EUROPEAN EMPLOYMENT LAW UPDATE

2019 EDITION

SHEPHERD+WEDDERBURN

INTRODUCTION

Our annual Employment Law Update aims to help organisations with a pan-European presence keep up-to-date with changes to legislation and best practice.

In the 2019 edition of our European Employment Law Update, we examine the most important legislative changes over the past 12 months and those that are likely to affect businesses in the coming year.

This guide compiles updates from 32 leading law firms across the continent, and on the final page we have listed the contact details of all the contributors who have kindly provided updates relevant to their particular jurisdictions.

Once again this year we see different jurisdictions across Europe grappling with quite different issues, from implementing changes in relation to discrete laws to updating their underlying labour law frameworks.

A number of countries are dealing with the ramifications of European Union decisions on annual leave accrual, and working hours. Regulation of non-standard working relationships continues, from Swiss and Serbian rules on staff leasing and Norwegian regulations on permanent employment to Portuguese rules on term employment. With ageing workforces, another common theme is change to the retirement age in a number of jurisdictions. We also see some progress on diversity initiatives, such as the introduction of gender pay gap reporting in Ireland, and its potential expansion in the UK.

We do hope that you find our update useful and please feel free to contact any of our contributors if you have any questions or require further information.

Katie Russell, Shepherd and Wedderburn LLP, Editor

This brochure contains a summary of general principles of law. It is not a substitute for specific legal advice, which should be sought in relation to any application of the subject matter of this brochure.

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AUSTRIA

The most important recent legislative change in Austria has been the amendment to the Austrian Act on Working Hours. This has led to a number of changes, which we consider in detail below.

Increased working hour limits

The much-debated increase of the limit on daily working time from 10 to 12 hours and weekly working time from 50 to 60 hours is the most important feature of the recent amendment to the Act. The increase requires no separate agreement with either employees or their representatives, such as works councils.

The normal statutory working time of eight hours per day and 40 hours per week, however, remains unaffected.

Because of the increased maximum limit on working hours, the average maximum working time is expected to become increasingly important in the future. Under both the Act and the underlying provision in the EU Working Time Directive, an employee's weekly working time must not exceed 48 hours averaged over 17 weeks. This reference period may be extended to 26 or even 52 weeks if agreed in the collective bargaining agreement applicable to each business sector.

Guaranteed option right

In response to the various critical opinions expressed in the course of the Act becoming law, a special provision was added to the effect that employees may reject the extension to daily working time without needing to justify their refusal. In addition, employees may freely choose to receive either cash compensation or time off in lieu for these overtime hours and may not be disadvantaged or dismissed as a result of opting out of the 11th and 12th working hours.

Flexible working time

Agreements on flexible working time may even allow for the daily normal working time to be increased to up to 12 hours, if time credits can be used (not exclusively):

i. for a full day off; or

ii. in conjunction with the weekly rest period.

Exemptions from weekend rest periods and bank holidays

Austrian legislation provides for at least 36 uninterrupted hours of weekend rest and employees are generally not required to work on bank holidays (while still receiving their regular salary). Under recent legislative changes, exemptions from either weekend or public holiday rest periods may be agreed by means of a works council agreement. Such exemptions are, however, limited to four non-consecutive weekends or public holidays per year and per employee.

If no works council is established, then companies may conclude a written agreement with each individual employee to this effect. Employees are again allowed to reject such weekend or holiday work without the need to justify their decision.

New exemptions from the scope of the Austrian Act on Working Hours and the Act on Rest Periods

Since 1 September 2018, not only executive employees, but also other employees with significant autonomous decision-making powers as well as close relatives of the employer, have been exempt from the scope of the Austrian Act on Working Hours and the Austrian Act on Rest Periods. To qualify for the exemption, they must meet one of the following conditions:

- their working time is neither recorded nor predetermined; or
- the employee is free to choose their working time and place of work.

Further amendments of working time legislation, especially increased penalties for non-compliance, are currently being considered.

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DORDA

BELGIUM

"Cash for Car" and "mobility budget": two new alternatives to a company car

Company cars are a popular benefit in Belgium and are included in many employees' remuneration. Yet, road congestion brings an increasing need for more flexible mobility, leading the government to introduce two initiatives in 2018.

Cash for Car

The "Cash for Car" law, now in force, gives employees a cash "mobility allowance" if they return their company car and associated benefits (e.g. fuel card).

This is normally only possible if the employer has set up a specific mobility allowance scheme within the company. Only employers that have been offering (a) company car(s) to their employees for a period of at least three years can introduce a Cash for Car system. However, an exception is provided for new companies that are starting up.

Employees are free to either exchange their car for a mobility allowance or to keep it. An employee making a request for a mobility allowance must have had the company car for at least 12 months in the past three years, of which three consecutive months must be prior to the request. Specific rules exist in the case of a change of employer.

As there has been very limited take-up of the scheme, the Belgian Government intends to amend the law by also opening the system to employees who do not have a company car but who are, or were entitled to have one on the basis of the company's car policy. A draft Act is currently pending in Parliament.

The gross annual amount of the mobility allowance will be 20% (or 24% in the case of a fuel card) of 6/7th of the catalogue value of the exchanged company car.

The mobility allowance is treated in a similar way as the company car for social security purposes, i.e. the mobility allowance is not subject to employee social security contributions and the employer only pays a minor solidarity charge.

The Mobility Budget

The second initiative introduced by the Belgian government is a "Mobility Budget", i.e. an annual budget that an employee can freely allocate to:

1. a company car that is more environmentally friendly;
2. alternative means of transportation; and
3. a non-allocated balance amount that will be paid as salary.

The tax and social security regime varies for each option. This draft Act is currently pending in Parliament.

Notice period developments

Notice periods for employees hired before 1 January 2014.

For employees hired before 1 January 2014, the notice period to be observed in the case of dismissal comprises two parts that must be added up: a first part (Step 1) based on the employee's length of service pre-1 January 2014, and a second part (Step 2) based on the employee's length of service from 1 January 2014.

After some debate, on 18 October 2018, the Constitutional Court ruled that a termination clause validly entered into with a high-earning employee (a white collar employee earning more than €32,254 on 31 December 2013) before 1 January 2014, must be taken into account when calculating Step 1 of the notice period, as it is also the case for lower-earning employees.

Shorter initial notice period

Separately, the Economic Recovery Act of 26 March 2018 introduced new, reduced notice periods during the first six months of employment if the employee is dismissed; one week's notice during the first three months of employment, gradually built up to three, four and five weeks per month of service.

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BOSNIA & HERZEGOVINA

Salary increase through the amendments to the tax and labour framework

While there were no changes to the employment legislation of the Federation of Bosnia and Herzegovina, the National Assembly of the Republic of Srpska passed amendments to the Law on Income Tax and amendments to the Labour Law in 2018.

The amendments to the Law on Income Tax, which entered into force on 1 September 2018, introduced a tax allowance in the form of a basic annual personal allowance of BAM 6,000 (€3,000), which will mean an increase of approximately BAM 30 (€15) in monthly remuneration for every employee in the Republic of Srpska, Bosnia and Herzegovina.

The amendments to the Labour Law, which entered into force on 1 August 2018, modified the definition of salary so that the term "net salary" is not applicable in agreements with employees anymore. The concept of salary now includes income tax. This means that a given salary will be deemed to include income tax and contributions, and so is a gross salary. The amount that an employer and employee must agree on is therefore increased to take into account income tax and contributions. As a consequence, it is deemed that all elements of salary (the basic salary, performance-based remuneration, labour costs, etc.) include an amount in respect of income tax.

The Labour Law stipulates that employers have to harmonise concluded labour agreements with their employees within 30 days of the date that the amendments to the Labour Law entered into force by agreeing on a gross salary amount in such a way that existing salaries are increased by the amount of income tax in accordance with the Law on Income Tax.

This legislative change does not impose an obligation on employers to pay higher salaries to employees, but only that they have to calculate the salary in the gross amount, which includes all contributions and taxes prescribed by the applicable law.

The Labour Law stipulates monetary fines to be imposed on employers for violating the obligations prescribed by the new amendments to the Labour Law, i.e. if an employer does not harmonise its salary calculation methods from a net to gross amount. The monetary fines for employers range from BAM 2,000 to BAM 12,000 (€1,000 to €6,000), and for the company's responsible person from BAM 200 to BAM 1,200 (€100 to €600).

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CYPRUS

Pregnant women and new mothers in workplace

On 16 April 2018, the Parliament of the Republic of Cyprus passed the Promotion and Protection of Maternal Breastfeeding Law (L.21(I)/2018) and introduced an amendment to the Protection of Motherhood Law (L.100(I)/1997).

The first law aims to facilitate breastfeeding in the workplace and in public places through the creation of a national committee that will be responsible for providing guidance and support on this matter to the Minister of Health.

The amendment to the Protection of Motherhood Law extended the period during which pregnant women are protected from dismissal, from three to five months after the end of their maternity leave. It also safeguards the right of working mothers to breastfeed or pump and store milk in their employer's premises. Finally, the amending legislation introduces more stringent penalties for employers who violate its provisions.

Criminal Appeal 138/2017 Rodosthenous vs Aqua-Masters plc

On 4 July 2018, the Supreme Court issued its decision in the Criminal Appeal 138/2017 and clarified the criminal aspects of the Protection of Wages Law (L. 35(I)/2007). The respondents were charged with 38 criminal charges for breach of the Protection of Wages Law. The question before the Court of First Instance was whether and to what extent the respondents had breached their statutory obligation to provide the claimant with his monthly remuneration. The Court of First Instance held that the disputed issues were not confined to the non-payment of the claimant's remuneration but extended to other aspects relating to the interpretation and application of the employment contracts, the employment conditions and the claimant's benefits and duties under the employment contracts. For this reason, the Court of First Instance found that since the issues in question (i.e. the working terms and benefits) were complex and had not been crystallised, the respondents should be acquitted of all charges.

