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Welcome to the final edition of our Global Review for 2023. As we bid farewell to the year, we are excited to bring you the latest updates in global employment and labour law from our team of expert contributors.

In this edition, we delve into a wide range of topics, reflecting the diverse and dynamic nature of employment and labour law worldwide. From Africa to Asia, each update sheds light on the complexities and nuances of the legal systems in different jurisdictions, highlighting the importance of staying informed in our globalised world.

One of the recurring themes in this edition is the continued emphasis on employee rights and protections. From Uzbekistan's gender neutrality protections to new rules in employment security and safety in Venezuela, countries are taking steps to ensure fair practices and safeguard the interests of workers. Elsewhere, we look at the implications of a Supreme Court ruling on clawback provisions in financial institutions in the Netherlands, the contentious issue of hiring new employees while carrying out redundancies in Spain, and much more besides!

As we move into 2024, we would like to take this opportunity to thank all our readers for their continued support and engagement. We look forward to continuing to serve you with the most relevant and timely information in the upcoming year.

Best wishes for 2024.

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Angola

Supreme Court of Justice favours compensation over reinstatement in nullity dismissal case – In a case of alleged unlawful dismissal from April 2015, the Supreme Court of Justice (**TSJ**) in Angola overturned the original court ruling and declared the dismissal null and void due to violation of the workers' rights.

The TSJ went on to apply the rules for unlawful dismissal, despite the case's nullity dismissal characterisation. The court justified this due to the eight-year delay between the lawsuit filing and the decision, which had detrimentally impacted the employment relationship and rendered the reinstatement option, typically provided in nullity dismissals, impractical.

This ruling signifies a precedent set by the TSJ, providing an alternative judicial solution in cases where a breach of trust between the parties makes reinstatement unfeasible. Therefore, the TSJ rejected the reinstatement request, citing the time-damaged employment relationship, and opted for compensation as provided by the law for unlawful dismissals. This included compensation for seniority and payment of basic salary up to a limit of nine months, given the employer's status as a large company.

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South Africa

High Court overhauls maternity leave – On 25 October 2023, the Gauteng Division of the High Court delivered its judgment in a case concerning the Basic Conditions of Employment Act 75 of 1997 (**BCEA**). The case considered whether the provisions of the BCEA regulating parental leave unfairly discriminate against various types of parents, were contrary to the interests of the child and impaired the dignity of both parent and child. The High Court declared certain provisions of the BCEA to be invalid by reason of their inconsistency with sections 9 and 10 of the Constitution, because they unfairly discriminate between mothers and fathers, and one set of parents and another, on the basis of whether their children were born of the mother or were conceived by surrogacy or adopted.

The ruling has fundamentally changed parental leave in South Africa – but in doing so has now given parents a choice of how they choose to arrange their four-month parental leave entitlement and must now be shared between all parents. The ruling is an interim measure, in place for 24 months to give lawmakers room to amend the offending provisions of the BCEA.

The judgment seeks to advance gender equality in accordance with international best practice but the judgment still needs to be confirmed by the Constitutional Court (South Africa's apex court).

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Employer can terminate without giving a reason – The Court of Appeal of Uganda has held that termination of an employment contract by an employer with notice under section 65(1) of the Employment Act does not always require reasons for the termination.

Previously, the position of the Industrial Court had always been that the employment of a worker cannot be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertakings, establishment or service. The Court of Appeal clarified the distinction between termination and dismissal, highlighting that the purpose of a hearing is to establish whether allegations made against an employee are true. However, where no allegations are made against the employee, there is no need for a hearing. Accordingly, the court concluded that when there is no reason for termination, a hearing is not necessary, as no allegations have been made against the employee.

The Court of Appeal held that "termination of an employment contract under section 65(1)(a) of the Employment Act does not always need reasons for termination". The crucial point is that an employer does not "always" need reasons for termination. This implies that, in certain instances, an employer may be obligated to provide reasons for termination. This conclusion is supported by the definition of "termination of employment" under the Employment Act which means the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct.

Therefore, employers should not celebrate just yet and should seek legal advice before terminating employment contracts even though the earlier burden imposed by the Industrial Court has been lessened.

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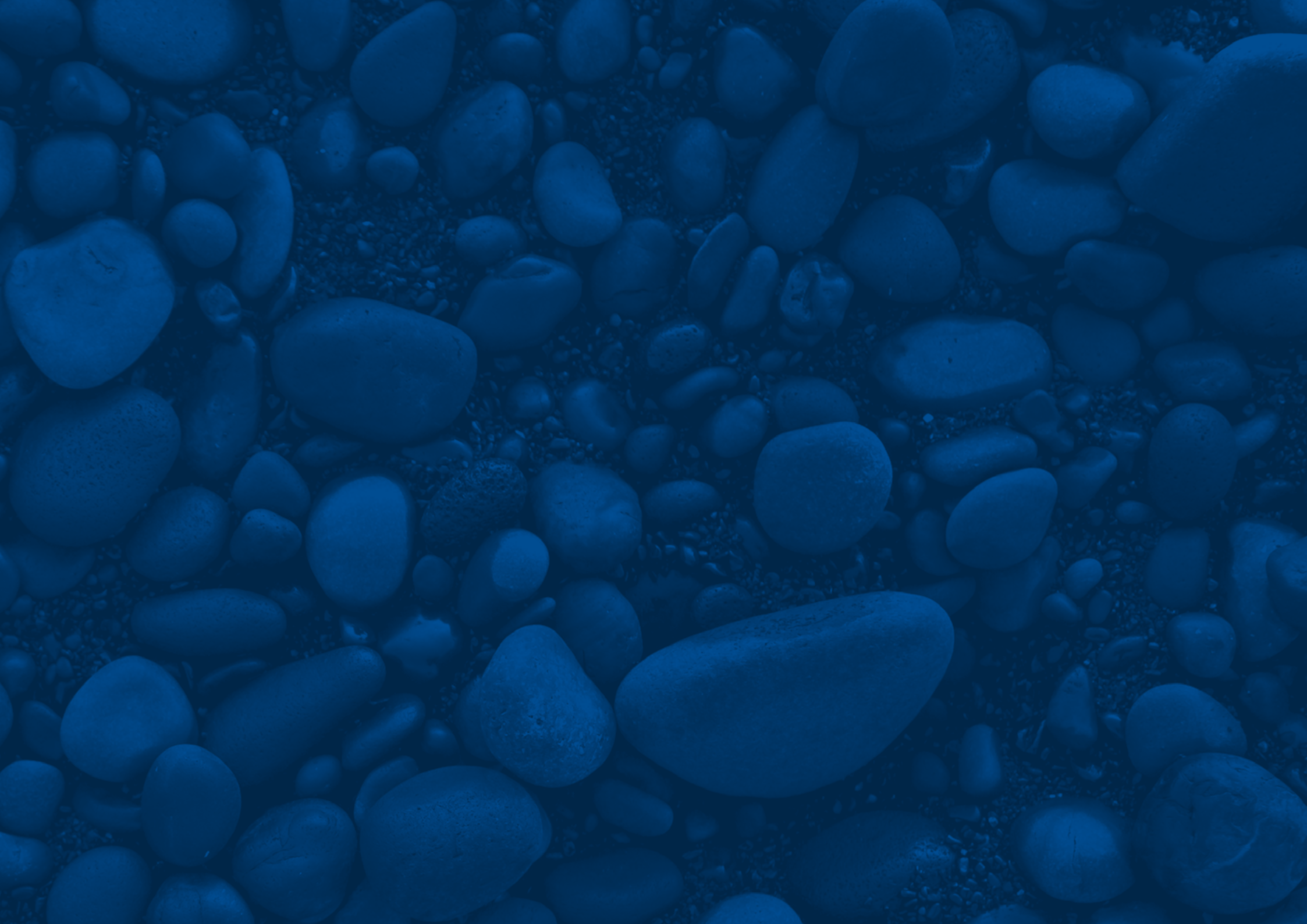

Asia

Mainland China

Newly issued circular lowers the cost of unemployment and work-related injury insurance premiums until the end of 2024 – The key points include:

- the premium rate of unemployment insurance shall continue to be reduced to 1%; and
- the premium rate of work-related injury insurance shall be reduced:
  - by 20% in regions where the cumulative surplus of the insurance fund is adequate to cover 18 to 23 months; and
  - by 50% in regions where the cumulative surplus of the insurance fund is adequate to cover at least 24 months.

As for main cities in China:

- Shanghai has announced its implementation of the circular where the premium rate of work-related injury insurance shall be reduced by 20%;
- Beijing Municipal Human Resources and Social Security Bureau announced that the rate may not be adjusted.

Guangdong Province, where Shenzhen and Guangzhou are located, forwards the circular and further stipulates that:

- as for unemployment insurance, employers' rate shall be reduced to 0.8% and employees' rate shall be reduced to 0.2%; and
- reduction in premium rate of work-related injury insurance shall be continually implemented in accordance with provincial policy issued on 24 May 2022 until 30 April 2023.

