



SPECIAL REPORT

GLOBAL EMPLOYMENT LAW UPDATE

Spring 2021

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Special thanks to McDermott Alumna Brian Cousin for the insight and production of the Global Employment Law Update.

For more information about McDermott Will & Emery visit mwe.com

INTRODUCTION

Welcome to the latest edition of the McDermott Will & Emery Global Employment Law Update. The purpose of this publication is to provide you with concise summaries of many of the laws and court decisions from 2020 that significantly affect employers and employees all over the world. No publication has ever captured all new employment law developments from every single country. However, our effort to create the most comprehensive global employment update ever assembled has resulted in updates from 53 countries.

Many of the updates presented in this publication describe changes in the law that are well known to lawyers and human resources professionals from those countries, but are lesser known in other parts of the world. Our aim is to provide you and your colleagues with a useful reference guide to significant changes in employment law all across the globe. Furthermore, we hope this guide—and other specially designed products we create for our clients—will serve as a tool to assist multi-national businesses in their ongoing struggle to maintain a consistent global corporate culture amidst an ever-changing landscape of local employment laws.

Local employment lawyers from each country, who are either McDermott lawyers or part of McDermott's Global Employment Law Network, prepared these updates. We select each law firm participating in our network based on their outstanding local reputation and, in most cases, our prior experiences in working with them. Participants in the network work closely with McDermott lawyers on client projects, article writing, seminar and webinar presentations as well as signature client events.

We hope you find this update informative and useful. We welcome your comments and suggestions for future publications.

ANGOLA

LAWS

COVID-19 Legislation

2020 was characterized by the pandemic that impacted countries around the world, and Angola was no exception. Starting with the Presidential Decree 82/20, which established the first employment-related measures in response to the pandemic, through the Presidential Decree 314/20, the last COVID-19-related regulation of 2020, the pandemic compelled the legislature to enact a number of temporary rules affecting the country's labor and employment laws. These rules included: (i) exemptions from on-site work requirements for employees aged 60 and over, pregnant women and other populations deemed to have high vulnerability to COVID-19, (ii) extending the expiration date of employment visas, (iii) limiting the percentage of employees performing on-site work for certain activities, (iv) suspending the right to strike and (v) prohibiting the suspension of employment contracts or the termination of employment based on the employee's absence from work.

Presidential Decree 295/20 (Extension of the Social Protection Regime to Activities Which Generate Low Income)

This decree extended the social protection regime to employees in positions that generate low income, such as agricultural and fishing, and small businesses. With this regulation, these employees are now protected by the Social Protection System with respect to disability, old age and death. The regulations also define specific contribution rates for these companies and employees.

Presidential Decree 299/20 (Old-Age Protection System Regime)

This decree approved the Old-Age Protection System regime, establishing an old-age retirement, early retirement and pension payments system. All employees who are at least 60 years old and with at least 180 months of contributions to the Social Protection System, or 420 months of contributions regardless of their age, are entitled to an old-age allowance. Significantly, employees may still continue working even after receiving the allowance, if the employer accepts their request.

Law 33/20 (Civil Requisition)

This decree regulates instances of civil requisition, setting the principles, rules and proceedings applicable to this mechanism, which permits the state, in urgent situations, to take control of companies and goods, and obliges citizens to provide services or work under the conditions defined by the government. Failure to comply with those orders may constitute a crime of disobedience.

CASE LAW

Constitutional Court – Judgement 606/2020 (Minimum Period Between the Convocation and the Disciplinary Interview)

With regard to disciplinary proceedings, the Angolan Constitutional Court followed the Supreme Court's decision that, despite the Employment General Law remaining silent as to a minimum period between the Convocation (the act of calling by summons) and the Disciplinary Interview, employers must wait at least five days between those acts to, among other things, avoid infringing on employees' rights to properly defend themselves. (More information available [here](#).)

BELGIUM

NOTICE PERIODS ARE SUSPENDED IN CASE OF CORONA FURLOUGH

Belgian rules on employee dismissal have been amended in the context of the COVID-19 pandemic. On June 11, 2020, a law was enacted to suspend the notice period of dismissed employees during periods of temporary furlough due to COVID-19-based *force majeure* ("Corona furlough"). This was intended to prevent employers from dismissing employees without having to pay any remuneration or severance indemnity.

After review by the Council of State, the law was not ultimately given retroactive effect. This measure, therefore, became applicable as of June 22, 2020, without any effect on notice periods that began before June 22, 2020. If the notice periods already expired before this date during a period of corona furlough, the employment agreements were deemed terminated.

Paternity and Co-Maternity Form New Grounds of Discrimination in Gender Act

Paternity, co-maternity, breastfeeding, adoption, gender and medically assisted procreation are new grounds for discrimination on the basis of gender. The new grounds of protection are in addition to the already existing protected criteria: pregnancy, childbirth, motherhood, gender transition, gender identity and gender expression.

Among other things, this extension to the Gender Act will better protect fathers who are discriminated against for taking paternity leave, and other parents who are often absent from work for in vitro fertilization (IVF) treatment.

Court of CASSATION 22 June 2020, AR S.19.0031.F

The case concerns the basis for calculating the severance and protection allowance of an employee who was dismissed and worked half time under a time credit scheme to care for her son. The Mons Labour Court ruled that there was no indirect discrimination on the grounds of sex when this severance and protection allowance was calculated on the basis of the remuneration received as a result of her reduced work performance. Both the employee and the Institute for the Equality of Women and Men challenged this judgment on the basis of Article 157 of the Treaty on the Functioning of the European Union (TFEU), which provides for equal pay for male and female employees, and on the basis of the European Anti-Discrimination Directive and the Belgian Anti-Discrimination Act.

The Court stated that when the pay for reduced working hours in the context of parental leave credit constitutes the basis for the calculation of the severance pay and protection pay, a difference in treatment between male and female employees is created. According to the Court, significantly more women than men opt for this time credit system. Such a distinction can be compatible with Article 157 TFEU only if it is justified by objective factors. Since the judgment under appeal failed to examine those points, it was therefore contrary to Article 157 TFEU.

BOSNIA AND HERZEGOVINA

CONSTITUTIONAL COURT SUPPORTS STAFF LEASING ALTHOUGH NOT EXPLICITLY REGULATED

The Constitutional Court of Bosnia and Herzegovina in its decision no. AP-809/19 dated November 10, 2020, found that staff leasing is not prohibited in Bosnia and Herzegovina (BH) even though such an arrangement lacks explicit regulation in the relevant labor legislation.

During a labor inspection at the premises of the appellant, the labor inspector established that the work performed by leased employees sent by a staff leasing agency represents regular business activities of the appellant. Therefore, these employees should have been employed by the appellant for conducting such work pursuant to the labor regulations instead of leased from another employer based on a commercial agreement.

The Constitutional Court of BH found that the lower courts interpreted the Labour Law (published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 26/16 and 89/18) arbitrarily to the extent that such interpretation represented a breach of the appellant's right to a fair trial.

The Constitutional Court of BH reasoned that although staff leasing is not explicitly regulated in BH, it is not explicitly forbidden and thus cannot be interpreted as such solely due to lack of explicit regulation, particularly since staff leasing is recognized as a permitted activity pursuant to the BH Classification of Business Activities. Furthermore, the Court noted that there is no regulation on how a company should organize its business activities, i.e., whether regular

business activities should be conducted by way of engaging employees or whether a company can use commercial agreements to lease employees, as the relevant regulations allow companies to make their own decisions in this regard.

The decision is extremely important because it is not uncommon for local authorities to interpret business decisions which do not result in direct employment to be executed for the purpose of avoiding higher tax and social security contribution liabilities or avoiding the local labor regulations (which are fairly rigid, inflexible and outdated in BH).

LAW ON WORK SAFETY AND PROTECTION FINALLY ADOPTED IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

The new Law on Work Safety and Protection (Work Safety Law) has finally been adopted in the Federation of Bosnia and Herzegovina (FBH), ending the application of an outdated law from 1990. The Work Safety Law is harmonized with the conventions of the International Labour Organization as well as regulations of the European Union. It envisages the establishment of a new authority, i.e., the Work Safety Council consisting of nine members, including the FBH Prime Minister, the FBH Minister of Labour, the FBH Minister of Health as well as representatives of employers and employees which signals that this segment of labor regulations has been lifted to a higher position of importance in FBH. The law went into effect on November 7, 2020, and employers have until November 7, 2021, to harmonize their internal work safety and protection-related enactments.

BRAZIL

EXPATRIATES AND TEMPORARY ASSIGNMENT – FEDERAL COURT RELEASES BRAZILIAN COMPANY FROM OBLIGATIONS TO COLLECT FGTS AND SOCIAL SECURITY CONTRIBUTIONS FROM EXPATRIATE TEMPORARILY ASSIGNED TO WORK IN BRAZIL

On August 7, 2020, the Federal Trial Court of Curitiba (Federal Court) rendered a decision releasing a Brazilian company from its obligation to collect Government Severance Indemnity Fund for Employees (FGTS) and the corresponding Social Contribution (INSS) related to salaries paid by a foreign entity for expatriate employees temporarily assigned to work in Brazil.

The Federal Court's decision found it both illegal and abusive for the tax authorities to consider the Brazilian company liable for the payment of FGTS and INSS over amounts paid abroad, in foreign currency and by a foreign legal entity. According to the decision, the mere fact that both companies are part of an economic group (*i.e.*, a conglomerate) does not result in the assumption of fraud.

The case, which involves concepts of tax and labor laws, is extremely relevant for multinational businesses that encourage the exchange of employees between companies of the same economic group located in different countries. (More information available [here](#).)

COVID-19 PANDEMIC AND ITS EFFECT ON REMOTE WORK

By Legislative Decree 6/2020, Brazil was placed under a state of emergency until December 31, 2020, because of the COVID-19 pandemic. Throughout the year, the government issued a series of provisional measures setting out for emergency and transitional rules to cope with the need to quarantine the workforce. One of the most relevant and commented measures was the possibility to implement remote work during the state of emergency.

In view of that, on September 10, 2020, the Employment Branch of the Brazilian Public Attorney's Office (MPT) issued an Advisory Note (Nota Técnica 17/2020 do GT Nacional COVID-19) expressing its views and concerns about remote work, including 17 recommendations on work safety and ergonomics, work hours and breaks, excess of workload, domestic privacy and digital ethics and etiquette.

Nothing in MPT's recommendation is entirely new: It addresses some traditional employers' obligations in the light of the extraordinary COVID-19 situation and expands rules of telework introduced by the Labor Reform of 2017. In addition, it is important to highlight that the MPT does not have the legal capacity to regulate employment or work relations. They can only audit and take legal action against companies on matters of collective or public interest. (More information available [here](#).)

DATA PROTECTION – LABOR COURTS ALREADY APPLYING THE NEW LAW AND EMPLOYERS' RACE TO COMPLY

On September 17, 2020, the president sanctioned Conversion Bill (PLV) No. 34/2020, resulting in the

immediate entry into force of the General Data Protection Law (Law No. 13,709 / 2018, or LGPD). Because of the coronavirus pandemic (COVID-19), the Brazilian Congress decided that administrative sanctions for breaches of the LGPD will only apply as of August 1, 2021 (Law No. 14.010 / 2020), and can reach up to 50 million reais.

Brazilian companies and those that collect and/or store data from individuals in Brazil are in a true race to ensure compliance with the LGPD, which requires implementing technical and administrative measures, as well numerous updates of internal policies, protocols and contracts with regards to the treatment of data of customers, suppliers and employees, as the case may be.

Labor Courts are not indifferent to the new law. According to a recent research from Data Lawyer, as of November 26, 2020, the LGPD had already been mentioned in at least 139 labor claims. (More information available [here](#).)

BULGARIA

DEADLINE FOR DISCIPLINARY SANCTIONS

The Labour Code was amended to include a tolling period to the statute of limitations for imposing disciplinary sanctions on employees. Generally, the employer may impose such sanctions on an employee for violating company work rules and policies no later than two months from the date on which the employer has found out about the violation, but, in any event, no later than one year from the date the violation was committed. This statute of limitations does not run while the employee is on statutory leave or takes part in a strike. However, if the applicable sanction is a

disciplinary dismissal and the employee is in a protected category pursuant to the Labour Code, the employer needs to obtain the prior consent of the competent Labour Inspectorate and, in some cases, an opinion by a specific Labour Expert Medical Commission. According to case law from the Supreme Court of Cassation, any disciplinary dismissal imposed after the two-month deadline is unlawful even if non-compliance with the deadline is due to a delay in the issuance of the prior consent by the Labour Inspectorate and/or the opinion by the Labour Expert Medical Commission (since the Labour Code only provided exceptions for statutory leave or strike). These rulings from the Supreme Court of Cassation significantly hindered the employer's right to dismiss protected employees and led to the adoption of the Labour Code amendment. Effective December 21, 2020, Art. 194, para. 4 of the Labour Code provides that the statute of limitations is tolled during the period from the submission of the employer's request to, and the receipt of the opinion from, the Labour Expert Medical Commission and/or the prior consent for dismissal of the Labour Inspectorate.

OVERTIME WORK

With a new amendment to the Labour Code, more overtime work can now be negotiated. Pursuant to Art. 146, para. 1 of the Labour Code, the amount of overtime work performed by an employee within one calendar year may not exceed 150 hours. However, the newly introduced para. 2 allows employees to work up to 300 hours of overtime in one calendar year, provided that this has been negotiated in a collective bargaining agreement at the industry or branch level between the respective representative organization for the employees and employers.

