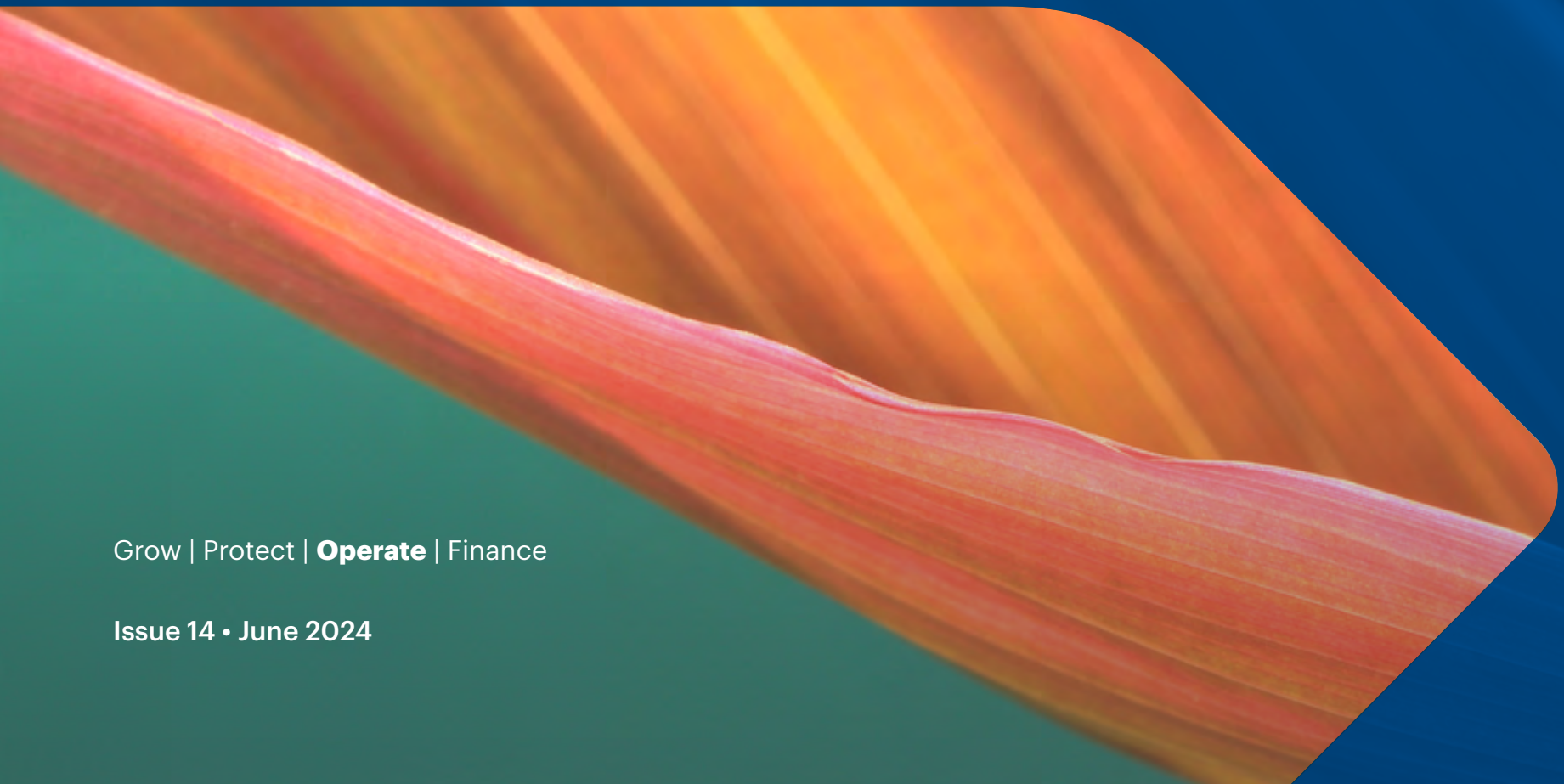
DENTONS

Global Employment Lawyer

Global Employment & Labor Quarterly Review



Grow | Protect | **Operate** | Finance

Issue 14 • June 2024

Welcome to the second 2024 edition of our quarterly global employment and labour law update. This edition provides a comprehensive update on significant developments in employment and labour legislation, regulations, landmark court rulings, and emerging trends from across all regions of the world.

In this quarter the regulation of non-compete clauses again emerges as a theme, with updates in this area from the United States, France and Australia, among others. We also examine a range of other issues, the scope of which reflects the diversity and complexity that faces employers with a global footprint. For example, we look at jurisdiction in cases of large-scale layoffs in South Africa, Nigeria's postponement of the Expatriate Employment Levy, minimum wage changes in several jurisdictions and Chile's "Karin Law" on labour harassment. UK legislation on paternity and bereavement leave also features, as well as Jordan's new medical first aid legislation and Kuwait's national project for improving the protection of employees' rights.

These topics, among many others, are part of our comprehensive coverage in this edition, providing a valuable resource for navigating the ever-evolving landscape of global employment and labour law. We hope you enjoy reading it.

Editors

Purvis Ghani
Partner, Global Chair
Employment and Labor
London, UK
D +44 20 7320 6133
purvis.ghani@dentons.com

Jenny Zhuang
Of Counsel
Hong Kong
D +852 2533 3660
jenny.zhuang@dentons.com

IN THIS ISSUE

Legal Updates
Africa

Nigeria

Expatriate Employment Levy postponed – Earlier this year, the government announced the launch of the Expatriate Employment Levy (the **EEL** or the **Levy**) aiming to drive economic growth and foster local workforce development. The Levy primarily targeted companies with expatriate employees in Nigeria across various sectors, including construction, ICT, agriculture, manufacturing, oil and gas, telecommunication, and banking and finance. These companies were required to comply with the filing and payment obligations set out in the EEL Handbook to avoid incurring penalties.

However, a few months ago, the Federal Ministry of Interior announced that the implementation of the Levy would be postponed. In a subsequent press release from the Ministry, the federal government stated that it is committed to listening to stakeholders and noted the importance of striking a balance between attracting foreign investment and prioritising human capital development to benefit Nigerians.

In view of this update, the registration of expatriate employees for the Levy has been stayed until further notice.

Oil and gas industry – A recent labour dispute case heard by the National Industrial Court of Nigeria offered its perspective on the applicability of the Guidelines on the Release of Staff in the Oil and Gas Industry 2019 (the **Guidelines**) which requires the written approval of the Minister of Petroleum Resources prior to the termination of an employee's employment in the petroleum industry. The court held that "contracting parties are bound to obey policy guidelines relating to their contract, which would constitute implied terms of such a contract, which the courts are bound to take judicial notice of and enforce, in a dispute arising from the contract between the parties". In other words, the Guidelines must be followed.

This decision is important because it clarifies the current legal situation in Nigeria. There had been a previous ruling that said the Guidelines were not valid. This new decision clarifies that the Guidelines must indeed be followed.

Contributor:

Alicia Adefarasin
alicia.adefarasin@dentons.com

South Africa

Constitutional Court clarifies Labour Court's jurisdiction – In a recent case, the Constitutional Court considered whether the Labour Court can adjudicate cases challenging the procedures used when employees are laid off for operational reasons. The relevant legislation says that the Labour Court cannot decide on these issues if the case is brought to it in a certain way, specifically after an attempt to resolve the dispute outside court has failed.

In this case, the Constitutional Court ruled that the Labour Court does have the power to handle cases about the fairness of the procedures used in large-scale lay-offs, which gives employees the right to take their case to court. However, it also said that if the dispute comes to the Labour Court after an initial resolution attempt, then the Labour Court would not have jurisdiction in those circumstances.

Contributors:

Noushaad Omarjee
noushaad.omarjee@dentons.com

Bongi Maseko
bongi.maseko@dentons.com

Asia

Mainland China

Court upholds collective contract wage reduction – A recent labour dispute case heard by the People's Court of Jiangbei New District in Nanjing, Jiangsu Province, has drawn significant attention. The case involved a company's attempt to lower employee wages through the implementation of a collective contract. However, one employee objected, sparking a dispute. The court ruled that the collective contract, legally agreed between the employer and the trade union after equal consultation due to business losses, has legal validity and employees are obligated to adhere to it. Notably, this case was recognised as one of the top ten typical cases of 2023 by the Jiangsu High Court.

The pivotal question at hand is whether companies can lawfully reduce wages specified in individual labour contracts through collective contracts amid the current economic downturn.

A collective contract is a written agreement signed between employee representatives and the employer following collective negotiations. It covers various aspects including wages, working hours, breaks, safety regulations, training and benefits. Both collective contracts and individual labour contracts have legal validity for both parties involved in the labour relationship. While the Labor Contract Law mandates that standards for remuneration and working conditions in labour contracts must not fall below those specified in collective contracts, there is no explicit provision regarding whether collective contracts can lower wages agreed upon in individual contracts.

This case serves as a precedent indicating that collective contracts can indeed modify the terms of individual labour contracts. When an employer faces significant external risks, it is deemed legitimate and reasonable for both parties in the labour relationship to mutually agree on a general wage reduction, ensuring that reduced wages still meet a basic standard of living. Once a collective contract is agreed upon by employee representatives, signed by the employer and the company's trade union, and approved by the labour administrative department, it satisfies legal procedures and becomes legally effective. The court's ruling upheld the prevailing collective will of the workforce, preserved the employer's stability in job retention measures and promoted the harmonious and stable development of labour relations.

However, it is important to note that China does not operate under a case law system, so the precedent set by the Jiangsu court does not have binding authority nationwide. It merely indicates a potential direction and the rulings of other courts in similar cases remain to be seen.

Contributor:

Joanie Zhang
joanie.zhang@dentons.cn

India

Mandatory registration requirements removed for employers in Tripura – In a memorandum dated 26 April 2024, the Labour Directorate, Government of Tripura has sought to promote the ease of doing business in the state of Tripura by deleting certain legislation. After this deletion, no shopkeeper or employer is required to obtain or maintain registration under the Tripura Shops and Establishment Act, 1970.

Gujarat relaxes work hours requirements for IT and finance sectors – The state government of Gujarat has issued a notification exempting IT, IT-enabled services and establishments engaged in the financial services sector from the provisions governing hours of work and spread-over hours of work under the Gujarat Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2019 for a period of two years commencing 5 February 2024. These exemptions are subject to such establishments complying with all other provisions of the Act.