The Supreme Court, annulling the decision of the Court of First Instance, held that the Court of First Instance had an obligation to assess all available evidence provided by the parties, review the terms of the employment contracts, ascertain the amount of wages and other benefits that the appellant was entitled to under the contracts of employment and, finally, decide whether the respondents had fulfilled their statutory obligations or not. The Supreme Court also stressed that the Court of First Instance was wrong in its finding that its criminal jurisdiction was limited only to disputes where the employment conditions have been crystallised. As a result, the appeal was successful, the acquittal was overturned, and a retrial was ordered.

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CZECH REPUBLIC

Minimal salary level for 'blue card' holders

A 'blue card' is a long-term residence permit that also serves as a labour permit for highly-skilled third-country nationals. Since May 2018, an employee who is a blue card holder must receive a salary of at least 1.5 times the average gross annual salary in the Czech Republic, as announced by the Ministry of Labour and Social Affairs. From 1 May 2018 to 30 April 2019, the gross monthly salary of a blue card holder must be CZK 44,256 (€1,736). Foreign nationals must submit their employment contract with their blue card application.

Amendment of the Labour Code – compensation for loss of earnings

A very brief amendment of the Labour Code has changed the amount of compensation for loss of earnings due to an accident at work, or an occupational disease that has affected the claimant. The amendment applies to employees who became jobless either immediately after their termination due to incapacity for work, or on the day their disability commenced. These employees have no comparable earnings for determining compensation, so the amendment provides that notional post-accidental earnings must be derived from the minimum wage effective on the day the employees were registered as jobseekers with the employment services. The amendment came into force on 1 October 2018.

Amendment of the Labour Code – cancellation of waiting period

The Chamber of Deputies of the Czech Parliament is currently debating cancelling the "waiting period" under which a worker is not entitled to be paid salary during the first three days of absence due to incapacity. Under the proposed amendment, sick pay would start immediately from the first day of incapacity. Employers would be compensated for the increased costs by a 0.2% reduction of the rate of sickness insurance premium they pay.

Conceptual Amendment of the Labour Code

The Ministry of Labour and Social Affairs has proposed amending the Labour Code to regulate certain employment regulations that are unsuitable or problematic in practice. In outline, the amendments would deal with, amongst other things, incorporation of a specific mechanism to determine the value of the minimum wage, a conceptual change related to holiday adjustments, and a change in a one-off compensation for the bereaved etc. The legislative process for approving the Bill began in August 2018 when a draft Bill was circulated to ministers for comment. After the settlement of comments and incorporation of changes, the Bill will be presented to the government for approval. If approved, the Bill will be debated in the Parliament of the Czech Republic. It is ambitiously proposed that the amendment will come into force on 1 July 2019.

GDPR Bill

The Bill deals with national law amendments directly supplementing the legally-binding General Data Protection Regulation (GDPR). The amendments also transpose the European directive on criminal measures. Forthcoming amendments will replace current Act No. 101/2000 Coll., on the Protection of Personal Data, as the Act becomes inapplicable to a considerable extent due to new institutes and procedures introduced by GDPR. The principal aim of the new amendment is to incorporate exceptions from the general regime, if they are admissible under the GDPR. The Bill is currently being debated in the Parliament of the Czech Republic.

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DENMARK

Amendment to the Danish Share Option Act

On 1 January 2019, an amendment to the Danish Share Option Act entered into force.

Pursuant to the amendment, Sections 4 and 5 of the former Share Option Act are replaced by a new Section 4 that regulates the repurchase of shares acquired through share programmes regulated by the Share Option Act.

Previously, Sections 4 and 5 distinguished between whether an employee parting ways with a company was a "good leaver" or "bad leaver". The repeal of these sections means that employers and employees now have greater freedom to deal contractually with non-exercised stock options in connection with termination of employment.

With respect to the repurchase of shares, the amendment includes a new Section 4, under which it can be agreed that the employer, upon the employee's termination of employment, can repurchase shares – acquired under a programme or an agreement under the Share Option Agreement – at their market price. However, it is currently unclear whether only listed companies will be entitle to repurchase shares.

New legislative change restricts employers' right of access to employees' health information

On 1 January 2019, an amendment to the Danish Sickness Benefits Act and the Active Social Policy Act entered into force.

The amendment restricts employers' access to health and medical information about employees in cases of reimbursement of sickness benefits or rehabilitation programme benefits during job capacity assessments. Accordingly, the usual position will be that an employer will not, under the rules of access to documents under the Danish Public Administration Act, have a right to be informed about an employee's health and medical information that is part of a reimbursement case, even though the employer is a party to the case.

Employers will, however, continue to have access to a particular employee's health and medical information if the information is essential for the employer to safeguard its economic interests. This, however, does not apply where fundamental considerations for the employee's interest in secrecy is required.

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FINLAND

Working Hours Act

Comprehensive reform of the Working Hours Act is currently under consideration. A government Bill on the new Act was submitted to the Finnish Parliament on 27 September 2018, and the new Act is expected to come into force on 1 January 2020.

The most significant change will be the introduction of flexible working hours. An employee working under the flexible working hours regime will have the right to decide their working hours and place of work, with the employer defining the employee's work duties and targets as well as an overall schedule of working arrangements.

Trade Secrets Act

A new Trade Secrets Act, implementing amendments required by the EU's Trade Secrets Directive, entered into force on 15 August 2018.

The new Trade Secrets Act includes a definition of trade secrets and regulations concerning unjustified acquisition, usage and disclosure of trade secrets, as well as reporting (whistleblowing) and legal remedies. The Act enhances the legal protection of trade secrets. The new definition of a trade secret was also included in the Employment Contracts Act.

Annual Holidays Act

The Annual Holidays Act is being updated to implement the minimum requirements laid down by the judgments of the Court of Justice of the European Union. Changes will ensure employees' right to four weeks' paid annual leave in cases of absence from work due to sickness or medical rehabilitation. A government Bill was submitted to the Finnish Parliament on 1 November 2018. The amendments are intended to enter into force on 1 April 2019.

Zero-hour Contracts

New rights for employees with zero-hour contracts entered into force on 1 June 2018. These changes aim to improve the rights of such employees to sick pay and reimbursement for loss of earnings due to reduced working hours during their notice period. They also prohibit the use of zero-hour contracts where the employer's workforce needs can be deemed to be permanent or more than zero-hours.

Additionally, the changes in legislation impose an obligation on the employer to inform the employee of their work shifts at least one week before the intended period starts and to plan the shifts for as long a period as possible.

Data Protection

A new Data Protection Act, replacing the Personal Data Act, entered into force on 1 January 2019. The new Act supplements the General Data Protection Regulation (GDPR), which entered into force on 25 May 2018.

The intention of the GDPR and the new Data Protection Act is to improve data protection and the rights of the data subjects, and harmonise data protection legislation in EU member states.

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FRANCE

One of President Macron's main goals is to reform the French social model. As seen from the violent protests of the "Gilets Jaunes" in early December 2018, this is not an easy task.

Following initial changes made by the Ordinances of September 2017, which aimed to give businesses greater flexibility to help them improve their economic performance, a second phase of reforms includes the following objectives for 2019:

- reforming vocational training to enable everyone to find their place in the labour market;
- developing apprenticeships to significantly scale up the opportunities businesses may make available to workers under the age of 25; and
- widen the scope of unemployment coverage to employees who resign because they wish to retrain in another profession, and to self-employed individuals who are in judicial liquidation.

The third stage is entitled Action Plan for Business Growth and Transformation (known as "loi PACTE"), adopted on 9 October 2018. This contains the following provisions aimed at simplifying companies' lifecycle and giving them an opportunity to be more innovative in order to help them grow, conquer new markets and create more jobs.

Simplifying companies' life cycle

From their date of creation, companies are overwhelmed with administrative obligations that complicate every step of their development. The PACTE law will remove such obstacles by setting up an electronic one-stop shop to replace the seven current points of contact for corporate formalities (Commercial Court Registry, Trade or Agriculture Chamber, etc.).

Reworking thresholds

Currently, there are 49 different employee thresholds for companies. Whenever a company exceeds one of these thresholds, different rules apply when it comes to social security, taxation, etc. With the PACTE law, there will only be three thresholds: 11, 50, and 250 employees. It is hoped that this will create a new legal environment more favorable to the growth of small and medium businesses.

Facilitating entrepreneurs' recovery

The deadline and costs of bankruptcy proceedings (compulsory winding-up) will be reduced and their predictability improved.

Removing the "forfait social" in certain circumstances

Employer's social contributions will be removed in relation to incentive schemes for companies with fewer than 250 employees and profit-sharing for companies with fewer than 50 employees so as to facilitate employee incentive agreements.

Facilitating business transfers

The current legislation, the Dutreil Pact, will be updated to include free transfers of companies. By doing so, the PACTE law will facilitate business transfers to employees and the financing of takeovers of small businesses.

Rethinking the role of companies

Companies should not only be concerned with making profits. The PACTE law will modify the civil and commercial codes to take greater account of social and environmental issues in companies' strategies and activities.

Simplifying and ensuring portability of pension savings products

Employees will be able to keep and grow their savings products throughout their career and withdrawals of lump sums will be facilitated.

Bringing academic research closer to the business world

Pathways for researchers who wish to set up or work with a company will be simplified with a view to revitalising connections between academic research and the private sector.