Nevertheless, the amount of overtime work may not exceed:

- 30 hours of day work, or 20 hours of night work during one calendar month;
- 6 hours of day work, or 4 hours of night work during one calendar week;
- 3 hours of day work, or 2 hours of night work during two successive working days.

SYSTEMIC VIOLATIONS OF THE LABOUR DISCIPLINE

Pursuant to the Labour Code, a disciplinary dismissal may be imposed as a sanction in case of systemic violations of work rules and policies. However, the lack of definition of what constitutes “systemic violations” of work rules and policies led to confusion in the implementation of the provision. With the newest amendment to the Labour Code, such definition is now included - it describes systemic violations as three or more violations of work rules and policies, committed over a period of one year, when at least one of them has not been a subject of disciplinary action, the applicable statute of limitations has not yet expired for it, and the sanctions for the other violations have not been removed under the relevant procedures.

REINSTATEMENT OF THE EMPLOYEE

Under Bulgarian law, if an employee has been unlawfully dismissed, a court may reinstate the employee to their position. According to Art. 345 of the Labour Code, the employee may return to said position if they report to work within two weeks from receiving the notice for reinstatement. However, the case law is inconsistent as to the start date of the two-week deadline, with some cases holding that the term

starts to run only after the employee receives a specific notice for reinstatement from the court that has ruled on the case, while others hold that the time period starts upon the employee learning about the effective court judgment for reinstatement, which does not contain a specific notice providing for a return-to-work date within two weeks. An interpretative judgment that will resolve the controversy is currently pending before the Supreme Court of Cassation.

MINIMUM WAGE

The minimum wage in 2020 was BGN 610 per month for full-time employment. Effective January 1, 2021, the statutory minimum monthly wage increased to BGN 650 or BGN 3.90 per hour.

CAMBODIA

SENIORITY PAYMENTS

The 2019 Instruction on Payment of New Seniority Indemnity continues to have a significant effect on employer-employee activities in Cambodia. The instruction provides that seniority be counted once every six months (a “semester”). Employees who have worked for at least one month and who work until the end of a semester are entitled to seniority payments equaling seven and a half days of average wages and other benefits each semester, for a total of 15 days’ ongoing seniority payments per year. The payments for each semester are to be made during the second payment period for June and December, respectively; this occurs between the first and seventh of the following month.

The Ministry of Labour and Vocational Training (MLVT) issued two other instructions to lay out the process for paying seniority back payments. The

calculation of the back payments only includes actual wages, not bonuses. In the non-textile, garment and footwear sectors, employers must make back payments (which accrue at 15 days per year) starting in December 2021 at a rate of three days per semester. In the garment, textile and footwear sector, back payments are due at a rate of 15 days per semester, and the maximum seniority back payment amount cannot exceed six months of average net wages. In calculating the daily average basic net wage, employers must treat a month as 26 working days.

On June 2, 2020, the MLVT issued the Notification on the Postponement of Seniority Indemnity Back Payments for Periods Before 2019 and Postponement of Seniority Payments in 2020 to relieve employers (as a result of the COVID-19 pandemic) from the obligations to make seniority back payments or ongoing seniority payments in the normal course of business until 2021. However, if an employer terminates an employee for any reason, except for serious misconduct, the employer will be obliged to pay any seniority back payment or seniority payments required under Cambodian law.

In light of the continuing effects of the COVID-19 pandemic, employers will want to monitor whether the government further postpones employers' obligation to pay seniority payments and seniority back payments.

FIXED DURATION CONTRACTS AND RENEWALS

Another measure which has had a lasting impact on employment operations is the MLVT's Instruction on Determination of Type of Employment Contracts, enacted on March 17, 2019. This instruction sets the maximum duration of an initial fixed duration contract (FDC) for a local or foreign employee at two years.

The contract can be renewed one or more times so long as the total duration of the renewals does not exceed an additional two years, after which it will be deemed an undefined duration contracts (UDC). If an employee reaches the maximum duration for an FDC, which is potentially up to four years, and the employer wants to continue the employment on an FDC basis, a one-month break must be inserted between the expiration of the FDC and the start of the new FDC.

FOREIGN WORKERS AND EMPLOYMENT CONTRACTS

Another significant contract-related change that continues to be felt in the employment landscape in Cambodia is the MLVT's Notification on the Registration of Foreign Employment Contracts, which was enacted on March 29, 2019. This allows employers to submit Khmer-language translations of employment contracts with their foreign employees when applying for work permits for their foreign employees. Further, both FDCs and UDCs are now accepted by the MLVT. These regulations replaced the previous rules, which had required an employer to submit a contract that followed an MLVT template, and deemed an FDC the only contract type valid for a work permit. Finally, the notification specifies that if the contract expires or is amended, the employer must submit an updated agreement.

PENSION SCHEME

Under the Law on Social Security Schemes and its related regulations, there are three social security schemes available to the private sector: occupational risk, health and pensions. However, only the first two schemes have been implemented in Cambodia. The Cambodian government has been working on implementing the pension scheme, which is expected

to launch in the near future. According to the draft Sub-Decree on Social Security Scheme Pension for Persons Defined by Provisions of Labor Law including Airline and Maritime Personnel and Household Servants, the pension contribution rate is expected to be 4%, half of which will be contributed by the employer and the other half will be deducted from the employee's salary.

MEDICAL CHECKUP

Another significant change in the employment landscape relates to physical examinations for Cambodian employee pursuant to the MLVT's Prakas No. 429 on Cambodia Employee's Physical Examination dated December 31, 2020 (Prakas 429). Previously, Cambodian employees were only allowed to undergo medical checkups at the Labor Medical Department of the MLVT (LMD). However, under Prakas 429, Cambodian employees covered under Article 1 of the Labor Law may undergo physical health checkups at the LMD or any healthcare facilities that are duly recognized by the Ministry of Health (MOH) and are collaborating partners of the LMD.

If an employee undergoes a physical examination at a municipal/provincial health center, employers must request physical checkup certificates from the LMD by registering in an automated system and attaching the employee's health check results, which must be dated no more than six months from the submission date.

CANADA

COVID-19: TEMPORARY LAYOFFS, STAY-AT-HOME ORDERS, AND PROVINCIAL DEVELOPMENTS

As the COVID-19 pandemic continues to spread in Canada, many of the country's provinces have turned to unique legislative measures to combat the rising case numbers. For example, on the east coast of the country, Canada's maritime provinces have created an "Atlantic Bubble," with specific inter-provincial travel restrictions, including mandatory quarantine orders, in place for Canadians and foreign nationals who wish to travel to any of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland and Labrador.

The rise of COVID-19 case numbers has also affected many Canadian employers—both large and small—with many employers turning to temporary layoffs during periods of retail, restaurant and nonessential business restrictions and shutdowns as permitted under the applicable provincial legislation. Layoff numbers have increased dramatically during the winter months, as certain provinces, such as Ontario and Quebec, have also implemented "stay-at-home" orders or mandatory curfews, forcing all nonessential employees to remain at home and heavily curbing the public's ability to shop, eat and participate in the in-person retail market.

COVID-19 FEDERAL RELIEF PROGRAMS

The Federal Government of Canada has taken a notably proactive approach toward providing unemployment assistance and economic relief for Canadian small businesses, employers, employees and students, through a variety of COVID-19 programs.

Since March 2020, Canadians have taken advantage of a multitude of federal programs, which have often worked in conjunction with specific economic relief measures put in place by the individual provinces. Most notably, there have been programs aimed at wage subsidization (the Canada Emergency Wage Subsidy, or CEWS), unemployment relief (Canada Emergency Response Benefit, or CERB), commercial rent relief (Canada Commercial Rent Assistance, or CECRA), enhanced sickness benefits (the Canada Recovery Sickness Benefit, or CSRBS), unemployment relief for those who would not ordinarily qualify (the Canada Recovery Benefit, or CRB) and measures to assist with home mortgage deferrals, as well as programs designed specifically to support Indigenous communities and those facing residential evictions.

WAKSDALE V. SWEGON NORTH AMERICA INC.: ONTARIO EMPLOYERS FACE SWEEPING IMPLICATIONS FOR THE ENFORCEABILITY OF TERMINATION CLAUSES

In the significant case of *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, the Court of Appeal for Ontario ruled that an unenforceable "for cause" termination clause in an employee's employment agreement rendered unenforceable the entire termination provision (which included the "without cause" clause, which attempts to contract out of an employee's entitlement to a much more expensive common law severance entitlement). This decision is one of the more substantial Ontario employment decisions in several years as it has rendered most "standard" termination provisions in many employment agreements unenforceable, thereby enabling terminated employees to claim reasonable notice at common law and significantly increasing the severance obligations of Ontario employers. As a

result of this decision, most Ontario employers have re-assessed their template employment contracts and redrafted the termination provisions.

POST-TERMINATION INCENTIVE COMPENSATION: KEY DEVELOPMENT FROM CANADA'S HIGHEST COURT

The recent decision of *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, from the Supreme Court of Canada, has applied further pressure on employers in the area of "post-termination" incentive compensation. In the case, the Supreme Court of Canada awarded a former senior executive more than \$1 million for the loss of a long-term incentive plan (LTIP) payment that came due only after he stopped working, because he would have received the LTIP during the 15-month notice period the Court awarded had he worked through that period. The Court held that language in the LTIP that attempted to contract out of the employee's entitlement to any LTIP payment during any post-termination period of reasonable notice was not sufficiently clear to divest the employee of the LTIP entitlement.

In deciding in the employee's favor, the Supreme Court of Canada held that employers have to draft clauses limiting post-employment rights unambiguously and explicitly if they wish to oust an employee's right to compensation during any period of reasonable notice. As a result, employers may face increased claims from employees for such compensation, even for periods of time in which they are not actively employed, and will again have to look to edit or rewrite any incentive plans or employment agreement templates they regularly use.

CAPE VERDE

LAWS

COVID-19 Legislation

In Cape Verde in 2020, the COVID-19 pandemic had some effects on employment law, namely with Law 83/IX/2020, which established a simplified employment contract suspension regime, regulated by Laws 97/IX/2020 and 103/IX/2020. With the simplified regime, the legislature intended to preserve jobs and part of employees' remuneration and to reduce companies' expenses, with less bureaucracy.

Decree-Law 58/2020 and Decree Law 88/2020 (Work Accidents and Work-Related Diseases)

The Decree Laws established the new legal regime regarding mandatory insurance to cover work accidents and work diseases, safeguarding all the employees and self-employed individuals. Among other things, Decree Law 58/2020 also defined the situations in which the employer is not required to indemnify the employee, and all the necessary proceedings in case of professional accident or illness.

Ministerial Order 15/2020 (Temporary Employment Licenses)

This Order approved a new licensing model for temporary employment agencies to develop their activity.

Law 89/IX/2020 (Creation of the Employment Observatory)

The Employment Observatory will be an independent entity, integrated into the Environmental, Economic and Social Council, whose purpose is to identify,

analyze and propose legal solutions regarding employment politics and regulation, professional formation and rehabilitation and the employment market.

CHINA

INTERIM MEASURES FOR PARTICIPATION OF HONG KONG, MACAU AND TAIWAN RESIDENTS IN SOCIAL INSURANCE PROVIDED IN MAINLAND CHINA

The Ministry of Human Resources and Social Security (MOHRSS) and the National Healthcare Security Administration (NHSA) issued Interim Measures for Participation of Hong Kong, Macao and Taiwan Residents in Social Insurance in Mainland China (Mainland), effective as of January 1, 2020 (Interim Measures).

The Interim Measures consist of 15 articles in total. The main contents include: (a) the scope of personnel to whom the Interim Measures are applicable—two categories of residents from Hong Kong, Macao and Taiwan (those working in the Mainland and those living but not working in the Mainland); (b) the scope of applicable insurance types—Hong Kong, Macao or Taiwan residents working in the Mainland should participate in any of five types of basic social insurance while Hong Kong, Macao or Taiwan residents living but not working in the Mainland may participate in the basic pension insurance and medical insurance for urban and rural residents at their places of residence in accordance with the relevant provisions; (c) the handling procedures for Hong Kong, Macau and Taiwan residents to complete social insurance formalities should be consistent with those for the Mainland residents; (d) residents of Hong

Kong, Macao or Taiwan who have participated and continue to participate in local social insurance programs in Hong Kong, Macao or Taiwan may, on the strength of a certificate issued by the relevant authorized agency, opt not to participate in the pension insurance and unemployment insurance in the Mainland. (More information available [here](#).)

THREE DEPARTMENTS, INCLUDING THE MOHRSS, HAVE DISTRIBUTED THE CIRCULAR ON PROVISIONALLY REDUCING AND EXEMPTING THE SOCIAL INSURANCE CONTRIBUTIONS BORNE BY ENTERPRISES (THE CIRCULAR)

The Circular reads that from February 2020, each province (except Hubei Province), autonomous region, municipality directly under the central government and the Xinjiang Production and Construction Corps may, according to the extent of the epidemic's influence on the local region and in consideration of the balance of the social insurance fund, exempt small- and medium-sized enterprises (SMEs) and micro firms from making contributions to three types of social insurance borne by employers for a period up to five months and exempt large enterprises and other insured entities (excluding government bodies and public institutions) from making contributions to three types of social insurance borne by employers for a period up to three months. The Circular specifies that, as of February 2020, Hubei Province may exempt all types of insured employers (excluding government bodies and public institutions) from making the contributions to three types of social insurance borne by employers for a period up to five months. Enterprises that have material difficulties in production and business operations due to the epidemic may apply for deferring the social insurance contributions and the

deferral may last, in principle, for a period not exceeding six months, during which period no overdue payment will be incurred. Moreover, the Circular points out that the proportion of the central government's relief for the employees' basic pension will be raised to 4% in 2020 to enhance support to regions in need. (More information available [here](#).)