Contributor:

Anuj Trivedi
anuj.trivedi@dentonslinklegal.com

Singapore

Flexible work arrangements – From 1 December 2024, the Tripartite Guidelines on Flexible Work Arrangements Requests will require employers to, as far as reasonable, consider employees' requests for flexible work arrangements. Employers should consider taking the following steps:

- examine work processes – review organisational work processes and identify the roles where and the extent to which the Flexible Work Arrangements (**FWAs**) can be introduced, such as staggered work hours or a compressed work week;
- engage with employees – employers may wish to consider conducting firmwide surveys on FWAs to facilitate a smoother transition;
- draft FWA policies – start drafting FWAs in time for the implementation date. Provide training to supervisors and human resource personnel to explain and justify the organisation's FWA policies;
- prepare forms – while the guidelines provide standard templates for FWA requests, an organisation may wish to tailor these forms; and
- consider the need to amend existing agreements – employers should consider whether they should prepare new agreements or addendums to the original employment agreements.

Foreign workforce policy updates – the Singapore Ministry of Manpower has announced that there will be a further increase in the Employment Pass qualifying monthly salary for new applicants from 1 January 2025, and for those who are renewing it from the year after:

- the minimum qualifying monthly salary will be raised to S$5,600 from S$5,000 currently;
- this may vary for those working in particular sectors e.g. the finance sector;
- the qualifying salary will increase progressively with age;
- there will also be progressive increases to the minimum qualifying salary for S Pass applications; and
- there will be an increase in the local qualifying salary from 1 July 2024. Firms hiring foreign workers are required to pay all their local workers at least the local qualifying salary and this also counts towards determining a firm's foreign worker quota entitlement. The threshold will be raised from S$1,400 to S$1,600 per month. Hourly rate thresholds apply and there will be an adjustment in the foreign worker quota computation.

Increase in retirement and re-employment age – The Singapore Ministry of Manpower has announced that the retirement and re-employment ages will be increased from 64 to 69, respectively in 2026. That means employers must offer eligible employees re-employment until they reach the statutory re-employment age of 69 years old. By 2030, the re-employment age will be increased to 70.

Employers may use the part-time re-employment grant of up to S$125,000 in grant support. This also supports employers implementing structured career planning, where employers can engage the employees with training and career development goals to align with business needs, particularly useful when employees are reaching retirement age.

Contributors:

Lim I-An
i-an.lim@dentons.com

Sarah Chan
sarah.chan@dentons.com

Anne Tan
anne.tan@dentons.com

Uzbekistan

Tax benefits for entrepreneurs who employ underprivileged citizens – In April 2024, the Tax Code was amended to allow business entities to pay their relevant taxes in instalments over certain periods, depending on the number of new jobs they create. Additionally, they can now pay property and land taxes at reduced rates.

Businesses included in the "20,000 entrepreneurs – 500,000 qualified specialists" programme, excluding those registered in Tashkent, are granted instalment payments based on cooperation agreements for the following periods:

- up to three months – if 51 to 100 new jobs are created;
- up to six months – if 101 to 200 new jobs are created; and
- up to 12 months – if more than 200 new jobs are created.

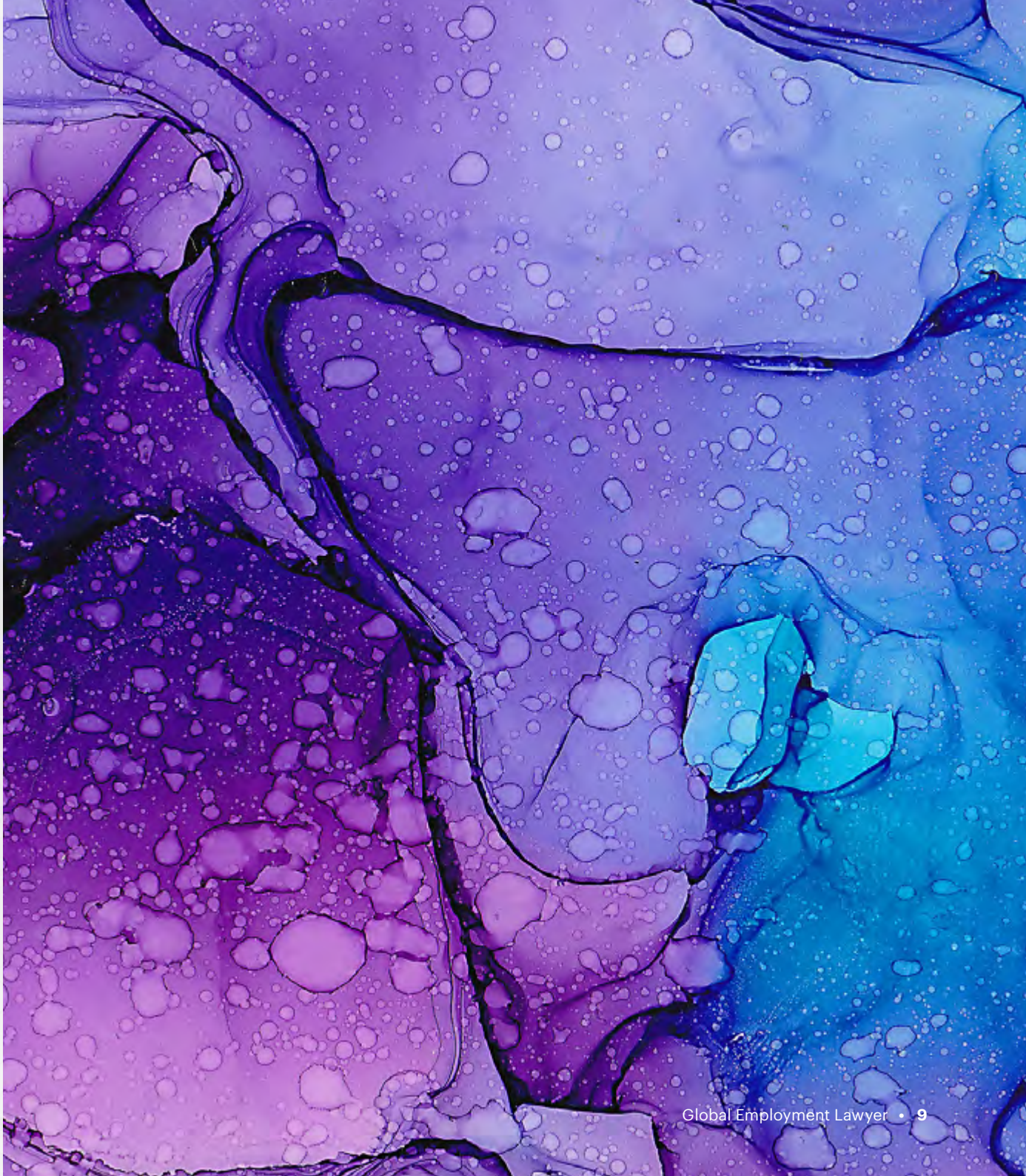
The instalments will be provided without collateral, surety or bank guarantee, without interest accrual and without financial analysis.

Contributors:

Agisheva Darya
darya.agisheva@dentons.com

Abdullaeva Malika
malika.abdullaeva@dentons.com

Orifjonov Murodiljon
murodiljon.orifjonov@dentons.com



Australasia

Australia

Significant changes to employment laws – From 26 August 2024, some key changes will take effect, including:

- the right to disconnect (commencing 12 months later for small business employers);
- a new definition of 'casual employee' and new casual conversion pathways; and
- "employment" will be defined in Australia's main employment statute (note: this change may take effect on an earlier date set by the Australian Government).

Additionally, from 1 January 2025, intentional wage underpayments will be a criminal offence.

Annual wage review – On 3 June 2024, the Fair Work Commission (**Commission**) increased the national minimum wage and all modern award minimum wage rates by 3.75%, effective from 1 July 2024. The new national minimum wage for permanent employees will be $915.90 per week (up from $882.80) or $24.10 per hour. This is lower than last year's 5.75% increase, reflecting the current lower inflation rate. To determine the 3.75% increase, the Commission considered several factors, including: economic, labour market and business considerations; the inflation rate remaining above the Reserve Bank of Australia's target range; the bank's future inflation and interest rate assessments; the Federal Budget delivered on 14 May 2024; economic growth; business profits; and labour productivity in Australia and comparable countries. The Commission also considered relative living standards, gender equality, job security, and the state of collective bargaining.

Non-compete clauses – In 2023, the Australian Government announced a Competition Review Taskforce which would consider matters including non-compete clauses (being clauses which restrict an employee from moving to a competitor) in employment contracts. The Government's White Paper on Jobs and Opportunities, released in September 2023, identified that "non-compete clauses in workers' employment contracts may be hampering job mobility, innovation and wage growth…" This follows the US Federal Trade Commission recently announcing a rule banning the use of non-compete clauses in employment contracts. In Australia, an employer is not entitled to protection from mere competition, however courts will consider enforcing post-employment restraints if they go no further than what is reasonably necessary to protect legitimate business interests of the employment. From June to December 2024, the Taskforce will advise the Australian Government on outcomes from consultation held across April and May 2024.

Foreshadowed changes to Australian work visas – In December 2023, the Australian Government released its Migration Strategy, in response to the Migration Review earlier in 2023, to reform various aspects of the migration system in Australia. Amongst the various changes foreshadowed to take place towards the end of 2024 is replacement of the Temporary Skill Shortage (SC 482) Visa with a Skills in Demand visa, which will have three streams (Specialist Skills Pathway, Core Skills Pathway and Essential Skills Pathway) to cover highly specialised occupations, requiring a minimum salary of $135,000AUD, right through to lower paid workers with essential skills in specific sectors.

Contributors:

Nick Linke
nick.linke@dentons.com

Ruth Nocka
ruth.nocka@dentons.com

Paul O'Halloran
paul.ohalloran@dentons.com

Edmund Burke
edmund.burke@dentons.com

Persephone Stuckey-Clarke
persephone.stuckeyclarke@dentons.com

Justin Le Blond
justin.leblond@dentons.com

Alexandra Terrill
alexandra.terrill@dentons.com

Debrah Mercurio
debrah.mercurio@dentons.com

New Zealand

Employment status of funded family carers – In a pivotal decision on how to draw the line between employment and other types of work, the Court of Appeal ruled that family members who are funded to care for disabled relatives are not employees. This avoided the Ministry of Health being required to compensate them as employees and addressed some of the uncertainty around the employment status of homeworkers.