The circular presents a favourable outcome for employers by lightening their social insurance responsibilities. This reduction of premium rates directly contributes to a significant decrease in the overall labour cost for employers.

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India

The Punjab government exempts all factories from certain provisions of the Factories Act, 1948 (Factories Act) – The Punjab government has conditionally exempted factories in Punjab from the application of various provisions regulating weekly hours, weekly holidays, daily hours and spread-over. Under the relevant notification, factories will be entitled to exemption, subject to certain conditions such as:

- total number of hours in a day not exceeding 12, and the spread-over inclusive of intervals not exceeding 13 hours in a day;
- the total number of hours in a week not exceeding 60; and
- no worker working overtime at a stretch for more than seven days, and total overtime hours not exceeding 115.

Maternity benefits must be granted notwithstanding end of contract – The Supreme Court of India has held that female contractual employees are entitled to continuation of maternity benefits even if the maternity exceeds their contract period. This is because these maternity benefits are in-built in the statute and continue and survive despite cessation of employment.

Bombay High Court holds "Business Manager" not "workman" – The Bombay High Court has noted that the fact that the decisions of an employee are subject to control or verification does not itself establish that they are a workman under the Industrial Disputes Act, 1947. The decision to classify a person as a workman depends on the dominant nature of the duties and the responsibilities.

Standard Operating Procedure (SOP) notified for Employees' Provident Fund (EPF) exempted establishments – The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**) authorises the appropriate government to exempt certain establishments from all or certain provisions of the EPF Act (**Exempted Establishments**). On 6 October 2023, the Employees' Provident Fund Organisation published an SOP to be followed by such Exempted Establishments. This SOP aims to outline the compliances to be undertaken by the Exempted Establishments managing their own trust and the regulations thereof including, inter alia, stakeholder responsibilities, procedures and timelines for compliances.

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Singapore

Enhancing workplace fairness legislation to promote harmony, not litigation – An update on proposed legislation aimed at targeting workplace discrimination:

- new legislation to be introduced to provide protection against common forms of discrimination, such as nationality, age, sex, race and language;
- these common forms of workplace discrimination are currently set out in the Tripartite Guidelines on Fair Employment Practices;
- the forthcoming legislation will complement the existing guidelines with a focus on mediation rather than litigation for dispute resolution;
- for employers, this aims to promote a workplace culture that is not litigious. Companies may be required to put in place grievance-handling channels to facilitate amicable dispute resolution within the company, with adjudication at the Employment Claims Tribunals as a last resort;
- employees should expect mechanisms such as protection against retaliation for making a complaint when experiencing discrimination;
- exemptions will be available for small firms with fewer than 25 employees. However, this may be lowered five years from commencement. Smaller firms are also encouraged to work on strengthening their human resource capabilities and practices, and to nurture a fair and harmonious workplace culture;
- the impending legislation is set to be completed at the end of 2024 and will be a significant step forward in enhancing protection for workers from workplace discrimination, while promoting fairness and strengthening fair employment practices. These measures aim to contribute to stronger business outcomes with a more productive and engaged workforce.

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Controversial labour amendment – On 9 November 2023, the National Assembly passed an amendment to the Trade Union and Labour Relations Adjustment Act in its plenary session. The key components of the amendment include:

- an expanded definition of "employer";
- a broader scope of labour disputes; and
- a limitation on liability for damages in illegal disputes.

Under the amendment, it is highly likely that the concept of the "original employer (principal contractor)" will be brought into the category of employers obligated to participate in collective bargaining. In addition, managerial matters such as restructuring or disputes over rights could potentially fall under labour disputes, and the extent of liability for damages in illegal disputes is expected to be reduced. It is anticipated that these changes will bring significant changes to labour-management relations.

The proposed amendment faces opposition from both the government and employers. The ruling party has recommended a presidential veto against the amendment and it remains to be seen whether the President will follow this recommendation. A presidential veto would require the National Assembly to reconvene and pass the bill once more with a majority attendance and at least two-thirds approval, a challenging feat considering the current composition of the National Assembly. This would make the enactment of the amendment a significant challenge.

Supreme Court rejects permanent contract workers' discrimination claim – On 21 September 2023, the Supreme Court ruled in a case involving permanent contract workers managing national roads. The plaintiffs alleged that the state (their employer) had discriminated against them by treating them differently from civil servants. The Supreme Court ruled that the plaintiffs' employment status did not equate to an "occupational status" comparable to that of civil servants. Therefore, the state's failure to provide family allowances and performance bonuses (benefits accorded to civil servants) did not constitute discriminatory treatment under the Labor Standards Act (**LSA**). This ruling provides clarity on the application of Article 6 of the LSA, establishing that general workers and civil servants are not comparable for discrimination claims under this article.

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Workplace sexual harassment – The Ministry of Labor has published draft regulations for dealing with workplace sexual harassment complaints which will amend the Gender Equality Employment Act. The draft outlines the scope of complaints local governments should review and how to handle them. Investigations must be concluded within two months, with the option to extend by a further month if necessary. Workers or job seekers can lodge complaints with local government authorities if the accused party is the highest authority or employer, or if their employer does not properly handle an incident. A new system has been set up to process cases. The regulations are set to be implemented on 8 March 2024.

Adjustment of the basic wage for 2024 – On 8 October 2023, the Basic Wage Review Committee determined that, from 1 January 2024, the monthly basic wage should be adjusted from 26,400 to 27,470 New Taiwan Dollars. The hourly basic wage, in alignment with the percentage adjustment of the monthly basic wage, will be raised from 176 to 183 New Taiwan Dollars. The entire proposal will be submitted to the Ministry of Labor for reporting to the Executive Yuan for final approval.

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List of materially responsible positions and jobs approved – The list approved by the Ministry of Employment and Poverty Reduction contains 177 positions and types of work carried out by employees with whom written agreements on full material responsibility may be concluded. These include, among others, warehouse managers, pharmaceutical specialists, chemical engineers, trade workers and others.

Pursuant to the Labor Code, recommendations on concluding with an employee an agreement on full individual or collective material liability, the approximate form of these agreements, as well as an approximate list of positions and jobs occupied by employees with whom written agreements on full material liability may be concluded, are approved by the Ministry of Employment and Poverty Reduction.

Wages, pensions and allowances increases – From 1 December 2023, the following increases will apply:

- minimum wage – 1,050,000 soums per month; and
- basic calculation unit – 340,000 soums per month.

Additional innovations in the Labor Code –

- expansion of the grounds for the emergence of individual labour relations (passing a competition and election to a position, sending an employee to work by an authorised state body, confirmation of the right to work when hiring a foreign citizen, etc.);
- ensuring the principle of "gender neutrality" in the regulation of the labour of employees who combine work with family responsibilities;
- introducing the concept of social partnership in the sphere of labour, reflecting its peculiarities, defining the content of the subject of social partnership and strengthening its basic principles, and defining its regulations; and
- digitalisation of labour processes, maintenance of an electronic labour book, creation of labour contracts in a unified information base and introduction of registration mechanisms.

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Australasia

Australia

Closing Loopholes Bill – Earlier this year, the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the **Bill**) was introduced into Parliament. While the objective of this Bill is to "close loopholes", the proposed reforms may create challenges and uncertainties for businesses. The proposed reforms include (amongst other things):

- **new definition of "casual employees" –** Under the proposed laws, courts will have to consider the substance of the relationship in all of the circumstances, and not just how it is described on paper. This makes the question of whether an employee is a casual or permanent employee more prone to argument;
- **casual conversion –** The Bill seeks to allow casual employees with at least six months' service (or 12 months if working for a small business) to notify their employer in writing if they believe their current status no longer aligns with the definition of "casual employee", and express that they wish to transition to permanent employment. The employer will then be obligated to respond and engage in consultation regarding the casual conversion notification;
- **new definitions for "contractor"/"employee" dichotomy –** The Bill proposes to insert a new section in the Fair Work Act 2009 with new definitions of "employee" and "employer", with an aim to bring focus to the substance of the relationship, rather than its description on paper. To successfully defend a "sham contract" claim, the proposed Bill requires employers to prove they "reasonably believed" that the worker was an independent contractor;
- **gig economy –** In Australia, gig workers do not fall within the common law meaning of "employee" and, thus, these workers are not entitled to the same benefits and workplace protections as employees. The Bill seeks to close loopholes by addressing the existing gaps and enabling the Fair Work Commission to establish minimum pay and other work conditions for individuals who are "employee-like performing digital platform work";
- **wage theft –** The Bill proposes tougher penalties for underpayment of employees. The new criminal offence for deliberate "wage theft", underpayment and exploitation of employees, includes a maximum penalty of 10 years' imprisonment and fines of up to A$7.825 million for a corporation (A$1.565 million for an individual);
- **domestic violence discrimination –** Under the proposed Bill, employees who are subjected to family and domestic violence will be protected from adverse action such as dismissal.