Additional payments to be made free from tax and social security contributions

In an attempt to resolve the "Gilets Jaunes" protests, the parliament has passed a new law of significant interest to employers. Employers will be able, if they choose to do so, to pay a non-taxable bonus of up to €1,000 to each employee who earns less than €4,500 gross per month. This bonus must be paid by 31 March 2019, and will not be subject to social security contributions.

In addition, reforms have been made to overtime payments from 1 January 2019, and these will also be exempt from tax and employees' social security contributions up to €5,000 per month.

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GERMANY

Changes in part-time work law: the "bridge part-time"

On 18 October 2018, the German Parliament passed a law on the further development of part-time work, the central element of which is the introduction of a temporary, fixed-term reduction in working hours (known as "bridge part-time"). The law came into effect on 1 January 2019.

The aim of the law is to enable an employee to work part-time on a temporary basis, rather than having to make a permanent change to their contract. Previously, there was no enforceable right to return to the former working hours once an employee opted for part-time work. Now, however, the employee will have a guaranteed right to do so.

Main content

In companies with at least 45 employees, the employee is entitled to demand a temporary, fixed-term part-time working arrangement (lasting at least one year up to a maximum of five years) as soon as they have at least six months' service with the employer.

With regard to the procedure and the requirements for part-time work, the law mainly replicates the current regulations on part-time work. The employee does not have to give particular reasons for the request, such as bringing up children or caring for relatives. The employer is only entitled to refuse a request for part-time work for business-related reasons. If several employees apply for limited part-time work at the same time, the employer must choose between them, taking into account family aspects, the care of seriously ill relatives or the exercise of honorary offices.

In order to achieve a degree of planning certainty for both the employee and the employer, the employee is not entitled to a second reduction or extension of working hours or an early return to full-time work during the limited part-time period.

At the end of the limited part-time period, the employee does not have to be employed in the same job as before they entered into the part-time arrangement. Within the framework of the right of direction and delegation, the employer is entitled to delegate an equivalent, similar or different activity to the employee.

No overstraining of small businesses

Smaller companies with 46 to 200 employees are only obliged to employ a certain number of limited part-time employees. The employer must grant one employee the right to limited part-time work for each 15 employees. This means that in a company with 46-60 employees, four employees are entitled to work part-time for a fixed period.

German companies have already commented that this law will create a considerable administrative burden for them. In the media, the new law has been welcomed as parents, in particular, can now reduce their working time for a fixed period and then return to their former working patterns without having to "beg" their employer to increase their working time. Companies, on the other hand, now fear they will be confronted with a wave of requests from employees wishing to increase their working hours, which will lead to additional costs. However, the law expressly states that companies can reject requests for an extension of working time if no open suitable positions are available.

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GREECE

Liability for third party contractors' employees

Article 9 of Greek Law 4554/2018 has made an engaging entity jointly and severally liable for the compliance of its third party contractor's obligations towards the contractor's employees. More specifically, where any natural or legal person (principal), within the context of its business activities, appoints a third-party contractor to perform work, both the principal and the contractor shall be jointly and severally liable towards the contractor's employees for the payment of any due emoluments, social security contributions or severance payments. The above liability is limited to the rights of the employees that accrue from the contractual relationship between the principal and the contractor in respect of the specific work, or part thereof. Where the third party contractor further appoints a sub-contractor to execute the work or part thereof, then the joint and several liability applies to the principal, the contractor and the sub-contractor.

This liability lasts for three years after the expiry of the agreement between the principal and the contractor/sub-contractor.

In all agreements between a principal and a third party contractor/sub-contractor, it should be specifically provided that the contractor/sub-contractor is obliged to comply fully with the provisions of labour and social security legislation, health and safety legislation, and legislation on the elimination of occupational hazards.

Any agreement between the parties excluding or limiting the above rights of the employees is null and void.

The principal is entitled to have recourse against the contractor or sub-contractor, especially if it has exercised due diligence as to the fulfilment of the contractor's/sub-contractor's obligations towards their employees. It can do this by:

- demanding to receive, on a monthly basis, the payroll or severance payment receipts;
- sending an extra-judicial notice to the contractor/sub-contractor to fully comply within a 15-day notice period if it has evidence that they have not complied with their obligations towards their employees; and
- immediately terminating the contractor/sub-contractor's agreement if they fail to comply within the 15-day notice period.

Collective Labour Agreements

Due to the end of Greece's Economic Adjustment Programme on 20 August 2018, the provisions on Collective Labour Agreements, which were suspended in 2012, have become fully effective again. This means that the most favourable Collective Labour Agreement (company or sectoral) will apply to an employee, and the provisions for making mandatory a Collective Labour Agreement which binds 51% of the employers in a sector or profession are reinstated.

Overtime

As of 1 July 2018, employers are obliged to declare to the competent labour authorities electronically, or through text message, the overtime and overwork scheduled to take place.

Sanctions

The administrative sanctions for undeclared employees have become stricter: an employer is liable to a fine of €10,500 for each undeclared employee, and, if they repeat the offence, this fine is increased by 100% for the first repeated offence and by 200% for each subsequent offence. If the employer hires the undeclared employee, the fine shall be reduced, depending on the duration of the employment agreement.

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HUNGARY

Changes to the Labour Code

The Labour Code was amended several times in 2018. Some of the amendments were only made for clarification purposes but others are more important. This article summarises the key changes of note.

Extra rights for mothers

In line with the provisions in force before 1 January 2018, employees can only work in conditions that are not considered harmful for their physical condition, development or health. Since 1 January 2018, in the event of any change in an employee's state of health, employers must make adjustments to their working conditions and work schedule. Pregnant women and mothers with children under the age of one must be offered a job that is suitable for their state of health in situations where the conditions of employment cannot be modified and when, according to a medical opinion, they cannot work in their original position. In this case, they are entitled to a salary for the new role that is not lower than that they received previously. In line with the provisions in force before 1 January 2018, when there is no appropriate position available, mothers must be exempted from work. In this case they shall be entitled to their base salary for the entire duration of the exemption, unless they refused the job offered without good reason.

Employees with reduced working capacity

The definition of "persons with reduced working capacity" has been updated. The term now includes all those:

- whose state of health is assessed at 60% or less;
- whose health is considered impaired by at least 40%;
- whose capacity to work is diminished by at least 50%; and
- those who are receiving disability benefit.

People with reduced working capacity are entitled to five additional days of annual holiday.

Additional rights for union representatives

The definition of "employees' representative" has been extended and now also includes trade union representatives. As a result of the change, union representatives will also be entitled to request reinstatement in the event of the unlawful termination of their employment relationship.

New delivery rules

On 1 January 2018, the new Civil Procedure Code entered into force and introduced the definition of "fictitious delivery". Declarations made in writing (such as a termination notice) shall be considered served upon delivery or at the time when access to the electronic document is provided. An electronic document is considered accessible when the addressee has the opportunity to view the content. Declarations are also considered served if the addressee refuses to receive them or intentionally prevents delivery. When a declaration is sent by registered mail with a return receipt, it shall be considered served on the day of the attempted delivery if the addressee refuses to accept the delivery and also if the delivery fails because the addressee moved from the address or is unknown at the address. In all other cases, declarations shall be considered served on the fifth working day following the day when delivery was attempted without success.

These events, known as "fictitious delivery" may be challenged before the court when a legal remedy is also available against the declaration delivered, when that delivery service was inappropriate or when the reason the addressee could not collect the declaration was beyond their control. In the latter case, it must be ensured that the challenge receives fair treatment. If the court rules in favour of the challenge, delivery must be repeated.

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SZECSKAY ATTORNEYS AT LAW

IRELAND

The spotlight on gender pay gap (GPG) reporting intensified in Ireland during the latter half of 2018. The General Scheme of the Irish Government's GPG Information Bill was approved by Cabinet in June 2018. If enacted, the Bill will require Irish employers with 250 or more employees to publish data on differences in pay and bonus between men and women at different levels within the organisation. The Bill envisages designated officers being empowered to investigate any non-compliance with the reporting obligations. It is also intended that the Irish Human Rights and Equality Commission can apply to the Circuit Court for an order directing compliance. In addition, it would be open to employees to refer non-compliance complaints to the Director General of the Workplace Relations Commission (or the Labour Court) to direct a specified course of action.

Age Discrimination

The issue of mandatory retirement and the so-called "grey ceiling" has continued to be topical over the course of 2018. The increase in the state pension age, resulting in a 'financial gap' between the traditional retirement age of 65 and the 'new' state pension age of 66 has served as a catalyst for claims of age discrimination. Last year, the Workplace Relations Commission issued a Code of Practice on Longer Working to provide guidance to employers and employees on the "best principles and practices to follow" in the run-up to retirement. Although not legally binding, courts will likely have regard to employers' adherence to the Code when evaluating their approach to mandatory retirement. The Irish Human Rights and Equality Commission also issued practical guidelines on "Retirement and Fixed-Term Contracts".

Bullying

Another significant damages award for workplace bullying was handed down by the High Court last year. In the case of Hurley v An Post, an employer was ordered to pay a former employee €161,000 in damages. The court held the conduct of Ms Hurley's colleagues, in ostracising her following a separate incident with a co-worker, constituted "continual social rejection" that fell within the legal definition of workplace bullying. In particular, the court was critical of the "minimal" support offered by the employer in allowing the conduct of Ms Hurley's colleagues to "continue unchecked", effectively suggesting that Ms Hurley "ride out the storm in the hope it would pass". The court confirmed that an employer has both a statutory and a common law duty to "take all reasonable precautions for the safety of its employees and not to expose them to a reasonably foreseeable risk of injury".

