Whilst the reasoning will likely apply to COVID-19 vaccinations, as flu vaccinations can be mandated under State law in high risk settings, advice should be taken before effecting terminations on this basis.

## **Employee / Contractor distinction in the gig**

**economy** – The contractor / employee distinction remains a challenging area of the law, particularly in the gig economy. In a recent decision of the Fair Work Commission a driver was held to be an employee despite their ability to work for multiple platforms and to choose whether and when to work. This decision failed to follow guidance from a recent Full Bench decision of the Commission involving another delivery platform.

The application of the law in this area remains uncertain however the High Court of Australia currently has 2 appeals from the Federal Court before it on the independent contractor / employee distinction. Although not gig economy cases, it is expected that the High Court will shortly provide some further guidance about the principles to be applied in these cases.

**Superannuation Guarantee Increase** - Employee superannuation increases from 9.5% to 10% per annum on 1 July 2021 and is scheduled to increase on 1 July each year by a further 0.5% until it reaches 12% on 1 July 2025.

**Minimum / Award Wage Increase of 2.5%** - The Fair Work Commission increased Award wages (and the national minimum wage) by 2.5% effective 1 July 2021 but with a delay for sectors most affected by the coronavirus pandemic to 1 September 2021 (general retail) and 1 November 2021 (aviation, tourism, hospitality, amusements, live performance and specialist retail segments).

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## NEW ZEALAND

### Legislative changes creating a more favourable climate for employees -

- Employees will be entitled to 10 sick leave days – an increase from the current statutory minimum of five. This change will come into effect on 24 July 2021.
- Parliament is currently debating (with a majority likely to favour) a bill that would allow parents to take up to four hours a year of paid leave to attend parent/teacher interviews.
- The government has indicated that draft legislation on implementing Fair Pay Agreements (FPAs) will come out this year. FPAs will lead to industry-wide minimum terms and conditions similar to an award system.
- The government also announced a proposed new unemployment/insurance scheme to provide redundancy compensation. This would be funded by compulsory employer levies, replicating the framework of New Zealand's accident compensation scheme (ACC), but for sudden job losses that are brought on by things other than injury.

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## PAPUA NEW GUINEA

### COVID-19 and measures taken to protect employment –

Papua New Guinea has declared a state of emergency (SOE) since March 2020. During the SOE, the government enacted and passed the National Pandemic Act which appointed an SOE Controller to impose measures governing international and domestic travel, provincial coordination, burial of deceased persons, customs duties, testing, surveillance of businesses and social events, mandatory non-pharmaceutical interventions and public transport restrictions.

Although the government has strongly urged employers who have been affected by the pandemic to reconsider laying off employees, there is very little assistance from the government to subsidise ongoing costs required to keep them in employment, especially in the private sector. Nevertheless, the government has verbally directed the National Labour Department to closely monitor and take action against employers who have laid off employees during this period.

Private sector employers currently rely less on government financial assistance to help them through the pandemic, and instead are looking more at amending policy, employment contracts and general local labour laws, in order to retain hard-working employees whilst still maintaining ongoing operating costs.

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# Central And South America

## ARGENTINA

**Extension of prohibition of dismissals and additional severance compensation** – The prohibition of dismissals without cause, due to reduced work or a “force majeure” event (i.e. an event or effect that can be neither anticipated nor controlled) has been extended until 30 June 2021. This measure may be extended further due to increasing cases of COVID-19 in Argentina.

The requirement to provide double severance compensation in the case of dismissals without cause continues to be in force until 31 December 2021.

Both measures only apply to employment relationships commenced before 13 December 2019.

**Extension of measures to prevent the spread of COVID-19** – The government has extended measures provided by an emergency decree to prevent the spread of COVID-19 until 25 June 2021. The decree establishes four different categories for geographical zones, depending on the risk of COVID-19 infection in that area (low, medium, high and sanitary alert) and introduces (i) general rules that apply in every zone, and (ii) particular rules applying to specific zones. The most relevant rules are:

- Employees working in certain services can return to the workplace, provided that relevant protocols are approved by the health authority and the number of people in any enclosed space does not exceed 50% of usual capacity.
- Employers must encourage remote working.
- Employees in “at risk” groups must in any event continue to work remotely (except for vaccinated employees who can be required to return 14 days after receiving their first dose).
- In zones with sanitary alert, public transport can only be used by essential workers and authorised individuals.

**Mandatory Minimum Wage increase** – A progressive increase of the Mandatory Minimum Wage (MMW), to be introduced in seven instalments, was confirmed in April 2021. The MMW was previously set at ARS 23,544 (approximately US\$250) as of 1 April 2021, and will be increased to ARS 29,160 (approximately US\$310) as of 1 February 2021. The MMW has generally been lower than the basic salaries established by the Collective Bargaining Agreements, though these vary from one activity to another.

### **Official peer negotiations and increase to the cost of living salary**

– Unions and entities representing employers have commenced 2021 official peer negotiations, which resulted in an increase to the official cost of living salary (which varies from 30% to 57%, depending on the sector role). This means that all companies covered by the scope of a Collective Bargaining Agreement (CBA) must now honour these increases for all employees included within each CBA category.

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## **BARBADOS**

**Increase in national minimum wage** – Amidst the constraints of the COVID-19 pandemic and despite calls from the private sector for delay, the government has increased the national minimum wage to Bds\$8.50 (US\$4.25) per hour, as of 1 April 2021. It has been more than nine years since the last increase (on 1 March 2012 wages for shop assistants were increased to Bds\$6.25 (US\$3.13) per hour).

The recently passed legislation now increases the general minimum wage rates as follows:

- weekly wages (for a 40-hour work week) are Bds\$340 (US\$170);
- daily wages for an eight-hour work day (where an employee is not employed on a weekly basis) are Bds\$68 (US\$34); and
- hourly wages (where an employee is not employed on a weekly or daily basis) are Bds\$8.50 (US\$4.25).