WRITTEN EMPLOYMENT CONTRACTS MAY BE CONCLUDED ELECTRONICALLY

On March 4, 2020, the General Office of the MOHRSS issued a Letter on Issues Concerning the Conclusion of Electronic Employment Contracts (the Letter). The Letter specifies that employers and employees may conclude written employment contracts in electronic form upon negotiation and mutual agreement. Where an employment contract is entered into electronically, data messages regarded as written form under the Electronic Signature Law and other relevant laws and regulations and reliable electronic signatures shall be used. Employers shall ensure that the generation, transmission, and storage of electronic employment contracts satisfy the requirements stipulated in the Electronic Signature Law and related laws and regulations, and ensure that the contracts are complete, accurate, and tamper-proof. Electronic employment contracts that comply with the provisions of the Employment Contract Law and the aforesaid requirements shall have legal effect upon execution. (More information available [here](#).)

STANDARDIZE THE TRIAL OF CIVIL CASES REGARDING COVID-19

On April 20, 2020, the Supreme People's Court released the Guiding Opinions for Several Matters on Hearing Civil Cases Regarding the COVID-19 Epidemic According to Law I (the Opinions). The

Opinions point out that the People's Courts of each level shall fully understand the material impact of the COVID-19 epidemic on the economy and society. They shall insist on taking non-contentious measures, prioritizing the use of mediation and actively guiding the parties to negotiate and reconcile. The Opinions also clarify that the courts shall precisely apply force majeure and seriously control the conditions where it is applied.

The Opinions stressed that relevant provisions of the PRC Employment Law and the PRC Employment Contract Law shall be applied accurately. The People's Court will not support employee termination where employers terminate the employment relationship merely on the ground that the employee is a confirmed, suspected, or asymptomatic case of COVID-19, is legally quarantined or comes from an area more affected by the epidemic.

In addition, the Opinions also prescribe the application of punitive damages, suspension of action limitation, postponement of the litigation period, strengthening judicial relief and flexible adoption of preservation measures. (More information available [here](#).)

SOCIAL INSURANCE CONTRIBUTIONS WILL BE COLLECTED BY THE TAX DEPARTMENT IN SEVERAL MUNICIPALITIES AND PROVINCES OF CHINA

On October 30, 2020, it was announced that, according to the deployment of reforming the social insurance premiums collection system by the State Council and local governments, beginning November 2020, all social insurance contributions will be collected by the tax department on a unified basis in

Beijing, Shanghai, Shenzhen, Tianjin, Sichuan, Shanxi, Hunan, Shandong, Jilin, Jiangxi, Guizhou, Guangxi, Tibet and Xinjiang. The scope of collection mainly includes premiums contributed by companies for basic pension insurance, basic medical insurance, maternity insurance, work injury insurance and unemployment insurance as well as premiums for basic medical insurance and basic pension insurance contributed by flexible employment individuals.

The payer will declare payable amounts of social insurance contributions to the social insurance authority and pay to the tax department based on the amounts verified by the social insurance authority.

RELEASE OF PERSONAL INFORMATION PROTECTION LAW (DRAFT)

On October 21, 2020, after being reviewed by the Standing Committee of the National People's Congress, the Personal Information Protection Law (Draft) (the Draft) was officially released for public comment.

Employers' HR management inevitably involves processing employees' personal information. The Draft has set forth the principles to be followed in handling such personal information. For example, among other measures: (a) processing personal information shall be conducted in a legal and proper way for explicit and reasonable purpose; (b) handling personal information shall be limited to the minimum scope to achieve the processing purpose; (c) the rules on personal information handling shall be publicized; and (d) protective measures shall be adopted and information accuracy ensured. These principles shall be implemented throughout the whole process and every step of personal information processing.

The Draft clarifies that personal information processors have obligations of managing the

information in a compliant manner and ensuring the security of personal information, including requiring the processors to formulate internal management systems and operating procedures in accordance with regulations, adopting corresponding security technical measures and designating responsible personnel to supervise the handling of personal information, conducting regular compliance audits of activities involving personal information, conducting prior risk assessments for high-risk processing activities such as handling sensitive personal information and providing personal information overseas, performing obligations of remedy and notification when there is a leak of personal information. (More information available [here](#).)

EMPLOYERS CANNOT PROVIDE DISCRIMINATORY CONTENT TO HUMAN RESOURCES SERVICE AGENCIES FOR ONLINE RECRUITMENT PURPOSES

The MOHRSS issued Administrative Provisions on Online Recruitment Services (Provisions) on December 18, 2020, which became effective as of March 1, 2021. The Provisions state that online recruitment information provided by employers to human resources service agencies shall not contain any discriminatory content in respect of race, ethnicity, gender, religious belief, etc.

Meanwhile, the Provisions require that human resources service agencies shall establish and improve the information protection system of online recruitment services for users, and shall not leak, falsify, destroy, illegally sell, or illegally provide others with the information they have collected, such as ID numbers, age, gender, address, contact

information and employers' business performance, etc. (More information available [here](#).)

COLOMBIA

MINIMUM WAGE AND MANDATORY TRANSPORT ALLOWANCE

In Colombia, the minimum wage is determined annually by the Colombian Government. Through Decree No. 1785 dated December 29, 2020, the minimum monthly salary for 2021 is \$ 267 USD, which represents an increase of 3.5% from the prior year. Additionally, by means of Decree 1786 dated December 29, 2020, the mandatory monthly transport allowance for 2021 is \$31 USD, which also represents an increase of 3.5% from the prior year.

CONNECTIVITY ALLOWANCE

Because of the COVID-19 pandemic, the Colombian government temporarily ordered employers to recognize an internet connectivity allowance at the same value of the mandatory transport allowance. This benefit is only for employees who earn less than the equivalent of two minimum monthly wages and are rendering their services from home.

FORMAL EMPLOYMENT SUPPORT PROGRAM

The Formal Employment Support Program (PAEF) was structured by the Colombian government to aid all employers for keeping their employment contracts by means of a monthly payment given directly to employers, who can receive up to 40% of the minimum legal wage for each employee formally retained or hired. [check this with local counsel]

SOCIAL PROTECTION FLOOR

As of February 1, 2021, employers and contracting parties with part-time employees or contractors that earn less than one minimum monthly legal wage (MMLW) must register these personnel before the Social Protection Floor. This is a special social security system, divided in the following subsystems: a) Subsidized Health Regime; b) Inclusive Insurance; and c) Economic Periodical Benefits (EPB). The contribution is paid exclusively by the employer or the contracting party, it is paid to the EPB subsystem, and it is equal to 15% of the employee's or contractor's monthly income. The 1% of this contribution goes to the Inclusive Insurance.

BIOSAFETY MANDATORY PROTOCOL

Because of the COVID-19 pandemic, the Colombian government, the Colombian Ministry of Labor and the Colombian Ministry of Health and Social Protection have taken different measures throughout 2020 to protect the health and safety of employees. Under Resolution 666 of 2020, which remains in force, all employers and contractor parties are to undertake biosafety protocols to mitigate, control and execute proper management of the COVID-19 pandemic in the workplace, in addition to the obligations set forth in the Occupational Health and Safety Management System (SG-SST).

COSTA RICA

REDUCTION OF WORKING HOURS

Law 9832 was published on March 23, 2020, in the Official Gazette, authorizing employers to unilaterally reduce the number of hours of the ordinary working day agreed in the work contract, when the employer's income is affected by the declaration of a national emergency, such as the COVID-19 pandemic.

The percentage of working-hours reduction will be authorized taking into account the drop in the employer's gross income with respect to the same month of the previous year. (More information available [here](#).)

SUSPENSION OF EMPLOYMENT CONTRACTS

Executive Decree No. 42248 – MTSS, which was issued on March 19, 2020, regulates the procedure for temporarily suspending work contracts in cases of *force majeure* and fortuitous events to apply to the COVID-19 context. Employers whose economic activity is temporarily prevented by the partial or total closure of establishments because of COVID-19 health and safety measures, as required by the government to contain the spread of the virus, may request the suspension of employment contracts by clearly and specifically stating the reasons for the request via affidavit. (More information available [here](#) and [here](#).)

TRANSFER OF HOLIDAYS

To promote the reactivation of small and medium tourism businesses, as they have experienced some of the greatest negative impact from COVID-19, Law

No. 9875 was published on July 18, 2020, transferring official holidays to Mondays for the years 2020 through 2024, to promote domestic visitation and tourism. Accordingly, in 2021, the holidays are moved as follows:

- May 1 will be moved to Monday, May 3.
- July 25 will be moved to Monday, July 26.
- September 15 will be moved to Monday, September 13.
- December 1 will be moved to Monday, November 29.

(More information available [here](#).)

MORAL DAMAGES IN CASES OF SEXUAL HARASSMENT

The Second Chamber of the Court issued Resolution 00768 - 2020 on April 30, 2020, establishing that the recognition and estimate of moral damages in cases of sexual harassment in the workplace does not require direct proof. Rather, for compensation purposes, the calculation of moral damages is subject to the prudent appreciation of the decision-making authority. In other words, the calculation of such damages does not require the analysis of particular evidence, since it is a matter of logical deduction and of the judge's own experience. Any such court determinations will serve as a jurisprudential reference for future cases. (More information available [here](#).)

CROATIA

LEGISLATION

Act on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Decisions on Fines

The Act, which went into effect on January 1, 2021, regulates the working conditions and rights of a worker who is sent to work for a limited time or for a short-term assignment in Croatia from the European Union, another state party to the European Union Economic Area, the Swiss Confederation or a third country, regardless of the law applicable to their employment. Where there is a conflict, the law that is more favorable to the employee applies. Short-term assignment is defined as an assignment that lasts up to 18 months. The Act also sets forth the obligations of employers and the rules and procedure for mutual assistance and cooperation between the competent authorities of the Member States in qualified cross-border enforcement of fines issued due to violations of the rights of short-term assignment workers. (More information available [here](#).)

Foreigners Act

The New Foreigners Act, which also went into effect on January 1, 2021, implements a number of changes to employment law. Firstly, under the Act, the government will no longer make a decision on determining the annual quota of employment permits for foreigners. Employers will have to request from the Croatian Employment Service the relevant labor market standard before applying for residency and a work permit for foreigners. If it is determined that there are no unemployed persons in Croatia who meet the employer's job requirements, employers may then apply for residency and a work permit with the

Ministry of the Interior, which will request the Croatian Employment Service issue an opinion on hiring a specific foreigner with a Croatian employer. The procedure for issuing residency and work permits, including the implementation of the labor market standard before the competent authorities, should take a maximum of 30 days. The Act also provides for exceptions to the implementation of the relevant labor market standard related to occupations where availability is scarce such as seasonal agricultural work of less than 90 days, forestry, catering and tourism.

Amendments to the Labour Market Act

The Amendments to the Labour Market Act went into effect March 2020. The changes were minimal and focused on the right of seasonal workers for prolonged monetary aid and pension insurance in case of special circumstances that endanger the life and health of citizens, endanger property of great value or risk significant damage to the environment or economy.

Regulation Regarding the Preservation of Jobs during the COVID-19 Pandemic

The COVID-19 pandemic forced the Croatian government to close numerous business activities in two waves, the first in March and the second in November. As a result, numerous jobs were endangered, and the impact to the economy was devastating. Thus, to preserve jobs, multiple governmental measures were taken to subsidize the employment of all affected workers. The Croatian Employment Service was charged with coordinating and implementing these measures. Some of the measures include subsidizing up to 50% of workers' salaries and 100% of workers' education costs.

Act on the Amendments of the Income Tax Act

The Croatian Parliament enacted the Act on the Amendments of the Income Tax Act, which went into effect on January 1, 2021, and lowered the income tax rates by 6%, 4 % and 2%. Now, the income tax rates are 30%, 20%, and 10%, respectively, depending on the amount and type of income a person earns.

COURT DECISIONS

Judgment on the Validity of Extraordinary Termination of Employment Contract (Supreme Court of the Republic of Croatia, Revr 152/2017-2, January 8, 2020)

Pursuant to the first paragraph of Article 116 of the Employment Act, the termination of an employment contract because of extraordinary circumstances is permitted and does not constitute discrimination toward an employee even if a comparable contractual breach did not result in the termination of another worker's employment contract because of extraordinary circumstances. The basis for termination of an employment contract because of extraordinary circumstances is the employer's assessment of the specific employment relationship and the possibility for continuation of said relationship. Thus, in comparable situations an employer can decide which contract to terminate and which to uphold.

Judgment on the Validity of Termination of Employment Contract in Situations Where the Employee Claims He Has Been the Victim of Harassment in the Workplace and Thus Is Not Performing His Contractual Obligations (Supreme Court of the Republic

of Croatia, Revr 2184/2019-3, September 22, 2020)

If an employee claims the existence of harassment and/or sexual harassment and refrains from work because they believe the employer has not executed measures that would stop the harassment (as is their right in accordance with article 134 paragraph 4 of the Employment Act), this cessation of work does not prevent the employer from terminating the employee's contract if another valid reason exists for the termination. (More information available [here](#).)

CZECH REPUBLIC

EQUAL PAY FOR EQUAL WORK APPLIES ACROSS THE COUNTRY

In a groundbreaking decision, the Supreme Court held that employees performing the same work must receive the same salary even if they are working in different regions of the country. Although the Supreme Court acknowledged that higher supply in the labour market, especially in larger cities, increases employee salary, the principle of equal pay for equal work does not permit employers to take into consideration social and economic conditions of particular regions in which the employee performs work. (More information available [here](#).)