Right to Disconnect

In August 2018, the Labour Court awarded €7,500 to an employee who, by sending and receiving work-related emails outside normal work hours, had exceeded her statutory maximum working hours. In the case of Kepak Convenience Foods v O'Hara, the court was guided by the fact that the employer was "through [the complainant's] operation of its software and through the emails she sent it, aware of the hours the complainant was working and took no steps to curtail the time she spent working". The court concluded that such a situation demonstrated that the employer had permitted the complainant to work in excess of the 48-hour week and, therefore, contravened its statutory obligations under the Organisation of Working Time Act.

Accurate record-keeping of employees' working hours is a complex task given today's fluid and flexible working arrangements, which can result in blurred lines around the concept of "working hours". But, as the law currently stands, a failure to keep such records and allow employees to work beyond "normal" working hours will likely be fatal.

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ITALY

In July 2018, the Italian Government issued Law Decree 87/2018 (the so-called 'Decreto Dignità'), which was passed by Parliament, with amendments, by Law 96/2018. This introduced significant changes to the 2015 Italian Jobs Act. Decreto Dignità governs a number of matters including restrictions to the regime of fixed-term employment agreements, and stronger sanctions in certain cases of unfair dismissal.

Fixed-term employment contracts

Decreto Dignità introduced a less flexible regime applicable to fixed-term employment agreements. Under the previous regime, fixed-term contracts could last up to three years, with the only limitation being that a company's workforce could not comprise more than 20% fixed-term employees. Decreto Dignità amended this regime by introducing several restrictions and, as a result, the hiring of fixed-term employees is now subject, among other things, to the following rules:

- the maximum duration of fixed-term employment relationships, including renewals and extensions, is 24 months; and
- no specific reason to hire on a fixed-term basis is required, provided that the fixed-term relationship does not exceed 12 months. Should this period be exceeded, the employer must identify specific reasons (to be selected among those set forth by the Decreto Dignità).

Failure by the employer to specify the reason underlying the fixed-term hiring, where required by law, leads to the fixed-term contract being converted into an open-ended one. Decreto Dignità also introduced a new quantitative threshold: a company's workforce may not comprise more than 30% of fixed-term employees and temporary workers on a fixed-term basis.

Sanctions in case of unfair dismissal

Decreto Dignità strengthened the applicable sanctions in:

- certain cases of unfair disciplinary dismissals; and
- cases of unfair dismissal based on economic reasons involving employees hired after 7 March 2015.

The Decreto Dignità provides for compensatory damages ranging from a minimum of six up to a maximum of 36 months' salary, depending upon the employee's length of service. The Labour Court is to award two months' salary for each year of service. Previously, damages ranged between a minimum of four and a maximum of 24 months' salary.

In autumn 2018, however, the Italian Constitutional Court ruled that the automatic calculation of the damages on the exclusive basis of the dismissed employee's length of service violates certain provisions of the Italian Constitution. Consequently, if the employee successfully challenges the dismissal, the Labour Court shall calculate damages – within the six month minimum and 36 month maximum – by taking into account other circumstances as well as length of service, including the size of the company and the parties' respective behaviors and conditions.

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LATVIA

Amendments to the Labour Act

On 1 November 2018, the Latvian Parliament (Saeima) passed a number of amendments to the Labour Act. These amendments have been promulgated by the State President and took effect from 28 November 2018.

Requirement of fluency in a foreign language

The amendments to the Labour Act specifically stipulate that an employer has no right to require fluency in a specific foreign language from an employee, if use of that language is not part of the job description. If, upon performance of job duties, it is not necessary to use a foreign language the employer does not have a right to forbid the employee from using the official language.

Requirement to specify amount of salary in a job advertisement

The amendments prescribe that the range of the overall monthly or annual gross remuneration or prescribed hourly rates must be specified in job advertisements. The explanatory notes of the amendments do not elaborate on how specific this range should be.

Necessity for trade unions to approve notice of termination of employment

The current provisions of the Labour Act stipulate that in cases when the employer plans to give notice of termination of employment to an employee who is a member of a trade union, it must request that trade union's approval. This legal framework does not apply to certain exceptional cases: for example, if the employee is under intoxication of alcoholic, narcotic or toxic substances while performing their work; where an employee who performed the relevant work previously is reinstated to their position; or the employer is being liquidated.

Going forward, this approval will have to be requested only if the employee has been a member of the trade union for at least six months. The employer will only have to give prior notification to the trade union and consult with it, rather than requesting approval, where:

- the employee is unable to perform the contracted work due to a health condition, confirmed by a doctor's certificate; or
- the employee does not perform work due to temporary incapacity for a continuous period of more than six months, or for one year within a period of three years, if the incapacity to work is discontinuous.

Payment for overtime work

Proposed amendments to the Labour Act stipulated that if a general agreement is concluded that prescribes a considerable increase in the minimum salary or hourly rate established by the government for a certain sector, the amount of the additional payment for overtime work can be set at no less than 50% of the hourly rate established for the employee.

These proposals prompted rather heated discussions on the part of organisations representing employers. Therefore, the State President sent them to Saeima for further review.

Adoption of the Whistleblowing Act

On 11 October 2018, Saeima passed the Whistleblowing Act, which will come into effect on 1 May 2019. Previously, there has been no such uniform legal framework in Latvia. There were robust discussions about the Act's necessity because certain laws already contain provisions that protect whistleblowers. Concerns were raised that the law will create unnecessary legal conflict and unnecessary additional administrative burdens for employers. Currently, it is difficult to predict how effective it will prove to and whether it will meet its objectives.

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LITHUANIA

On 1 July 2017, the Lithuanian Labour Code was completely redrafted. Below we summarise the main aspects that have proven to be important during its first year in force.

Employment contracts (greater flexibility with fixed term employment, etc.)

The Labour Code now provides for an option to enter into fixed-term employment contracts for permanent work. The maximum term (possible extensions included) is two years (for the same function) or five years (where functions vary). However, fixed-term employment contracts covering permanent work may not exceed 20% of the total number of employment contracts at any one company.

In addition, a greater variety of types of employment contracts now provide for more flexible work arrangements. New types of employment contracts include the following: project-based employment contracts, contracts covering work for several employers, work place division contracts, etc.

New possible grounds for termination of an employment contract

The new Labour Code provides for termination at will of an employment contract. This means that an employer shall be entitled to terminate an employment contract for reasons other than redundancy etc. (provided no discriminatory practices apply) subject to giving three business days' notice and making a severance payment of six months' average salary.

More flexibility in working time regulation

The new law provides for wider options for the employer to regulate working time. For example, the previous requirement for an eight-hour standard working day has been removed.

Minimum wage now applicable only for unskilled work

The minimum wage now only applies to unskilled work. This term includes any work not subject to any special qualification skills or professional abilities. So far, no criteria have been set for the minimum remuneration for qualified work. It is likely to be left to the reasonable discretion of each employer.

Agreements on full material liability eliminated

The new Labour Code eliminated individual agreements for full material liability; however it increased the statutory limits of employee liability. The new limits are as follows: up to three months' average salary (for standard cases), up to six months' average salary (where damage is caused due to gross negligence), and up to 12 months' average salary (when a territorial or sector collective agreement so provides). The Labour Code retains cases where no limits for liability apply, for instance when damage is caused through the fault or criminal activity of an employee. Furthermore, there is still an option to agree on instances of full material liability in a relevant collective agreement.

Vast majority of labour disputes directed to special commissions

Under the new law, if an employee wishes to bring a claim, they first have to submit it to a special labour dispute commission. The idea behind this regime is to resolve labour disputes more quickly and cheaply, and more simply compared to the court process.

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MACEDONIA

Amendments to the Macedonian Law on Labour Relations (Labour Law)

In June 2018, various amendments regarding matters such as employment agreements, annual holiday, the payment of trainees, probationary work, and remuneration were introduced to the Labour Law. In summary, the main changes are as follows:

- Additional protection has been provided for a child under the age of 15, or a child who has not completed compulsory education. They may work, but for no longer than two hours per day and no more than 12 hours per week. During a school holiday they can work for up to six hours per day, but must be provided with two uninterrupted weeks of rest.
- The duration of the public advertisement of an open position has been shortened from five working days to three.
- The probationary work period is reduced from six to four months. After this period, the reason why an employer decides to terminate employment must be specified, and a 15-day improvement period is compulsory after a written warning.
- Termination of employment for business reasons must now be executed on the basis of the criteria defined in the relevant collective agreement.
- The amendments also specify minimum deadlines for termination by the employee. The termination period is one month, but may be shorter if the employer is at fault, for example by failing to provide work, paying a reduced salary for at least three months or acting in a discriminatory manner.
- Furthermore, where the employer terminates employment for business reasons, they cannot employ another person in the same position for at least two years, or else must give priority to the employee whose position was terminated.
- The amendments now further specify the payment of remuneration in the event of an employer terminating employment for business reasons, which is dependent on the duration of employment.
- The amendments specify the deadline for submitting a written request for the extension of employment when reaching retirement age (64 for men and 62 for women), and increase the percentage of the minimum wage for a trainee from 40% to 70%.
  - Also, the amendments further clarify the meaning of the term “adequate food” for a night worker, by determining the allowance for food expenses at 20% of the average net salary per worker paid in the Republic of Macedonia in the previous year. The same article specifies that the worker cannot be assigned to night work if there is no public transport, and the employer does not provide transportation to and from work.
- There has been a change to the obligatory duration of annual leave from 12 working days to two uninterrupted working weeks.

Any procedures regarding probationary work or remuneration, or the payment of trainees that started before the introduction of these amendments, shall continue in accordance with the law and collective agreement by which they were initiated.

New Law on Personal Income Tax

A draft law on Personal Income Tax has also been proposed, which, if adopted, will introduce progressive rates of taxation. All workers who receive MKD 720,000 (€11,700) or less will have to pay personal income tax at a rate of 10%. For those with incomes above MKD 720,001, the tax will be 18% for the portion of income exceeding this amount.