### **Unfair dismissal and compensation for lost wages**

– Where an employment tribunal determines that an employee has been unfairly dismissed, and no order for reinstatement or re-engagement is granted, the following award for compensation must be made to the employee:

- a basic award;
- an amount the tribunal considers fit in respect of any benefit the employee might reasonably expect to have; and

- an amount capped at 52 weeks' wages (where the dismissal was deemed unfair, such as by reason of trade union activities, HIV/AIDS infection, racial discrimination and others).

Barbados' highest court, the Caribbean Court of Justice, has recently determined that the basic award should be calculated to include compensation for past services as well as for loss of future wages. This is similar to how the basic award and compensatory award, respectively, are calculated in the UK. However, in Barbados both these elements are covered under the basic award.

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## **BOLIVIA**

**Salary increase** – Every 1 May, it is customary for the government to increase the National Minimum Salary (NMS) and the Basic Salary. This year, however, due to the economic downturn caused by the pandemic, the central government did not increase the Basic Salary and only increased the NMS by 2% to Bs 2164 (approximately US\$311), in an effort to preserve economic stability for employers and employees.

**Vested Labour Rights Bill** – The Legislative Branch is discussing a new labour bill which would ensure any sum of money, compensation or remuneration provided by employers to employees under an agreement, law or tradition would become a vested right of the employees.

The Bill also intends to forbid and sanction employers that reduce, disrupt, eliminate or defer the payment of such vested rights or substitute them for others of lesser value.

**Stable Job Bill** – Bolivia's Legislative Branch is discussing a labour bill to ensure labour stability for public and private employees during the pandemic. The Bill prohibits the downgrading of positions or salary and the unjustified dismissal of employees during the pandemic.

**Work Harassment** – On International Women's Day, 8 March 2021, the Ministry of Labour (MOL) issued a ministerial resolution which regulates the process for addressing claims related to labour and sexual harassment suffered by female employees.

Under this resolution, the Ministry is entitled to issue proceedings against any person accused of

violence against a female employee. The MOL may determine, as a preventive measure, a change of the victim's position or the temporary suspension of the accused employee. When bringing a claim under this resolution, it does not prevent victims from also bringing criminal claims against the perpetrator.

This resolution has been followed by a draft labour law specifically addressing sexual harassment against women.

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## CHILE

### **New employment obligations due to COVID-19**

– A new law came into force on 1 June 2021, which will apply as long as the sanitary alert caused by the COVID-19 outbreak remains in force (currently until 30 September 2021). The law established the following obligations:

- permanent remote working, without any reduction of remuneration, for employees at risk of serious infection by COVID-19 (including those who are over 60 years old, or those who suffer from diabetes, heart disease and others). Employers cannot refuse any requests to work remotely from these employees. If the employee's role cannot be carried out from home, then the employee can choose to: (i) not carry out work that may require contact with the general public; or (ii) work at a place where there is no contact with others;
- implementation of a "COVID-19 Safety Protocol" for any work which is being carried out on-site. This protocol sets out obligations that are already standard practice (i.e. measuring temperatures, use of masks at all times, social distancing, hand washing, etc.). This protocol should be developed and overseen by the administrator of the employer's labour accident insurance; and

- provision of individual annual insurance for employees who are performing on-site work, which is now available from all major insurance providers. The deadline for arranging this insurance expired on 4 July 2021.

### **Modernisation of the Chilean Labour Bureau –**

With effect from 1 October 2021, companies will be required to:

- register an email address on the Labour Bureau's website (for notification purposes);
- upload all labour documents required for an inspection (i.e. attendance register, contracts, payroll book, etc.) to the Labour Bureau website. This is expected to be set out in a new regulation issued by the Ministry of Labour within the next three months; and
- register all employment agreements on the Labour Bureau's website.

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## COLOMBIA

**Remote working** – A new law has been enacted to regulate remote working of employees. The law sets out that:

- remote working should be applicable only in exceptional circumstances. Remote working can only be implemented on an occasional or exceptional basis, which should be agreed between employee and employer. This may include, for example, where remote working is necessary in order for an employee to care for a sick relative;
- the remote working arrangement may be used for a period of up to three months (which may be extended for another three months only once, or until the exceptional circumstances no longer exist);
- employers must observe all labour rights when implementing any remote working arrangement;

- and, when considering implementing a remote working arrangement, it is important to determine whether working from home (as a temporary form of remote work) or teleworking (as a permanent form of remote work) is applicable, and the obligations associated with each.

**Electronic signature** – The national government authorised the use of electronic signature when signing employment agreements, establishing that:

- it is not mandatory to implement such electronic signature (employers can continue using ink signature);
- employment agreements may be executed electronically by one or both parties;
- for the signature to be valid, it must comply with the conditions set forth in the law for electronic signature or digital signature and will have the same effect as ink signature;
- if the employer chooses to have the employment agreement signed electronically, the employer must provide employees with the necessary means to use the electronic signature;
- employers must store electronically signed employment agreements by a technical mechanism that guarantees the authenticity, integrity and availability of the documents. The electronically signed employment agreement, its annexes and modifications, will have to be provided by the employer to the worker by an electronic means authorised by the worker; and
- the payment of any cost associated with using an electronic signature must be covered entirely by the employer.

**Youth hiring subsidy** – In order to encourage and promote the employment of young people between 18 and 28 years' of age, the national government announced that it will provide a subsidy equivalent to 25% of a minimum legal wage (COL\$ 227,131.50) to employers who formally hire individuals in this age bracket. The subsidy will be introduced from 1 July 2021 and will apply initially for one year, but the objective is for it to be extended further, if approved by the Congress of the Republic. This subsidy will be extended to 500,000 job openings in this first year, based on the current budget availability. The regulation is yet to be issued.

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## **COSTA RICA**

### **Amendment to anti-discrimination legislation: record of disciplinary sanctions (effective 29 April 2021)**

– The amendment requires employers to keep an updated record of any disciplinary sanction applied to its employees in relation to sexual harassment.

The record must comply with the following:

- protect the identity of the complainant;
- be kept in a corporate-safe database;
- be kept for a maximum of 10 years;
- exemption for minors;
- include the identity of the person reported and the applied sanction; and
- can be addressed to interested third parties.