FIRING AN EMPLOYEE BEFORE RETIREMENT FOUND UNACCEPTABLE

The Constitutional Court held that firing an employee near retirement age is against good morals (*contra bonos mores*) and, therefore, the notice of termination of the employment relationship is void. In this particular case, the employee had been dismissed for not meeting the legal requirements to be a teacher. At

the time of the termination the employee would have become eligible to receive a retirement pension in 17 months. (More information available [here](#).)

EMPLOYEES CAN BREACH THEIR OBLIGATIONS EVEN IF THEY ARE SICK

The Supreme Court held that although the employee is not obliged to work if on sick leave, if they voluntarily work despite being sick, they must abide by all of their employment obligations. Therefore, even if the employee is sick, they can still breach their obligations to their employer, which might result in termination of the employment relationship. (More information available [here](#).)

NEW RULES FOR THE TRANSFER OF UNDERTAKINGS

The Czech Labour Code has been significantly amended, effective July 30, 2020. The amendment brings, *inter alia*, a change in the legal regulation of the transfer of rights and obligations from labor law relationships (transfer of undertakings). Employers may no longer transfer employees' rights and obligations to another employer simply by transferring activities (tasks) performed by the original employer to another employer. Rather, a successful transfer will require that the employer meet the following criteria: (a) the activity is carried out after the transfer in the same or similar manner and scope as was originally carried out; (b) the activity does not consist entirely or largely of the delivery of goods; (c) immediately before the transfer, a group of employees has been identified to carry out the activity; and (d) assets or the right to use the assets is transferred, where such assets are essential for the performance of the activity, having regard to the character of the activity; or a majority of the employees the current employer used

to perform the activity are transferred, if this activity largely relies only on the employees and not the assets. There are limits to the applicability of this amendment. It will not apply where a special law already provides for the transfer of employee rights and obligations (e.g., in the case of a merger or the sale of an enterprise).

NEW CONCEPT OF HOLIDAY ENTITLEMENT

As of January 1, 2021, new rules for calculation of holiday entitlement have been adopted. Holiday entitlement is newly calculated on the basis of working hours worked in the relevant period. The minimum holiday entitlement for employees in private sectors remains four weeks; extension to five weeks is however discussed by the Parliament. When an employee has worked for less than the whole year but at least four times their weekly working hours, they shall be entitled to a proportion of the holiday.

DENMARK

AMENDMENT TO THE DANISH ACT ON POSTED WORKERS

The amended European Union (EU) directive for posted workers entered into force on July 30, 2020. The directive introduced a set of new requirements for employment terms and conditions for employers who send their employees to work temporarily in another EU member state. On January 1, 2021, a number of amendments to the Danish Act on Posted Workers entered into force to implement this EU Directive. The amendments aim to improve conditions for posted workers and ensure equal treatment with national employees in terms of pay and working conditions. As an example, the list of mandatory Danish working

conditions applicable to posted workers, regardless of which country's law otherwise applies to worker, has been expanded to include accommodation and allowances or reimbursement of expenses to cover travel and meals. Furthermore, the amendments make changes to long-term postings with a duration of more than 12 months, employment of temporary agency workers, and remuneration of workers posted to Denmark.

SALARY COMPENSATION SCHEME TO AID BUSINESSES DURING THE COVID-19 PANDEMIC

Throughout 2020, the Danish government introduced several initiatives granting salary compensation to employers financially affected by COVID-19. The current salary compensation scheme is applicable to companies that expect to dismiss at least 30% or more of their total workforce or more than 50 employees because of restrictions implemented by the Danish government. The scheme is applicable while COVID-19-related restrictions are in force.

SUPREME COURT RULING ON MATERNITY LEAVE

According to the Danish Act on Equal Treatment of Men and Women, an employer dismissing a pregnant employee is required to prove that the dismissal is not wholly or in part based on the employee's pregnancy. On August 31, 2020, the Supreme Court lifted this heavy burden of proof on an employer, a clinic, that had suffered a decrease in patients and, consequently, needed to reduce staff. Apart from recognizing the employer's economic difficulties, the Supreme Court found that the dismissed employee's work experience was significantly different from the employees who had not been dismissed.

RULING ON THE VALIDITY OF RESTRICTIVE COVENANTS IN SHAREHOLDERS' AGREEMENT

The Eastern High Court ruled in a case concerning a noncompetition clause agreed upon in a shareholders' agreement between two shareholders holding 50/50 ownership, who were also employed by the company. In connection with one of the shareholders' withdrawal as owner, the shareholder entered into a settlement agreement providing that the shareholders' agreement remained valid between the parties. However, the former shareholder began operating a competing business. His former co-owner sought an injunction. Both the District Court and the Eastern High Court found that the noncompetition clause was valid and not covered by employee-protective statutory legislation. According to the Eastern High Court, its assessment of the validity of the noncompetition clause was not affected by the fact that the former owner continued as an employee after the withdrawal and was subsequently dismissed summarily. The ruling has been appealed to the Supreme Court.

EASTERN HIGH COURT RULING ON EMPLOYEES' ENTITLEMENT TO BREAKS DURING WORK

In November 2020, the Eastern High Court ruled in a case concerning employees' entitlement to breaks during work. The case concerned an employee who was obliged to answer phone calls during her lunch breaks. According to the Danish Act on Implementation of Parts of the Working Time Directive, employees whose daily working time exceeds six hours are entitled to a daily break during which an employee does not perform any work. The employee claimed that she was entitled to

compensation because she was answering phone calls during her lunch break. The Eastern High Court ruled that the employee's obligation to answer phone calls during her lunch breaks did not constitute a violation of the Act because (i) the Act does not fix the duration of the break; and (ii) the employee had not proved that she was not able to take breaks in accordance with the Act.

EGYPT

Since late March/early April 2020, COVID-19 cast a shadow on civil and commercial transactions and contractual obligations thereunder, thus disrupting the global economy and, thereby, Egyptian businesses.

The decrease in business resulted in a decline in profits and prompted some companies in Egypt to: (i) force workers to use annual leave during the COVID-19 pandemic; (ii) reduce employee wages by a percentage based on the wage value of the employee; and (iii) shut down the business altogether or terminate some employees, a severe legal violation.

In Egypt, the legal implications of COVID-19 on the employment relationships include:

- **Can employers force employees to use their annual leave during a pandemic-caused lockdown?** Employers must grant the employee their annual leave in accordance with employer policy but may compel the employee to use any remaining annual leave or leave that has accumulated from previous years during the pandemic to reduce the costs and financial burdens as a result of the economic recession caused by the COVID-19 pandemic. Such conduct is inconsistent with ethical work codes, as the dire economic situation requires greater employer

support of employees, who may have no other financial resources but their salary.

- **Can employers reduce worker pay?** The Labour Law grants the employer the right to "temporarily" reduce worker salaries by up to 50% in cases where workers are unable to carry out their duties during exceptional or *force majeure* events. The COVID-19 pandemic is such an event and can result in a temporary salary reduction unless otherwise agreed in the employment contract or the company's policies. It should nonetheless be noted that employers may not implement the terms of an employment contract in cases of exceptional or *force majeure* unless implementation is done temporarily and does not diminish or eliminate employee rights.
- **Can employers require employees work from home?** According to Labour Law, employers must take all necessary measures to protect workers from the risk of infection. Employers in the private sector are may adopt any one or a combination of measures designed to protect employees, including: (i) providing employees and their families with medical supplies, (ii) implementing reduced flexible working hours; (iii) adopting a work-from-home policy; (iv) adopting work schedules to rotate workers; (v) paying for employee transportation to and from the workplace or allocating special transportation means for employees to avoid public transport. This does not apply to any new worker who has been employed for less than six months.
- **Can employers partially or completely close the workplace as a result of the outbreak or as a precautionary measure to prevent COVID-19's spread?** The employer is legally entitled to do so if the crisis leads to business disruption for a long time, or leads to the loss of

the project for its economic viability, but if the crisis continues for months or years, the responsibility of the employer with regard to termination is greatly mitigated.

Notwithstanding the foregoing, however, the question of whether the COVID-19 pandemic qualifies as a *force majeure* event – and thus allows employers to take actions it may otherwise not have been able to for the viability of its business and the safety of its employees – must be analysed on an industry-by-industry, case-by-case basis. Whether the COVID-19 pandemic is a *force majeure* event will depend on how much a particular business sector's performance has been affected (*i.e.*, the performance is impossible or excessively onerous but yet still possible). The burden to show that the pandemic constitutes a *force majeure* event is on the debtor (*i.e.*, the business unable to perform).

EL SALVADOR

TELEWORKING REGULATION LAW

This law took effect on June 24, 2020, through Legislative Decree No. 600. It was the first regulation governing telework, mobile work, remote jobs and flexible workplaces.

This law requires a written agreement between the parties that: (a) specifies the equipment and software provided to the employee; (b) establishes methods for evaluating job performance and employee productivity; (c) requires compliance with work schedules, goals and performance efficiency; (d) details information security matters, including data protection and confidentiality requirements, that the teleworker must explicitly accept in the written agreement; (e) ensures that the physical space for

teleworking complies with Occupational Safety and Health regulations; and (f) requires the employer to assume the cost of operating the technological equipment and to subsidize the payment of electricity and internet services in a manner proportional to the amount required for the employee's work. This law also emphasizes that teleworkers have the same individual and collective rights as face-to-face workers.

PROTECTION FOR VULNERABLE WORKERS

Several temporary decrees were issued in response to the COVID-19 pandemic to protect vulnerable workers. Decree No. 774, which took effect in October 2020 and lasts for 180 days, considers vulnerable those over 60 years with chronic pathology, pregnant women and people with chronic illnesses, as well as COVID-19 convalescent patients in their first month of recovery. It regulates within its main protection measures: (a) voluntary shelter in place, protecting vulnerable workers who choose to shelter in place from negative employment action; (b) mandatory payment of the equivalent of the employee's salary and social security subsidy in case of medical disability; and (c) a guarantee of labor stability that prohibits employment dismissal so long as the decree is in force.

SPECIAL LAW OF INCLUSION FOR PEOPLE WITH DISABILITIES

This law repealed a law effective since 2000, and aims to recognize, protect and guarantee the full and equal exercise of rights by people with disabilities. It was published in the Official Gazette No. 178 Volume 428 of September 3, 2020, and took effect on January 1, 2021; however, the Chapter related to Sanctioning

Court, Infractions, Sanctions and Procedures will become effective on January 1, 2022. Primary requirements for employers include: (a) guaranteeing compliance with current accessibility regulations so that all new construction work, extensions or remodeling are in accordance with designs that adapt to people with disabilities; (b) hiring at least one person with a disability for every 20 workers employed by that employer; (c) if it is not possible to hire the required number of people with disabilities, the employer will have to pay an amount equivalent to the current monthly minimum wage of the number of employees that the employer should have hired according to this law; (d) the work carried out by the person(s) with disabilities must be compatible with their capacities and abilities to ensure their maximum personal and professional development and safeguarding their dignity; and (e) if a person with disabilities is dismissed, the employer must prove that it is not because of their disability.

PREVENTION OF BIOLOGICAL RISKS BECAUSE OF COVID-19

The Department of Labor and Department of Health have issued joint guidelines and protocols to improve employees' health and well-being. These regulations govern safety measures when entering the workplace, workplace occupancy restrictions, public transportation and other areas of public accommodation, measures to reinforce the occupational safety management program, applying working methods to prevent the spread of COVID-19 and actions to be taken in response to cases of infection.

TEMPORARY REGULATIONS THAT REGULATED LABOR ASPECTS DURING THE STATE OF EMERGENCY BECAUSE OF COVID-19

A number of decrees were established in 2020 in response to the COVID-19 State of Emergency that had labor implications, including: (a) a guarantee of protection against dismissal for all workers who have been quarantined because of COVID-19; (b) restrictions placed on the operations of many business activities; (c) suspension of all terms of judicial and administrative processes, including labor, for about four months; (d) development of exceptional and temporary measures to safeguard the labor stability of workers, such as advancement of vacation time by mutual agreement, subsidies to micro and small businesses and granting credits to certain businesses. Although these decrees are no longer valid, either due to the passage of time or as a result of having been declared unconstitutional, some business benefits are still in effect.

RESOLUTIONS THAT HAVE DECLARED UNCONSTITUTIONAL SOME REGULATIONS PASSED DURING THE PANDEMIC THAT HAD LABOR IMPLICATIONS

- **Resolution of Unconstitutionality 63-2020 of the Supreme Court on May 2020:** This provisionally suspended Executive Decree 19, which said that the executive branch cannot usurp the power of another State body, even during a state of emergency.
- **Resolution of Unconstitutionality 21-2020 of the Supreme Court on June 8, 2020:** Decree No. 29 (and several other decrees, by association) was

declared unconstitutional because the shelter-in-place decree and the measures to restrict citizens' rights were extended by the executive branch.

- **Resolution of Unconstitutionality 21-2020 of the Supreme Court on August 7, 2020:** This declared unconstitutional Executive Decree No. 32, which governed the economy's reopening. It also declared that limitations on constitutional rights must be done through secondary regulations.
- **Controversy No. 8-2020.** The resolution of the Supreme Court on August 13, 2020, resolved the controversy between the Legislative Assembly (Congress) and the Executive Branch (Supreme Court). Legislative Decree No. 661 was declared constitutional. Months later, because the previous decree was already out of date, a new Decree 757 (special transitory law to contain the pandemic because of the COVID-19 disease) was promulgated, which will remain in effect until 2021.

Each of these resolutions influenced companies to restart operations, in different productive sectors, following the health guidelines and protocols previously dictated, as well as the recommended work modalities such as teleworking, rotating shifts and reduced hours.