Court of Appeal confirms minimum wage approach for part-time employees – A line of cases addressing the minimum rate of wage payable to part-time salaried employees in New Zealand has been settled in a recent judgment of the Court of Appeal. In the Employment Court, it was held that both full-time and part-time airline cabin crew should be paid the same minimum weekly rate, regardless of the number of hours or days worked. Essentially, this meant that part-time cabin crew working two-thirds of a full-time employee's hours were receiving the same remuneration. The Court of Appeal confirmed that the entitlement to minimum wage for part-time salaried employees should be prorated by reference to their hours worked, overturning the Employment Court's judgment.

Government makes changes to Accredited Employer Work Visa Scheme – This scheme is designed to prioritise New Zealanders for jobs, while simultaneously allowing employers to hire skilled migrants when there are shortages of skill or labour. Workers who qualify can apply for a temporary visa under this scheme, allowing them to work in New Zealand under the employment of an accredited employer. The key changes to this scheme will affect both employers and employees and include:

- new minimum skill requirements for applicants;
- applicants must be employed for a minimum of 30 hours per week;
- expanded grounds for employers' accreditation being suspended;
- greater obligations to notify Immigration New Zealand when a worker leaves their employment; and
- implementation of a new definition of "suitable and available New Zealanders".

Contributor:

Emilie Aitken
emma.aitken@dentons.com

Central and South America

Argentina

New interest calculation in labour disputes– The National Appellate Court has issued resolutions introducing a new method to calculate interest rate in labour disputes in the city of Buenos Aires. This came shortly after the Supreme Court ruled that the method previously used by the Labor Appellate Courts contradicts the general principle established by the Civil and Commercial Code, creating an exception that lacks legal grounds (please see our comments in the last edition on this ruling).

Through these new resolutions, the National Appellate Court has provided that:

- labour credits without a legal rate will be adjusted based on the Reference Stabilization Coefficient Rate regulated by the Argentine Central Bank;
- an annual interest rate of 6% will be applied to the owed amount from the date the credit is due until the date when the defendant is served with the claim. The accumulated interest will be capitalised;
- then, another annual interest rate of 6% must be added to the capitalised amount from the date the defendant is served with the claim until payment; and
- this method is applicable to cases without a final judgment regarding interest matters.

Changes to labour regulations debated – Currently, a bill including changes to labour regulations (among many other things) is being discussed at the Congress. The most relevant labour-related points are the following:

- elimination of additional compensations due to lack or deficient labour registration;
- creation, through collective bargaining, of a parallel and voluntary severance system (i.e. funds financed by employers with monthly contributions that may not exceed 8% of the employee's salary);
- creation of additional compensation for dismissals that are proven to have been motivated by discrimination after a court ruling;
- extension of the probationary period to six months (currently three months). Collective bargaining agreements may allow the trial period to be extended to eight months for companies with six to 100 employees and up to one year for companies with up to five employees;
- creation of an "independent worker with collaborators" category. This new category will not be considered a labour relationship either with the principal or between the independent contractor and their collaborators; and
- creation of a simplified labour registration system.

Contributors:

Juan R. Larrouy
juan.larrouy@dentons.com

Fernando Neville
fernando.neville@dentons.com

Bolivia

2024 salary and national minimum wage increase - By Ministerial Resolution and Supreme Decree, the following have been established: RM 521/24 and Supreme Decree 5154 establish:

- the minimum wage for 2024 at Bs 2,500 (USD 359,20 appx.); and
- a 3% salary increase on the basic salary.

The salary increase is not mandatory for workers in hierarchical positions provided that these positions have an established salary level. On the other hand, the 3% increase will be mandatory even if this percentage exceeds the minimum wage. If this increase is not sufficient to reach the minimum wage, the employer must apply a higher percentage that allows the salary to be levelled up to the minimum wage. The salary increase has retrospective effect to 1 January 2024. Therefore, it is necessary to make a retrospective payment from that date.

The salary increase must be made by 31 May 2024, and formalised through the signing of a Collective Agreement for Salary Increase between the employer and the workers' representatives (trade union). If the company does not have a trade union, the agreement must be signed by most of the workers. Once the collective agreement has been made, the following documentation must be submitted to the Ministry of Labor:

- the collective agreement;
- salary increase payroll; and
- salary increase retrospective return payroll to 1 January 2024.

If these documents have not been submitted by 30 June 2024 the employer can be sanctioned**.**

Contributors:

Jaime Lora
jaime.lora@dentons.com

Luis Gutiérrez
luis.gutierrez@dentons.com

Bruno Lora
bruno.lora@dentons.com

Chile

New "Karin Law" on labour harassment – On 1 August 2024, legislation known as "Karin Law" will come into force, modifying the Labour Code regarding the prevention, investigation and sanction of workplace harassment. This new law broadens the definition of "workplace harassment" to include single acts of harassment (without repetition being needed to qualify). In addition, harassment by third parties outside the labour relationship (such as customers or suppliers) towards employees will also constitute workplace violence.

Minimum wage increase – From 1 July 2024, the minimum monthly income increases to CLP$500,000.

Contributor:

María Kútulas
mariabelen.kutulas@dentons.com

Colombia

Pension reform bill to be approved by Congress – The reform bill filed by the Colombian government is one congressional debate away from becoming law. The main change proposed by the reform is the creation of a pillar system. If approved, the structure of the pension sub-system would comprise three pillars:

- solidarity pillar – applicable for those residing in Colombia, in conditions of extreme poverty and vulnerability, who would be beneficiaries of a basic solidarity income subsidised by the government;
- semi-contributory pillar – for people who do not meet the requirements to access a regular pension, who would have access to a contributory pension financed by the government and contributions saved by each worker; and
- contributory pillar – comprising dependent or self-employed workers with the capacity to pay contributions, to whom the pension rules currently in force will apply.

In the contributory pillar, contributions will be divided depending on the salary earned by the worker. For those with salaries between 1 and 2.3 times minimum monthly salaries, contributions will be made compulsorily to Colpensiones (the current public pension fund). For those salaries above 2.3 times the minimum monthly salary, contributions must be made to the private pension fund chosen by the worker.

The reform is intended to increase old age protection, unifying the existing regimes by expanding the public fund coverage of most contributions in Colombia and seeking to guarantee equality of conditions among affiliates. The current rules for retirement (age 57 for women and 62 for men, as well as having contributed 1,300 weeks) are not modified by the reform.

Contributors:

Lorena Arambula
lorena.arambula@dentons.com

Angela Cubides
angela.cubides@dentons.com

Costa Rica

Gender reaffirmation surgeries – In Costa Rica, to date, there is no specific regulation that expressly prohibits the practice of gender reaffirmation or "sex reassignment" surgeries. However, the Social Security Administration (**CCSS**) does not perform such procedures and actually considers them to be purely cosmetic. As a result, it does not grant medical leave to employees who undergo these procedures and, therefore, the time off (paid leave) of these employees cannot be covered by their employers, unless the employer wants to cover it at its sole discretion.

Despite this, the CCSS also has the authority to validate medical leave issued by private medical centres. Therefore, if an employee undergoes gender reaffirmation surgery in a private medical centre and is issued a medical leave certificate, the decision whether or not to validate such leave will rest solely on the CCSS. This will depend on the way in which the treating private doctor describes the procedure performed on the employee in the certificate (for example, it could not expressly state that the procedure consisted of a gender reaffirmation surgery and, instead, state that it was a medical procedure). Therefore, each case may vary.

If an employee submits to their employer medical leave issued by a private medical centre and validated by the CCSS, the employer must cover the employee's time as required by the Costa Rican Labor Code and pay the employee 50% of their salary for the first three days of the leave and, after the fourth day, the CCSS must pay a subsidy to the employee corresponding to 60% of their salary, as reported by the employer.

Surrogate mother procedure – There is no legal regulation that directly prohibits the application of the "surrogate mother" or surrogate gestation procedure. Therefore, this cannot be considered an illegal practice or contrary to law. However, currently the CCSS does not perform this type of procedure and couples who wish to have access to it must do so through a private medical centre.

From a labour point of view, for the biological mother of a child born as a result of a surrogate pregnancy or "surrogate mother" process, to be able to enjoy the maternity leave (one month of pre-partum and three months of post-partum) provided by the Labor Code, she must simply submit to her employer a medical certificate stating that she will give birth to a child. Also, from the moment the mother of the child notifies her employer that she is pregnant, she is covered by a special protection status, which means that she cannot be terminated except for serious proven misconduct and with the authorisation of the National Labor Directorate and the Labor Inspection.

Regarding surrogate parents, if they follow a direct adoption process before the Family Court to be able to give their last names to their child born through the surrogacy process, and the adoption is approved by the judge, they may opt for special adoption leave of three months, which is regulated in the Labor Code, and must submit to their employer a certificate from the Family Court stating the approval of the adoption. Likewise, the employer may grant, at its sole discretion, time off to the surrogate parents.

Contributors:

Anna Karina Jiménez
annakarina.jimenez@dentons.com

Silvia Hernández
silvia.hernandez@dentons.com

Adriana Fernández
adriana.fernandez@dentons.com

Sebastián Rodríguez
Sebastian.rodriguez@dentons.com

Ecuador

Administrative procedure for "Visto Bueno" dismissals – One way to terminate an employment relationship is through an administrative process known as approval for dismissal (*visto bueno*). Both the employer and employee may start the process with a labour inspector, through the justification of the causes invoked. On 21 March 2024, the Ministry of Labor issued a new Ministerial Agreement to regulate the administrative procedure for this type of termination. Key aspects of this agreement include:

- jurisdiction – the competent authority for labour inspections is determined by the jurisdiction where the employment contract is executed or where the accused party resides;
- suspension – employers may request the suspension of the employment relationship, which will be granted if deemed necessary and justified by the labour inspector;
- notification - the request for *visto bueno* must be notified to the accused party within 24 hours, either personally or through delivery of a notice;
- clarifications – the labour inspector may request clarifications related to the information for notification up to two times. If notification attempts are exhausted, the process will be archived;
- appeal - parties affected by the labour inspector's resolution may appeal within three days from notification of the resolution; and
- statue of limitations - the employer's action to request *visto bueno* against the worker expires within one month from the date on which the fault was committed.