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Election results – Following the 2023 election, New Zealand has a change in government. The incoming executive consists of the central-right leaning National, ACT and New Zealand First parties. They have entered into coalition agreements which confirm an intention to push through a series of new employment laws. It is certain that the "fair pay" agreement industry award scheme introduced by the previous government will be repealed as one of the first actions of the new administration, before any such agreements are finalised. Another early change is the return of statutory 90-day trial periods for all businesses. Currently, only employers with fewer than 20 employees can make use of a trial period, during which they can terminate employment without the usual requirements for justification or process. The new government also promises reform to health and safety law and a simplified employment claims regime, with a potential bar against claims from higher-paid employees.

Whakaari tragedy – The tragedy of the Whakaari/White Island volcanic eruption in 2019 exposed a myriad of health and safety issues around New Zealand tourism operations. A recent case involved a prosecution of Whakaari Management Limited (**WHL**), which was the main company responsible for granting access to the island for third party tour operators. WHL was convicted for failing to ensure the workplace under their management or control (the island) was without risks to the health and safety of any person. The duty held by WHL was not transferrable to other entities such as tour operators i.e. WHL still had requisite control. However, its directors all managed to escape individual officer liability. In addition, WHL was not convicted of putting the health and safety of "other persons" at risk. The court confirmed that there was no duty owed to the general public, only to those directly involved or affected by an organisation's work.

Mana-enhancing process in an employment disciplinary context – The Employment Court has highlighted an employer's obligation to follow a mana-enhancing process in the course of carrying out a disciplinary process when cultural concerns are raised by the employee. Mana is a traditional Māori concept, recognising the prestige, authority and spiritual power held by a person. It was held that a "hurried, distanced and impersonal" disciplinary process held by video conference when the employee had requested an in-person meeting undermined the mana of the affected employee and fell short of being fair and reasonable.

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Central and South America

Argentina

Labour reforms being analysed by the new government – Media reports indicate that the new president-elect, Mr Javier Milei, is in the process of drafting bills aimed at reforming certain aspects of labour legislation. The key points of these proposed reforms include:

- **reduction of employer's contributions to the social security system –** This seeks to reduce the financial burden on employers by minimising their contributions to the social security system;
- **direct salary negotiation –** Employers would be allowed to negotiate salaries directly with employees. This would eliminate the limitations imposed by collective bargaining agreements and would exclude union involvement. This would effectively eliminate the current practice of "peer negotiations";
- **changes in severance compensation system for dismissal without cause –** The reform proposes eliminating the current severance system which is currently calculated based on the employee's seniority and highest monthly salary earned during the last year of services. This system would be replaced by an "unemployment fund", a system like Brazil and the one used in the construction industry. This fund would require employers' monthly contributions equivalent to 12% of the employee's salary during the first year of employment and 8% thereafter.

  The accumulated funds would be held in a bank account, generating interest for the employee, and remaining beyond the reach of creditors. Upon termination of the employment relationship, the employee would gain control over the fund.

The president-elect aims to achieve two primary objectives with these reforms: to reduce labour litigation and to improve employment rates.

However, none of these bills has yet been officially confirmed by the president-elect's office or brought before the Congress.

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Breastfeeding-friendly rooms at workplaces – The Ministry of Health has issued "Guidelines for Implementing Breastfeeding-Friendly Rooms at Workplaces and Educational Institutions" targeting both public and private sectors. The objective is to provide comfortable spaces that support breastfeeding, enhancing infants' nutritional security.

These guidelines supplement existing laws emphasising breastfeeding's importance during an infant's first six months. For instance, Supreme Decree 115, Article 15, mandates employers to accommodate breastfeeding mothers, proposing solutions like daily one-hour breaks. It also underscores the need for breastfeeding spaces in premises with mothers of infants under six months.

Simultaneously, a draft bill, "Law for breastfeeding rooms and daycare centres in public and private entities", is under way. This mandates the creation of breastfeeding spaces and daycare centres in public and private entities with 50 or more staff, irrespective of employment types.

While the guidelines and draft bill are yet to be published, current regulations like the General Labor Law's Article 62, requiring separate childcare rooms in workplaces with more than 50 employees, should be remembered.

Draft bill for the increase of solidarity pension – The Ministry of the Presidency submitted a proposal to increase the solidarity pension for the insured at the Integral Pension System. The initiative aims to provide conditions for dignified ageing, addressing adjustments in solidarity limits and the financing of the solidarity fund. Key proposed changes include:

- adjustments to solidarity limits according to contribution density, establishing maximum and minimum references for the elderly pension;
- a referential percentage is introduced based on each insured's contribution density;
- the financing of the long-term fund is increased, considering employees and those from the mining sector; and
- specific solidarity limits for the mining sector are set based on density contributions.

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Chile

Protection for parents of children with certain diseases – Following the introduction of a law that provides insurance for caregivers of children with certain diseases, a labour protection has been established. This protection prevents the dismissal of employees who utilise this insurance, which includes provision for leave of absence. The protection extends throughout the leave period and for 180 days after the last leave for such treatment ends (unless the employment is fixed-term or project-based, in which case the protection ends when the project or term concludes). The law also increases medical leave from 15 to 30 days and extends the period of medical leave from 90 to 180 days within a year.

Protection for employees suffering from domestic violence – Survivors of attempted femicide will be granted employment protection from the time of the incident until one year later. During this period, an employer must seek judicial permission to carry out a dismissal. To be eligible, the survivor must provide their employer with the report they filed with the police or the Public Prosecutor's Office.

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Colombia

Reduction of weeks required for women to obtain pension – The Constitutional Court has ruled that the 1,300-week contribution requirement for women to obtain their pension is unconstitutional. Starting on 1 January 2026, there will be a 50-week reduction, followed by a 25-week reduction each year from 1 January 2027, until it reaches 1,000 weeks by 1 January 2037. It is worth noting that two mandatory pension schemes exist:

- Fixed Contribution Scheme managed by Colpensiones, a public entity; and
- Individual Savings Scheme managed by government-authorised private pension funds.

Employees can choose between the two schemes. The change introduced by the Constitutional Court applies to the Fixed Contribution Scheme.

"Employment for Life" financial incentives for job creation – The Ministry of Labor has issued a decree outlining the legal requirements for employers to receive financial incentives for creating and maintaining new jobs. From 14 November 2023, employers which expanded their workforce in 2023 and retained workers for six months can apply for incentives for their September and October payroll.

The incentives correspond to a percentage of the legal monthly minimum wage of 2023 (COP1.16 million), as follows:

- young people between 18 and 28 years of age – 25% (COP290,000);
- women over 28 years old – 15% (COP174,000); and
- men over 28 years old – 10% (COP116,000).

These incentives will also apply in 2024, 2025 and 2026 – adjusted to the legal monthly minimum wage of each respective year.

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Private sector minimum salary increases – Effective 1 January 2024:

- the minimum wage will increase 1.83% for private sector employees;
- domestic service minimum wage will increase an additional 2.33962%;
- semi-skilled occupations minimum wage will increase an additional 0.398639%;
- skilled occupations minimum wage will increase an additional 0.3955514%; and
- specialised occupations minimum wage will increase an additional 0.556288%.

The minimum wage increase also means that the salary that cannot be garnished increases and, therefore, garnishment calculations must be adjusted.

Amendment to immigration legislation – Visitors from certain countries are now allowed to legally stay in Costa Rica for up to 180 days per entry. Effective 8 September 2023, the citizens of the following countries can be granted a legal stay of up to 180 days without requiring a visa: Andorra, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, the Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Puerto Rico, Qatar, Romania, San Marino, Serbia, Singapore, Slovakia, Slovenia, Spain, South Africa, South Korea, Sweden, Switzerland, Trinidad and Tobago, the UAE, the UK, Ukraine, Uruguay, the US and Vatican City.

2024 Mother's Day will be observed on 15 August – On 5 October 2023, the Costa Rican Legislative Assembly approved, on second (final) debate, the Bill to reschedule the observance of Mother's Day to 15 August, the date of the actual holiday. This national holiday was previously scheduled for Monday 19 August 2024, to extend certain weekends with the purpose of promoting national tourism during the years 2020 to 2024. The Bill was transferred to the Executive for the President to sign it into law.

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Ecuador

New legislation takes a step forward in ensuring a fair and safe working environment in Ecuador – A new ministerial agreement was issued on 14 November 2023. It aims to regulate general standards concerning employers' obligations of control and to establish inspection procedures. It will come into effect upon its publication in the Official Registry. Significant changes include:

- registration of employment contracts;
- registration of settlement agreements;
- payments by consignment;
- registration of internal regulations; and
- inspection processes by the Ministry of Labor.

Promoting the purple economy and workplace equality – On 20 November 2023, the President of Ecuador issued Executive Decree No. 928, providing the General Regulations to the Organic Law for Promoting the Purple Economy. The Regulation is set to take effect upon publication in the Official Registry.

Among the most important points are:

- an explanation of the diagnosis that companies must conduct;
- the content, validity, monitoring and updating of the equality plan;
- the establishment of specific measures to prevent workplace sexual harassment and procedures for the investigation of complaints and sanctions; and
- the process for terminating employment contracts arising from cases of harassment, workplace sexual harassment and gender-based harassment at work. The regulation also outlines how companies can obtain the "Sello Violeta" specifying the requirements and the procedure for obtaining it.