**Antigen COVID-19 testing in companies** – As of 17 May 2021, Costa Rica's Ministry of Health permitted the use of antigen testing at the workplace for the detection of COVID-19 in asymptomatic employees, as a containment measure and to prevent outbreaks at the workplace. As a general rule, the test can only be applied, and the result then shared with the employer, with the consent of the employee.

### **New law to extend the application of work shift reductions for the tourism sector**

– On 21 May 2021, a new law came into force, extending the possibility to request work shift reductions at the Ministry of Labour for companies in the tourism sector (for up to one year whilst the state of emergency is continuing). For this, the companies must comply with the following:

- have at least 20% economic losses, compared to the months of the previous year;
- allow a labour inspection to take place;
- continue to employ those employees who are subject to the reductions;
- no division of shifts for employees who have reduced working hours; and

- when the reduction of the work shift is applied to a percentage of employees, overtime is not allowed.

#### **Immigration reforms on temporary residencies –**

On 14 July 2021, Law 9996 came into force to grant temporary special duty-free benefits to foreigners who are granted a temporary residency as Investor, Rentista, or Retiree, and lowered to US\$150,000 the threshold required to be eligible to apply as an Investor; this, with the purpose to reactivate the economy in the country.

**Promotion of digital nomads visa –** On 13 July 2021, the Costa Rican Legislative Assembly approved, on the second (final) debate, the Bill to allow foreigners who provide remunerated services remotely for a legal entity abroad (“digital nomads”) to stay in Costa Rica for a year with the option to renew one additional year, by creating a new migratory category as Remote Employee or Provider of Remote Services. The Bill has been transferred to the Executive for the President to sign it as a new Law.

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## **MEXICO**

**Cap to the profit-sharing obligation –** Under federal law, employers are obliged to share 10% of their annual profits with their employees. This obligation had been historically evaded by employers through the use of outsourcing schemes.

Nonetheless, after several discussions between the federal government and the main business chambers of Mexico, and in consideration of the amendment to outsourcing arrangements (discussed below), this profit-sharing obligation is now capped to the greater of either: (a) three months’ salary of each employee, or (b) the average amount of profit-share received by employees over the previous three years.

#### **Congress enacts legislation that outlaws**

**outsourcing –** On 20 April 2021, Congress passed a law that prevents legal entities (i.e. companies) from engaging outsourcing or insourcing services, unless such services are so specialised that they fall outside the company’s corporate purpose and outside their dominant economic activity. The amended law is effective as from 24 April 2021.

The amended legislation also requires employers

to transfer employees that currently perform outsourced labour services (that do not qualify as specialised) to the company or individual to which the outsourced services are being provided, no later than 22 July 2021.

Amendments were also made to related tax and social security legislation so that they align with the amended labour law. Consequent new tax obligations shall be effective as of 1 August 2021. Companies found in violation of the amended legislation are subject to fines and may face tax implications, such as the inability to make deductions that would otherwise be applicable.

#### **New regulation applicable for providing specialised services –**

Where, under the amended legislation, companies can engage outsourced or insourced services because they are specialised in nature (i.e. services that are not part of the company’s main economic activity), the provider of such services must comply with the new guidelines. The guidelines, which have been recently issued by the federal government, require these companies to, among other requirements, register with the relevant agency and renew this registration every three years. The government still has the authority to cancel a company’s registration if the provider of specialised services is found to be operating outside the limits of the amended legislation.

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## SAINT LUCIA

**Extension of COVID-19 restrictions** – On 28 May 2021, the government extended existing COVID-19 protocols regarding the operation of businesses. These protocols apply to employers as follows:

- employers must continue to allow employees to work using a hybrid working approach (a combination of remote working and physical attendance at the workplace); and
- employers must cease operations by 9:00pm daily (please note, this does not apply to essential services).

**Ratification of another ILO convention** – On 14 May 2021, the government ratified a key occupational health and safety convention of the International Labour Organisation (together with the respective protocols). The convention (Convention 155) is intended to implement “a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health, to improve working conditions” and is expected to come into force in May 2022.

**Court of Appeal decision regarding notice of termination of employment** – The Court of Appeal decided in May 2021 that, even in cases of natural disaster and other acts of God, an employer is not “absolved from giving notice or payment in lieu of notice to employees”. Again, although the case dealt with a matter from the British Virgin Islands, there is no material difference in the applicable legislative provisions considered, so this decision still applies to St. Lucia.

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## URUGUAY

**Extension of partial unemployment insurance** – In March 2020, the government created a special temporary unemployment insurance to prevent mass dismissals as a result of the COVID-19 emergency. Under this special regime, employers are allowed to reduce employee’s worktime, and the amount of unemployment insurance is prorated according to the percentage of time worked reduction.

The special regime was originally put in place for three months but has since been extended many times. The partial unemployment insurance has currently been extended until September 2021.

**Extension of health insurance for employees over 65 years old** – The government has extended health insurance for employees over 65 in order to mitigate the risk of them being infected by COVID-19. This category of employees is therefore entitled to receive sickness benefit until 30 June, if they wish to maintain preventive isolation but cannot work from home. Such employees must remain isolated at home and can only leave in case of urgent need.

**Special subsidy for sectors most affected by the pandemic** – On April 2021, the government announced a special unemployment insurance for those employees that work in sectors most seriously affected by the pandemic. The government listed 33 groups whose activity had suffered a significant economic impact due to the COVID-19 emergency. The special aid eases requirements for employees in such sectors to have access to unemployment insurance. This regime will be available until 30 September 2021.

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# Europe

## AZERBAIJAN

**New principle in the Labour Code** – A new law introducing changes to the Labour Code of the Republic of Azerbaijan was adopted on 8 May 2021 which prohibits the use of civil law contracts for labour relations. The law contains a new definition of the term “labour relations”, clarifying which relationships require parties to enter into a written employment contract governed by the Labour Code.

The new amendments limit an employer’s ability to hire individuals as independent contractors under civil law contracts (as opposed to hiring them as employees under employment contracts). This may create risks for businesses who are using or relying on civil law contracts, such as liability and penalties for failure to enter into employment contracts when it would be appropriate to do so, and potential claims brought by individuals working currently as contractors but seeking to be recognised as employees, under the protections of the Labour Code.