ESTONIA

CHANGES TO THE PARENTAL LEAVE AND BENEFIT SYSTEM TO BETTER RECONCILE WORK AND FAMILY LIFE

Increased Flexibility in Parental Leave and Benefit System

From July 1, 2020, the payment period for the parental benefit became flexible. The payment of the 435-day parental benefit can be suspended by calendar month and resumed in accordance with the wish of the parent until the child reaches three years of age. All parental benefit recipients will be eligible for this kind of flexibility as of July 1, 2020, including those who have already been receiving the benefit. When resuming the payment of the parental benefit the amount of the benefit will not be recalculated.

Introduction of a "Daddy Month"

As of July 1, 2020, the father can stay on paternity leave for 30 days instead of the previous 10 working days and receive parental benefit for this period (a "daddy-month"). It is a non-transferrable benefit for the father in addition to the regular 435-day parental benefit period. The father's right to monetary parental benefit does not depend on his previous employment or contractual form of employment, and the father can use the benefit at the same time as or separately from the mother. This parental benefit can be used as a whole or in parts starting 30 days prior to the estimated due date until the child reaches three years of age.

The new system of "daddy-month" will only apply to those children who are born on July 1, 2020, or later. In addition, for the new system to apply, the entire paternity leave taken based on the new system must be

taken after July 1, 2020. (More information available [here](#) and [here](#).)

NEW RULES FOR EMPLOYEES POSTED TO ESTONIA

On July 30, 2020, amendments to the Working Conditions of Employees Posted to Estonia Act came into force, aiming to ensure better protection of the rights of employees posted to Estonia and transposing the amended Posting of Workers Directive (Directive 2018/957/EU).

The minimum working conditions that must be ensured for a posted employee during their stay in Estonia were changed. Instead of a minimum wage, wages must be guaranteed, and posted workers must be reimbursed for the expenses related to business trips. The amendments added an obligation to the employer to keep the data of workers posted to Estonia up to date and notify the Labour Inspectorate of any changes before they take effect. For the employer, the retention period for documents related to posted workers was reduced from seven to three years from the end of the posting.

The regulation of long-term posting was also established. According to the new rules, if an employee's actual posting lasts longer than 12 months, the employer is required to ensure the employee all the working conditions applicable in Estonia except for the rights and obligations related to entry into and termination of an employment contract, including a noncompete clause applicable after the end of the employment relationship, and occupational pension schemes. The 12-month period can be extended up to 18 months upon reasoned notice to the Labour Inspectorate. However, if the employer replaces a posted employee with another posted employee performing the same duties at the same

place, the durations of their postings shall be added up. (More information available [here](#).)

SPECIFICATIONS REGARDING MISDEMEANOR LIABILITY OF THE EMPLOYER

On July 30, 2020, specifications regarding liability for misdemeanors stipulated in the Employment Contracts Act and other labor legislation came into force. The amendments aimed at ensuring the application of sanctions for misdemeanors. Namely, the case law has previously established that the term “employer” used previously in regulations concerning employers’ liability generally does not include a natural person. However, under Estonian law, the liability of a legal person for an offense committed presupposes the identification of a natural person acting in the interests of a legal person. Henceforth, because of the amendments to the relevant legal acts (Employment Contracts Act, Occupational Health and Safety Act and Trade Unions Act), the misdemeanor charges can now be imposed on an employer or an employer’s management board member or another representative to whom the performance of this obligation was delegated. (More information available [here](#), [here](#) and [here](#).)

SUPREME COURT DENIES THE POSSIBILITY OF EXTENSION OF OBLIGATIONS ARISING FROM COLLECTIVE AGREEMENT TO EMPLOYERS WHO ARE NOT A PARTY TO COLLECTIVE AGREEMENT

Pursuant to the Collective Agreement Act, wage and working time conditions of a collective agreement entered into between an association or a (con)federation of employers and an association or a

(con)federation of employees may be extended by agreement of the parties. Until now, this provision was largely interpreted in a way that allowed the extension of obligations arising from collective agreement to employers (and their employees) who were not a party to the collective agreement.

In its judgment from June 15, 2020, No 2-18-7821, the Supreme Court explained that the Collective Agreement Act does not provide for the possibility of extension. The Supreme Court held that even if the collective agreement is entered into in the field of activity of an employer, in case the employer is not a party to the collective agreement and does not belong to the employers’ association that is a party to the collective agreement, the extension of obligations arising from such agreement could lead to disproportionate interference with the freedom to conduct business and the fundamental right to property as the employer can neither participate in the conclusion of the collective agreement nor influence the formation of the terms of the collective agreement.

The Estonian Ministry of Social Affairs has drafted a bill amending the conditions for extension of collective agreements. The purpose of the draft is to alleviate the bottlenecks identified by the Supreme Court and again to enable the extension of collective agreements. (More information available [here](#).)

GERMANY

INCREASING GENDER DIVERSITY ON COMPANY BOARDS

In 2020, the German government agreed on new rules for a “female quota” for large, publicly listed companies. For companies listed and subject to an employee’s co-determination (50% employee participation on the supervisory board level), a board of directors consisting of more than three directors must include at least one female director. This quota replaces an old quota, which required supervisory boards of companies to have at least 30% of its members from the opposite gender.

GOVERNMENT MEASURES TO AID BUSINESSES DURING THE COVID-19 PANDEMIC

When the COVID-19 pandemic started, Germany reacted quickly and introduced various measures to help companies. For example, Germany implemented “short-time work” rules (a kind of furlough scheme). Short-time work means a temporary reduction of working hours followed by a return to the original level of working hours when short-time work ends. Under the short-time work rules, companies can apply for short-time work allowances from the state covering 60% to 67% (if children are living with the employee) of the employees’ net income (capped at a certain level). For long-term short-time work (short-time work is limited to a maximum of 12 months) the allowances will be increased. The state will also cover social security contributions. Short-time work is regarded as a very effective tool for companies to steer through this crisis without laying off personnel.

FEDERAL LABOR COURT FINDS “CROWD WORKERS” ARE EMPLOYEES, NOT INDEPENDENT CONTRACTORS

In 2020, our Federal Labor Court ruled that so-called “crowd workers” that are registered with an online platform where they can opt in for different assignments are to be regarded as employees of the platform if the platform provider provides detailed requests regarding timing, place and content of those assignments. The decision was a surprise, as those kinds of working relationships were typically regarded as independent contracting.

GHANA

SUPREME COURT FINDS EMPLOYERS MUST PAY REDUNDANCY PAY UNDER SECTION 65 (1) OF THE LABOUR ACT, 2003 (ACT 651)

In *National Labour Commission v. First Atlantic Bank Limited* (Civil Appeal No. J4/62/2019), the Supreme Court had to determine whether an employer—whether because of the reorganization of its business, changes to technology, or other reasons—is required to pay redundancy pay when it lays off employees under section 65 (1) of the Labour Act of 2003 (Act 651) (the Labour Act). Sections 65 (1) and (2) of the Labour Act permit employers to terminate employment relationships due to redundancy. However, whereas Section 65 (2) clearly states that a redundancy because of an arrangement, amalgamation or office closure requires the payment of redundancy pay, Section 65 (1) does not provide for the payment of redundancy pay. This has led to varied interpretation of the law. The Supreme Court settled the issue by holding that an employer must pay

redundancy pay if it terminates an employment relationship under Section 65 (1).

DIFFERENCE BETWEEN UNFAIR AND UNLAWFUL TERMINATION

The Supreme Court explained the distinction between unfair and unlawful termination in two cases decided this past year. In the first, *Charles Afran & Ors v. SG-SSB Limited* (Civil Appeal No. J4/71/2018), the Supreme Court held that “unfair termination, as distinct from the common law concept of ‘wrongful dismissal,’ is a creature of statute.” *Unfair* termination may only arise where the termination is due to the employee’s gender, race, color, ethnicity, origin, religion, creed, social, political or economic status, pregnancy (including maternity leave), or disability.

In the second, *Republic v. High Court, Accra (Industrial and Labour Division Court 2); Ex Parte Peter Sangbah-Dery* (Civil Motion No. JS/53/2017), the Supreme Court noted that termination or dismissal is considered unlawful if the terms of the contract are not adhered to in terminating the employment relationship.

APPEALING DECISIONS AND FINDINGS OF THE NATIONAL LABOUR COMMISSION

The National Labour Commission (NLC) is the adjudicating body for labor and employment disputes. In the case of *James David Brown v. The National Labour Commission & Achantaman Rural Bank Ltd* (Civil Appeal No. J4/74/2018), the Supreme Court held that there is no inherent right to appeal a decision of the NLC and that the right of appeal is a creature of statute. In its decision, the Supreme Court noted that: (a) an NLC decision is appealable to the Court of

Appeal in all respects; (b) leave or permission of the Court of Appeal must first be obtained (before the filing of the appeal); and (c) the appeal must be filed within 14 days of the NLC’s decision.

GUATEMALA

ADDITIONAL RULES TO THE REGULATIONS REGARDING OCCUPATIONAL HEALTH AND SAFETY FOR THE PREVENTION AND CONTROL OF SARS COV-2 OUTBREAKS IN THE WORKPLACE (MINISTERIAL DECREE 79-2020)

This regulation complements the Occupational Health and Safety Regulation, Government Agreement number 229-2014, concerning the prevention and control of the spread of the SARS COV-2 virus in all public and private sector work centers. It uses occupational health and safety provisions that promote safe working conditions to minimize the risk of disease transmission. (More information available [here](#).)

HONDURAS

DECREE 33-2020 CREATED A LAW TO ASSIST THE PRODUCTIVE SECTOR AND WORKERS IN RESPONSE TO COVID-19

- Decree 33-2020 created the Law on Aid to the Productive Sector and Workers, which establishes the process of suspension of employment contracts and the obligation to pay a solidarity contribution to the worker during the period of suspension of contracts are established.

- Companies that did not dismiss or suspend workers between March and December 2020 were permitted to deduct an additional 10% from taxes as payroll expenses.

DECREE 58-2020: LAW OF USE OF MASKS AND APPLICATION OF BIOSAFETY PROTOCOLS

- A law governing the Use of Masks and Application of Biosafety Protocols was enacted, requiring the members of the public to wear masks when visiting public places, or private places with more than five people, when using public transit or elevators or when in the workplace.
- It also establishes the obligation for companies to implement biosafety protocols authorized by the government of the republic to prevent the spread of the pandemic.
- Those who do not follow the measures may be subject to sanctions.

HUNGARY

In 2020, the main employment law developments were focused on adapting to the extraordinary circumstances brought about by the pandemic. The purpose of legislative action was to support employers with business continuity and employee retention, as well as to promote efforts to ensure a safe and healthy workplace. Within this framework, the statutory provisions on "remote work" were modified several times to promote this atypical form of employment. The purpose of the modifications was to make remote work arrangements more flexible and to enable employers and employees to stipulate the terms of employment in a way that best suits their needs. As a consequence, remote work quickly became popular

and, according to the official statistics, telework increased to 17% after the outbreak of the pandemic from 3% prior to the pandemic (and the real increase was probably even greater).

During the first wave of the pandemic, employers were legally empowered to unilaterally instruct employees to work from home. During the second wave of the pandemic, this option was no longer available, as employees cannot be required to work from home under local law if their individual circumstances simply do not allow it (*e.g.*, small apartment, baby at home). Therefore, although employers and employees needed to mutually agree on the conditions of remote work, the legislation made remote work terms more flexible during the state of emergency. For example, during this period, it was not mandatory for employers to complete a risk assessment regarding the work equipment used by employees at home (*e.g.*, desk, chair). Instead, employers only needed to inform employees about safe working conditions, and it was the employee's responsibility to choose their place of work accordingly. The government also eased tax rules relating to remote work, allowing employers to provide tax-free lump sum compensation to employees to cover remote work expenses, such as energy consumption or internet access, without the necessity of documentation. Because of the benefits of remote work with respect to work-life balance, environmental impact and enabling people with family commitments (such as caring for a child or parent) to participate in the workforce, it is expected that remote work regulations will be further modified even after the pandemic in order to promote its use.

INDIA

THREE NEW LABOR CODES ENACTED

The Indian employment law framework has traditionally been perceived as rigid, archaic, confusing and cumbersome. Over the past year, there have been efforts to simplify, rationalize and consolidate the country's labor and employment laws. Twenty-nine existing Central laws have now been reduced to four Codes: The Code on Wages, 2019 (Wage Code), the Code on Social Security, 2020 (SS Code), the Occupational Safety, Health and Working Conditions Code, 2020 (OSHW Code) and the Industrial Relations Code, 2020 (IR Code). All four Codes have received presidential assent and have been notified but are yet to be implemented. The associated delegated laws are open for public consultation and feedback. The Codes are anticipated to be implemented by April 2021. India has surged 14 places in the World Bank's global "Ease of Doing Business" index and is currently ranked at 63, and the Codes are touted to improve this ranking further. The penalties for noncompliance have been increased under the Codes, which also allow for compounding of offenses. Exemptions for public emergencies (including a disaster or epidemic or pandemic) have been included in the Codes.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The OSHW Code amends and consolidates 13 laws relating to safety, health and welfare requirements for various sectors. The applicability of various obligations is tied to meeting the different thresholds prescribed under the OSHW Code. The OSHW code proposes one registration and one return to simplify the procedural requirements. Special provisions for

the health, safety and welfare of transgender workers at the workplace are included under this OSHW Code. The new definition for "contract labor" introduced under the Code would impact the way companies engage contract workers through external service providers, with prohibitions on engagements in "core activities" and revisions to the definition of "contract labor." (More information available [here](#).)