The Regulation establishes that inspections by the Ministry of Labor may occur to verify compliance with obligations related to the prevention, investigation and punishment of workplace sexual harassment, discrimination or gender-based violence in companies.

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Guatemala

Expansion of social security enrolment – The Institute of Social Security, through Agreement 1529, allows for-profit and non-profit entities employing more than one person to register with the Institute. This aligns with Article 6 of the Regulations for Registration in the Social Security Regime – Governmental Agreement 9-2023, making it compulsory for all employers to register their employees in the social security system, barring exceptions stated in other institutional regulations.

This change aims to increase the number of workers covered by the Institute. Previously, only employers with three or more workers were required to enrol in the social security system, with those employing one or two workers having the option to do so. Now, all workers can contribute to the Institute to receive coverage under the Sickness, Maternity and Accident programme and the Disability, Old Age and Survivorship programme. This not only benefits the registered employee, but also provides medical attention for their spouse and children under the age of seven, in addition to retirement pensions or benefits for their beneficiaries in case of death.

Employers also benefit as the Institute covers costs when workers fall sick or become temporarily disabled, promoting economic and productive stability for employers, while providing indefinite social protection for workers and their beneficiaries.

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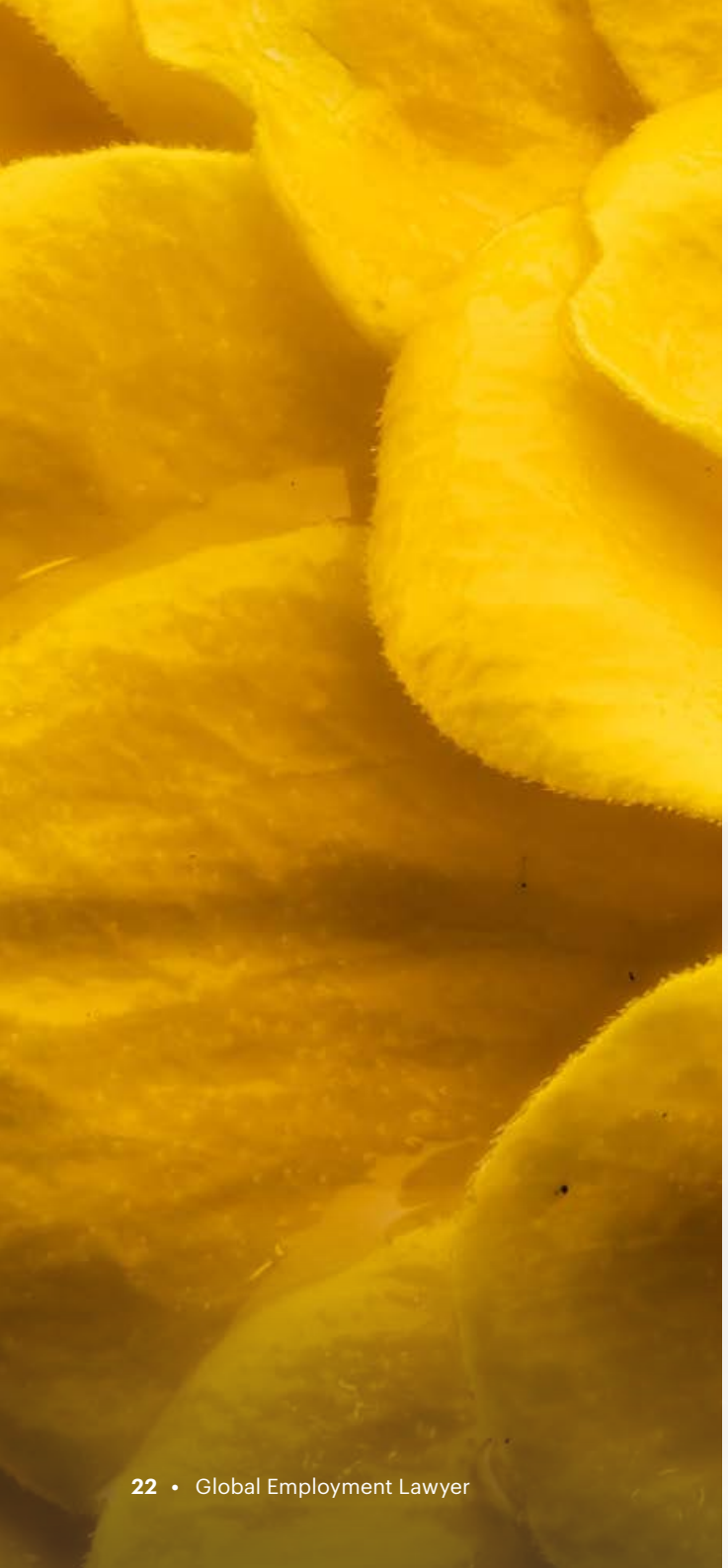

Mexico

Tax incentives for key sectors of the exports industry – On 11 October 2023, a Presidential Decree was issued introducing a series of tax incentives for eligible taxpayers. This includes a provision allowing an additional deduction of 25% on the increase in expenses related to employee training during the fiscal years 2023, 2024 and 2025, subject to specific rules and conditions.

New list of occupational diseases – On 24 October 2023, the Senate approved a decree to amend the Federal Labor Law. This amendment aims to update the list of occupational diseases and the assessment of permanent disabilities, and includes 88 new conditions across various categories. The following additions are particularly noteworthy:

- psycho-social illnesses such as anxiety, insomnia and illnesses related to stress and depression;
- incorporation of infectious and parasitic diseases, including COVID-19;
- increase in the number of occupational cancer diseases (from four to 30 different types);
- conditions specific to women, such as repeated miscarriages, endometriosis or infertility; and
- diseases caused by intoxication increased from 36 to 46.

Such conditions are classified as occupational hazards, making affected employees eligible for various benefits and impacting employer obligations. The updated list of occupational diseases, a significant advance in safeguarding employee rights in Mexico, also means employers have additional responsibilities to comply with occupational health and safety regulations.

The decree with the list of occupational diseases will be published in the Federal Official Gazette and the modifications will come into effect the day after its publication.

Registry cancellation for specialised services providers – In July 2023, the Mexican Institute of Social Security (**IMSS**) and the Ministry of Labor and Social Welfare (**STPS**) commenced the initial stage of a pilot programme aimed at ensuring compliance with social security obligations. As part of their coordinated efforts, a compliance request was issued to service providers enlisted in the Registry for Providers of Specialised Services or Specialised Works (**REPSE**), whose Opinion of Compliance with Social Security Obligations indicated a "Negative" or "No opinion" outcome. The primary objective of this phase was to allow such providers to rectify and regularise their situation.

On 23 November 2023, the second phase of the pilot programme commenced. During this new stage, the IMSS and the STPS will collaborate closely and share information to effectively cancel the registration of providers in the REPSE database who repeatedly receive a "Negative" or "No opinion" compliance outcome due to their failure to comply with social security obligations.

The cancellation of the REPSE has a significant impact on compliance with the amendment to the Federal Labour Law in relation to specialised subcontracting. Consequently, companies that engage or continue to utilise specialised service providers under the repealed REPSE will find themselves in violation of labour, tax and social security regulations.

Legislative initiative to modify working hours to 40 hours per week – An initiative is currently under discussion in Congress which aims to reduce the working week from 48 to 40 hours. The implications for companies arising from the reduction of working hours would be substantial, affecting not only labour-related concerns but also social security and tax matters. If this initiative is approved, employers will need to address the following challenges:

- re-organising employees' shifts;
- recalculating vacation bonus and overtime payments for each employee;
- hiring more personnel to maintain the organisation's operability at appropriate levels;
- reviewing internal processes in order to streamline, modernise and even automate processes; and
- analysing the number of employees on the payroll, the type of shifts they are covering and the gaps that will arise in the event of reducing working hours.

If implemented, the impact of reduced working hours will vary across sectors, affecting labour-intensive companies more. This change may also necessitate renegotiations regarding work hours in collective bargaining agreements, individual labour contracts and other internal regulations.

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Nicaragua

Severance for public sector employees – With effect from 24 November 2023, public sector employees (i.e. governmental employees) resigning from their positions will be subject to the following severance pay scheme:

- as of the third year and up to 10 years of service, severance: one month's salary;
- 10-15 years of service, severance: two months' salary;
- 15-20 years of service, severance: three months' salary; and
- more than 20 years of service, severance: five months' salary.

This severance scheme is not applicable to private sector employees and continues to be subject to the regulations provided for in the Nicaraguan Labour Code, in effect since 1996, as follows:

- first three years of service, severance: one month's salary per year or fraction;
- as of the fourth year onwards, severance: 20 days' salary per year; and
- severance threshold: five months' salary.

Severance and other rights, such as the 13th month payment and vacations, are without prejudice to other labour benefits that employers may have agreed upon with employees through the individual employment contracts, collective bargaining agreements, employment internal regulations and others.