Law for eradication of violence and harassment – On 16 May 2024, the Reformative Organic Law for the Eradication of Violence and Harassment in All Forms of Work was promulgated. This law primarily establishes the following:

- the definition of workplace harassment is revised, incorporating the term "violence". Among the most relevant aspects of the definition are:
  - any unacceptable behaviour and practices, including threats occurring once or repetitively, resulting or potentially resulting in physical, psychological, sexual, economic, political, symbolic or digital harm against a worker, including gender-based violence or harassment or discrimination;
  - committed in the workplace or at any time against any party of the employment relationship or among workers, including personal interactions, social media, emails or other work-related contexts;
  - a change of occupation must have express written authorisation, otherwise it constitutes a form of psychological and financial violence, particularly in the case of reduced remuneration; and
- digital disconnection – failure to digitally disconnect, disrespecting the worker's rest time, permits, vacations and personal and family privacy is also considered workplace violence and harassment.

Behaviours reported as workplace violence and harassment will be evaluated by labour inspectors, who may:

- impose monetary fines;
- order reparative measures for victims;
- order public apologies; and
- establish protective measures for whistleblowers, victims, witnesses or informants.

Protection against workplace violence and harassment is extended to all individuals with any relationship with employers, including trainees, interns, apprentices, former employees, volunteers, job seekers and applicants.

Contributor:

Erika Wolter
erika.wolter@dentons.com

Mexico

Rules for voluntary incorporation of self-employed workers – On 28 May 2024, an agreement was published in the Federal Official Gazette approving rules for the voluntary incorporation into the mandatory social security regime of self-employed individuals or independent workers. Mexican nationals, Mexican nationals abroad, and foreigners in Mexico can now register at the Mexican Institute of Social Security (**IMSS**) as self-employed individuals or independent workers, as long as they are not in a subordinate employment relationship. They are also allowed to make contributions towards acquiring a house once they register and pay contributions to the IMSS. While this advancement may not directly affect companies in Mexico, it is significant for individuals providing independent services.

Profit-sharing payment limit is constitutional – On 3 April 2024, the Supreme Court of Justice of the Nation ruled that the limits applied to the payment of workers' participation in profit sharing are constitutional. The court noted that the three-month salary limit is not an absolute limit. It allows for the possibility of taking into account the average amount given to the category, position, level, or position of the worker during the last three years, always favouring the best option for the worker. Additionally, it does not retrospectively affect the rights of workers. This decision reinforces the rights of workers to receive their fair share of profits, while also giving employers some flexibility in determining the applicable limits.

Criteria on integration of telework benefits - On 22 March 2024, an agreement published in the Federal Official Gazette outlining the criteria for integrating telework benefits. Employers must ensure that benefits related to providing, installing, and maintaining equipment for telework, such as computer equipment, ergonomic chairs, printers, telecommunication services, and electricity payments, are not included in base salary for social security contributions.

For employers to qualify for this benefit, it is important to establish a comprehensive employment contract that delineates the non-salary components and specifics of telework. Additionally, it is essential to provide evidence that the employment arrangement is indeed based on telework. Failure to do so may lead to potential repercussions in terms of social security and tax liabilities, as the existence of a different type of employment relationship could potentially result in penalties for simulation.

Contributor:

Mercedes Espinoza
mercedes.espinoza@dentons.com

Peru

Extraordinary withdrawal of private pension funds authorised – Law No. 32002 authorises all employees who are members of the Private Pension Fund Management System (**AFP**) to withdraw from their personal private pension fund an amount up to 4 UIT (S/20,600). This withdrawal is allowed on an extraordinary basis and is optional for employees.

Likewise, through SBS Resolution No. 01623-2024, the operating procedure to request the extraordinary and optional withdrawal of contributions made to the AFP was approved. The aforementioned dispositions became effective on 20 May 2024.

Extraordinary disposition of 100% of compensation for time of services authorised – Law No. 32027 authorises employees the free disposal of 100% of the Compensation for Time of Services (**CTS**), in order to cover their needs due to the current economic crisis. Through this law, employees are temporarily and extraordinarily authorised to freely dispose of 100% of the CTS deposits made in financial entities, and which they have accumulated in their accounts as of the date of disposition, until 31 December 2024. Likewise, through a Supreme Decree, the operating procedure to request the extraordinary withdrawal of 100% of the CTS deposits until 31 December 2024 was approved.

Telework service compensation rates updated – A Ministerial Resolution has approved an update to the reference value tables used to calculate the compensation employers must provide to teleworking employees for their internet and electricity usage. These compensation values will be revised and updated annually by the Ministry.

Valuation of employee petitions and financial assessment of employers during collective bargaining negotiations – A Supreme Decree has established the criteria that the Administrative Labor Authority must observe in order to issue the documents containing the evaluation of the economic-financial situation of a company, in a collective bargaining process, being:

- labour economic opinion; and
- second labour economic opinion and the labour report,

to facilitate the development and resolution of the collective bargaining.

Contributor:

Pamela Duffy
pamela.duffy@dentons.com

Uruguay

Prevention and health services survey – The Ministry of Public Health has created a new electronic survey on prevention and health services in the workplace (**SPST**). This new survey is freely available through the web page of the Ministry of Public Health, which will carry out descriptive reports annually, or as deemed necessary, regarding the technicians responsible for SPST in companies. This survey must be updated by companies annually or each time that a significant change occurs in the integration of the SPST, which will constitute an affidavit.

Contributors:

Ignacio Demarco
ignacio.demarco@dentons.com

Victoria Zarauz
victoria.zarauz@dentons.com

Venezuela

New special contribution for all private employers – On 9 May 2024, the Law for the Protection of Social Security Allowance against the Imperialist Blockade (the **Law**) was passed. The purpose of the Law is to establish appropriate mechanisms for the protection of social security pensions in spite of the adverse effects of coercive actions and other restrictive measures imposed on Venezuela. The Special Contribution is independent from the already existing tax-payroll contributions under the Social Security System legislation. On 16 May 2024, the amount of the special contribution referred to in the Law was set at 9% of all monthly salaries and non-salary bonuses paid by private employers to their employees. The basis for the calculation of the Special Contribution shall in no case be less than the monthly indexed broad minimum income decreed by the Executive from time to time (minimal tax base).

Monthly indexed broad minimum income announced – On 1 May 2024, the Executive announced the increase of the monthly indexed broad minimum income for public sector workers to an amount equivalent to US$130 in national currency. However, this decree has not yet been published in the Official Gazette. Last year, a similar notion was defined as monthly national minimum income which included all payments associated with workers' remuneration, regardless of the salary nature, including the statutory nutrition benefit and the bonus against the economic crisis.

Local court ratifies its jurisdiction to hear labour cases – In an employment lawsuit brought against Corporación Andina de Fomento (**CAF**) for US$16,212,315.49, the Supreme Tribunal of Justice (**STJ**) held that labour cases are not exempt from national jurisdiction, even for international organisations such as CAF. CAF is an international body created by Bolivia, Chile, Ecuador, Peru and Venezuela through an international treaty in 1968. This ruling is significant because it challenges the traditional understanding of immunity for such organisations.

Under international law, embassies and international organisations enjoy certain privileges, including immunity from local jurisdiction for claims against them, in the understanding that such privileges enhance their diplomatic and international affairs. By affirming local court jurisdiction to determine employment rights, even for international personnel, the STJ aims to protect national sovereignty and state security.

Contributor:

Yanet Aguiar
yanet.aguiar@dentons.com

Europe

Czech Republic

Anti-trust in labour markets – In May 2024, the European Commission published a new competition policy brief dealing with anti-trust in labour markets with a focus on non-poaching agreements and wage fixing. Key takeaways are as follows:

- wage-fixing and non-poaching agreements typically fall under the category of restrictions by object. This means that these agreements are inherently harmful to the functioning of competition;
- non-poaching and wage-fixing agreements might be considered ancillary restraints but only under very stringent conditions; and
- wage-fixing and non-poaching agreements are unlikely to be exempted.

In the Czech Republic, the Office for the Protection of Competition (the **Office**) has previously issued a fact sheet on the competitive aspects of employment-related agreements in the Czech market. According to the Office, there are certain types of agreements between employers that may have negative effects on competition for qualified employees. These include agreements not to recruit or hire employees from each other. The Office also sees any coordination between employers on remuneration or other terms and conditions of employment (non-poaching agreements) as problematic.

In light of the above, the Office now intends to focus more on these types of agreements as part of its priorities. It is therefore highly recommended that corporate compliance programmes also reflect these situations and seek to minimise the risk of anti-competitive agreements.

Contributor:

Jitka Soldado
jitka.soldado@dentons.com

France

Validity of non-compete clauses – In a recent case, the French Supreme Court has provided a reminder of the conditions of validity of a non-compete clause and the extent of judges' jurisdiction. To be valid, a non-compete clause must be essential for the protection of the legitimate interests of the company, be limited in time and space, take account of the specific nature of the employee's job and require the employer to pay the employee during the term of the non-compete commitment.

Judges have jurisdiction to review the validity of the clause agreed between the parties and, if necessary, to reduce its scope or duration if the other validity criteria are met. However, if the employee requests that the clause be declared null and void (in the case at hand, on the grounds that the non-compete clause covered too large a territory), judges can only declare that the clause is null and void and cannot validly reduce its scope, even if it is deemed to be too broad (i.e. the whole French territory for an employee who has only worked in the Paris region.

Contributor:

Katell Déniel-Allioux
katell.deniel-allioux@dentons.com

Germany

Dismissal on suspicion of a breach of duty - Generally, in court proceedings, the employer must fully prove an employee's breach of duty where this was used as grounds for dismissal. In exceptional cases, however, a strong suspicion of a breach of duty can also justify a dismissal. An increasing number of court judgements dealing with such suspicious dismissals are currently being published. Such a dismissal requires strong grounds for suspicion which is based on objective facts and likely to destroy the trust required for the continuation of the employment relationship. Due to the suspicion, it must be unreasonable for the employer to continue working with the employee. Dismissal on suspicion is only justified if the employer has done everything reasonable to clarify the facts, including hearing the suspected employee. In the view of the Federal Labour Court, the presumption of innocence set out in the European Convention on Human Rights does not preclude the admissibility of a dismissal on suspicion.