Businesses are strongly recommended to review their existing civil law contract arrangements to ensure that they are complying with the new amendments and, where necessary, consider terminating civil law contracts and/or replacing them with employment contracts.

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## BELGIUM

**Personal information of former employees is personal data** – Following a decision by the Belgian Data Protection Authority, it is now clear that personal information relating to a company’s former employee (such as their identity, job title and picture) fall within

the GDPR definition of “personal data”. As such, companies will be seen to “process” personal data if such information is publicly available, so they must have a valid reason under the GDPR to do so. In this most recent decision, the former employer alleged that the processing was needed to inform customers of the identity of its employees. This was seen as an invalid ground from the point when the employee’s employment was terminated. This ruling clarifies that all employers must remove any personal data relating to its employees from the public domain (e.g. from their website and social media pages) as soon as their employment terminates. The ruling specified that this should generally be done within one month from the end of the employment.

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## ITALY

**Ban on dismissals** – The ban on individual and collective dismissals for economic reasons will remain in force until (i) 30 June 2021 for employers who have access to the ordinary redundancy fund (CIGO) (mainly those in the industrial and construction sector) except for those who require access to redundancy funds after 1 July 2021 and up to 31 December 2021, in which case the ban will remain in place for as long as they still have access to the funds and (ii) 31 October 2021 for employers who have access to some specific redundancy funds (i.e. the “Assegno Ordinario” (FIS), the “Cassa integrazione in deroga” (CIGD) and the “Cassa integrazione salariale operai agricolo” (CISOA)).

**Vaccination against COVID-19 in the workplace**

– The social partners, at the invitation of the government, on 6 April 2021 adopted a national protocol for in-company vaccination, which governs the procedures for the administration of COVID-19 vaccines in the workplace.

Companies administering vaccines in the workplace now need to comply with the measures outlined in special technical operational documents developed by the National Insurance Authority and the government.

The essential requirements for in-company vaccination are the following:

- availability of vaccines;
- availability of the company to administer vaccines;
- presence/availability of a competent doctor or health personnel;
- safety conditions for the administration of the vaccines;
- voluntary and informed agreement by employees; and
- protection of privacy and the prevention of all forms of discrimination against the employees.

#### **Mandatory vaccination for healthcare workers**

– In light of the COVID-19 emergency, the Italian Parliament issued a new law providing for mandatory vaccination against COVID-19 for health professionals.

Failure to comply with the mandatory vaccination may lead to the suspension of healthcare workers from any working activities that require interpersonal contact or involve, in any other form, the risk of COVID-19 infection.

Alternatively, healthcare workers who refuse to be vaccinated can be assigned, where possible, to different tasks and duties which do not involve risks of spreading the virus. If the assignment to different tasks is not possible, no remuneration or other compensation is due for the period of suspension.

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#### **LUXEMBOURG**

**Distinction between a corporate mandate and an employment contract** – The Luxembourg Court of Appeal has clarified the criteria for determining whether a corporate officer can be classified as an employee, and therefore whether they should be engaged under an employment contract or not.

They decided that, in order to be classified as an employee, the individual must have specific technical duties that cannot be absorbed by those arising from their corporate mandate. They must regularly receive precise instructions regarding the execution of their work, meaning they have little freedom to act when performing their role. This demonstrates that they are truly subordinate to the corporate body which appointed them, and subject to their control. The most decisive factor is therefore the nature of the individual's role, as opposed to other factors such as remuneration.

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#### **NETHERLANDS**

##### **Reform of certain elements of Dutch labour law**

– Dutch trade unions and employer representatives reached an agreement in June 2021 to reform certain key elements of Dutch labour law, as part of an advisory report by the Dutch Social and Economic Council (SER). The report addressed labour law issues such as employment agreement terms, zero hour contracts, responsible labour market behaviour, severance payments, sick pay and payment of self-employed workers, although legislation enacting such reforms is not expected imminently.

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## SLOVAKIA

**Amendment of the Slovak Labour Code** – As a result of changes to working arrangements brought on by COVID-19, the Slovak Parliament has recently approved a significant amendment of the Slovak Labour Code, effective from 1 March 2021, which provides clear definitions, rights and obligations of the employer and employee in relation to working from home arrangements. Further, it allows employees to choose either a meal voucher or a food allowance, makes intra-group assignments easier and, where employer trade unions are formed, introduces a requirement to employ trade union members at the respective employer company.

**New Act providing support during work shortages (the so-called Kurzarbeit Act) will become effective from January 2022** – The Kurzarbeit Act aims to cover any future crisis situations, whereby the government will provide a one-time grant to support employers affected by a crisis. This should cover a reimbursement of up to 60% of employee salaries for affected employer companies (at a maximum of €1,340 per employee). The affected employers will then need to pay only 20% of employees' salaries. The grant will be paid for a maximum of six months to employers who cannot provide a third of their employees with at least 10% of their usual working time.

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## SPAIN

**Spain has ratified the European Social Charter**

– This text summarises individual and collective employee rights, including the right to fair working conditions, access to social security, health and safety at work, fair payment, the right to negotiate collective bargaining agreements, trade union membership, maternity and vocational training. Among these rights is the protection of employees from termination of their employment without cause, unless they are duly compensated. This is significant in light of recent judgments, such as that in the High Court of Justice of Madrid in March 2021, where termination without evidenced cause was ruled to be null and void, and the judge required the reinstatement of the employee.

**New regulation of delivery riders will be effective as of 12 August 2021** – This Act modifies the Workers' Statute on two points:

- delivery drivers (riders) who work for digital platforms are employees rather than self-employed individuals. Companies therefore need to pay their social security contributions and provide a fixed salary; and
- for the first time, employee representatives have a right to be informed by the company about "algorithms or artificial intelligence systems" that may affect working conditions, recruitment or the maintenance of employment.

**Dismissal of an employee who repeatedly refused to use hand sanitiser and a mask was justified** –

The High Court in this case found that the dismissal of an employee who had repeatedly disobeyed their employer's instructions to use appropriate equipment to protect against the risks of COVID-19 and behaved disrespectfully by shouting at his supervisor was fair. They found that the employee had been aware of the obligations with which he had to comply in terms of hygiene, and had repeatedly and persistently failed to do so.