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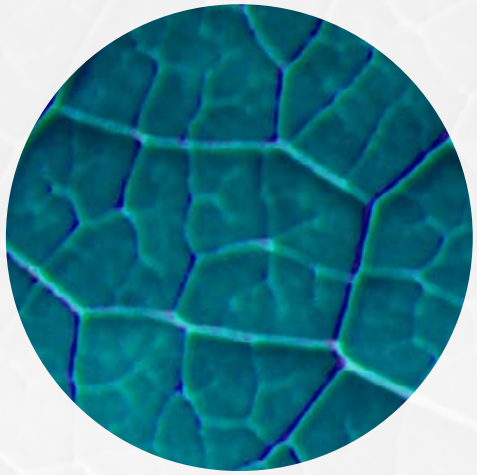

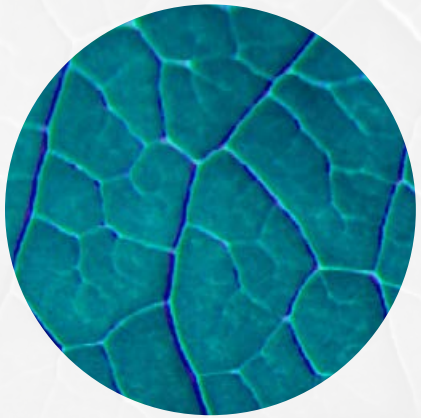

Peru

New immigration provisions issued – On 14 November 2023, Peru modified its immigration law to introduce the "Digital Nomad" migrant status. This allows foreigners to work remotely for a company based outside Peru, excluding activities that generate income from Peruvian sources. Residency under this status lasts up to 365 days and can be extended, but application procedures are still pending regulation.

Conversely, a special procedure has been established for foreigners who entered the country without performing the necessary migratory checks and those carrying out activities that jeopardise public, national or citizen security. If found violating these immigration regulations, the individual can be held for up to 24 hours, after which, if the infraction is confirmed, immediate expulsion is ordered.

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Uruguay

New statute concerning IT professionals and other labour matters – IT technicians and professionals moving to Uruguay for full-time employment with locally based companies until 28 February 2025 can choose to pay the Income Tax of Non-Residents at a fixed rate of 12%. This is instead of a progressive income tax rate of up to 36%. These employees also have the option to opt out of the Uruguayan social security system. This choice can only be made once, when they first start their job in the country. The benefits last for the year they meet the requirements, plus the next four years. If requirements are not met in any year, the employee must follow the general tax rules.

Other provisions:

- clarification that the hours used by the father or non-gestational mother to accompany their partner to medical controls must be effectively paid;
- the Executive Branch will be in charge of determining the conditions and limits of telework in Free Zones, which must address specific issues. The statute also bans limiting the ability to telework in Free Zone enterprises to a certain number of dependent employees;
- creation of the "I Work and Study Programme" in the private sector, which is focused on generating first work experience for young people between 16 and 20 years old, who are currently studying. The state will provide a monthly non-refundable contribution for each employee hired in a 20-hour work week contract. If, once the contract is concluded, the employee is maintained in the company's spreadsheet, the company will be exempted from employer retirement contributions corresponding to the original contract while the same labour relationship continues. This benefit can be extended until the worker turns 25; and
- reduction of the Social Security Assistance Tax.

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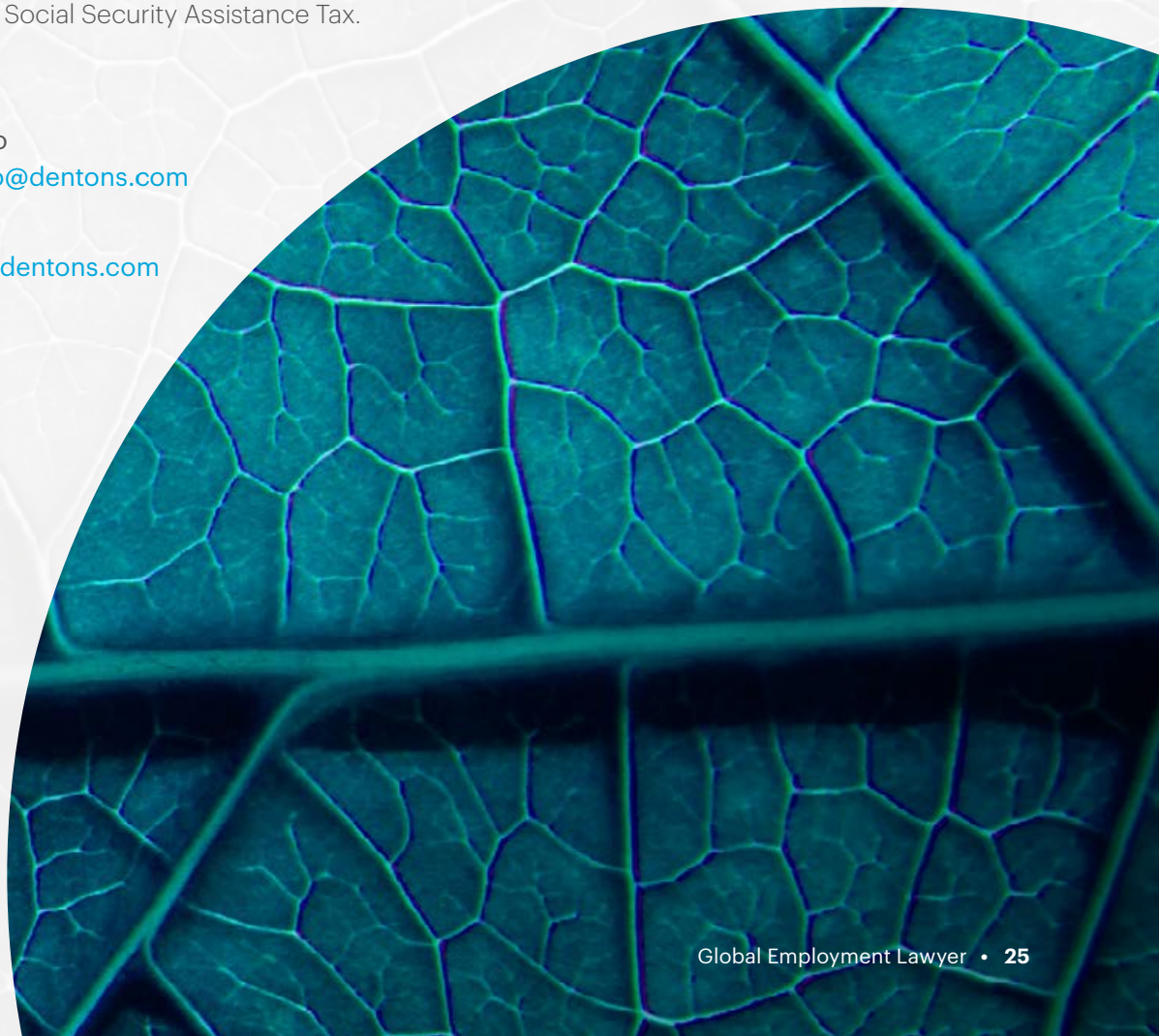

Venezuela

Increase in labour litigation – Our Caracas office has researched the number of lawsuits filed at the Caracas labour courts in which labour benefits and termination claims have been discussed. The results indicate that lawsuits have more than doubled within the last two years, as follows:

- between December 2020 and December 2021: 415 cases; and
- between December 2022 and November 2023: 1,050 cases.

Venezuela recognises evidence from WhatsApp screenshots – In a civil lawsuit that ended up at the Civil Chamber of the Supreme Tribunal of Venezuela, the court accepted documentary evidence containing a screenshot of WhatsApp. Although the court did not conduct a comprehensive analysis of the value of evidence obtained electronically or via social media, it accepted the evidence primarily because:

- the principle of freedom of evidence applies in Venezuela; and
- the party against whom the evidence was presented did not validly oppose it.

New rules in employment security and safety – To update the technical standards for safety and health at the workplace, the National Institute for Prevention, Health and Security at Work (**INPSASEL**) has issued new regulations. Among other things, a new rule mandates all employers to revise the criteria, guidelines and basic procedures for the design, preparation, implementation, follow-up and assessment of the Security and Health at Work Programme (the **Programme**) which must be approved by the Committee on Security and Health at Work and the INPSASEL.

The Programme must include as a minimum:

- a description of the employer's production process or activities;
- a policy on Security and Health at Work; and
- plans for addressing dangerous processes.

Agreement between union and employer for the maintenance of business upheld – On 11 October 2023, an Appeal Labor Court confirmed the validity of an agreement entered into between the employer and the labour union to mitigate the effects of the economic crisis in Venezuela and to guarantee the continuity of the employer's business activity. The plaintiffs had sought an annulment of the agreement, alleging violence and mistake. However, the Appeal Court ruled that these arguments were not sufficiently supported by the evidence. This decision is important because it authorises the contingency measures taken by the parties during Venezuela's economic emergency.

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Europe

Comparative study on minimum wage – Minimum wage is becoming a hot topic in several jurisdictions throughout the EU. Currently, each jurisdiction approaches the minimum wage concept differently. How does the EU come together on this?