Contributor:

Markus Diepold
markus.diepold@dentons.com

Ireland

Determining employment status for taxation purposes - In May 2024, the Irish Revenue Commissioners issued guidance for determining employment status for taxation purposes. The guidance is in line with a Supreme Court decision from October 2023 on the employment status of delivery drivers engaged by a pizza delivery company. The guidance gives practical examples of the five key tests set out by the Supreme Court. Businesses should review their arrangements with independent contractors, consultants and others engaged on a self-employed basis in light of the guidance to assess the risk of employment status.

Enhanced protection for employees on insolvency - On 9 May 2024, a new Act was signed into law. The commencement date has not yet been confirmed. Under the Act, the obligations on employers to inform and consult with employee representatives and to notify the Minister in a collective redundancy situation will now be extended to liquidators, provisional liquidators, receivers or any other persons appointed by the court where they assume full control of the business. Consultation should commence at the earliest possible opportunity and no notice of dismissal should be given until at least 30 days of consultation after notifying the Minister (there is no longer any exemption for insolvent employers). An insolvency practitioner is entitled to continue a consultation process already commenced by an employer. Liquidators, provisional liquidators and receivers will need to take steps to comply with the collective redundancy obligations when the new legislation comes into force to limit the risk of claims which may include potential personal sanctions (criminal and civil).

Supreme Court decision on mandatory retirement age - In May 2024, the Supreme Court dismissed an appeal against a High Court judicial review decision on the application of a mandatory retirement age of 70 in relation to sheriffs as public servants. The applicant argued that the mandatory retirement age of 70 was not compatible with the Equality Framework Directive, which was transposed in Ireland by the Employment Equality Acts 1998-2021. The Supreme Court determined that provided that the aim sought is legitimate and the means of achieving that aim are appropriate and necessary (i.e. proportionate), a mandatory retirement rule does not offend the prohibition on age discrimination in the Directive, notwithstanding that it does not entail an individual assessment of those subject to that rule. So, an employer is generally not required to justify the application of a general retirement age to an individual employee.

The court found that there were legitimate aims justifying the application of a mandatory retirement age of 70 in the public service and to sheriffs - holding that a standardising retirement age at 70 across the public service and public agencies and offices is one such legitimate objective. It also found the fact that sheriffs could combine that office with continuing practice as a solicitor or barrister as a highly significant factor in assessing proportionality, as that office is not their only source of income (and if they have made the necessary contributions, they would be eligible to receive the State Contributory Pension from age 66). It also considered that it is difficult to identify circumstances in which a retirement age of 70 might be regarded as disproportionate. Such a retirement age is higher than mandatory retirement ages considered without criticism by the CJEU and considerably higher than the current pensionable age of 66.

Workplace Relations Commission annual report - A key takeaway from the annual report of 2023 (published in May 2024) is a considerable increase of 201% in complaints under the Protected Disclosure Act 2014 in 2023 compared to 2022.

Contributor:

Susan Doris-Obando
susan.doris-obando@dentons.com

Italy

Unused holidays must be remunerated - A recent decision by the European Court of Justice will have a direct impact on Italian public employment law, in particular how it regulates compensation for untaken leave when a public employee terminates employment. In a recent ruling, the Court of Justice of the European Union stated that public employees who are unable to take all of their paid annual leave before resigning are entitled to an economic allowance, specifying that member states may not invoke reasons related to the containment of public spending to restrict this right.

This principle, already well-known in the Italian private sector (i.e. an employee who has terminated employment is entitled to an allowance in lieu of accrued and untaken vacation, unless due to the employee's exclusive will), reduces the distance between the rules of the private and public employment relationship.

This ruling is particularly topical given the attention being placed on work/life balance in both the public and private sectors. The ruling originates from a preliminary reference made by the Labor Court of Lecce, which in turn was called upon to decide on an employment dispute involving a civil servant and the Municipality of Copertino, in southeastern Italy. The worker in question was an official who, having voluntarily taken early retirement, had judicially requested the payment of financial compensation for a total of 79 days of untaken annual leave. The public administration, citing an Italian public law stipulating that employees are not entitled to financial compensation in lieu of untaken annual leave at the time of termination of the employment relationship, contested the application submitted by the employee.

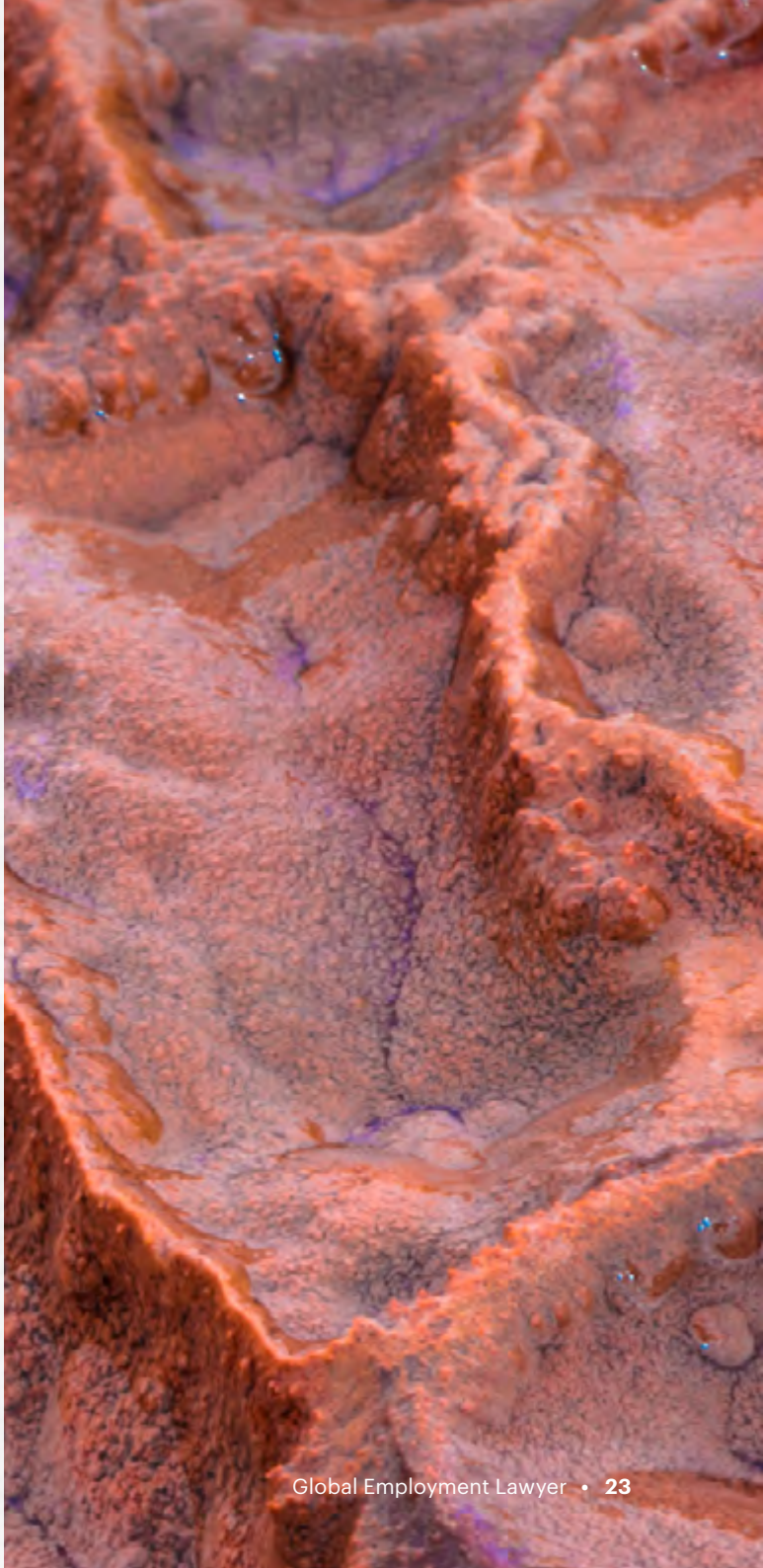
In light of the above, the national court, recognizing an interpretative doubt between the Italian legislation and Community principles, referred the decision on whether the national rules complied with the Community principles to the Court of Justice, which ruled in the decision under review here.

With the ruling in question, therefore, the EU courts have recognized the non-conformity of the Italian legislation with what has been stipulated by European law, and therefore the Italian legislature will now have to amend national legislation in order comply with the EU provisions.

Contributors:

Davide Boffi
Davide.Boffi@dentons.com

Luca De Menech
Luca.DeMenech@dentons.com



Poland

Adoption of new whistleblowing law expected soon - The new law aims to implement the EU Directive requiring Member States to have rules and procedures to protect whistleblowers (i.e. individuals who report information obtained in a work-related context about violations of EU law in key areas of public life). Violations range from unlawful acts or omissions to abuses of the law aimed at circumventing it.

To be eligible for protection, a person must have reasonable grounds to believe that the reported information falls within the scope of the Directive and that it is true at the time of reporting and must have made the report using established internal or external channels. Whistleblowers are encouraged to report internally first if the breach can be effectively addressed, and the whistleblower believes there is no risk of retaliation.

Whistleblowers are protected against all forms of retaliation, such as dismissal, demotion, intimidation or blacklisting. Whistleblowers are also entitled to appropriate support measures, such as interim legal remedies and immunity from liability for breach of confidentiality clauses in their contracts.

Although work is moving towards finalisation, there is still intense discussion about what exactly this law should regulate. The Polish government wanted the scope of the act to cover a broader range of issues than the minimum indicated in the EU Directive, as the wording of the act adopted by the lower house of parliament (the Sejm) included labour law (not indicated in the wording of the Directive as mandatory) in the catalogue of legal violations that could be the subject of a whistleblower report. However, this proposal was not supported by the upper house of parliament (the Senate) and it decided to amend the law by removing labour law from the catalogue. The senators considered that this would be too far-reaching an entitlement for employees and, in addition, there would be a duplication of the competences of the State Labour Inspectorate in this area.

It will now be up to the Sejm to decide whether to accept the amendments introduced by the Senate. However, whatever the final shape of the whistleblower protection law is, it is expected to be adopted during the summer of 2024. Therefore, in order to safeguard interests and ensure compliance with the soon-to-be-enacted law, employers should already take a detailed interest in the forthcoming legislation and prepare for its introduction.