THE INDUSTRIAL RELATIONS CODE, 2020

The IR Code amends and consolidates three laws related to trade unions, service conditions and industrial disputes. The employee's right to strike without notice has been curtailed through the new IR Code. The threshold for the applicability of provisions requiring prior government approval for layoff/retrenchment or closure and certification of standing orders has been increased to 300 (prior threshold was 100 workers), providing limited incremental flexibility in hiring and terminating workers. New rules on union recognition have been introduced, along with the concept of a "negotiating union" in case there are multiple unions without any single one of them representing at least 51% of the employees. Fixed-term employment is expressly recognized under the IR Code and SS Code, provided there is no discrimination with permanent employees on benefits and other conditions of employment. A "Worker Reskilling Fund," funded by employers, is proposed to be set up to help retrenched workers reskill and remain competitive in the job market, and employers will need to pay 15 days' wages to that fund in case of retrenchments. Establishments with 20 or more workers will need to establish a Grievance Redressal Committee to address workplace grievances and disputes. (More information available [here](#).)

THE CODE ON SOCIAL SECURITY, 2020

The SS Code amends and consolidates nine laws relating to social security benefits. The new definition of "wages" will impact salary composition and calculation of social security contributions and employment benefits. "Gig workers" and "platform workers" are recognized under the SS Code, and a dedicated social security scheme is proposed for them. Similarly, a social security scheme for non-unionized workers is also proposed. Finally, a provision for *pro rata* gratuity for fixed-term employees has also been introduced under the SS Code. (More information available [here](#).)

ATMANIRBHAR BHARAT ROZGAR YOJANA

The scheme was announced by the government as part of the COVID-19 economic stimulus package to: (a) incentivize creation of new employment; and (b) restore employment lost during the pandemic. Under the scheme, the government will cover the Employee's Provident Fund contribution (either 12% or 24% depending on employee headcount in the establishment (>1000 or <1000)) for 24 months for eligible beneficiaries. To be eligible an employee must have either: (a) lost a job between March and September 2020 and become re-employed in Oct 2020; or (b) start a new job between October 2020 and June 2021. For employers to benefit from the scheme, they must recruit at least two or five new employees depending on establishment headcount (<50 or >50) as of September 2020. (More information available [here](#).)

COVID-19 DIRECTIVES AND STANDARD OPERATING PROCEDURES

To contain the spread of the virus and to ensure employee safety, the Indian government started releasing COVID-19 directives and standard operating procedures beginning in March 2020. In line with World Health Organization directives, the government has issued guidelines on social distancing norms that should be followed at workplaces. This included the grant of additional leaves for testing and quarantining; allowing operation with limited capacity; thermal screening; sanitization/disinfection; social distancing; staggering of visitors/patrons; wearing of masks; reporting obligations to the management and to the local medical authorities; and video conferencing work from home. Social distancing requirements are constantly evolving, and there are still restrictions on containment zones and travel. Employers are required to address both Central and state-specific requirements while running commercial operations. (More information available [here](#).)

SUPREME COURT OF INDIA INTERVENES TO PREVENT COERCIVE ACTION AGAINST EMPLOYERS DURING LOCKDOWN

The Ministry of Home Affairs (MHA) issued directions in March 2020 restricting employers from reducing salary and carrying out terminations. The MHA Order was in force until May 18, 2020, and the constitutional validity of the order for the time it remained in force has been challenged before the Supreme Court. The Court in *Ficus Pax Private Ltd v. Union of India*, in its interim order, directed that no coercive action should be taken against employers in furtherance of the MHA directions and ordered that employers and employees should negotiate among

themselves regarding the payment of wages during the closure period and arrive at a mutually agreeable settlement. The Court also observed that if employers and employees are unable to reach a settlement, the concerned labor authorities' assistance can be sought. (More information available [here](#).)

SUPREME COURT OF INDIA QUASHES SWEEPING LABOR LAW RELAXATIONS

Employees in Gujarat challenged the measures taken in the backdrop of the pandemic, where workers could be obligated to work up to 12 hours a day for six days a week, their rest periods were truncated and overtime pay was decreased under Factories Act, 1948. The Court in *Gujarat Mazdoor Sabha v. State of Gujarat* quashed the Gujarat government notification that had exempted factories from paying overtime wages to workers and providing ideal working conditions to them amid the COVID-19 lockdown and directed them to pay overtime wages to workers who were working since the issuance of the notification. The Court was of the view that financial losses cannot be offset on the weary shoulders of the laboring worker, who provides the backbone of the economy. The Court ruled that the government cannot issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic that did not result in an “internal disturbance” of a nature that posed a “grave emergency” whereby the security of India is threatened. (More information available [here](#).)

INDONESIA

The newly enacted Job Creation Law (November 2, 2020) is intended to improve the ease of doing business and stimulate the Indonesian economy. The employment law reforms are summarized below and implementing regulations are anticipated soon.

EXPATRIATE EMPLOYMENT

The Job Creation Law amends certain provisions of the Labor Law on the employment of expatriates, including the rules governing Expatriate Manpower Utilization Plans (RPTKA), which together with the Notification issued under an RPTKA now serve as the work permit. An RPTKA is not required for certain directors or commissioners, shareholders or expatriate workers needed in an emergency, for vocational activities, business visits, technological startups or performing research for a set time period.

Under a Supreme Court guideline issued in 2017, expatriates can only be employed on fixed-term contracts. The Job Creation Law is silent on this issue, but expressly contemplates implementing regulations to update the list of jobs open to foreigners and the period of employment of expatriates.

PROCEDURE FOR TERMINATION OF PERMANENT EMPLOYEES

The most intriguing potential development relates to the procedure governing termination of employment. Under the Labor Law, an employer had no right to unilaterally terminate employment in any circumstances. Rather, unless settled by agreement, the employer was required to obtain a Labor Court approval of each termination and the employee was entitled to up to six months' salary during such legal

proceedings. The business community has long considered this procedure to place unfair bargaining power in the hands of employees who have been able to successfully negotiate settlement packages in excess of their generous statutory entitlements for the employer to avoid the costly, lengthy and disruptive formal legal proceedings.

The legislature did not clearly state in the Job Creation Law that the employer can unilaterally terminate employment upon written notice without a court order. However, the new rules created by the Job Creation Law may be so interpreted. For the first time, the Job Creation Law creates the notice of termination concept by requiring the employer to provide written notice of termination with reasons. It also abolishes Article 152 of the Labor Law, which has been construed as the main provision requiring the employer to obtain a Labor Court approval of any proposed termination. Employers should keep apprised of any developments on how these new provisions will be interpreted in practice.

TERMINATION OF PERMANENT EMPLOYEES: ENTITLEMENTS

Another notable change to the Labor Law is the revocation of Articles 161-172, which set out the generous and distinct termination benefit packages applicable to the various grounds for termination, including poor performance, resignation, change of status of the employer, closing of the employer (with or without proven economic losses), bankruptcy, retirement age, absence without leave and long-term disability. This also effectively abolishes one of the termination benefits formerly known as the “health and housing allowance.”

Although the Law still recognizes these familiar grounds for termination as well as the severance and

service pay tables, the precise entitlement for each ground is no longer specified. The ambiguity is expected to be resolved by the anticipated implementing regulation.

TERM AND TERMINATION OF FIXED TERM EMPLOYMENT

The Job Creation Law revoked the main rule on the maximum term of fixed term contracts (*i.e.*, maximum two-year first term, one-year second term and two-year third term after a 30-day clean break). It more generally provides that fixed-term contracts can be based on a fixed time period or completion of a specified project. For the first time, it provides for an unspecified separation benefit upon expiration of the term or project which will be clarified in the regulation.

UNEMPLOYMENT INSURANCE

Importantly, the Job Creation Law creates a new type of social security benefit under the Social Security Law (BPJS) called “loss of job security” (*i.e.*, unemployment insurance). The benefit consists of: (a) up to six months’ wages; (b) information on job opportunities; and (c) training.

IRELAND

The 2020 Irish employment law landscape was dominated by COVID-19 and the key themes that emerged as a result, including remote work, layoffs, redundancies, temperature testing and COVID-19 vaccination. However, 2020 also presented important developments for Irish employers through some notable cases.

DONAL O'DONOVAN V. OVER-C TECHNOLOGY LIMITED AND OVER-C LIMITED [2020] IEHC 291 – INJUNCTION DURING A PROBATIONARY PERIOD

The employee in this case was dismissed during his probationary period for poor performance and he sought (and was granted) an injunction preventing his dismissal on the basis that the employer had failed to afford him fair procedures when assessing his performance and effecting his dismissal.

Generally speaking, employees dismissed during their probationary period do not have the 12 months' requisite continuous service to bring a statutory unfair dismissal claim. However, this case serves as an important reminder to employers that they do not have carte blanche in effective dismissals on the grounds of poor performance, misconduct, etc. during an employee's probationary period. Instead, such dismissals must be consistent with the requirements of natural justice and the employee's employment contract to mitigate the risk of such an employee seeking injunctive relief to avoid dismissal. (More information available [here](#).)

RYANAIR DAC V. PETER BELLEW [2019] IEHC 907 – NONCOMPETE POST-TERMINATION RESTRICTIVE COVENANTS

This case was heard at the tail end of 2019, but the judgment was not available until early January 2020. Ryanair commenced injunctive proceedings to prevent its chief operations officer from joining easyJet until the contractual 12 month noncompete period had expired.

The Court held that the scope of the post-termination contractual restraint was too broad as it would stop the employee from taking up employment with any business in competition with Ryanair (low-cost or flagship/high-cost airlines) "in any capacity." Ryanair argued its main competition was from low-cost carriers and easyJet was its "most immediate rival." However, the clause did not delineate that reality. Further, the restraint prohibited the employee from being employed as a pilot or air steward, for example, and it was held that such went beyond the protection of Ryanair's legitimate interests. For these reasons, the High Court held that the restraint was unenforceable and Ryanair failed in its application.

Importantly and of some relief to businesses, the Court had "no difficulty with the time constraint" of 12 months. The key takeaway is that there is no "alone-size-fits-all" covenant for all employees across an organization and bespoke drafting is required. (More information available [here](#).)

DOOLIN V. THE DATA PROTECTION COMMISSIONER AND OUR LADY'S HOSPICE AND CARE SERVICE (NOTICE PARTY) [2020] IEHC 90 – USE OF CCTV IN DISCIPLINARY PROCEEDINGS

In this case, the High Court considered the use of CCTV footage in disciplinary proceedings. The outcome of this case is that while CCTV footage can be used by employers for the purposes expressly specified, including its use as part of a disciplinary investigation, its purpose must be clearly identified in advance.

The case arose in the context of an investigation into terrorist-related graffiti. A sign informed employees that CCTV recordings were for the purposes of health and safety and crime prevention. The footage was reviewed as part of the graffiti investigation, but it was noticed that Mr. Doolin had taken a number of unauthorized breaks, which led to a disciplinary process being invoked (for which he was subsequently sanctioned).

When this matter came before the High Court, it held that there was “further processing” of the footage in its use in the disciplinary investigation, and that the such further processing was for the separate and distinct purpose of disciplinary proceedings into the unauthorized breaks taken and, therefore, incompatible with the original purposes of health and safety and crime prevention. (More information available [here](#).)

CLARKE V. CGI FOOD SERVICES LIMITED [2020] IEHC 368/CONWAY V. THE DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE [2020] IEHC 665 – PROTECTED DISCLOSURES

There have been a number of high-profile protected disclosure cases before the Irish courts in 2020 that have provided useful guidance on aspects of the Protected Disclosure Acts 2014 that had not previously been litigated.

In the *Clarke* decision, the Court, among other things, clarified the interpretation of an important provision in the 2014 Act which is often relied upon by employers where an employee raises a concern and such detection / investigation is within the employee’s functions and so does not come within the protections of the 2014 Act (here, the employee was the financial controller and the matters raised were financial in nature).

In the *Conway* decision, the High Court held, among other things, that the Workplace Relations Commission, the Labour Court or the High Court had no jurisdiction to adjudicate on the claim that the employer had not dealt with a protected disclosure promptly, even where such may have been the case, as no such cause of action existed. However, the EU Whistleblowing Directive, which must be implemented by 17 December 2021, provides for strict time limits for dealing with protected disclosures. For example, an employer will have to acknowledge receipt within seven days and “*diligently follow-up on disclosures*” within three months, which can be extended to six months if duly justified. (More information available [here](#) and [here](#).)

ISRAEL

THE EFFECTS OF COVID-19 ON THE ISRAELI EMPLOYMENT MARKET

COVID-19's full impact on the economy and employment is yet to be known. During 2020, the Israeli government imposed at least two lockdowns, each of which lasted three to four weeks. Many regulations were passed regarding workplace restrictions, such as the number of employees allowed in a workplace, social distancing at work and which employees or workplaces can be categorized as essential to the Israeli economy, among others.

Coronavirus Sweeping Paid Sick Leave

During the early stages of COVID-19, an order was released establishing a blanket medical certificate for those who were ill or forced to stay in isolation due to COVID-19. As a result, employees were able to use their accumulated paid sick leave for time spent in quarantine. Israel's Supreme Court accepted a petition by Israeli employers and by the Employers' Associations opposing the sweeping sick leave coronavirus order because of the financial burden it imposed, requiring them to finance their employee's long-lasting quarantines. The Supreme Court ordered that quarantine does not qualify as "sickness" under the Sick Leave Law and canceled the sweeping medical certificate. Following the court ruling, a law was enacted which determined that the Israeli National Insurance Agency will participate in the cost of quarantine payment.