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## TURKEY

**Termination ban ended** – Since April 2020, a termination ban has been in effect preventing termination of employment other than for certain limited reasons. This ban expired on 30 June 2021 and was not further extended. Therefore, the termination ban and employers' right to place employees on unpaid leave ended from 1 July 2021.

**Social security declarations of remotely working employees** –

The Social Security Institution published a communique relating to employees' monthly social security declarations. Starting from the monthly declarations of May 2021, employers are obliged to notify the Social Security Institution of the number of remotely worked days of each employee on a monthly basis. Therefore, for the purpose of social security declarations, employers must keep track of the number of remotely worked days and office work days.

### **Decision of the Turkish Constitutional Court on monitoring of corporate e-mail accounts of employees**

– The Turkish Constitutional Court recently rendered a decision related to monitoring of corporate e-mail accounts of employees. The Court ruled that employers may monitor the workplace communication tools where (i) they have a legitimate purpose, (ii) employees are informed on the monitoring and (iii) the monitoring does not create an excessive interference with fundamental rights and freedom of employees.

Based on the decision, an employer can monitor the communication tools available to the employee for reasons that can be justified and legitimized, such as the efficient conduct of the business, control of the information flow, protection against criminal and legal liability due to the employee's actions, measuring efficiency, and ensuring safety. In any case, monitoring cannot be of a nature that would harm the essence of fundamental rights and freedom of the employee.

In any case, it is necessary to provide employees with full and clear information in advance that the communication will be monitored, and this information is required to contain the legal basis of the monitoring and personal data processing, the purposes, the scope, the period of storage of the data and the rights of the data subject, the results and limits of the monitoring and what this information will be used for.

If the employer has other suitable and less intrusive methods to fulfil its purpose on this matter, those alternative methods should be used first. Also, the scope of the investigation must be specific and limited. The data obtained as a result of the investigation must be used in accordance with the purpose, and the number of people to be monitored and the duration must be determined accordingly.

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## **UNITED KINGDOM**

**No minimum amount of work required to establish “worker” status** – In the UK, there exists a hybrid employment status category known as “worker” status. This status sits in between a self-employed individual and an employee. Workers

have some of the employment rights that are enjoyed by employees. A recent decision by the Employment Appeal Tribunal (EAT) (which is binding on employment tribunals) confirmed that, in order to establish an individual as a “worker”, there is no requirement for the employer to offer, or for the worker to accept and perform, a minimum amount of work. This decision means employers need to be even more cautious when engaging independent contractors, as it becomes increasingly difficult to establish true “independent” status. Proper due diligence will need to be carried out in terms of working practices and contractual arrangements, in order to identify any potential risks.

### **Certain “gender-critical” beliefs qualify as philosophical beliefs protected under the Equality Act and the European Convention on Human Rights**

– The EAT in a recent case found that a belief that there are only two biological sexes, and that it is impossible for a human to change sex, is a “philosophical belief” and therefore a protected characteristic under the Equality Act 2010. It is therefore unlawful for employers and service providers to discriminate against or harass their employees or customers simply for holding or expressing such beliefs. The ruling overturns an earlier judgment of the Employment Tribunal, which found that the employee’s gender-critical beliefs were “not worthy of respect in a democratic society”, and were therefore not protected.

### **New legislation mandates vaccinations for care home workers**

– From October 2021, it will be mandatory for care home workers to be vaccinated against COVID-19 (with a 16-week grace period to allow staff time to obtain both doses). This was announced after a government consultation on the issue, and will apply to anyone working in a registered care home providing nursing or personal care on a full-time, part-time or volunteer basis, whether employed directly by the care home provider or by an agency. Those coming into care homes to do other work (including healthcare workers, tradespeople, hairdressers and inspectors) must also comply. The government intends to consult further on whether to extend mandatory vaccination to those working in other health and social care settings. It will be interesting to see if employers in other sectors follow suit.

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# Middle East

## JORDAN

**Localisation ratio** – The Jordanian Ministry of Labour has recently published a decision, which addresses employment localisation ratios across various sectors (“localisation ratio” refers to the prescribed ratio of Jordanian to non-Jordanian employees which companies must maintain in their particular sector). The decision sets out the following:

- those jobs that are “closed vocations” to non-Jordanian workers i.e. activities in economic sectors which only Jordanians are permitted to carry out;
- those vocations non-Jordanians are permitted to carry out, with and without conditions. The conditions set out depend on the localisation ratio by which the employing entity, depending on its business, must abide;
- those jobs that are “closed vocations” to non-Jordanian workers unless they fall under a specific set of conditions e.g. approval or licensing from the competent authority;
- those jobs that are “closed vocations” to non-Jordanian workers unless they obtain a work permit granted to workers who practise a special vocation (as defined by the Ministry of Labour), such as non-Jordanian workers who:
  - have a specialty/occupation which is considered rare in the Jordanian labour market and contributes to the training and enrichment of the capabilities of the local workforce;
  - have rare experience related to research, development, quality, operation and maintenance of modern technological devices, equipment and specialised machines, and are experts in all of their respective categories and specialisations;

- contribute experience and knowledge to transfer technology, knowledge and expertise into the Jordanian labour market;
- and, have experience and specialisations that contribute to the promotion and increase of investments generated to provide work for Jordanians;
- the number of non-Jordanians that foreign-owned establishments (including sole trading entities, companies and associations) are allowed to employ;
- details of the localisation ratios required for jobs in companies operating in the clothing and knitting industry; and
- the requirements for employment of non-Jordanians by diplomatic, international, foreign and other entities which have their own procedures.

**General conditions** – The general conditions set out restrictions regarding non-Jordanians working in certain sectors. For example, a prohibition of non-Jordanian workers changing sectors or employers if they work within certain sectors where the employing entity operates from developing areas e.g. housework, clothing and knitting sectors.