Contributor:

Magda Słomska
magda.slomska@dentons.com

Spain

Additional solidarity social security contribution from 2025 – The government has set up a new social security contribution item called the "solidarity fund". This new social security contribution item will be used to increase the funds for current and future retirement allowances.

From January 2025, employees whose earnings surpass the maximum monthly social security contribution base (currently €4,720.50) will pay between an additional 0.92% and 1.17% depending on the extent to which their income exceeds the threshold. These additional rates will increase progressively until reaching an additional 5.5% to 7% by 2045.

This will increase labour costs for companies and will involve increasing the deductions for employees, who will receive less salary as a result.

Entitlement to annual bonus during sick leave – The Supreme Court has ruled that an employee on sick leave remains entitled to a full or partial bonus if they have met the required goals. Should the company withhold the bonus, the employee can legally contest that decision as discriminatory.

The only exception would be in circumstances where the bonus is subject to the employee's attendance or compliance with effective working time. In such a case, and according to a Constitutional Court ruling, remuneration which depends on the employee's attendance could be prorated. However, in our view, depending on the case, this argument could be rejected. For example, if the employee is on strike, we consider that payments could be prorated. However, if the employee is on sick leave, which is a circumstance that is not controlled, managed or caused by the employee, withholding sums on this basis could be discriminatory.

Paternity-linked redundancy null and void – In a recent case, an employee sent an email to his employer notifying it of his future paternity situation and requesting new employment conditions. The company did not answer and, eight days later, terminated the employee by reason of redundancy. The employee challenged this before the courts.

The High Court of Justice of La Rioja stated that, although the company highlighted in the termination letter certain economic and organisational reasons, there was a temporal link between the email sent by the employee and the day that the termination letter was delivered, and it must therefore be understood that the decision to terminate the employee was a reprisal for the future exercise of his paternity rights. Therefore, the dismissal was null and void.

On-call periods not effective working time – The High Court of Justice of Andalucía has ruled that on-call duty, where employees must be available but are not required to carry out duties at the company's premises or be permanently connected, should not be classified as effective working time. This is important because such on-call periods will not be counted as exceeding working time (therefore, not requiring registration as such), nor as overtime (which is limited to 80 hours per year and involves additional social security contributions). However, since the employee is at the company's disposal, such period should be compensated, but the amount should not exceed the price of an ordinary hourly rate.

In our view, and according to different rulings, the on-call period should only be considered as effective working time if the employee must be connected every time he/she is on call, or the on-call duty materially reduces the employee's personal life during this period (e.g. when the employee receives a call, he must be at the company's premises in an hour to take care of the incident in question).

Termination for economic reasons during sick leave – The High Court of Cantabria has ruled that the dismissal of an employee on sick leave would be fair, provided that the termination letter includes a detailed explanation of the company's economic situation, including figures as well as all the necessary documents to evidence the company's decision and to help the employee to understand the reasons for termination. Moreover, in line with previous case law, the court confirmed that the employee is not entitled to receive an additional severance payment, except in limited circumstances.

Recording on a balcony not a violation of privacy – The right to personal privacy prohibits private investigators from physically entering an employee's home or using devices to record what occurs inside. However, this limitation does not apply where the investigator records events that may occur inside the home but are captured from outside without the need of any artifice. Moreover, even the use of zoom from outside the home is not a fraudulent

use violating privacy rights. Consequently, the court accepted as evidence photos taken by a private investigator from outside an employee's home, which showed the employee on sick leave for a broken elbow engaging in home refurbishment activities.

Terminations by sudden permanent disability may be changed – A recent Supreme Court ruling has stated that, in the case of an employee on permanent disability, the company, before terminating the employee, should offer him/her a new job position adapted to his/her disabled situation. This ruling is important because, previously, companies were entitled to terminate employees when the Resolution from the Social Security Authorities was notified to the company. Taking this into account, the Labour Ministry is drafting an act to implement the ruling of the Supreme Court. Therefore, companies, before terminating an employee in these situations, must make reasonable and necessary adjustments to the workspace or to the employee's role.

Contributor:

Juan Alonso
juan.alonso@dentons.com

United Kingdom

Law insufficient in protecting striking workers from detriment – UK legislation safeguards workers from detrimental treatment for taking part in trade union activities "at an appropriate time", which excludes working time. This has allowed employers to legally discipline (although not terminate) employees who strike while they are due to be working. In a recent case, the Supreme Court issued a declaration of incompatibility between this legislation and Article 11 of the European Convention on Human Rights (freedom of assembly and association).

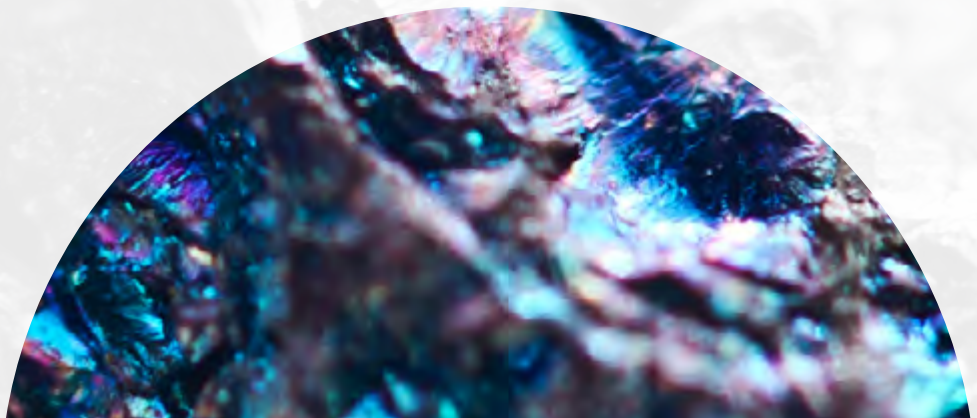
The Supreme Court's declaration of incompatibility does not alter the current legal position. It is now up to Parliament to review and potentially revise this legislation to make the law compatible with the ECHR but, in the meantime, the law remains unchanged. As such, employers are not barred from imposing detriments, other than dismissal, on workers participating in lawful industrial action. Nevertheless, we recommend that employers remain cautious and take advice before doing something that may be considered a detriment where employees are involved in industrial action.

Paternity and bereavement leave – The Paternity Leave (Bereavement) Act 2024 received Royal Assent on 24 May 2024. Further regulations are required but, once fully in force, it will make a number of changes to paternity leave entitlement. Among other things, the usual 26-week service requirement for paternity leave will be waived if the mother dies within the first year after birth or adoption. In addition, although not set out in the legislation, it is understood that further regulations are intended which would provide for paternity to be extended to 52 weeks in these circumstances.

Contributors:

Purvis Ghani
purvis.ghani@dentons.com

Alison Weatherhead
alison.weatherhead@dentons.com



Middle East

Jordan

New medical first aid legislation – For the first time since 1997, Jordan has updated its legislation concerning medical first aid means and equipment for employees.

As with the 1997 legislation, all employers must provide medical first aid equipment in accordance with the degree of risk of the economic activity, the number of employees and the sources of occupational hazards to which employees may be exposed.

Employers are also now required to provide medical first aid training to a minimum number of employees as follows:

- no less than 2% of employees in less dangerous economic activities; and
- no less than 4% of employees in more dangerous economic activities.

The classification of the danger for different economic activities is set out under separate legislation and is subject to continual update.

The list of first aid items and equipment has been revised to also include glucose monitoring devices, defibrillator devices, foil blankets and CPR rescue masks, to name a few.

All employers should ensure the relevant equipment and medical first aid items are available, taking into account the number of employees and the nature of their activities, and are easily accessible, maintained and replenished as necessary.

Contributor:

Sara Moubaydeen
sara.moubaydeen@dentons.com

Kuwait

New labour rights project – On 2 June 2024, the Kuwait manpower authority, in collaboration with the Kuwait Society for Human Rights, launched a new national project for improving the protection of employees' rights in Kuwait. The project intends to increase employees' awareness of their rights under the various labour laws, provides employees with the necessary legal support administration and encourages local society to advocate for employees' human and labour rights. The project's goal is raising Kuwait's international rankings in reports related to human rights and combatting human trafficking. In accordance with international agreements ratified by Kuwait's government, the project promotes co-ordination regarding research related to violations and the mechanism for dealing with them, improving cooperation between state institutions and public benefit associations, and spreading the culture of human rights in society. In addition, it includes establishing specialised training courses and programmes regarding the laws and regulations governing work in the private sector and domestic workers, which includes activities and services provided online and in different languages.

Contributor:

Mary Ann Sharp
maryann.sharp@dentons.com

Saudi Arabia

Amicable settlement procedures – The Ministry of Human Resources and Social Development (**MHRSD**) has issued a Ministerial Resolution adopting rules and procedures for the amicable settlement of labour disputes. Pursuant to this resolution, a dedicated Amicable Settlement Department will be established within labour offices, serving as the initial point of contact for resolving disputes before resorting to formal litigation. The resolution stipulates that the Amicable Settlement Department is to look at all disputes related to employment contracts, wages, rights, work injuries, termination, disciplinary penalties, and employees under the KSA Labor Law. Mediators must have a good reputation, not be convicted of crimes affecting integrity, and be approved to engage in reconciliation. Settlement procedures are confidential and may be conducted electronically. Arabic is the official language for proceedings, and disputes should be resolved within 21 working days from the first session. If a settlement is reached, a Settlement Record is prepared and signed; if not, the plaintiff is advised to file a lawsuit. Settlement Records are enforceable documents as per the Enforcement Law. This resolution replaces previous rules and is formally published in the Official Gazette and on the MHRSD's website. In line with this resolution, the Ministry of Justice issued a public consultation for a law reform project reflecting the new amicable settlement procedures in both the Labor Law and the Civil Procedures Law.

Schedule of violations and penalties – A new Ministerial Resolution outlines a comprehensive schedule of violations and penalties related to employer and employee conduct under the KSA Labor Law. The resolution specifies fines for various violations, such as non-compliance with occupational safety regulations, failure to provide safety instructions, employing children under the legal working age, and not providing medical insurance as per the Cooperative Health Law. It also addresses penalties for employing non-Saudi workers without proper permits, wage discrimination, and not adhering to Saudization percentages for certain professions. Employers are obligated to pay fines within 60 days of notification, and objections to penalties for violations must be filed within the same timeframe. The resolution supersedes conflicting resolutions and is effective from its publication date on the MHRSD's website.