Directive 2022/2041, published by the European Commission on 25 October 2022, aims to ensure adequate minimum wages for employees in the EU. Indeed, the European Commission indicates as the main way forward the adoption of a framework of national rules aimed at guaranteeing the adequacy of minimum wages through the activation of formal procedures for the involvement of social partners. This approach preserves the option of using collective bargaining agreements to determine minimum wages (provided they cover at least 80% of employees in the given minimum wage category).

Our teams in Dentons Europe have prepared a comparative study looking at the current situation in various major EU economies.

Czech Republic

Highly anticipated transposition amendment to the Labour Code adopted – Most amendments have been effective since October 2023, while others will be effective from January 2024.
A significant part of the amendment is based on the mandatory transposition of two European Directives on transparent and predictable working conditions and on work-life balance for parents and carers. The amendment also introduces new elements of the digitalisation of labour law and responds to the changing needs of the market.

The main changes relate to:

- new rules on remote working;
- extended information obligation;
- more precise definition of the regime for work performed outside the employment relationship (so-called "contract workers"), thus improving the predictability of their work; and
- key change to delivery of documents to employees, which greatly simplifies the electronic delivery of employment-related documents.

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Germany

Strict case law on works council remuneration and draft legislation – In January 2023, the Federal Court of Justice issued a judgment regarding the criminal liability of managers in relation to the remuneration of works council members released from their working duties. This is a very delicate topic from a compliance perspective, since works council members may neither be discriminated against, nor may they be treated more favourably. Their remuneration is therefore based on a comparison with "similar" employees and a development which is considered "customary" within the relevant company. Knowledge and skills that were gained during the works council office may not be taken into account. The complexity of works council duties, such as the fact that members negotiate with top management "at eye level", may not be taken into account.

An expert commission has now published a proposal for new legislation, which allows, among other things, for agreements between works councils and employers to stipulate the procedure to determine works council remuneration in more detail and to define comparable employees. Companies should review whether existing remuneration schemes are compliant with recent case law.

Draft legislation on recording of working hours – In September 2022, the Federal Labour Court followed the Court of Justice of the EU and determined that employers must systematically record the working hours of their staff. Due to wide criticism of this draft, we expect that a new and revised law will not be passed within the next few months. In principle, the draft requires the recording to occur on a daily basis and by way of electronic means. More flexible arrangements are permissible based on tariff agreements. However, this would limit companies who are not bound to such tariff agreements. In practice, this is particularly important for flexible and trust-based working time arrangements.

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Italy

Remote working extension for parents with children under the age of 14 – Italy's Senate Budget Committee has approved an amendment to the Advances Decree (Decreto Anticipi) that extends the right to work remotely for private sector employees with at least one child under the age of 14, until 31 March 2024, provided that:

- there is no parent in the household who is receiving unemployment benefits, and that there is no non-working parent; and
- the job can be performed remotely.

In view of this measure, it is likely that the extension will also be granted to so-called "super vulnerable" public and private sector employees.

We await the imminent approval of the Italian Budget Law in the coming days to see whether this amendment will be approved thereby extending remote work for these categories of workers.

Ministry of Labor clarifies new rules on fixed-term contracts – In a Circular, Italy's Ministry of Labor and Social Policies has provided clarification on the rules governing fixed-term employment contracts in light of the amendments made by recent legislation (the **Labor Decree**).

The Circular points out that the Labor Decree has not modified the rules concerning:

- the maximum duration of fixed-term contracts, which remains 24 months;
- the possible execution of a further fixed-term contract with a maximum duration of 12 months at the territorial office of the National Labor Inspectorate;
- the maximum number of extensions of fixed-term contracts (i.e. four within 24 months); or
- the stop and go between one contract and the other.

The Labor Decree has significantly affected the rules governing the reasons, extensions and renewals, as well as the methods for calculating the percentage limits of workers who may be employed under a staff leasing contract.

In addition, the law converting the Labor Decree provides an important clarification on the conditions under which it is permitted for old fixed-term contracts (and staff leasing contracts) to reset the calculation of the months of acausal employment to zero.

More specifically, the Circular provides that in relation to contacts "entered into" as of 5 May 2023, employers will be free to make use of fixed-term employment contracts for an additional (maximum) period of 12 months of causal employment, regardless of any relationships already existing between the same parties under employment contracts entered into prior to that date, subject in any case to the maximum duration limit of 24 months. In this regard, the Ministry emphasizes that the expression "entered into contracts" refers both to renewals of previous fixed-term employment contracts and to extensions of existing contracts, so that the period of 12 additional months without the need for a specific reason runs from the first act (renewal or extension) after 5 May 2023.

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Clawback provisions in financial institutions – On 17 November 2023, the Supreme Court provided clarity on the clawback provisions of the Financial Supervision Act (Wft in Dutch).

The ruling emphasises that these regulations not only provide discretionary power but also impose an obligation on financial institutions, which applies even in the absence of detailed procedures. The case in question involved an employee who was dismissed for unauthorised cardholder procurement, leading the bank to seek damages and to claw back variable remuneration.

The Supreme Court's view differed from that of lower courts, asserting that the clawback provision applies regardless of whether financial institutions have established procedures. The court highlighted the legislative intent for continuous application of the clawback provision. It allowed financial institutions broad discretion in determining the clawback in each individual case, without the need for mandated criteria. The court considered the reason for variable remuneration irrelevant – fulfilling the conditions in the legislation was sufficient, without requiring a specific causal link between the remuneration being clawed back and the reason for it.

In reaching this conclusion, the Supreme Court overturned previous decisions and provided an interpretation contrary to the position of the Advocate General.

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Spain

Hiring new employees while redundancies are carried out – Companies sometimes need to carry out individual redundancy processes due to economic, technical, organisational or production reasons. What happens if the company needs to hire new employees while simultaneously terminating others on organisational or production grounds? In this scenario, employees could argue in court that their termination is unjust as the company is hiring new employees instead of avoiding terminations.

A recent judgment has clarified that companies can hire new employees in the scenario described above, provided the new hires perform different duties in a different job position. It does not affect the termination of the redundant employees. This is because the objective of redundancies is that the job position of the redundant employees no longer exists. Therefore, it is permissible for companies to hire new employees for different job positions without offering these positions to the redundant employees.

Employment courts apply subjective criteria to increase severance compensation – The Spanish Employment Act states that, where an employee is terminated, they will be entitled to receive statutory severance compensation based on the formula of X days of salary per year of services rendered. Therefore, two criteria must be taken into account when applying the formula: seniority and current salary.

However, based on the ILO Convention 158 and Article 24 of the European Social Charter, several employment courts are applying other subjective criteria to increase severance compensation in cases of unfair termination. Criteria such as whether the termination is based on legal cause, whether the company hired the employee while they were considering other job offers only to terminate them months later, or the likelihood of the employee finding a new job quickly are considered.

These rulings could end a common practice among many Spanish companies of terminating employment without legal cause and paying statutory severance compensation based on the formula discussed above. Moreover, it could create uncertainty for companies, making it challenging to calculate the cost of termination when no real or substantiated cause exists.

Voluntary departures may count towards collective redundancy thresholds – To determine whether a company must carry out individual or collective redundancy procedures, the number of employees affected and those terminated in the past 90 days must be evaluated. For example, under the Employment Act, a company with fewer than 100 employees must carry out a collective dismissal procedure if 10 employees are terminated within 90 days. This count includes terminations of temporary contracts, disciplinary dismissals and redundancies. However, the Supreme Court has now determined that "voluntary" departures must also be considered when determining the threshold. This applies if it can be shown that the employee was either "forced" or "invited" by the company to voluntarily leave, with the offer of a lump sum or other benefits.

Use of facial recognition for clocking on – Spanish law states that every employee must register their working time daily. However, the law does not state what system should be used. Several companies have implemented facial recognition to prevent employee fraud.

The Spanish courts have rejected this practice stating that biometric data only can be used when adequate, relevant and not excessive. The key issue is whether facial recognition is intrusive for the employee. The courts consider there is a clear imbalance between the sensitivity of the information captured and its practical necessity for clocking in, thereby violating the employee's privacy by using their image and biometric data without consent. Consequently, in such instances, the courts have ruled that employees are entitled to compensation if the company implements a facial recognition system without their consent.

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General workforce consultation in individual redundancy processes – When dealing with larger scale redundancies involving 20 or more employees, statutory collective consultation rules apply. However, in scenarios where collective consultation obligations are not triggered, it is uncommon for consultation at a workforce level to be undertaken. In such cases, employers generally conduct consultations on an individual basis, adhering to established principles.

However, a recent Employment Appeal Tribunal (EAT) decision introduces the potential requirement for an employer to carry out "general workforce consultation" when redundancy proposals are still at a formative stage. This is an important case for employers as the approach of the EAT differs from current common practice. Employers will now need to ensure that they consider whether to consult the workforce more broadly, at an early stage, even if the statutory collective consultation obligations have not been triggered.

If employers do not conduct general workforce consultation this will not automatically make any subsequent dismissal unfair, but the employer will need to justify why this did not take place.