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# North America

## CANADA

**Pension regulators provided a variety of COVID-19 relief measures to employers** – Pension regulators across Canada reacted to the COVID-19 pandemic in 2020 by relaxing many requirements. The relief measures include:

- **DC plan contributions:** Employers who sponsor defined contribution (DC) registered pension plans were permitted to reduce employer contributions to zero for 2020. Many employers reacted to this by temporarily ceasing to contribute to their DC plans.
- **DB plan contributions:** Eligible private sector employers were permitted to defer certain types of contributions to defined benefit (DB) registered pension plans, provided that a variety of conditions were satisfied, including notice to plan members and regulators.
- **Filing deadlines:** Regulators announced extensions for many filing deadlines and member communications, including valuation reports, annual returns, financial statements and annual statements to members. In some jurisdictions, the extensions were automatic, but in others it was necessary for administrators of pension plans to make submissions to regulators in order to enjoy the extensions.
- **Electronic communications:** The gradual move to electronic communications was accelerated in some jurisdictions. For example, in some provinces, beneficiary designations could be made electronically and certain provinces imposed new requirements for any regulatory filings to be made electronically.

- **Temporary freeze on member withdrawals:** During the initial onset of COVID-19 in 2020, a few regulators took the bold move of prohibiting termination of employees from withdrawing their pension benefits from their employer's DC and DB registered pension plans. In some cases, the prohibition was absolute. In others, the application of the prohibition depended on the funded status of DB plans.
- **Moratorium on regulatory fines:** The Ontario pension regulator announced in 2020 that it would temporarily refrain from levying monetary penalties on pension plan administrators who were in breach of certain administrative requirements.

Overall, Canadian pension regulators stepped up to assist employers in 2020. A challenge for Canadian employers who sponsor registered pension plans, however, is that the legal regime for registered pension plans varies by province, and federally. Employers had to seek expert advice on the fast-changing requirements in 2020 as the various pension regulators across the country took different measures, at different times, to provide several welcome relief measures to employers. Some of those measures continue in 2021.

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## UNITED STATES OF AMERICA

**Equal pay and transparency** – A federal court in Colorado upheld the constitutionality of the state's Equal Pay for Equal Work Act, marking a blow to opponents of so-called equal pay and pay transparency initiatives, and signalling momentum for a movement that is growing across the US. Colorado's law requires employers with any employees to disclose the salary ranges in job postings and also market any internal openings for promotions. About a third of the states have enacted some form of equal pay and pay transparency legislation, including California and New York. Given the impact such states' laws can have on markets, greater transparency and equal pay laws (and reporting regulations) may become more common for employers across the country.

**Ceasing unemployment subsidies and fraud concerns** – Following state legislative sessions this spring, 25 states (as of 17 June 2021) have passed laws rejecting any further federal aid for unemployment. Governors of these states explain their concerns that the expanded unemployment benefits disincentivise work and put a strain on businesses trying to find workers. They hope that the end to federal subsidies will help employers fill the holes in their workforces. This growing rejection of federally supplemented unemployment comes at the same time that state and federal officials begin to assess how much of the unemployment relief efforts were subject to fraud. Relying on historical data, the US Department of Labour projects that roughly 10% of the US\$896 billion in federal unemployment funds were obtained through fraud. Other industry experts predict as many as half of unemployment claims made during the pandemic were fraudulent. Employer concerns regarding unemployment fraud are also increasing with the rise in data security incidents.

**Employer-mandated vaccines** – Federal labour officials attempted to resolve some of the uncertainty regarding the legality of employer-mandated vaccinations. On 28 May 2021, the Equal Employment Opportunity Commission issued guidance that employers may require employees to be vaccinated before returning to the workplace, but they must make reasonable accommodations (such as allowing working from home) for employees with disabilities that would caution against such vaccinations. The guidance also states that employers can offer incentive programmes (as long as they are not so substantial that they are coercive) in order to encourage vaccination and that employers can require proof of vaccination from employees. Of course, this is guidance rather than binding law and could be rejected if challenged in court as a violation of disability or other employment-related laws. However, a federal court in Texas recently upheld a hospital's requirement for its employees to be vaccinated. On 12 June, the court in *Jennifer Bridges, et. al. v. Houston Methodist Hospital* found that hospital employees were not subjected to "coercion" by being required to get vaccinated in order to provide medical care.

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# In conversation with...

IN THIS EDITION, WE TALK TO **JOANIE (张洁) ZHANG**, DENTONS' HEAD OF CHINA'S REGIONAL EMPLOYMENT AND LABOUR PRACTICE GROUP.



## Tell us a bit about yourself.

I am a senior partner in Dentons China, Zhuhai Office. I am the leader of Dentons China Region's Labour and Employment Group and the director of Dentons China's Compliance Committee. I have been a lawyer for 27 years. Before I joined Dentons in 2015, I practised in a local law firm. Zhuhai is adjacent to Macao and a 70-minute ferry trip from Hong Kong. It is a second-tier city and the economy here is not as prosperous as Hong Kong and Macao, which means that lawyers in Zhuhai have to know something of everything and know everything of something. In the early years of my career, I was a criminal lawyer. In 2001, I was selected to attend the Lord Chancellor's Training Scheme for Young Chinese Lawyers and studied in the UK for a year, which totally changed my career and life. Thanks to the training scheme, I got to know the UK's legal system, paving the way for my career as a lawyer specialised in foreign-related matters. In 2008, with the promulgation of the Labour Contract Law of PRC, labour and employment law became the main

focus of my career. Since then, I have been working in the field of labour and employment for more than 10 years and have rich practice experience.

## What is it that you like about Dentons?

Joining Dentons was the turning point of my career. Dentons provides me with a really great platform, where I can easily get recognised by foreign clients, expand my horizons and reach a new peak in my career too. After joining Dentons, I have met many outstanding lawyers and learnt a lot from them, not only in professional competence but in communication skills, legal writing and even billing methods. I am so glad that I chose Dentons six years ago.

## What developments do you expect to see in 2021?

I expect the pandemic will end this year and the world will soon be back to normal. The international economy is at a standstill. I hope 2021 will see a global recovery in all industries. COVID-19 has profoundly changed the world and put Chinese corporations under greater pressure. I expect to assist Chinese corporations in coping with international economic sanctions and internal compliance requirements, such as data compliance, personal information compliance, employment compliance and anti-malpractice compliance.