MAJOR COURT RULINGS

Labor Appeal (National) 383-03-18 *ILAN Israeli Association for Injured Children v. Michael Mochdinov*

250% pay for hourly employees working on holiday: According to Extension Order – Framework Agreement from 2000, all hourly and daily salaried employees are entitled to nine days of paid holiday per year under certain conditions—even if they did not work during the holiday. Additionally, under the Hours of Work and Rest Law, an hourly or daily employee who worked during the holiday is entitled to 150% of his/her regular salary. According to earlier court rulings, only an employee who was forced by the employer to work during the holiday was entitled to both the 100% holiday pay and the 150% pay. In the ILAN case, the labor court ruled that so long as the employer was involved in the scheduling the work arrangements of the employee during this period (even if the employee chose to work) it is considered as if the employee were forced to work, and the employee will be entitled to the entire 250% payment.

Labor Appeal (National) 47271-06-18 *Hatama v. Sami Hafuta*

Under Israeli law, prior to terminating an employee, an employer must conduct a hearing to grant the employee an opportunity to give their position to the employer before a final decision of termination is made. This court case dealt with the hearing process prior to the termination of an employee of contractor for disciplinary reasons when the termination process was initiated by the party receiving the service from the contractor (*i.e.*, the termination process was not initiated the contractor who is formally the employer). The national labor court ruled that when dismissing a contractor's employee upon demand of the service

recipient due to serious circumstances, it is not sufficient that the contractor conduct the termination hearing process, but rather both the contractor and the service recipient must participate in the hearing.

[Labor Appeal \(National\) 316-10-19 *Opus-HR v. Zeit Tafari*](#)

This recent court ruling softened the above *Hatama v. Sami Hafuta*. The court ruled that if the employee of the service contractor has spent a limited amount of time on the premises of the service recipient, only the service contractor (i.e., the employer), and not the service recipient, must attend the termination hearing. In conclusion, the court ruled that service recipient is required to attend the termination hearing of the employee of the contractor only under certain circumstances, specifically based on the amount of time the contractor's employee spent on the premises of the service recipient.

[Labor Dispute \(Tel-Aviv\) 16863-07-20 *Dor Alon Energy v. National Workers' Union*](#)

Dor Alon Energy attempted to prevent the national workers' union (Histadrut) from unionizing Dor Alon's employees by claiming that the Histadrut was using illegal tactics to force Dor Alon employees to join the union (specifically offering employees with gift cards and phone chargers, among others). The court ruled in favor of the Histadrut, stating that the gifts provided to Dor Alon employees did not affect their freedom to choose whether they wish to join the Histadrut, and the court ruled that the Histadrut is the representative union in Dor Alon. This court ruling widens the power gaps and capabilities between employers and the unions, as employers are not permitted to take any action to attempt to influence their employees from joining a union.

LAOS

HYGIENE AND SAFETY MEASURES DURING THE COVID-19 OUTBREAK PERIOD

In 2020, the COVID-19 outbreak seriously impacted the emerging economic sector in Laos. On May 11, 2020, the National Taskforce Committee for COVID-19 Prevention and Control issued Instructions No. 071 on Adjusting the Conditions and Measures for the Operations of Business Unit during the COVID-19 Outbreak (the Instructions) to assist the country's business units in resuming operations and maintaining sanitary conditions, thereby preventing further economic loss. Most recently, the government issued a notification in January 2021 confirming the continued enforcement of the various mandates to uphold hygiene and safety in the workplace, cooperate with authorities in their efforts to combat the virus, and restrict certain activities, among other measures.

The May 2020 Instructions address all types of business units in Laos and give special attention to specific workplaces (i.e., factories) that have many workers and therefore increase the risk of spreading the virus on a large scale. In particular, the Instructions provide six conditions that factories and workplaces must observe throughout the outbreak:

- Working areas must not be narrowed and must accommodate social distance measures.
- Canteens must be spacious and allow good hygiene. Utensils must not be shared. One meter must be observed between each seat. There must be a separate room in which suspected positive COVID-19 cases can be placed.
- Clean water, masks and places to wash hands with sufficient soap and gel must be provided.

- There must be an employee who monitors staff entering and leaving the working areas.
- Employees must dispose of their trash properly.
- The National Task Force’s inspections should be facilitated.

In addition, the Instructions require the following five measures to be implemented:

- Temperature checks in the morning and evening. If an employee presents symptoms (temperature of 37.5°C, cough or difficulty breathing), records of this must be made, and they must be isolate, and consult with the emergency number on what must be done accordingly.
- Provision of masks.
- Social distancing of at least one meter. Activities that cannot ensure such social distancing must be prohibited.
- Monitor outsiders working with the legal entity.
- Clean working areas, canteens, toilets, dormitories and warehouses/storerooms every day.

IMPORTING FOREIGN LABOR

As a measure to limit the spread of COVID-19, Laos’ borders with its neighboring countries and international checkpoints (e.g., airports) have been closed unless there are certain reasons for them to be opened. Given this limitation and the ensuing economic loss, the local authorities have put in place procedures to allow requests for importation of foreign labor. According to these procedures, employers willing to import foreign labor during the COVID-19 outbreak must apply for and obtain business visas from the Consular Department of the Ministry of Foreign Affairs for the foreign workers to enter Laos. In addition, employers must inform the

relevant ad hoc taskforce committee under the Ministry of Foreign Affairs of the foreign workers’ estimated travel times, travel vehicles, checkpoints to enter, places for quarantine, countries transited and reasons for the need to employ foreign laborers. Because these requirements have been in place since almost the beginning of the pandemic, employers now consider these requirements as the standard procedures to follow for hiring foreign laborers in the country, rather than as temporary emergency regulations.

LATVIA

CHANGES IN THE LABOUR PROTECTION LAW

As specific forms of employment become more relevant, especially during the COVID-19 pandemic, as of July 1, 2020, the Labour Protection Law of Latvia has been supplemented with the definition of **telework**, stipulating that it is a form of work performed when the work that the employee could perform within the company is permanently or regularly performed outside the employer's company, including work using information and communication technologies; however, telework will not be considered to be work which, due to its nature, is related to regular movement.

The definition of telework complies with international norms and also includes an explanation of the use of information and communication technologies in accordance with [the agreement on telework](#) of the European social partners of July 16, 2002. The new regulation also states that an employee who performs telework shall cooperate with the employer in the assessment of the risk of the work environment and provide the

employer with information on the conditions of telework which may affect their safety and health during the performance of the employee's work.

Considering that the regulatory enactments contain different **definitions of self-employed** depending on the regulatory context, the new amendments also include a definition of self-employed within the meaning of the Labour Protection Law, providing that a self-employed person is a natural person who performs work independently and is not considered an employee within the meaning of the Labour Protection Law. The general principles of labor protection for the self-employed must be observed to the extent that they correspond to the nature of the work to be performed by the self-employed person, for example, to eliminate the causes of work environment risk, replace dangerous with safe or less dangerous, etc.

ADMINISTRATIVE FINES INDICATED IN THE LATVIAN LABOUR LAW AND LABOUR PROTECTION LAW

Because of the de-codification process in Latvia, the Latvian Labour Law has been supplemented with Part E “Administrative Liability,” which came into force at the same time as the new Administrative Liability Law, *i.e.*, on July 1, 2020.

Henceforth, administrative penalties for violations of employment regulations now are indicated in the Latvian Labour Law, relevant changes were also made to the Labour Protection Law. Although the de-codification changes affect the penalty application system and the penalties in general, administrative fines regarding employment regulations are the same, though, the penalties are determined in the penalty units—one penalty unit is equal to EUR 5.00.

COVID-19 - ONLINE INTERACTIVE RISK ASSESSMENT

To help employers to assess the readiness of their work environment and workplace because of COVID-19, the State Labour Inspectorate of Latvia in cooperation with the European Agency for Safety and Health at Work has developed a new free Online Interactive Risk Assessment (OiRA) tool in the Latvian language. (More information available [here](#).)

The OiRA tool helps employers, even without special prior knowledge in labor protection regulations, to identify the factors of the work environment present in their workplace and to assess the risk that employees will suffer or become ill at the workplace.

Also, with the help of the OiRA tool, it is possible to determine the labor protection measures to be performed in the company, as well as to prepare the necessary documentation (work environment risk assessment and labour protection measures plan). More information and helpful tips about the OiRA is available in the Latvian language [here](#) at the homepage of the State Labour Inspectorate of Latvia.

CASE LAW OF LATVIA 2020

Supreme Court: Qualification of Psychological Terror in the Workplace or Mobbing

In this case, the Supreme Court established that in the case of **psychological terror or mobbing** committed by the employer, the principle of equal rights has been violated, and this qualifies as a violation of the principle of equal rights and obligation to ensure fair and safe working conditions that are not harmful to health.

It was established that the duration of mobbing against an employee must be assessed in conjunction with other signs of psychological terror, in particular the nature, purpose and systematic nature of the activities. The more frequent and systematic the harmful activities, the shorter the time it may take to detect a mobbing, and vice versa. Therefore, in the current case, there is no reason to believe that mobbing cannot take place for 13 days alone, thus, for a relatively short time. This is an important conclusion, given that so far mostly six months have been considered as a reference period.

Finally, the Supreme Court also established that in certain cases, it may be permissible to record an employee's conversation with an employer without informing the employer and to use this record in court as evidence to protect the employee's rights. In considering whether, in the circumstances of a particular case, the employer's right to privacy or the employee's right is preferable, the court must assess: (i) the circumstances in which the recording of the conversation took place; (ii) for what purposes it was recorded; (iii) what was the framework of the conversation; (iv) how the record was used; (v) whether there was other possible evidence which could equally effectively prove the existence of the infringement in question; and (vi) whether the recorded person has been unduly provoked. (More information available [here](#).)

Supreme Court: Separation of Working Time and Rest Time during Breaks

In this case, the Supreme Court reviewed and clarified the concept of working time and mainly referred to the case law of the Court of Justice of the European Union on working time under Directive 2003/88/EC, and in particular the decision in Matzak (C-518/18).

To separate working time from rest time, the Court pointed out that the **work break** is a time during which, following the law and the employer's rules of procedure (shift schedules), the employee does not have to perform their work duties and may leave the workplace to use this time freely, but mainly to rest and eat.

Working time status is granted for the period during which the employee is obliged to be physically present at the place specified by the employer and to be available to the employer so that the relevant services can be provided immediately if necessary (on-call time).

However, if the employee is at the disposal of their employer, in so far as they must be reachable, the employee may organize their time in a less restrictive manner and devote it to their interests; in this case, only the time associated with the actual provision of the service is considered as working time (call readiness). Therefore, employers should evaluate their rules of procedures and other internal regulations and assess whether employees during their work breaks are actually on a rest time or such break could be considered as an on-call time to which a working time status is granted, thus shall also be paid. (More information available [here](#).)

LITHUANIA

PERSONAL INCOME TAX EXEMPTION FOR EMPLOYEE'S SHARES ACQUIRED UNDER SHARE OPTION AGREEMENTS

The Lithuanian Parliament adopted changes of tax legislation in the Law on Personal Income (the Law). As of February 1, 2020, the shares of the employees acquired under the Share Option Agreements could be tax-exempted from personal income tax. The new amendment of the Law establishes that the shares acquired under the Share Option Agreements could be exempted from personal income tax in compliance with the following requirements: 1) the Share Option Agreement was concluded not earlier than February 1, 2020 (shares acquired under Share Option Agreements which were concluded earlier than February 1, 2020, could not be exempted from personal income tax); and 2) the employee shall obtain a right to acquire the shares not earlier than after three years, *i.e.*, after February 1, 2023. All employees of the company may have a right to acquire the shares, as well as the manager of the company, members of the supervisory board and/or the management board who are employees of the company. It should be noted that the shares may be acquired either from the employer or from the shareholder of the company. Share Option Agreements are becoming more attractive as an employee motivational tool, especially for start-ups.

A NEW LEGAL GROUND FOR IDLE TIME AND DISMISSAL OF AN EMPLOYEE

As of March 19, 2020, Article 47 of the Labour Code of the Republic of Lithuania was supplemented by a new legal ground for idle time. Since then an employer may declare idle time for an employee or

group of employees when the Government of the Republic of Lithuania declares an emergency situation and/or quarantine and the employer cannot therefore provide the employee with the work stipulated in the employment contract, because due to the peculiarities of work organization it is not possible to work remotely or the employee does not agree to work remotely. An employee on idle time should be paid not less than the minimum monthly salary. Moreover, Article 49 paragraph 31 of the Labour Code of the Republic of Lithuania was supplemented by an additional legal ground for dismissal of an employee. According to it, the employer has a right to suspend the employee (whose health condition endangers the health of other workers, e.g., employees returning from COVID-19-affected areas or having had a direct contact with COVID-19-affected people) from work and not to pay the salary if they do not agree to work remotely.

CHANGING REGULATION REGARDING THE POSTING OF EMPLOYEES

Amendments to Articles 108 and 109 of the Labour Code of the Republic of Lithuania entered into force beginning July 30, 2020. Changes include the application of foreign state imperatives, maximum duration of posting, posting of temporary staff, etc. When the duration of the secondment exceeds 12 months all provisions of foreign labor law and provisions of higher than at the level of the employer collective agreements will have to be applied, except for the conditions for concluding, terminating employment contract and non-competition agreements. Upon reasoned request to the authority of the Member State concerned (in Lithuania – State Labour Inspectorate), this period may be extended to 18 months. However, if the employer replaces a posted employee with another posted employee

performing the same duties at the same place, the durations of their postings shall be added up. These changes are not applicable for road vehicles drivers.