Supreme court rules on historic holiday pay liability – The Supreme Court has ruled that a three-month gap or a lawful payment does not necessarily interrupt a series of unlawful wage deductions. What constitutes a series of deductions is a fact-based question for each case and will partly rely on identifying the "unifying vice" linking each of the underpayments. The decision exposes employers in Great Britain to claims for underpayment of holiday going back two years.

Government announces raft of reforms – On 8 November 2023, the government announced reforms to retained EU employment law and holiday entitlement. Changes include:

- codification of "normal pay" for EU-based holiday entitlements;
- new method of calculating holiday accrual plus "rolled up" holiday pay permitted for part-year and irregular hours workers;
- removal of daily working time monitoring requirements under certain conditions; and
- amendments to employers' consultation requirements in the context of a transfer of an undertaking.

The new regulations came into effect on 1 January 2023. Although, employers will have a little more time to adapt - the holiday changes will only apply to holiday leave years which start after 1 April 2024 while the consultation changes will apply to transfers from 1 July 2024.

Food app riders not employees – The Supreme Court has also ruled that riders for a food delivery app lacked the right to form or join a trade union on the basis the riders did not fall within the category of "employee" for this purpose.

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Middle East

Oman

New Labour Law – As reported in our last edition, Oman has introduced a new Labour Law making a historic change that has long been awaited. This significant development has reshaped employment relationships in Oman and businesses have been granted a grace period until January 2024 to restructure their operations in line with the new law.

One of the notable changes is in relation to the term of an employment contract. Under the new Labour Law, a term of an employment contract can be fixed, unlimited or project-based. However, a fixed-term contract cannot exceed five years, but can be renewed by mutual consent. Any renewal will be treated as an extension of the original term and included in calculating the employee's total years of service.

The new Labour Law discusses circumstances under which an employment contract will be considered unlimited, including if the term or project duration exceeds five years, if the parties continue to work without a new written contract or beyond a project's completion, or if the total duration of original and renewed contracts surpasses five years.

It is important for employers to be mindful of the legal implications of the term they specify in their employment contracts as it may trigger obligations for employers to observe. Failure to adhere to such obligations could expose businesses to risks, which may include liability for compensation or reinstatement orders. Dentons' Muscat office continues to advise Oman-based and international investors on doing business in Oman and managing their workforce in light of Oman's new Labour Law.

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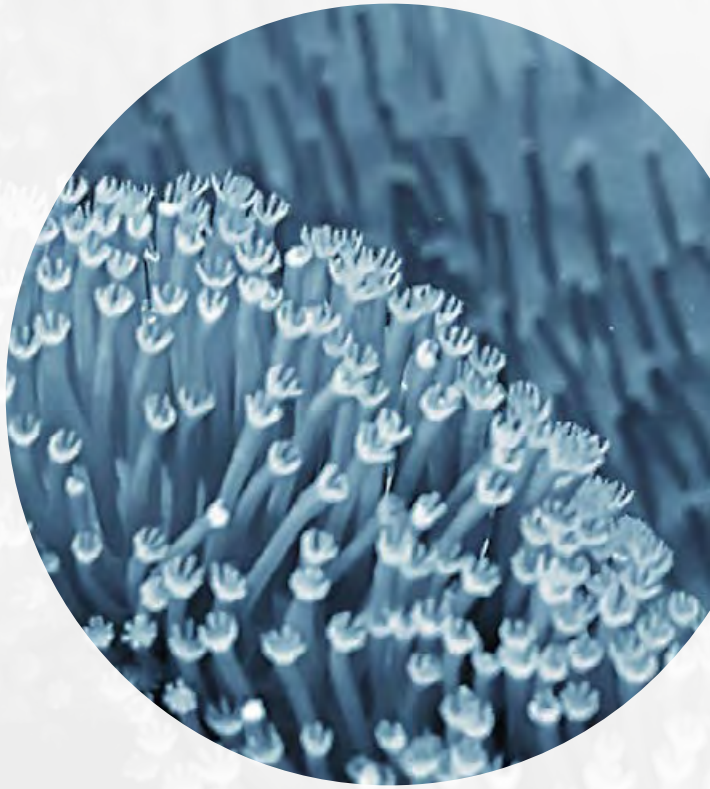

Saudi Arabia

MHRSD Qiwa platform updates – The Ministry of Human Resources and Social Development (**MHRSD**) has introduced an electronic "Certificate of Service" for employees, accessible through the MHRSD Qiwa platform. This official document serves as legal proof of work experience in the Kingdom of Saudi Arabia (**KSA**) and is requested by new employers. The Qiwa platform also now allows employers to print wage protection and nationalisation certificates for the company.

Probation period reduction – The MHRSD Qiwa platform has been updated to reflect the permitted maximum probation period for an employee of 90 days. Previously, employers could set a probation period up to 180 days without the employee's written agreement, which is in violation of Article 53 of the KSA Labour Law. 180 days' probation is now only applicable on the MHRSD Qiwa platform if employee consent is provided for the additional period.

Rights of persons with disabilities – The Rights of Persons with Disabilities Law (**ROPWD**) has been enacted. It aims to protect and promote the rights of persons with disabilities and ensure their access to various services, including employment. The ROPWD specifically seeks to guarantee the right of persons with disabilities to work and be employed without discrimination.

To achieve this goal, the ROPWD focuses on designing and implementing employment programmes for people with disabilities, providing them with vocational and technical training, and motivating both government and private employers to hire them. Additionally, employers are obligated to adapt their work environments and systems to accommodate the specific needs of individuals with disabilities, including providing accessible facilities, equipment and assistive technologies. The ROPWD also explicitly prohibits discrimination against persons with disabilities in employment practices. Furthermore, governmental and non-governmental entities are tasked with raising awareness and enhancing the status of people with disabilities in society, publicly communicating their rights, abilities and contributions.

Training and development – The MHRSD has established 12 sector skills councils to enhance workforce training and development in KSA. These councils will focus on identifying and addressing skill gaps in key sectors, including wholesale and retail trade, culture and entertainment, construction and real estate, healthcare, professional services, logistics and transportation, security, digital technologies, finance and insurance, tourism and hospitality, energy and public utilities, and manufacturing. The initiative aims to boost employment rates, increase worker productivity, and attract local and international talent, leading to a more stable and productive workforce.

This enhanced collaboration between the public and private sectors will ensure that education and training systems align with labour market needs. By supporting business growth and economic development, the sector skills councils aim to play a pivotal role in the KSA economic landscape.

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Joint and several liability does not apply to transfer of employment by consent – Under the Labour Law, when a workplace or part of it is legally transferred (e.g. an asset sale), all employees and their rights and obligations are also transferred. For two years from the transfer date, both the transferor and transferee company are responsible for any existing debts (e.g. unpaid salaries, overtime payments). Although not explicitly stated in any statutory provision, the Court of Appeals has previously applied this rule to the transfer of an employment agreement which takes place with the employee's consent.

The Court of Appeals has changed this, ruling that when an employment agreement is transferred with an employee's consent, the transferor employer is no longer jointly and severally liable for any pre-existing debts. This is because all parties agree to the transfer, so the new employer assumes all rights and liabilities towards the transferred employees. This differs from automatic transfers due to workplace transfers, where employees cannot object to the transfer, and both employers share liability to protect the employee.

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United Arab Emirates

Optional alternative scheme for the conventional end of service gratuity – Commencing 13 October 2023, an official alternative scheme to the end of service gratuity (**EOSG**) regime came into force. This alternative scheme is optional for private sector employers operating in the UAE mainland or in the free zone.

According to the new scheme, instead of accumulating the employees' EOSG with the employer, the employer will have the option to make monthly contributions into one of the specific investment funds licensed by the authorities, for the benefit of the employee. The monthly contribution must be equivalent to 5.83% of the employee's basic salary whenever the period of service does not exceed five years. This percentage increases to 8.33% whenever the period of service exceeds five years.

Unlike the current EOSG regime, the new scheme will give the employee the chance to invest the amount, made up of the employer's contributions, into one of the investment options offered by the operator of the investment funds, with the aim of making profits and subsequently increasing the value of the amount the employee will receive at the end of the employment relationship. The investment funds will offer a cash preservation option, various risk options and a Shari'a-compliant option. Needless to say, the employee can only withdraw these amounts at the end of the employment relationship.

The employer will have the right to claim any amounts owed by the employee from the employee's entitlement, subject to approval from the Ministry of Human Resources and Emiratisation (**MOHRE**), or by virtue of a court judgment. The employer will also have the right to claim back the contributions made in the event the employment relationship is terminated prior to the completion of one year's service.

Any EOSG accrued prior to participation in the new scheme will be due at the end of the employment relationship and will be based on the employee's salary at the time of participation in the new scheme.

The contributions must be paid into the fund by the 15th of each month. In the event the contributions are not made for two months, MOHRE will stop issuing work permits to the employer and a monthly penalty of AED1,000 (per violation) will be imposed whenever the non-payment continues for four months. Whilst participating in the new scheme is optional, an employer who chooses to participate cannot withdraw from the new system before a period of one year, except in certain cases to be decided by virtue of a ministerial resolution.