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

The 2019 Dentons Partners Meeting was a memorable event for me. I hope to reunite with colleagues from Dentons all over the world. I also want to further develop my professional competence in compliance to help corporations achieve their "go global" strategy, as mentioned above.

## What do you enjoy doing outside of work?

I really enjoy spending time with my dogs and cat. I have three dogs and a cat in my family. They bring me a lot of happiness. I am also enthusiastic about helping stray cats and dogs. I feed stray cats regularly, take them to be neutered and help them find a new home so that they can live a better life. I am trying to do my bit for animals in need and I also hope to contribute to animal protection from a legal perspective in the future, such as lobbying for legislation, and participating in legal publicity and education of animal protection.

# Dentons news and events

## COVID-19 EMPLOYMENT HUB

Please click [here](#) for access to the latest country developments on COVID-19 and employment law.

## GLOBAL COLLECTIVE REDUNDANCY GUIDE

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

## CANADA VACATION INSIGHT

In Canada, every legal jurisdiction has laws governing an employer's vacation obligations. These obligations are separated into vacation time and vacation pay. Although the rules around vacation time and vacation pay vary somewhat from province to province (as well as for federally regulated employers under the Canada Labour Code), they are usually at least somewhat similar. This briefing note speaks in general terms to vacation time and vacation pay obligations from an Ontario law point of view. Click [here](#) to access the full insight

## ESG: GLOBAL SOLUTIONS HUB

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

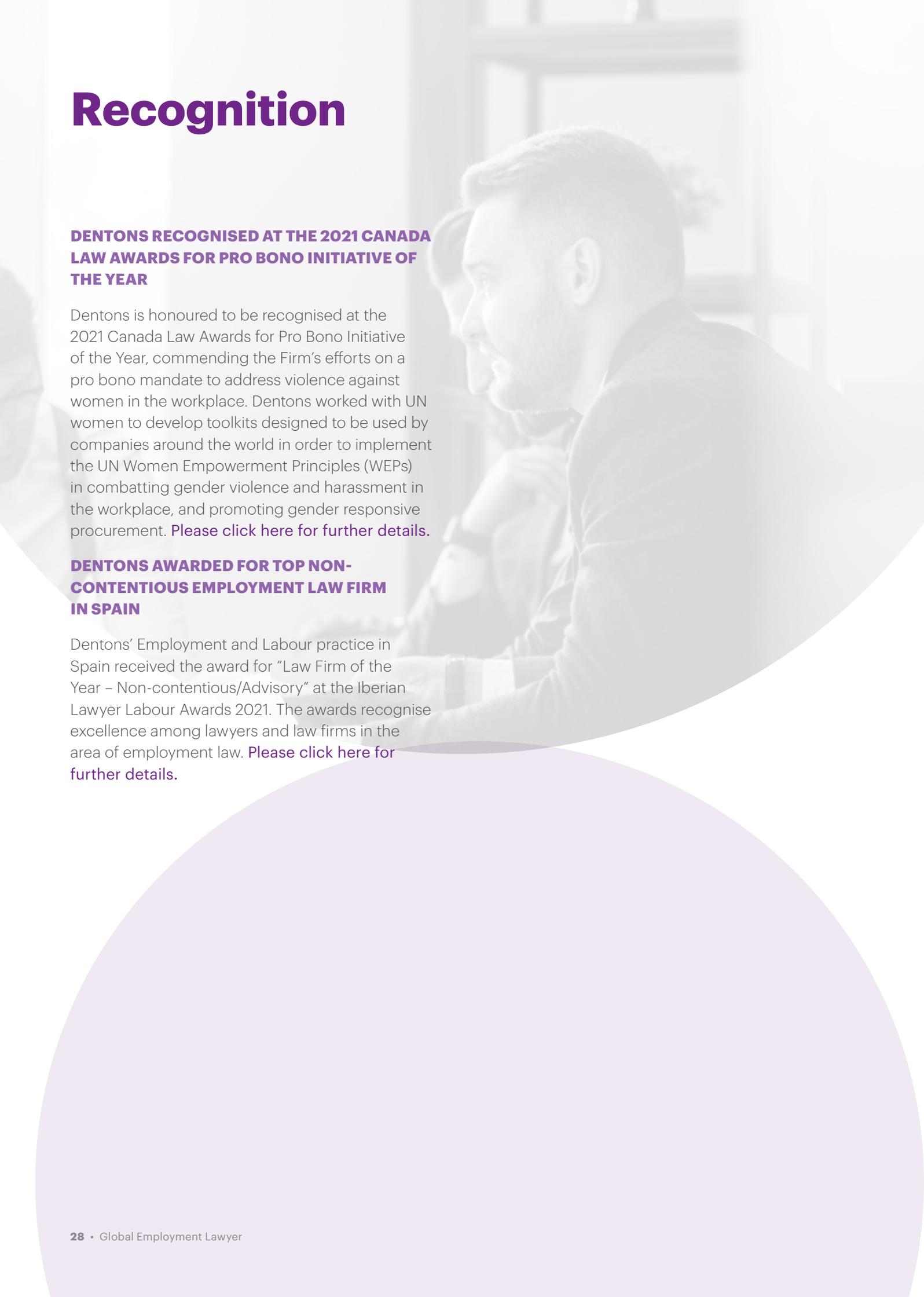
## DENTONS LAUNCHES DENTONS GLOBAL ADVISORS WITH ALBRIGHT STONEBRIDGE GROUP AND LEADING ADVISORY INDUSTRY TALENT

Dentons Global Advisors is an independent advisory firm that provides integrated strategic counsel and support for clients facing complex challenges spanning legal, reputational, financial, regulatory, geopolitical and governance dimensions. Learn more at [www.dentonsglobaladvisors.com](http://www.dentonsglobaladvisors.com).