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MONTENEGRO

Montenegrin labour and employment legislation is expected to change significantly in the near future. During 2017, the Ministry of Labour and Social Welfare conducted a public consultation regarding its draft Labour Law. In May 2018, the Government of Montenegro sent the draft law to the European Commission in order to obtain its opinion, after which the government will publish its Proposed Labour Law. In addition, the General Collective Agreement, which was originally declared to be in force until June 2018, was amended in June 2018, and its application extended until 30 June 2019.

Draft of the New Labour Law

During 2018, significant steps forward were made regarding the process of adopting the Proposed Labour Law. The process of public consultation was concluded in 2017, and in February 2018 the Government of Montenegro adopted the Work Programme of the Government for 2018 (the Work Programme). Through the Work Programme, it was stated that it was expected for the Proposed Labour Law to be published by the end of September 2018. However, this has not been done yet.

The most important objectives of the Proposed Labour Law are those necessary to harmonise labour legislation with the EU acquis, ILO conventions and recommendations, suppress the grey economy in Montenegro, and improve social dialogue through collective negotiations etc.

Apart from the reintroduction of the four-year limitation period for claims arising from employment, the most important changes in relation to the draft law concern the extension of the maximum possible employment agreement from 24 to 36 months, and introducing sick leave abuse as a reason for the cancellation of the employment agreement etc.

While awaiting full preparation and implementation of the full Proposed Labour Law, one aspect has already been implemented. one amendment of the Labour Law, personified through the Decision of the Constitutional Court of Montenegro which entered into force on 26 January 2018.

New Laws

In 2018, several laws in relation to labour and employment legislation have been adopted, such as the Law on the Amendments to the Work Protection and Health Law, the Law on Social Council and the Law on the Representativeness of Trade Unions, due to the improvement of the Montenegrin legislation through the process of accession to the EU. Additionally, the Ministry of Labour and Social Welfare conducted a public consultation on the Draft of the Law on Peaceful Labour Disputes Resolution in order to enable the government to continue with the process of adopting the law.

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NETHERLANDS

Proposed reforms to Dutch employment law

On 7 November 2018, the government presented to the Lower House of the Dutch Parliament the proposed Balanced Labour Market Act (Wet Arbeidsmarkt in Balans or WAB). The WAB is currently pending in the Second Chamber of Dutch Parliament, but is expected to come into force on 1 January 2020.

The most important elements of the WAB are:

Introduction of cumulative ground for dismissal

The introduction of a cumulative ground for dismissal, for use in cases where the facts and circumstances are not sufficient to substantiate one of the other grounds for dismissal. If the employment contract is terminated on this basis, the court may grant the employee an additional compensation of up to half the statutory severance pay.

Changes to the statutory severance pay

Service after ten years will be weighted the same as previous service years: at 1/3 of a month's salary per year of service instead of 1/2 of a month's salary per year. Employees will start accruing the payment on the first day of employment instead of after two years. Furthermore, employers will be compensated for paying the statutory severance pay where they dismiss employees because of long-term illness (lasting at least two years).

Changes to rules around fixed-term contracts

Under the current rules, no more than three consecutive fixed-term employment contracts can be agreed in a two-year period before the employment converts into a permanent contract, unless the employment is interrupted for a period of six months or more. This two-year period will be extended so fixed-term contracts can be agreed for a maximum period of three years before the contract converts.

Changes to rules on probationary periods

If an employer offers a permanent contract for the first time, a probationary period can be agreed for a maximum of five months (rather than the current two). For contracts lasting two years or longer, a maximum probationary period of three months may be agreed instead of the current maximum of two months.

Changes for payrolling employees

Employees who are permanently seconded, so-called "payrolling employees", shall be entitled to – with the exception of pensions – the same terms and conditions of employment as the employees employed by the legal entity to which the payrolling employees are seconded.

Changes for on-call employees

An employee with an on-call contract no longer needs to comply with a call if:

- the number of working hours is not, or not clearly, laid down in their employment contract (which is the case in so-called zero-hour contracts); and
- the employee is given less than four days' notice of the start of the work.

If the employer cancels the assignment within this period, the employee is entitled to be paid for the hours the assignment would have entailed.

Social security premiums

Employers will pay a lower unemployment social security contribution for an employee with a permanent employment contract than for employees working on fixed-term contracts.

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NORWAY

New regulations regarding permanent employment

On 1 January 2019, new regulations came into force relating to permanent and temporary employment and the use of temporary work agencies. Through this new legislation, the Norwegian Working Environment Act now defines "permanent employment" as:

- a standing employment agreement, without time limitations;
- the employee having employment protection; and
- the employee being able to predict what work they will receive, by having a real employment position.

It is especially the last criterion that may entail changes in Norwegian employment law. Through the new regulations, the Norwegian legislators wanted to limit the use of employees hired from temporary work agencies, where the employees do not have a guaranteed salary.

For this reason, Norwegian legislators held that the predictability criterion means that the employee will be guaranteed a particular salary each month, and that the employment position must coincide with the expected workload that the employer foresees at the time of taking on the individual. The predictability criterion may be fulfilled in several ways, for instance by a specific percentage, an average of expected work hours, shift schemes with fixed workdays, etc.

In our opinion, the definition of permanent employment is likely to affect the use of on-call substitutes without a guaranteed salary. Without a guaranteed salary, one could argue that the predictability criterion is not fulfilled, and therefore that the on-call substitutes are temporarily employed. If that is the case, each on-call assignment must fulfill the requirements for temporary employment.

Contractual pension and the right of choice in TUPE processes

The Supreme Court of Norway has recently concluded that an employee was entitled to choose between being transferred to the new employer and remaining with the old employer in a transfer of undertaking (TUPE), due to the fact that the employee lost the ability to apply for a contractual pension by being transferred to the new employer. This is the first time that the Supreme Court has assessed whether loss of a potential benefit, such as a contractual pension, may entail a right of choice in a TUPE process.

The Supreme Court referred to the non-statutory right of choice as only applicable in exceptional circumstances, where the transfer entails "significant negative changes" for the employee. The Supreme Court held that the decisive factor is the probability of such negative changes following from the transfer, and that the negative changes must have a certain impact in order to give an employee a right of choice. The Supreme Court rejected arguments related to the individual employee, and made it clear that only negative changes related to the work or workplace are relevant in the assessment.

A contractual pension is a pension scheme stemming from collective bargaining agreements, where the right to a contractual pension is based on qualification, not accrual. A precondition however, is that the employer participates in the contractual pension system by being bound by a collective bargaining agreement. In order to be eligible for a contractual pension, the employee must fulfill criteria both upon turning 62 years of age and upon withdrawal of pension.

In this case, the employee in question would have turned 62 years of age one year and two months after the transfer date. She fulfilled the length of service requirement for withdrawal at the transfer date. The value of the loss of contractual pension was calculated at NOK 1,300,000 (€135,000). The Supreme Court therefore concluded that it was likely that she would have received the contractual pension by remaining with her old employer, and that the economic loss was significant enough to grant her a right of choice in the TUPE process.

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POLAND

Changes to storage and organisation of personnel files

Further to changes introduced by the General Data Protection Regulation (GDPR), since 1 January 2019, personnel files of new employees generally have to be stored for 10 years after employment, rather than 50 years as they were previously. Additional conditions apply to shorten the time to 10 years for those employed between 31 December 1998 and 1 January 2019.

Since 1 January 2019, the files can be kept in electronic form. Paper files can be converted to a digital format, but the relevant employees will have to be informed.

Further, the manner of keeping personnel files was changed, to include introduction of a new section D of those files, and a new obligation to keep employment documents and information on working hours separately for each employee.

Surveillance at the workplace

Amendments that came into force on 25 May 2018 confirm that video recording, or other forms of surveillance, are permissible in certain circumstances. However, strict conditions apply; namely, that employees must be informed in advance; recordings can be kept for a maximum of three months; and recordings can only be used for the purposes for which they were made.

Protection of trade secrets

An unclear amendment to the Polish Combating Unfair Competition Act as a result of European Directive 2016/943 means there is currently no clear right in law requiring former employees to keep trade secrets confidential. Therefore, it is advised to include post-employment confidentiality provisions in employees' contracts to ensure confidentiality after their employment ends.

Trade unions

Since 1 January 2019:

- union rights now extend to civil-law contracted workers (not only workers under contracts of employment);
- union activists under civil law contracts are also protected when engaging in union activities;
- representation thresholds have increased (with the intention of making it more difficult for small unions to block decision making); and
- employers now have to better control the accuracy of union membership as a court will be able to verify it.

Employment of foreign nationals

It is now easier, but still time-consuming, to employ foreign nationals. The key groups of employees that are affected by the procedural simplifications are seasonal workers and intra-company posted workers.

Employee Capital Plans

The main aim of Employee Capital Plans (PPK) is to encourage individuals to save in order to have financial security after the age of 60. The enabling legislation is binding as of 1 January 2019 and gradually subsequent groups of employers are to be included; namely, employers of more than 250 employees as of 1 July 2019, employers of more than 50 employees as of 1 January 2010, employers of more than 20 employers as of 1 July 2020, and other employers as of 1 January 2021. Under this new legislation:

- employers and financial institutions managing PPKs will have to put contractual arrangements in place;
- employers and employees will both pay into PPKs, which will mean employer work-related costs will increase; and
- an employee will be able to discontinue paying into a PPK, but will have to renew that decision every four years.

Minimum wage rates in 2019

In 2019, the Polish national minimum wage rates are PLN 2,250 gross per month (€520) for workers under a contract of employment, and PLN 14.70 gross per hour (€3.35) for workers under civil law contracts.