Inclusivity and equality in the workplace – A Cabinet Decision is now in force which supports the adoption of a nationwide strategy aimed at fostering equal opportunities and fair treatment within the workforce, spanning the private and public domains. The policy presents a strategic framework for a ten-year incremental rollout, emphasising the establishment of anti-discrimination rules, evaluation of outcomes, and the increased integration of traditionally marginalized demographics into the workforce.

Salary delays – The MHRSD has introduced rigorous regulations via the Mudad platform to address the issue of delayed wages. Employers who fail to pay salaries for three successive months will encounter a suspension of all their services. Affected employees are granted the ability to switch to a different employer without requiring approval from their current employer. Additionally, the timeframe for employers to provide a reason for delayed salary payments has been shortened to 10 days, while employees will have a three-day window to reply. These measures are designed to strengthen the protection of employee rights and ensure the punctual disbursement of salaries.

Salary allocation as a percentage now available on QIWA platform – The QIWA platform in KSA has introduced a new functionality that permits employers to allocate salaries as a percentage of earnings. This addition is designed to offer greater versatility in managing payroll, especially beneficial for companies with income that varies. It affords employers the ability to adjust their wage distribution in line with changing financial circumstances, promoting both the stability of the business and equitable payment for employees.

Illegal workers – In a significant security operation, KSA authorities have detained 23,040 foreigners for infringing the kingdom's residency, labour, and border security statutes within the span of one week, from 29 February to 6 March 2024. The breakdown from the KSA Ministry of Interior indicates that 12,951 individuals were arrested for violating residency laws, 6,592 for border security violations, and 3,497 for breaching labour regulations. Additionally, the MHRSD's latest weekly briefing disclosed that 59,721 violators, including 4,690 women, are undergoing legal processes. Efforts to deport these individuals are underway, with 52,815 being directed to their embassies for travel documents and 1,963 arranging their departure. During this period, 9,179 were deported, and nine were arrested for aiding violators. The MHRSD has issued stern warnings against aiding illegal entrants, with penalties including up to 15 years of imprisonment, fines up to SR1 million, and public naming of offenders. This crackdown is part of KSA's broader initiative; "a country without a violator", which is aimed at regulating the local labour market and addressing irregular expatriate activities.

Job transfer service via Masar platform – The MHRSD has unveiled a new job transfer service for government employees, operational through the Masar platform, as of 14 March 2024. This initiative is designed to optimise human capital investment and to simplify the process of internal and external transfers among government agencies. The service encompasses a variety of options, including direct transfers, promotions, and announcement-based transfers, with or without promotion. It's tailored to facilitate the movement of employees on the general government employee ladder, allowing them to apply for transfers and promotions, subject to meeting the established criteria. The service also equips HR specialists within these entities to efficiently manage transfer procedures. This move is aimed at supporting the strategic employment of internal resources, enhancing the transfer system between agencies, and ensuring a governed and efficient transfer process.

Localisation:

- dental professions – The MHRSD in partnership with the Ministry of Health, has launched a strategic initiative to increase employment opportunities for Saudi nationals by localizing 35% of jobs in the dental sector. Effective from 10 March 2024, the policy mandates that private dental practices with a workforce of three or more must comply with this localisation ratio. A detailed manual outlining the localisation requirements is available on the MHRSD's website, and adherence to these regulations is strictly enforced to avoid penalties;
- insurance sales jobs – The MHRSD declared the nationalisation of all insurance sales positions by 15 April 2024. It also stipulates that individuals in non-sales capacities within the industry are prohibited from obtaining sales-related commissions. The objective of this policy is to cultivate expert local talent and enhance the value of services within the insurance sector;
- engineering professions – The MHRSD has issued a regarding the Saudization of engineering professions by a percentage of (25%). The aim of this decision is to empower national talents to work in the private sector in line with the MHRSD's vision and strategies.

Occupational safety and health risks for children – The MHRSD has issued a Ministerial Decision adopting the risk assessment strategy guideline for determining suitable professions for children. Effective as of 3 March 2024, this guideline covers various aspects of child employment. It includes a list of professions categorized as "unsafe" for individuals under 18 years old, as well as an overview of professions considered "light work". The guideline also provides a detailed risk assessment matrix schedule along with a schedule for protection strategies.

Contributors:

Dr Sairah Narmah-Alqasim
sairah.narmahalqasim@dentons.com

Rana Azhar
rana.azhar@dentons.com

Yara Al-Sayegh
yara.alsayegh@dentons.com

Tala Sabahi
tala.sabahi@dentons.com

Turkey

Processing personal data – Under the relevant law, personal data is classified into special categories. This includes information on individuals' race, ethnicity, political opinions, philosophical beliefs, religion, sect or other beliefs, clothing, association, foundation or union membership, health, sexual life, criminal convictions, security measures, and biometric and genetic data. Processing this type of data without explicit consent is subject to stricter conditions. Significant changes were made to the rules regulating exceptions for processing special categories of personal data as published in March 2024.

Accordingly, the following exception was added: "Processing is necessary for complying with legal obligations in the fields of employment, occupational health and safety, social services and welfare". This exception became effective on 1 June 2024, addresses a current need and facilitates employers' activities in processing special categories of personal data without explicit consent.

In all data processing, compliance with principles such as fairness, accuracy, processing for specific, explicit and legitimate purposes, being relevant, limited and proportionate to the purpose and proportionate data retention period must still be ensured. Considering the penalties that can be imposed by the Personal Data Protection Authority and the guiding practice principles and decisions it occasionally publishes, it is beneficial for employers to seek legal advice regularly to shape their special category data processing activities without explicit consent in both day-to-day activities and more exceptional situations.

Seafarers' right to annual paid leave – Legislation applies to seafarers working under a service contract on ships flying the Turkish flag and having specific qualifications, and their employers. This law stipulates that for seafarers to receive payment for unused annual leave upon contract termination, the contract must end for specific reasons. If the employer terminated the contract due to the seafarer's misconduct or because their work on the ship became impossible due to the seafarer, payment is not due. This regulation was annulled by a recent Constitutional Court decision, which stated that it conflicted with the right to rest and the approach in different laws for other employees, and that no distinction should be made based on the reason for termination. The decision will take effect on 14 September 2024. The legislator is expected to amend the relevant law before this date.

Contributors:

Mehmet Feridun İzgi
fizgi@baseak.com

Simge Kublay Can
skublay@baseak.com

B. Miray Güneşli Gümüştekin
mgunesli@baseak.com

United Arab Emirates

Amendment to the DIFC Employment Law – The DIFC Employment Law was recently amended to widen the scope of employees to be enrolled with the DIFC Employee Workplace Savings scheme (**DEWS**). This amendment has introduced for the first time a conditional obligation on DIFC-based employers to enrol their UAE/GCC national employees with the DEWS.

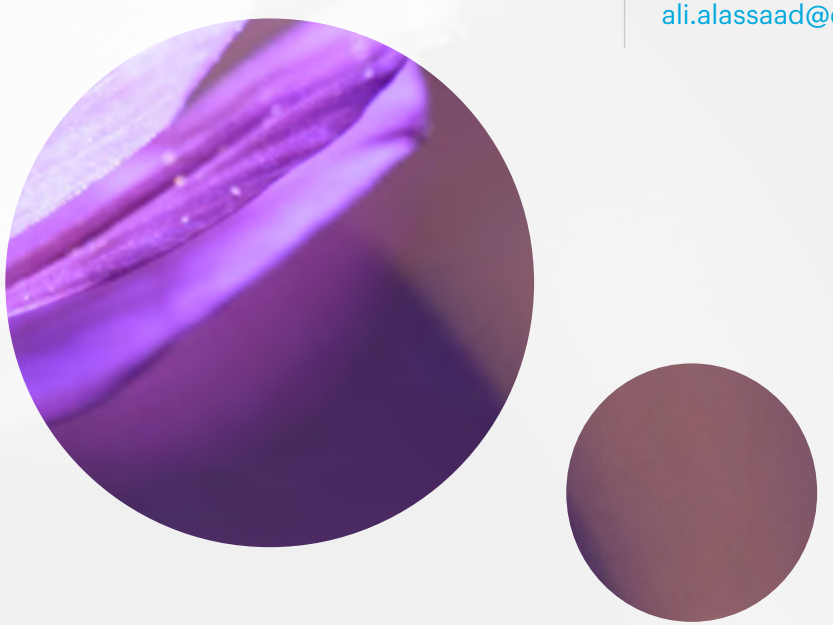
According to this amendment, a UAE/GCC national employee, working within the DIFC, will be entitled to a top-up payment whenever the statutory contributions paid to the General Pension and Social Security Authority by the employer are lower, by at least AED 1,000, than the contributions made by the employer into DEWS for an expatriate employee, earning the same basic salary. The said top-up must be paid into the DEWS scheme.

In addition, the amendments introduced to the DIFC Employment Law addressed the scenario where an employer or an employee are subject to sanctions preventing them from being enrolled into the DEWS scheme. In these circumstances, the concerned employee's end of service gratuity (**EOSG**) will continue to accrue on the same basis that was applicable to EOSG prior to the introduction of DEWS. The employer will not be liable to compensate the employee for any benefits they were going to receive from DEWS had they or the employer not been a sanctioned person.

Contributors:

Shiraz Sethi
shiraz.sethi@dentons.com

Ali Al Assaad
ali.alassaad@dentons.com



North America

Canada

Specific rider recommended for international incentive and commission plans – Global employers with Canadian employees are recommended to reach out to Canadian legal counsel for assistance with drafting Canada-specific riders or appendices for their international incentive and commission plans.

Canada does not recognise termination "at will". Instead, employees who have their employment terminated for most reasons must be provided with working notice or pay in lieu of notice for a defined period of time, in order to assist them in the transition to new employment. During statutory notice periods under employment standards legislation, employees must continue to receive their full "wages". In turn, most incentive (bonus) payments and commission payments are defined in Canada as falling under the definition of "wages" (note that just because a bonus is called discretionary does not mean that is actually the case in Canada; most bonuses fall under the wages definition of incentive bonuses). This means that incentive bonuses and commissions must continue to accrue beyond the date of notice of termination and through to the end of the statutory notice period.