## DENTONS LAUNCHES COMBINATION WITH SIROTE IN ALABAMA

Dentons becomes the first global law firm in Alabama, adding five new offices and 84 lawyers. The combination continues the momentum of Project Golden Spike, helping clients navigate the New Dynamic Decade in 44 US locations. [Please click here for further details.](#)

# Recognition



## **DENTONS RECOGNISED AT THE 2021 CANADA LAW AWARDS FOR PRO BONO INITIATIVE OF THE YEAR**

Dentons is honoured to be recognised at the 2021 Canada Law Awards for Pro Bono Initiative of the Year, commending the Firm's efforts on a pro bono mandate to address violence against women in the workplace. Dentons worked with UN women to develop toolkits designed to be used by companies around the world in order to implement the UN Women Empowerment Principles (WEPs) in combatting gender violence and harassment in the workplace, and promoting gender responsive procurement. [Please click here for further details.](#)

## **DENTONS AWARDED FOR TOP NON-CONTENTIOUS EMPLOYMENT LAW FIRM IN SPAIN**

Dentons' Employment and Labour practice in Spain received the award for "Law Firm of the Year – Non-contentious/Advisory" at the Iberian Lawyer Labour Awards 2021. The awards recognise excellence among lawyers and law firms in the area of employment law. [Please click here for further details.](#)

# Regional developments

## UAE

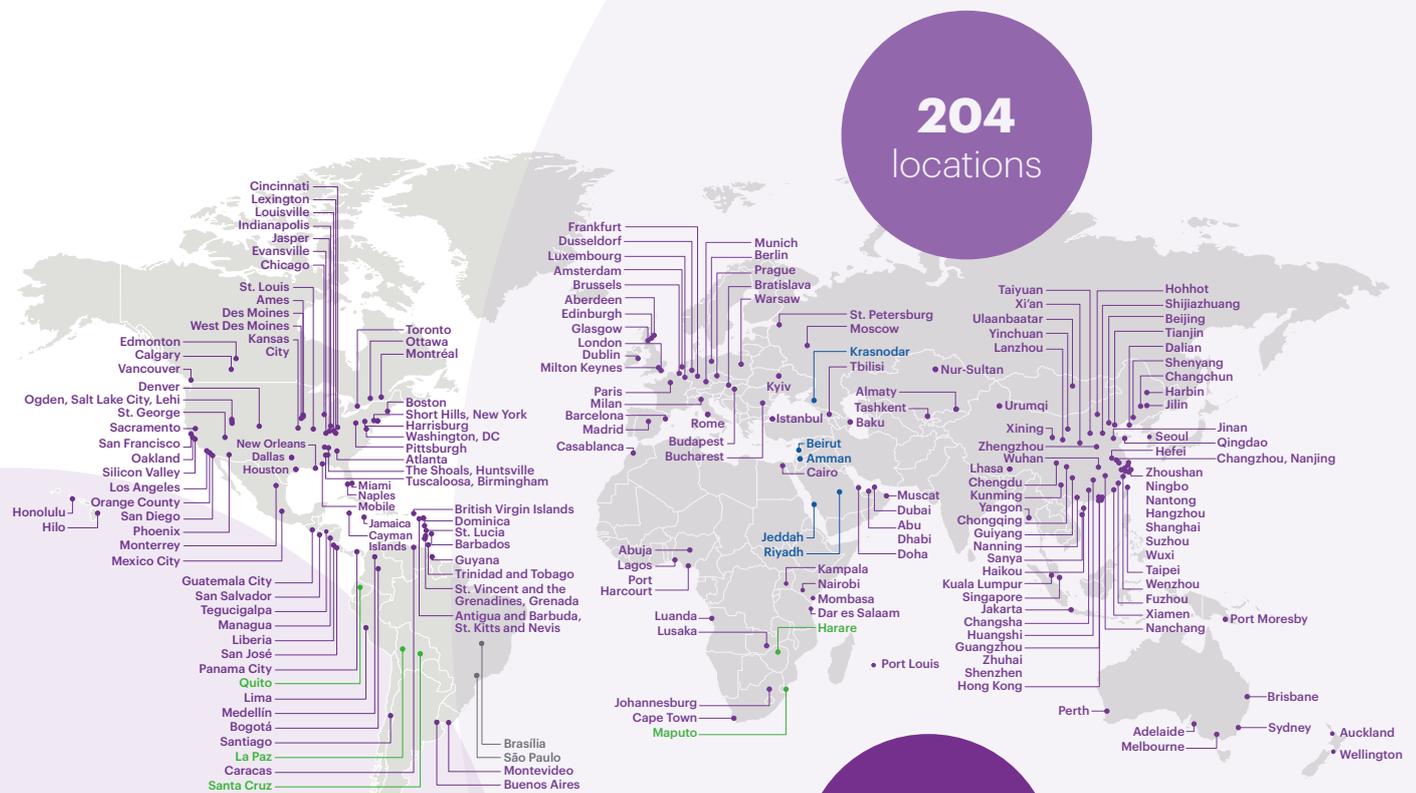
The Dentons Employment team has been working closely with the Dubai Multi Commodities Centre (DMCC), which is one of the largest free zones within the UAE. The DMCC is currently home to more than 19,000 businesses, including brokers, banks, commodities exchanges, business support firms and professional services companies. We have a great relationship with the legal team and are its go-to training partner when it comes to delivering employment law updates to the DMCC community. Earlier this year, we held an introductory session on UAE Labour Law which was attended by more than 400 people. On 9 June, we held a further session where we discussed employment terminations.

The team also advises the DMCC on its pro bono clinic on a regular basis and we are the go-to firm for companies that require our assistance.

The Dentons Employment team is regularly invited onto Dubai Eye radio to discuss current employment trends and topics. Most recently, legal manager Ali Al Assaad was invited to discuss the topic of death in service. Shiraz Sethi has also recently been part of a team led by Freshfields in bringing together a three-part podcast series on employee monitoring, data protection and whistleblower protection.



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.



**12,000+**  
total number  
of lawyers

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

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## **ABOUT DENTONS**

Dentons is the world's largest law firm, connecting top-tier talent to the world's challenges and opportunities with 20,000 professionals including 12,000 lawyers, in more than 200 locations, in more than 80 countries. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and award-winning client service challenge the status quo to advance client interests.

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