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PORTUGAL

Forthcoming legislation

Amendment of the legal framework on term employment and agency work

The Portuguese Parliament is currently debating a draft law that envisages the introduction of further limitations to term employment (which covers non-permanent employment contracts, either for a "fixed" or "unfixed" length of time).

In summary, the measures currently being debated are to:

- reduce the maximum duration of unfixed term contracts from six to four years;
- reduce the duration of fixed-term contracts from three to two years;
- reduce the number of possible extensions of fixed-term contracts from three to two;
- stop employers using term employment to hire workers looking for their first job or long-term unemployed workers;
- restrict term hiring on the grounds of the launch of new activities to companies with fewer than 250 employees;
- introduce additional social security contributions for companies that register an excessive use of term hiring; and
- extend the trial period applicable to permanent employment contracts entered into by workers looking for their first job and long term unemployed workers;

The agency work legal framework will also be affected by the forthcoming amendments to the Portuguese labour code. The objective of such amendments is to limit the use of agency work. The changes under discussion are to:

- introduce a maximum number of extensions (six) when using of agency work agreements;
- eliminate the minimum period of duration of such contracts that excluded the applicability of the user company Collective Bargaining Agreement (CBA) to temporary workers, meaning agency workers will be covered by the CBA from day one;
- introduce a duty to provide information to the temporary worker concerning the grounds that justify the execution of the agency work agreements; and
- mandate that, if an agency work agreement breaches legal requirements, then the worker will be deemed a permanent employee of the user company.

Bank of hours (by individual agreement)

Another anticipated change to labour law is the elimination of establishing a bank of hours by individual agreement with the employee.

A 'bank of hours' is a mechanism provided in Portuguese Law under which the employee may work up to two additional hours per day. These hours do not qualify as overtime work and are compensated, at the employer's discretion, with rest, payment in lieu (under the standard hourly rate) or holiday.

Going forward, this will only be possible if at least 65% of the workforce approves it, or if provided in the relevant CBA.

Recent changes

Amendment of the legal rules on the transfer of undertakings or business establishments

The legal framework on transfer of undertakings has recently been amended. The amendments envisage increasing workers' guarantees and improving the transparency of transfer processes.

The changes introduced seek to clarify the concept of an economic unit and to increase consistency. They also expand the joint liability of the transferor for labour credits; introduce an information duty for labour authorities with supervisory powers; and provide for administrative offences related to the breach of these obligations. The aim of such measures is to avoid fraudulent conduct by employers and to safeguard the professional status of impacted workers. Finally, the recent amendment introduced the right of workers to object to the transfer if it would cause serious damage to their careers.

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ROMANIA

Increased gross minimum base salary

Since 1 January 2019, the minimum guaranteed monthly gross base salary for an average full-time work schedule has changed as follows:

- the minimum monthly gross base salary has risen to RON 2,080 (€440);
- the minimum monthly gross base salary guaranteed for payment for employees who have one-year seniority in the field from which they have graduated, working in positions that require higher education graduates is RON 2,350 (€500); and
- the minimum monthly gross base salary guaranteed for payment in the construction industry is RON 3,000 (€640). This value of RON 3,000 applies only to the employees hired by companies active in the sectors expressly mentioned within the Government Ordinance that introduced that type of minimum salary.

The fiscal reform

Following reform of the fiscal system in Romania, a new Act came into force introducing a temporary mechanism to calculate the social health insurance contribution for employees who are exempt from paying income tax. This legislation was needed because the legislation that originally introduced fiscal reform created inequalities for this category of employee. In order to maintain the same net salary in 2018 as in December 2017, the State pays part of this contribution on a temporary basis, under specified strict conditions.

Statutory holidays

Good Friday was introduced as a statutory holiday (the last Friday before Easter).

Teleworking

Teleworking is defined as a form of work where the employee regularly and voluntarily fulfils duties specific to their job, occupation or profession, in a location other than the employer's premises, on at least one day per month, using information and communication technology.

A new Act details the regime applicable to employees performing work under such an arrangement.

Undeclared work

The level of fines for employees found to be carrying out undeclared work, as prescribed by law, has been capped at a maximum of RON 200,000 (€44,400). In addition, the Labour Inspector can apply, under the conditions of the legislation in force, for their place of work to be closed down. Restarting the activity without observing the legal rules is a criminal offence, punishable by a fine of between six months and two years' imprisonment.

Value tickets

Since 1 January 2019, new regulations have been introduced, in conjunction with the provisions of the Fiscal Code, applying to value tickets granted for the benefit of employees. The term "value ticket" includes meal tickets, gift tickets, crèche tickets, cultural tickets and vacation vouchers.

Regulation regarding internships

A newly-introduced Act regulates the performance of internship programmes. The law aims to cover a legislative void and regulates, in detail, the regime applicable to the performance of such internship programmes.

Equality of opportunities and treatment for women and men

As of 1 January 2019, the statutory retirement age for women rose to 61. The labour legislation has been aligned with the recent decisions of the Constitutional Court and, consequently, female employees can elect, by sending written notice within 60 calendar days of meeting the standard age conditions and minimum contributory period for retirement, to postpone their retirement to 65. This right cannot be restricted, nor limited by employers.

News on daily workers

Except in certain circumstances, new legal provisions state that a person may not perform "daily worker" activities for more than 120 days during a calendar year, irrespective of the number of companies for which they have worked.

Companies for whom daily workers are working cannot use a daily worker for more than 25 consecutive calendar days in these activities.

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RUSSIA

New grounds for unscheduled checks by State Labour Inspectorate

Since 11 January 2018, the State Labour Inspectorate has been able to conduct unscheduled checks on employers on one of the following grounds:

- intentional evasion from entering into an employment contract with an employee;
- conclusion of an employment contract with an employee in an improper form; or
- entering into a civil law contract (services, consulting, etc.) that regulates employment relations between an employer and employee.

The employer will not be notified in advance about a check initiated on the above grounds. In addition, the State Labour Inspectorate may carry out such a check without the prior approval of the Prosecution Office (as would normally be required for it to carry out an inspection).

New requirements in relation to migration registration of foreign citizens in Russia

Since 8 July 2018, foreign citizens need to be registered at the address at which they reside in Russia. This can be their home residence (e.g. flat, house) or a hotel, campsite, health resort or hospital where they actually reside.

A foreign national can only be registered at the address of their employer (or at premises owned by the employer) if they actually live there.

New criminal liability for employers

Since 14 October 2018, unjustified denial of employment and dismissal of a person of pre-retirement age may be punishable with a fine of up to 200,000 RUB (€2,635) or in the amount of up to 18 months' salary of the convicted person, or in a form of mandatory work for up to 360 hours. Pre-retirement age is defined as any point in the five years prior to a person reaching retirement age. Such a dismissal will be deemed "unjustified" if the employee can prove that their dismissal was connected with their age.

New retirement age

Since 1 January 2019, the retirement age will be increased every year, until it reaches 65 for men and 60 for women.

However, some categories of employees will be entitled to early retirement:

- women who have at least 15 years of pension contributions by the time they are aged 56, where they gave birth to four children and raised them until they were at least eight years old;
- women who have at least 15 years of pension contributions by the time they are aged 57, where they gave birth to three children and raised them until they were at least eight years old.

New obligations of parties inviting foreign citizens to Russia

Since 16 January 2019, the so-called "inviting party" of a foreign national must take measures to ensure that the person leaves Russia when their visa expires. In addition, the inviting party must take measures to ensure that that the individual concerned complies with the declared purpose of their entry into Russia (for example, a person travelling on a business visa cannot be involved in employment activities in Russia). Non-compliance with the above obligations may lead to the inviting party being fined.

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SERBIA

During 2018 several employment-related laws were amended in Serbia.

Law on the employment of foreigners

The labour market test that forms part of the work permit acquisition process (through which the National Employment Service examines whether there are any Serbian citizens suitable for a vacant position), has been shortened from one month to 10 days. The aim of this amendment is to expedite the process for issuing work permits. However, changes to the immigration regulations imposed an obligation to conduct the labour market test before applying for a temporary residence permit, effectively prolonging the procedure for obtaining both temporary residence permits and work permits by 10 days (since a work permit procedure may be initiated only after obtaining a temporary residence permit).

Law on the conditions for secondment of employees on temporary work abroad

From now on, employers may only send abroad employees who have been employed for at least three months prior to the secondment, except:

- if the secondment is arranged within the scope of the employer's main activity as registered at the Business Registers Agency; and
- the number of seconded employees does not exceed 20% of the total number of employees.

This will not apply to secondments that are arranged under the treaty between Serbia and Germany.

Furthermore, employers are no longer obliged to inform the Ministry of Labour in cases of secondment abroad.

Law on financial support for families with children

The new law that regulates financial support for families with children became applicable on 1 July 2018. The most significant implication for employers is the change in the manner of the payment of maternity and childcare leave. Before 1 July, employers had to pay salary and then apply for a reimbursement from the State. Compensation is now paid directly to the respective employees by the Ministry for Social Affairs, without employer involvement.

New minimum wage

A new minimum wage has been agreed upon on at the State level between the representatives of the government, representative trade unions and the Serbian Association of Employers. It represents an increase of 8.6%, and has applied since 1 January 2019. Employers cannot pay employees a basic salary below this legal minimum.

Law on staff leasing

It seems that the long-awaited law on staff leasing will be adopted soon. The draft of the law is presented for public consultation until the end of November 2018. The draft law is currently rather restrictive, limiting the number of leased staff to a maximum of 10% of the total number of employees (30% with the consent of the Ministry of Labour and an opinion of the Ministry in charge of the industry in which an employer operates). Employers may lease employees for a maximum period of 24 months (the same maximum period is prescribed for fixed term employment contracts).