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North America

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Proposed changes to recruitment and other matters in Ontario – On 14 November 2023, the Ontario government introduced Bill 149, Working for Workers Four Act, 2023. Most notably, the proposed law introduces a number of rules that would change the way employers recruit talent in Ontario:

- **compensation information in job postings –** Every employer who advertises a job posting publicly will be required to include information about the expected compensation for the position or the range of expected compensation for the position;
- **Canadian experience cannot be a job requirement –** Employers will be prohibited from including in the job posting or any associated application form any requirements related to Canadian experience;
- **disclosing use of AI in recruitment –** Employers who use AI to screen, assess or select applicants for the position must include in the posting a statement disclosing the use of AI;
- **retention of job postings –** Employers will be required to retain copies of every publicly advertised job posting and any associated application form for three years after access to the posting by the general public is removed.

In addition, the proposed law also covers the following workplace matters:

- **digital workers –** The law proposes to set specific timelines for recurring pay periods and recurring pay days for digital workers;
- **paid "trial periods" –** Any work performed during a "trial period" would be required to be paid;
- **no deductions from employee wages due to theft –** An employer may not withhold or make a deduction from an employee's wages where a customer of a restaurant, gas station or other establishment leaves the establishment without paying for the goods or services;
- **posting of tip sharing policy –** Employers that have a policy about the sharing of tips or other gratuities must post a copy of that policy in a conspicuous place in the employer's establishment where it is likely to come to the attention of employees. Employers must also retain a copy of every tip sharing policy for three years after the policy ceases to be in effect;

- **"super indexing" increases to Workplace Safety and Insurance Board (WSIB) benefits –** In certain circumstances, the WSIB may increase benefits above the annual rate of inflation to increase pay for injured workers;
- **presumption that certain cancers to be occupational disease for firefighters –** The proposed amendments will create presumptions that apply to certain firefighters and fire investigators in respect of primary-site oesophageal cancer.

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United States of America

California continues to expand employee protections – In 2023, California enacted a series of laws which place additional obligations on employers operating within the state. These include the following:

- employee leave rights have been expanded. California employees will now be entitled to:
  - additional paid sick leave; and
  - unpaid leave in the case of reproductive loss (i.e. miscarriage, stillbirth, failed adoption or failed surrogacy);
- California codified its existing ban on non-compete agreements and imposed new penalties against employers using such agreements. This law also requires employers to notify employees that certain non-compete agreements are invalid and allows for the recovery of costs and attorney's fees by employees who successfully invalidate non-compete agreements;
- by July 2024, most California employers will be required to implement a written workplace violence prevention plan. This law also requires employers to provide workplace violence prevention training and imposes additional record-keeping obligations; and
- effective 1 January 2024, the California Labor Code will also be amended to create a rebuttable presumption of unlawful retaliation if an employer takes adverse action (i.e. termination or discipline) against an employee within 90 days of the employee engaging in certain protected activities. This will make it more difficult for employers to defend against claims of retaliation.

National Labor Relations Board (NLRB) significantly changes labour law landscape – The NLRB issued many decisions and a new rule in 2023 that expanded protections under the National Labor Relations Act (**NLRA**). Section 7 of the NLRA grants rights to employees in both unionised and non-unionised workforces. Below are explanations of key decisions and the new rule:

- the NLRB adopted a new standard for analysing handbook rules. A rule is unlawful if it has a "reasonable tendency to chill employees from exercising their Section 7 rights";
- when a union requests recognition based on majority status, an employer must recognise the union or seek an election within two weeks after the union's demand for recognition. If an employer seeking an election commits any unfair labour practice that would require setting aside the election, the NLRB will order the employer to recognise and bargain with the union;
- the NLRB expanded protected concerted activity to include advocacy by employees on behalf of non-employees and, depending on the context, one employee's complaint to management; and
- the NLRB issued a new rule for determining NLRA joint employer status. An entity may be considered a joint employer if it has an employment relationship with the employees and the entities co-determine one or more of the employees' essential employment terms and conditions.

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In conversation with...

In this edition, we talk to **Shiraz Sethi**, Dentons' regional head of employment in the Middle East, based in Dubai. With more than 14 years of experience, Shiraz specialises in employment law, with a particular focus on the technology, telecommunications, energy, insurance, professional services and financial services sectors. He advises on all aspects of the employment lifecycle from recruitment, employment contracts, handbooks and immigration matters for onboarding employees to advice on restrictive covenants, terminations and criminal aspects of an employee's exit. Shiraz's key areas of expertise are in complex multi-jurisdictional workplace investigations on behalf of his clients, as well as advising on complicated and intricate team moves. He regularly handles multi-jurisdictional projects, employee mobilisation requests and international assignments. Shiraz played a key role in drafting legislative changes to the DIFC Employment Law and COVID-19 regulations for the DIFC and the DMCC.

Shiraz is highly regarded in his field and ranked in the UAE by *Chambers and Partners* and *Legal 500*. He has received the Young Lawyer of the Year and Pro Bono Lawyer of the Year awards. Recently, he was recognised as an HR and Employment leader by Lexis Nexis Middle East and appointed to the Board of the Lexis Nexis HR Middle East Journal. Shiraz is a sought-after speaker who regularly appears on Dubai Eye Radio, has made several appearances on Bloomberg/Asharq Business News and is regularly featured in the local press.

What motivated you to join Dentons?

It was simple really. I work for large corporate clients across the globe and I wanted a platform that allowed me to service my clients wherever they needed legal support. Dentons was the place that allowed me to do this.

You provide regular support to clients dealing with intricate cross-border issues across multiple jurisdictions. Are there any recurrent themes or patterns that stand out?

Clients are truly global now. Whether it is the client or its suppliers, clients are working across multiple jurisdictions and need support from their advisers. As a client relationship partner, you have to be nimble and be able to step outside your comfort zone and help your clients with tricky situations, which may not be your area of expertise. However, they see you as their trusted adviser and effectively you become an extension of their legal team.

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

We have been focusing on a number of projects recently. We were retained to advise on the legislative changes to the Qatar Financial Centre employment law. We have also been engaged in a number of cross-border investigations for clients headquartered in the US who have offices in the Middle East and require advice navigating the process on the ground.

We have also been involved in a number of team moves and defending threatened litigation by the employee's previous employer.

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

The Middle East and specifically the UAE and KSA are buoyant markets presently – there are huge amounts going on within each of these jurisdictions. In the UAE, I have a strong feeling that we will move to a four-day working week. This has been piloted and the government entities have already moved to a 4.5-day working week with the Emirate of Sharjah having gone down to a four-day working week for governmental employees. The UAE has taken great strides in becoming the forerunner when it comes to adopting change and has ensured that it aligns itself with international best practices and become the jurisdiction of choice for talent across the globe.

What do you enjoy doing outside work?

Serving humanity is a key passion of mine. Having been involved in several disaster response teams on the ground, I made it my mission to always give back! To this end, I run a foundation through which I raise funds through my network of friends and family for orphanages in Africa. Each year I take my children during their half-term break to visit a particular part of Africa to help and support deprived orphanages on the ground. In connection with this, I support the building of water wells in remote villages of Africa where access to water is scarce and where the local population have to walk for miles in search of clean drinking water.

Dentons news and events

World of work: employment and labour highlights on demand

Earlier this quarter, the Global Employment & Labor Group were pleased to launch a new on-demand video series, World of Work. In this series, our employment and labour law experts from across the globe bring you the top five highlights for their jurisdiction. Our first three updates feature Canada, the US and the UK, with further regions to follow. You can access all of our videos and content here.

Australian webinars

Our Australian team has a number of upcoming webinars:

- **IR Insights webinar series –** This is a monthly webinar series offering tips, tricks and insights on a range of current topics. Recent topics include "Get ready for new term contract law changes in the Fair Work Act" and "Year in review – What we learnt and what is yet to come". Past recordings can be found here: IR Insights – Employment Law Webinars: Past virtual events on Vimeo (vimeopro.com). Please contact us if you want to join the invitation list.
- **ReadyTech talks webinar –** Paul O'Halloran and ReadyTech's Compliance Product Manager, Paul Orford, will discuss important workplace relations changes that HR and Payroll Professionals need to know. Please contact us if you want to join the invitation list.

Bratislava office hosts CCE group event

In November 2023, Dentons organised the Employment and Labour CEE group event, which took place in the Bratislava office. Dentons participants included Davide Boffi (Partner and European Head of Employment and Labour) from Milan, Stanislav Ďurica (Partner) as host, Tiberiu Csaki (Partner) from Bucharest, Aleksandra Minkowicz-Flanek (Partner) from Warsaw, Philipp Byers (Partner) from Munich, Tomáš Bílek (Partner) from Prague and András Peisch (Senior Associate) from Budapest. During the two events, we met with our clients from Slovakia and the Czech Republic and discussed a wide range of important topics such as digitalisation of HR documents/electronic communication with employees; flexible working arrangements (homeworking, home offices etc.); EU directives – transparent working conditions, whistleblowing; harassment and discrimination; and others.

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Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

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