However, we often find that global plans appear to cut off entitlements to bonus and commission payments as of the date of notice of termination. While that may work in some jurisdictions, it does not generally work in Canada.

If an incentive bonus plan or commission plan cuts off entitlements to those items before the end of the statutory notice period, the termination provision in the employee's employment agreement may be deemed invalid. In turn, that will lead to an employee being entitled to more working notice or pay in lieu of notice than most employers intend. Finally, incentive bonus and commission payments will continue to accrue through that longer working notice or pay in lieu of notice period.

In summary, companies with Canadian employees must take care to ensure that incentive plans and commission plans are reviewed with an eye to the intricacies of Canadian law, which means that a Canada-specific plan or rider is generally required.

Contributor:

Catherine Coulter
catherine.coulter@dentons.com

United States of America

Federal Trade Commission non-competes rule - The Federal Trade Commission (**FTC**) published its final rule prohibiting most non-competes on 7 May 2024, making the effective date 4 September 2024. It is being challenged, including a request for a temporary stay of the effective date. A court decision on the stay is expected by 3 July 2024. Details of the rule include:

- non-competes - The rule's definition is a "term or condition of employment that prohibits a worker from, penalises a worker for, or functions to prevent a worker from seeking or accepting work in the U.S." or "operating a business in the U.S. after the conclusion of the employment." The term or condition can be in an agreement and/or in an employee handbook;
- penalising a worker – This includes forfeiture of compensation promised to a worker who seeks or accepts work or starts a business after they leave their job, such as a forfeiture-for-competition clause. It would also include liquidated damage clauses and excessive training cost reimbursement agreements;
- other restrictive covenants – "Restrictive employment agreements" (as referred to in the rule) are post-employment obligations including non-competes, confidentiality or non-disclosure agreements (**NDAs**), and non-solicitation agreements (**NSAs**). While the comments to the rule say NDAs and NSAs are "generally not non-compete clauses under the final rule," the comments acknowledge these types of agreements "may be non-competes under the 'function to prevent' prong of the definition" if they are "so broad or onerous"; and
- exceptions – Entities typically exempt from the FTC's jurisdiction are exempt from the rule such as certain non-profits, banks, common carriers, and entities subject to the Packers and Stockyards Act. The rule does not prohibit non-competes that apply during the employment relationship and businesses can require a "senior executive" to have a non-compete. Non-competes are still allowed in franchisor-franchisee agreements and the sale of a business. Existing legal actions on non-competes initiated before the effective date are not affected.

All other businesses that use restrictive covenants need to pay attention. Businesses must not engage in new non-competes after the effective date and, for existing non-competes, must provide notices that non-competes are not enforceable to those workers by the effective date. The FTC has provided a form notice. A "worker" covered by the final rule includes independent contractors, interns, externs, and volunteers, in addition to employees.

Department of Labor announces new overtime rules - The Fair Labor Standards Act (**FLSA**) sets out criteria for determining which employees are subject to mandatory overtime pay, and which employees are exempt. In a final rule announced on 23 April 2024, the U.S. Department of Labor (**DOL**) set out a schedule of minimum salary increases for overtime determination, which are set to begin this summer.

Changes for standard pay employees: Standard pay employees are exempt from the FLSA's overtime rules when:

- they are paid on a salary basis;
- their salary meets or exceeds the minimum salary threshold; and
- they primarily perform executive, administrative, or professional duties.

The "minimum salary threshold" for overtime purposes is currently $684 per week, equal to $35,568 per year. On 1 July 2024, the salary threshold for standard pay employees will increase to $844 per week, equal to $43,888 per year. This threshold will increase again on 1 January 2025, to $1,128 per week, equal to $58,656 per year. These increases are set to continue for the foreseeable future. Beginning 1 July 2027, the DOL will begin revising salary thresholds every three years.

Changes for highly compensated employees: So-called "highly compensated employees" (**HCEs**) are also exempt from the FLSA's overtime rules. This exemption applies when those employees:

- are compensated over the HCE minimum salary threshold;
- have primary duties including the performance of office or non-manual work; and
- customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

The HCE minimum salary threshold is $107,432 per year, including weekly pay of at least $684. On 1 July 2024, the HCE minimum salary threshold will increase to $132,964 per year, including weekly pay of at least $844. On 1 January 2025, this threshold will increase again to $151,164 per year, including weekly pay of at least $1,128. Beginning 1 July 2027, the DOL will begin revising these salary thresholds every three years.

Special industries and locations: The new rule does not adjust the minimum salary threshold amount for any other employee categories. The thresholds for employees in Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, employees in American Samoa, employees in the motion picture industry, and computer employees are unchanged under the new rule.

Contributors:

Ann Holden Kendell
ann.kendell@dentons.com

Logan Kraus
logan.kraus@dentons.com

In conversation with...

In this edition we talk to **Susan Doris-Obando**, a partner based in our Dublin office. Susan advises on the full spectrum of employment law – general advisory, litigation and corporate transactions and outsourcings, with a particular interest in whistleblowing, restrictive covenants, TUPE and the employment aspects of the new Individual Accountability Framework/ Senior Executive Accountability Regime in Ireland. Her clients include those in the financial services and technology sectors.

Susan, originally from Northern Ireland (where she obtained a First Class law degree from the Queen's University of Belfast), practiced as an independent London employment barrister for eight years before moving to a leading Magic Circle London law firm for more than 10 years as an employed barrister. She was seconded to a major financial institution during the 2008 financial crisis. Before she left London to move to Dublin, she was Counsel at Dentons' London office. She then worked for four years in the employment

department at one of Ireland's Big Six law firms. Susan has a unique wealth of international advisory and transactional experience in the Irish market. She is a CEDR accredited mediator.

What excited you about rejoining Dentons?

I am very excited to rejoin (known in Dentons terms as a "boomerang") a truly globally focused law firm, having experts all over the world willing to connect to best serve our clients. The firm attracts challengers – bright, curious, independent and values-driven people. It is a lively place to work and has its clients at its heart.

What are the key themes in employment law in Ireland at the moment?

At the moment, key themes mirror global themes - the world of work after Covid (with the new right to request flexible and remote working), whistleblowing (with the embedding of the new whistleblowing legislation including the requirement to have internal reporting channels and procedures) and the new Individual Accountability Framework/ Senior Executive Accountability Regime in the financial services sector. Being dual qualified, like my colleagues here, gives me a deep comparative insight in these areas which is helpful to multi-national clients. It is fascinating to follow these trends across the Dentons global network.

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

The way we work is clearly changing – ESG issues, AI, the cost of living and childcare affordability are all changing the landscape of work.

What do you enjoy doing outside of work?

Outside work I enjoy spending time with my two energetic boys – ziplining and waterpark slides have now replaced my old hobbies of salsa dancing, piano and running. I am a proud London Marathon finisher. I grew up enjoying speech and drama and debating – I still debate but with the two boys I rarely win now!

News And Events

Australia HR hacks

We have launched a new Dentons HR Hacks Q&A series! Paul O'Halloran, Accredited Specialist in Workplace Relations and Employment and Safety Partner probes leading experts in workplace law; business; psychology and management to ask the questions you need to know to run a modern business and manage contemporary employee relations issues.

In our first episode, Paul talks to Dr Colin D. Ellis, about his new book 'Detox Your Culture'. Colin is an award-winning international speaker, Amazon #1 best-selling author and renowned culture change expert who works with organisations around the world to help them transform the way they get things done! To receive the full 30-minute interview direct to your inbox on 12 June, please register HERE.

Australia IR insights webinar series

This monthly webinar series offers tips, tricks and insights on a range of current topics. This quarter's topics are "Underpayment of wages and accessorial liability" (24 April 2024), "Managing Fatigue - Implications and Legalities of Incentivised Overtime" (22 May 2024) and "Investigation Trips, Traps and Tips" (26 June 2024). These are now available via podcast – please visit HERE to access. Please contact us if you want to join the invitation list.

UK partner promotion

The UK employment team is pleased to welcome Elouisa Crichton to partnership. Elouisa is an expert in employment and equality law and works on Scottish, UK and international matters. She is accredited by the Law Society of Scotland as a specialist in both employment and discrimination law. *Chambers and Partners* ranks her as the Employment Star Associate 2024. *Legal 500* chose her as the Employment Rising Star of the Year 2023, and has ranked her as Rising Star in 2022, 2023 and 2024.

Key contacts

ASEAN

I-An Lim
Singapore
D +65 6885 3627
i-an.lim@dentons.com

Edric Pan
Singapore
D +65 6885 3645
edric.pan@dentons.com

Australia

Ruth Nocka
Sydney, Australia
D +61 2 9931 4744
ruth.nocka@dentons.com

Canada

Arianne Bouchard
Montreal, Canada
D +1 514 878 5892
arianne.bouchard@dentons.com

Andy Pushalik
Toronto, Canada
D +61 2 9931 4744
andy.pushalik@dentons.com

Meaghen Russell
Partner, Toronto
D +1 416 863 4397
meaghen.russell@dentons.com

Europe

Davide Boffi
Milan, Italy
D +39 02 726 268 00
davide.boffi@dentons.com

Latin America & the Caribbean

Yanet Aguiar
Caracas, Venezuela
D +58 212 276 0068
yanet.aguiar@dentons.com

Anna Karina Jiménez
San José, Costa Rica
D +506 2503 9815
annakarina.jimenez@dentons.com

China

Richard Keady
Hong Kong
D +852 2533 3663
richard.keady@dentons.com

Jenny Zhuang
Hong Kong
D +852 2533 3660
jenny.zhuang@dentons.com

Middle East

Shiraz Sethi
Dubai, UAE
D +971 4 402 0927
shiraz.sethi@dentons.com

South Africa

Shahid Sulaiman
Cape Town, South Africa
D +27 21 686 0740
shahid.sulaiman@dentons.com

United States of America

Dan Beale
Atlanta, USA
D +1 404 527 8489
dan.beale@dentons.com

United Kingdom

Alison Weatherhead
Glasgow, United Kingdom
D +44 33 0222 0079
alison.weatherhead@dentons.com

Purvis Ghani
Global Chair Employment
and Labor Practice
London, United Kingdom
D +44 20 7320 6133
purvis.ghani@dentons.com

ABOUT DENTONS

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.

www.dentons.com

CSBrand-146678-Global EL Quarterly Review Q2 2024-05 — 26/06/2024