Employers may lease employees for more than 24 months only in situations in which they would be able to conclude a longer fixed-term employment contract (e.g. work on a specific project, the replacement of an absent employee etc.). Although the regulation for staff leasing will bring more certainty to this important area, companies that organise their business using staff leasing are hoping that the final version of the law will be less restrictive.

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SLOVENIA

Slovenia's employment and labour legislature did not introduce any significant changes in 2018, however, the new Transnational Provision of the Services Act (the Act) came into force on 1 January 2018 affecting employers who post employees to and from Slovenia.

The Act comprehensively governs the transnational provision of services within the European Union, i.e. it regulates the conditions for Slovenian employers posting employees abroad, and the conditions for foreign employers posting foreign employees to Slovenia.

The new rules apply to Slovenian employers when an employee does not habitually carry out their work in the country of the posting, and the service is carried out within the framework of the employer's activities (except if the posting is between companies affiliated with a capital link) and the largest part of the employer's activity is carried out in Slovenia.

The employer is required to permanently employ at least three employees for at least six months or, if fewer than three, since the employer's establishment. The employer is also required to submit a declaration stating that it has carried out at least 25% of its EU business in Slovenia in the last 12 months or, if less, since its establishment. False declarations may result in criminal responsibility and civil liability.

The Act imposes a new document – the A1 certificate. This is a mandatory document for the employer posting employees to an EU Member State and represents a European certificate of social insurance, proving that the posted employee is a part of the social insurance scheme.

According to the regulation currently in force, A1 certificates are issued on the condition that the employee is included in the mandatory social security scheme for a period of at least 30 days. A foreign employer providing cross-border services in Slovenia is required to hold a valid A1 certificate for the posted employee.

The company's provided services can only include services within the framework of its registered activities, with the exception of cases when employees are posted to companies affiliated with a capital link.

If a doubt arises as to whether a substantial part of the employer's activity is being carried out in the country of its registered seat, despite a valid A1 certificate, a factual analysis is carried out, looking at whether the employer has carried out at least 25% of the business in its country in the last 12 months or, in a case of a shorter period, since its establishment. A factual analysis will also consider whether the posted employee has been included in the mandatory social security scheme in Slovenia in the last 24 months. Before the commencement of work in Slovenia, a foreign employee is required to register with the Employment Service of Slovenia.

A cross-border provision of services can be carried out in three ways, by way of posting employees:

- on the basis of the concluded contract with the party for whom the services are provided;
- to a company affiliated with a capital link; or
- within a framework of providing employees to a user (i.e. agencies).

Additionally, the Act contains provisions on the cooperation of EU Member States in the field of posted employees, and governs the cross-border enforcement of penalties imposed on employers posting employees in contravention of the law. Foreign employers found to have failed to comply with the regulations could face fines of up to €60,000.

The aim of the Acts is to harmonise national regulations with EU regulations and to deter the abuse and circumvention of posted workers' rights by bogus ("letter-box") companies, and to manage and control companies that have already been tried for offences related to the payment of wages and illegal work. Such scenarios arose from previous regulations that did not contain specific national legal frameworks

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SPAIN

There have been substantial changes in Spanish labor and employment legislation over the past year, the most significant of which include:

- The 2018 State General Budget Law (Law 6/2018, of 3 July 2018):
  - extended paternity leave up to five weeks;
  - increased the maximum monthly Social Security base on which employer and employee contributions are based to €3,803.70; and
  - re-evaluated public retirement pensions at a surplus rate of 0.25%.
- The Royal Decree 997/2018 of 3 August 2018 set legal alternatives to avoid hiring self-employed consultants who, based on the circumstances of their services, could be considered employees.
- A new Personal Data Protection Law was approved. The new law regulates the entitlement to "digital disconnection" from employers' electronic devices.
- The Royal Decree 1462/2018 implements, among others, the following measures:
  - an increase of the statutory minimum wage (as a general rule, €900 per month).
  - an increase of Social Security contribution bases (7% for the maximum contribution base and 22% for the minimum contribution base).
  - an increase of 1.6% of the retirement pensions.
  - allow the negotiation of mandatory retirement clauses within the scope of the applicable collective bargaining agreement, subject to the employee´s access to a complete retirement allowance and linked to targets aligned with the employment policy.
- The Supreme Court, through its ruling of 8 February 2018, allowed companies to monitor their employees' electronic devices and tools (such as their corporate email accounts) where they suspect misconduct by the employee. Such monitoring must be governed by the principles of proportionality and good faith.

During 2019, Spain is expecting further notable changes in labour and employment law. The recent change in government and the preliminary agreements on the 2019 State General Budget will have a substantial effect on future legislation.

In particular, the Spanish Government has announced its intention to pursue the following legislative proposals this year:

- Amendment of the 2012 Labour Market Reform, focusing on:
  - setting limits to the existing application priority of companies' collective bargaining agreements (over the sectorial ones);
  - modification of the current negotiating structure for collective bargaining agreements; and
  - the creation of daily working hours recording systems, even if employees do not work overtime.
- Draft of a Gender Equality Law with the aim of reducing any differences between men and women at a company level, for example in terms of salaries, promotions and employment access. It is also proposed that the Labour and Social Security Inspectorate will conduct equality audits.
- The Spanish Workers' Statute is being amended. Employment agents and operators want a new legislative base that reflects the modern reality of employment relationships and new working models. A group of experts will be asked to make proposals for redrafting during 2019.

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SWEDEN

New case-law regarding non-solicitation of employees

In October 2018, the Swedish Labour Court assessed, in two similar cases (AD 2018 no. 61 and 62), the fairness of non-solicitation clauses applied in employment agreements, which aimed to prevent leavers poaching employees of their former employer. According to the Swedish Labour Court, such clauses may be justified during a short transitional period in order to neutralise the competitive advantage a previous employee has compared to other potential employers when it comes to recruiting the previous employer's remaining employees. However, a case-by-case assessment must be made in order to assess the fairness and consequent validity of the restrictions.

In both cases, the Swedish Labour Court considered the non-solicitation clauses applied were unfair and too far-reaching to be legitimate. The relevant clauses were considered unfair as the restrictions:

- were not limited to employees that the former employees had worked with or employees holding a certain professional ability;
- did not only include active recruitment, but also prohibited other employees from seeking employment at the competitor; and
- stipulated a time period which was too long (between six and 18 months after the employment had ceased).

Non-solicitation restrictive covenants need to be drafted carefully to ensure that they will be valid if challenged.

New rules regarding rehabilitation

As of 1 July 2018, new rules entered into force in the Swedish Social Insurance Code. The new rules require employers to prepare a "plan for returning to work" by the date on which an employee has been off work due to sickness for 30 days. This plan is to be prepared if it can be assumed that the employee will remain on sickness absence for at least 60 days. However, a plan does not have to be prepared if it is evident, based on the employee's health condition, that the employee cannot return to work. The new rules aim to assist the individual's rehabilitation by requiring the employer to initiate the process for returning to work at an early stage.

Legal changes relating to calculation of sick pay

As of 1 January 2019, new rules entered into force in the Swedish Sick Pay Act. Previously, employees received compensation (i.e. sick pay) from the second day of sickness. The first day of sickness was a "waiting day" (Sw. karensdag) implying that no salary or sick pay was paid out. However, the new rules replace the waiting day with a sick pay deduction (Sw. karensavdrag), meaning that the amount of sick pay will instead be calculated for the entire period of sickness, i.e. from the first day of sickness. Instead, a deduction of 20% of the employee's average weekly salary will be made from their sick pay. The purpose of the changes is to ensure that the same deduction will be made, regardless of on which day the employee is absent from work due to sickness.

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SWITZERLAND

Unusual Mandatory Administrative Hiring Rules

The Swiss Parliament passed amendments to the law on staff recruitment and leasing, which came into effect on 1 July 2018. Under the amended law, companies offering jobs in Switzerland for which high unemployment rates exist will have to notify and register job vacancies with the authorities. Breaching this new statutory obligation could lead to fines up to CHF 40,000 (€35,000).

Background

The new rules are the consequence of popular concern about "mass immigration". The new legal provisions include "measures for job seekers". These stipulate that companies offering a job in a profession in which the unemployment rate reaches or exceeds a defined threshold must register a job vacancy with the authorities to encourage domestic job applicants. This obligation exists for every position of a profession for which the threshold value of the unemployment rate is reached. This applies even if the employer does not form part of the industry typically employing the professions in which the unemployment rate threshold is reached. The obligation to report jobs applies whether the employer wishes to fill the position with a Swiss national, an EU/EFTA national or any other type of foreign national.

The job notification requirement aims to simplify the placement of job seekers who are registered with regional job centres.

Which occupational groups are concerned?

The Federal Council issues a list of the occupational groups subject to the obligation to report jobs, which is updated annually.

The job notification requirement applies for professions for which the total Swiss unemployment rate reaches or exceeds 8%. From 1 January 2020, the threshold will be reduced to 5%. The transitional period between 2018 and 2020 should allow employers and law enforcement bodies to adapt their processes to cooperate with the new regime. The latest list of occupational groups subject to reporting requirements includes:

- construction;
- hotel and catering;
- watchmaking;
- marketing and public relations (PR);
- telephone services;
- agriculture;
- home economics;
- magazine and warehouse management; and
- theatre.

For example, the area of PR and marketing includes the following roles: PR Director, congress manager, event manager, PR professional, PR expert, PR specialist, press attaché, PR delegate, PR consultant, marketing administrator, marketing manager, marketing planner, marketing assistant, head of marketing, promotion manager and marketing communication expert.

In order to check whether a certain job vacancy must be registered, there is an online tool available, which lists all the professions that must be reported. This tool is available here: https://www.arbeit.swiss/secoalv/en/home/menue/unternehmen/stellenmeldepflicht/tool.html.

Employers need to check the list in detail before a position can be advertised. The law requires a pre-notification to the unemployment office before a position can be advertised. Then, after confirmation of the receipt by the unemployment office, a five-business day blocking period applies during which the position may not be advertised. The unemployment office has three days during which CVs of registered unemployed individuals can be submitted to the employer. The employer must then review these CVs and inform the unemployment office whether the candidates are suitable or not, and which candidates will be invited to an interview. If candidates are interviewed, the employer needs to notify the unemployment office whether a candidate was given the job or whether the position remains open.

Non-compliance with these provisions could lead to fines of up to CHF 40,000 (€35,000), though in practice the fines will certainly be lower.

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TURKEY

The major changes within the Turkish employment legislation during the year 2018 were the introduction of the mandatory mediation in labour disputes and the obligation to use Turkish currency in employment contracts.

Mandatory mediation in labour disputes

In order to ease the workload of the labour courts of first instance and the Court of Appeal, and to increase the effectiveness of judicial procedures in employment-related disputes, it is stipulated under the Code of Labour Courts No. 7036 that "it is mandatory to apply for mediation, prior to legal cases being filed for reinstatement of employment, or for claims of employee or employer receivables or compensation based on individual or collective employment contracts."

This provision came into force on 1 January 2018 and since then, any claims and compensation demands based on the abovementioned grounds (payment of severance and/or notice entitlements, overtime pay, weekend and national holiday work charges as well as annual leave charges) must first be brought to mediation.

However, mediation is not mandatory in lawsuits for material and moral damages arising from workplace accidents and employee health issues, and in subrogation cases concerning the same.

The use of Turkish currency in employment contracts

In the Communiqué Regarding the Amendment of Decree Numbered 32 on Protection of the Value of the Turkish Currency, issued on 4 October 2018, as amended, it is stipulated that the consideration and other payment obligations cannot be fixed in foreign currency, or be based on a foreign exchange index in the following cases:

- in employment contracts executed between two Turkish residents, save for the agreements which will be performed outside Turkey or agreements with individuals in the shipping industry; or
- in service agreements, save those:
    1. where the parties to the agreement are not Turkish citizens;
    2. that are executed within the scope of import, transit trade, sales and deliveries regarded as export, and services and activities related to foreign currency exchange;
    3. that are executed in respect of the activities to be carried out abroad by persons resident in Turkey; or
    4. are started in Turkey and terminated abroad, or vice versa, or which are commenced and terminated abroad.

There are further exceptions to the new rule: payment obligations can still be delivered in foreign currency or based on a foreign exchange index where the employment/service agreement is executed between branches, representation offices, offices, or liaison offices of the persons residing abroad; and by companies which they directly or indirectly control that are located in free zones in Turkey, or where the employee is resident in Turkey but is not a Turkish citizen.

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UKRAINE

Changes in consideration of labour disputes and disputes with corporate officers

On 15 December 2017, landmark changes to Ukrainian procedural law entered into force, as introduced by Law of Ukraine of 3 October 2017 No. 2147-VIII "On Amendments to the Commercial Procedure Code of Ukraine, Civil Procedure Code of Ukraine, Code of Administrative Procedure of Ukraine, and other Legislative Acts."

The amendments enacted the restated versions of Ukraine's procedural codes, resulting in substantial changes in a number of procedural rules, both in general and in respect of consideration of specific categories of disputes. In particular, the amendments have introduced new rules relating to labour disputes, and have altered certain rules related to disputes with corporate officers.

The key changes relating to the consideration of labour disputes by general courts are as follows:

- A simplified court procedure now applies to all labour disputes in order to ensure their quick resolution. The simplified procedure stipulates shorter time limits for the consideration of cases (up to 60 days from the date of commencement of the court proceedings) and for the completion of separate procedural steps; removes certain stages of usual civil court procedures (preparatory court hearing, legal debates); and introduces the possibility of a written procedure without the presence of the parties. However, the court may, on its own initiative or if a party so requests, summon the parties to the labour dispute to appear for an oral hearing.
- Additional grounds to reject an appeal to the Supreme Court have been introduced, including if a labour dispute has a low claim value (particularly if a legal opinion of the Supreme Court is available in a similar case).
- Representation by licensed attorneys is no longer mandatory for labour disputes.

The amendments have also changed the procedure by which commercial damages courts consider claims involving corporate office holders (including former office holders).

- The commercial courts' jurisdiction now extends to disputes covering all legal entities (not only those established as a business entity) relating to recovery of damages from corporate office holders based on the claims of the owners (participants, shareholders) of such legal entities.
- Going forward, only the owner (participant or shareholder) of a legal entity holding at least 10% of its shares or authorised capital can act as a claimant in such disputes in the commercial courts. Previously, legal entities had a direct right to lodge damages claims before commercial courts where they had suffered damages due to the actions or inactivity of their office holders.

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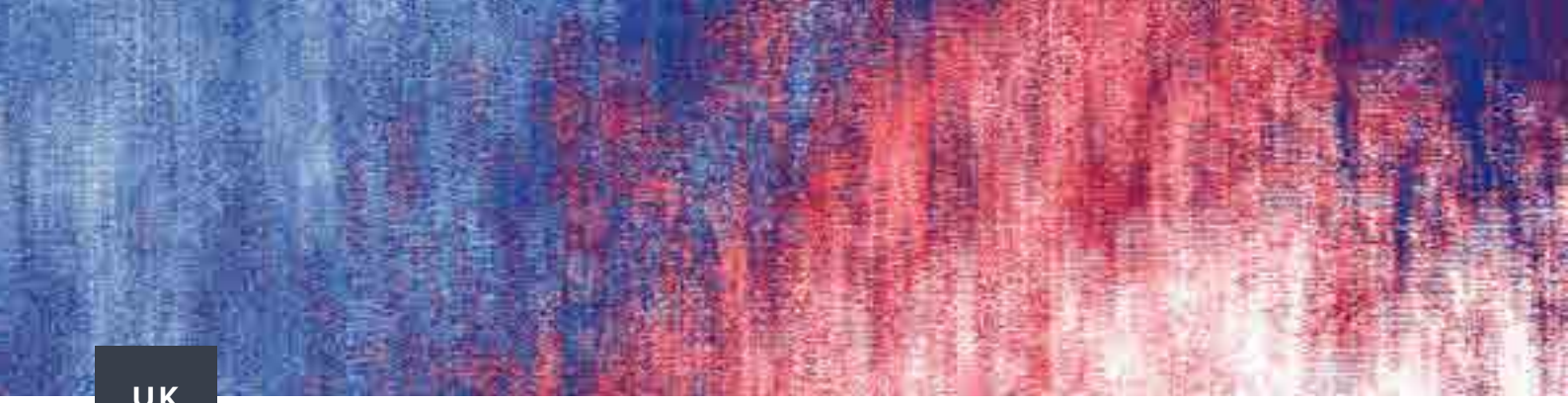

UK

Brexit

One of the most important strands of Britain leaving the EU has been the discussion around what will happen to EU citizens currently in Britain who have exercised their free movement rights. Knowing that employers and employees need clarity about this, the UK Government has set out a scheme called "settled status", which is expected to apply regardless of whether a deal is reached in Brexit negotiations.

Under the scheme, EU workers will have until 31 December 2020 to arrive under EU free movement rules. They will then have until 30 June 2021 to apply for settled status (or pre-settled status if they have not yet been in the UK for five years). This is equivalent to permanent residency.

#metoo

The #metoo movement has continued to make waves in the media, and a number of issues have consequently arisen for the employment relationship. There has been an increased awareness of the importance of proper anti-discrimination and anti-harassment training in the workplace, and of setting clear guidelines around what behaviour is and is not appropriate.

While confidentiality undertakings can still be included in settlement agreements, caution is to be exercised. There is a tension between public policy, and the employer's legitimate interest in settling any legal claims. In the UK, employees must receive independent legal advice before signing settlement agreements, and so should have the opportunity to be advised on whether or not they should sign an agreement rather than bringing a claim. It should be noted, however, that in one particularly high profile case this year, a Member of Parliament broke an injunction to name an employer accused of harassing employees, on the basis that it was in the public interest that his alleged behaviour be known. The UK Prime Minister consequently announced a review of the "potentially unethical" use of such confidentiality provisions.

Pay Gap reporting

The first mandatory Gender Pay Gap reports were published by employers in April 2018. These are required for all UK employers in the private sector with more than 250 employees, as well as employers in the public sector in England and Wales.

The government has received recommendations about the quality of the reporting data, and is considering lowering the threshold of employee numbers before an employer needs to submit the report. It is also proposed that employers should be required to publish an "action plan" detailing how they will improve their gender pay gap.

A consultation is also underway relating to the introduction of mandatory ethnicity pay gap reporting, building on the success of the existing pay gap reporting scheme. This may prove more difficult than gender pay gap reporting, as not all employers collect ethnicity information about their employees, and definitions/descriptions of ethnicity are not standardised.

Parental bereavement leave

Under the Parental Bereavement (Leave and Pay) Act 2018, employees who lose a child under the age of 18 will soon be entitled to two weeks' leave, paid at a statutory rate. Additional regulations are required to bring this into force, but the new rules are expected to apply from April 2020.

Increases in national minimum wage

From 1 April 2019, hourly national minimum wages rates will increase to £8.21 (€9.43) for workers aged over 25; £7.70 (€8.85) for 21-24 year olds; and £6.15 (€7.07) for 18-20 year olds. Lower rates apply for 16-17 year olds and apprentices.

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