POSSIBILITY TO DISMISS PREGNANT EMPLOYEES AND EMPLOYEES RAISING A CHILD UNDER THE AGE OF THREE

As of August 1, 2020, adopted amendments to the Labour Code of the Republic of Lithuania it became possible to dismiss a pregnant employee during their pregnancy and until their baby reaches the age of four months, where a court or employer's body makes a decision to terminate the employer's activities (*e.g.*, in the event of bankruptcy, liquidation). It will also be possible to dismiss employees raising a child under the age of three if the employee does not agree to the continuation of the employment relationship in the event of transfer of all or part of a business or if a court or employer's body decides to terminate the employer (Art. 61). Finally, Article 57 of the Labour Code of the Republic of Lithuania will set a three-months' notice period for pregnant employees if they have worked for the company for more than one year (if less, the notice period will be six weeks) and are dismissed due to the termination of the employer.

CHANGING REGULATION OF APPLICATION FOR RESIDENCE PERMITS (THE BLUE CARD)

Temporary residence permits procedure for highly qualified employees was facilitated in Lithuania. Highly qualified employees are now allowed to submit applications for temporary residence (the blue card) and provide copies of necessary documents online, and if Migration Department issues a positive decision regarding a residence permit, such foreigner will have right to enter the Republic of Lithuania. The

residence permit will be issued within a few days upon submission of the original documents and biometric data to the Migration Department. This should reduce the terms for issuance of a temporary residence permit to up 15 days (fast track) or one month (standard). In addition, a temporary residence permit issued to a foreigner may be revoked by the employer who has employed or undertakes to employ the foreigner. It is important to note that a high professional qualification is a qualification where higher education diploma or at least five years of professional experience equivalent to a higher education qualification is required for a profession or sector specified in the employer's commitment to employ a foreigner or in an employment contract. Highly qualified employees can also bring their family members (spouses, partners, minor children and/or their dependent parents) to Lithuania.

SUPREME ADMINISTRATIVE COURT: THE USE OF EMPLOYEES' FINGERPRINTS HAS NO LEGAL BASIS AND IS AN UNJUSTIFIED AND DISPROPORTIONATE MEASURE

The employer stated that only the processing of biometric data could achieve the desired goals—accounting of working time and control of work discipline. However, the Court emphasized that measures for the processing of biometric data could be used for certain very important purposes and only in exceptional circumstances which were not been established in the case at hand. According to the Court, the Inspectorate's investigation had reasonably established that the biometric data of the applicants' employees had been collected without their consent. The fact that the employees had not been provided with information about the processing of their biometric data and their consents had not been

obtained was confirmed by the fact that the applicants did not have any document governing the processing of personal data during the investigation, as well as any document confirming the provision of oral information to the employees. Finally, the Court stated that the employer must always look for the least intrusive measures and, if possible, choose non-biometric measures. Also, the panel of judges noted that from May 25, 2018, the new European Union regulation governing the processing of biometric data prohibits the processing of personal data disclosing biometric data attributed to special categories of personal data.

SUPREME COURT: WITHDRAWING MONEY FROM AN EMPLOYER'S CARD WITHOUT A REASON CAN BE CONSIDERED A GROSS VIOLATION OF WORK DUTIES

The employee was given an employer's bank card for small payments. The employee withdrew €2,000 as severance pay if he was fired sometime. The employee returned the money, but only after he was threatened to apply to the police; nevertheless, he was fired (at the initiative of the employer due to the fault of the employee). He challenged the dismissal because he was "instructed to withdraw the money and keep it for as long as necessary." The Court stated that an employer who entrusts an employee with certain work functions for their benefit and is obliged to pay for it, entrusts the employee with their material means and financial resources, has a reasonable expectation that the employee will perform their duties honestly, without abusing the law, protecting the employer's property. Therefore, it is obvious that when an employee disposes the employer's funds not in accordance with the conditions set by the employer, failing to meet the employer's needs, but intends to

satisfy their own or other people's needs, the employer loses trust and has grounds to consider such employee's actions as gross violation of work duties and terminate the employment contract.

LUXEMBOURG

NEW LAW ON INTERNSHIPS FOR PUPILS AND STUDENTS

The law of June 4, 2020, amending the Labour Code and introducing an internship scheme for pupils and students, entered into force on June 9, 2020.

The law differentiates between three types of occupation of pupils and students by companies: (a) during school holidays; (b) during mandatory internships required by an educational institution; and (c) during voluntary internships to acquire professional experience.

In particular, the law determines the formal requirements of the internship agreement/convention. The law also sets out the remuneration requirement, where relevant, to be observed in each specific case, subject to certain conditions: (a) during school holidays remuneration must be equivalent to a minimum of 80% of the minimum social wage for unskilled workers; (b) for mandatory internships of less than four weeks, remuneration remains discretionary; however, remuneration of at least 30% of the minimum social wage for unskilled workers is now mandatory for all internships of over four weeks; and (c) for voluntary internships of less than four weeks, remuneration remains discretionary; however, for internships of more than four weeks remuneration of at least 40% of the minimum social wage for unskilled workers and up to 100% of the minimum social wage for skilled workers depending on the

duration of the internship, the age and the qualification of the intern is now mandatory.

NEW LAW ON INTERNAL AND EXTERNAL EMPLOYEE RECLASSIFICATION

The law of July 24, 2020, which entered into force on November 1, 2020, amends the provisions on internal and external reclassification of employees.

This law notably defines the missions and powers of the Mixed Committee, the body that oversees decisions on internal or external reclassification, as well as the status of the person undergoing occupational reclassification, the adaptation of working hours, the compensation fee, the rehabilitation, the reconversion or the continuous vocational training measures for persons under internal reclassification.

The new conditions of eligibility for internal or external reclassification measures are also set out in this law (*i.e.*, employees are now eligible to reclassification if their seniority is of at least three years or if they obtained a certificate of suitability for the job established at the time of hiring).

In addition, the law provides that employers which, on the day the request is submitted to the Mixed Committee, employ at least 25 employees and which do not occupy the number of employees benefiting from internal or external reclassification within the limits of the rates relating to the employment of disabled workers provided for by the Labour Code, are obliged to reclassify the employee concerned by this measure. To this end, the law reintroduced the provisions where employees benefiting from internal or external reclassification are considered as disabled workers for threshold purposes.

This new law also amended the conditions for granting the compensatory allowance in the event of reclassification as well as its calculation, payment and its consideration for unemployment or pension allowances, for example. Furthermore, the law provides that individuals under reclassification status who are at the end of their unemployment compensation rights (including any extension), may benefit from a waiting professional indemnity under the condition that they can demonstrate at least five years of suitability in their last job or five years of seniority. In case of fraud concerning compensatory allowances or professional waiting indemnities, the Labour Code now provides for a prison sentence of one to six months and/or a fine of €500 to €5,000. Attempted fraud is punishable by imprisonment from eight days to three months and/or a fine of €251 to €2,000.

NEW AGREEMENT ON THE LEGAL REGIME OF TELEWORKING

On October 20, 2020, a new agreement on the legal regime of teleworking was signed between the social partners *Union des Entreprises Luxembourgeoises*, *Onofhängege Gewerkschaftsbond Lëtzebuerg* (OGBL) and *Lëtzebuenger Chrëschtliche Gewerkschaftsbond* (LCGB). This new agreement replaces the previous 2006 version and updates the teleworking framework for employers and employees.

Under the agreement, employees and employers may freely choose the organization of remote work, subject to applicable provisions, either when the employee is hired or at any point during the course of employment. Employees who choose to telework must be treated equally to employees working on site for the business. In the case that an employee refuses to telework, the

employer may not take action to dismiss the employee on the sole basis of such refusal.

With respect to regular teleworking, the employer must provide the employee with the equipment needed for the job at its own cost. This obligation does not apply, however, to occasional teleworking, which is a new concept introduced by this agreement and is defined as telework that represents less than 10% of the normal annual working time of the teleworker or telework that responds to unforeseen events (such as COVID-19).

The agreement does not cover secondment, the transport sector (generally speaking, except for administrative positions), sales representatives, coworking spaces, smart-working (occasional work via smartphone or laptop outside of the usual workplace) and all services provided to clients outside of the business.

A Grand-Ducal regulation making this agreement a general obligation applicable to all employees is expected in the course of 2021.

NEW LAW IMPLEMENTING EU DIRECTIVE 2018/957 ON SECONDMENT

The purpose of this law, which entered into force on December 22, 2020, is to adapt and extend provisions relating to employees seconded to Luxembourg from a company established abroad, in accordance with the latest European directive on this subject. The law broadens the compulsory provisions applicable and further specifies those applicable to long-term secondments (*i.e.*, of more than 12 months). In addition, the law indicates that the provisions on secondments are also applicable to temporary work agencies established abroad when they second employees to Luxembourg. New provisions regulating

the accommodation conditions of employees who are away from their usual place of work as well as provision of allowances or reimbursement of expenses to, cover travel accommodation or food expenses incurred by employees as a result of their secondments have also been included in the Labour Code. The powers (control and sanctions of the above-mentioned requirements) and the scope of information and documents that can be requested by the Luxembourg employment authorities (Inspection du travail et des mines, or ITM) are also expanded. Finally, this law underlines that its provisions are not applicable to the road transport sector.

MALAYSIA

In 2020, the Malaysian Parliament passed several amendments to the Industrial Relations Act 1967 (IRA), a critical piece of legislation regulating disputes between employers and their workers and/or trade unions. These amendments took effect on January 1, 2021. The amendments include the following:

a) Expediting References to the Industrial Court

While a ministerial discretion previously existed to determine whether disputes or matters ought to be referred to the Industrial Court, this level of discretion has been removed. The power of referral now vests with the Director General of Industrial Relations. Cases that are not settled in (pre-court) conciliation proceedings are automatically referred to court for adjudication.

b) Greater Powers in Dealing with Unjust Dismissal Claims

The amendments have further allowed for the Industrial Court to (a) award compensation and back wages to deceased claimants' next of kin

(previously, a claim would abate in the event of the claimant's death); and (b) grant interest of up to 8% per year on monetary awards that remain unsatisfied after 30 days.

c) Enhancement of Penalties

The failure to comply with awards of the Industrial Court previously attracted a rather paltry maximum fine of RM 2,000 (approximately USD \$496). The maximum fine has since been increased to RM 50,000 (approximately USD \$12,400). This is in addition to being compelled to pay any monetary award that may have been ordered. The general penalty for contravention of the Industrial Relations Act has similarly been increased from RM 2,000 to RM 50,000.

These amendments aim to enhance the speed with which matters are handled in the Industrial Court. Enhanced penalties are intended to ensure that employers take greater care before terminating employees. The effect of these changes may take some time to be seen given the various movement control orders in place in Malaysia, but one thing is for sure: These changes are here to stay.

MAURITIUS

AMENDMENTS BROUGHT TO THE WORKERS' RIGHTS ACT 2019 (WRA) AS A RESPONSE TO THE CONSEQUENCES OF THE COVID-19 PANDEMIC

From June 1, 2020, to June 30, 2021, employers who, as a result of being financially affected by COVID-19, have benefitted from or have not applied for financial assistance from a prescribed list of government agencies are prohibited from effecting retrenchments.

This prohibition does not apply to employers whose applications for financial assistance have been rejected. Although it has been argued before the Redundancy Board that this prohibition on redundancy shall apply only to redundancies resulting out of COVID-19, the Redundancy Board has taken the view that this prohibition shall apply to all redundancies. Additionally, employers providing the services listed in the third schedule of the Employment Relations Act 2008 (Exempted Employers) may, subject to regulations being made to that effect, be exempted from retrenchment prohibitions and have access to simplified and abridged retrenchment procedures (as at January 15, 2020, solely two companies providing airline and aviation-related services have been exempted from the retrenchment prohibitions). (More information available [here](#).)

The WRA further makes provisions, subject to regulations, for Exempted Employers to be discharged from their obligations of maintaining equally favourable conditions of employment and/or of recognizing the continuity of employment of employees in the event of a takeover or transfer of undertaking (as at January 15, 2021, no such regulations have been made).

In an attempt to alleviate the financial struggles of employers following the COVID-19 pandemic, monthly contributory obligations to the Portable Retirement Gratuity Fund (the Fund) have been suspended until January 1, 2022, such moratorium being applicable to employers who have not contributed or who have ceased to contribute to the Fund. However, contributions for past services have to be effected when employment is terminated.

The Workers' Rights Act 2019

<https://labour.govmu.org/Documents/Legislations/TH>

[E WORKERS RIGHTS Act 2019/Consolidated Version of the Workers' Rights Act 2019 as at 7 September 2020.pdf](#)

The Workers' Rights (Prescribed Period) Regulations 2020

[https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/183_The%20Workers%20Rights%20\(Prescribed%20Period\)%20Reg%202020.pdf](https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/183_The%20Workers%20Rights%20(Prescribed%20Period)%20Reg%202020.pdf)

Amendments brought to the Employment Relations Act 2008 by the Covid19 (Miscellaneous Provisions) Act 2020

[https://labour.govmu.org/Documents/Legislations/Employment%20relations%20act%202008/Extract%20of%20the%20amendments%20to%20the%20EReA%20by%20the%20COVID19%20\(MP\)%20Act%202020.pdf](https://labour.govmu.org/Documents/Legislations/Employment%20relations%20act%202008/Extract%20of%20the%20amendments%20to%20the%20EReA%20by%20the%20COVID19%20(MP)%20Act%202020.pdf)

The Workers' Rights (Exempt Employers) Regulations 2020

[https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Right%20\(Exempt%20Employers\)%20Regulations%202020.pdf](https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Right%20(Exempt%20Employers)%20Regulations%202020.pdf)

The Workers' Rights (Portable Gratuity Retirement Fund) Regulations 2020

[https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Rights%20\(P%20R%20G%20F\)%20\(Amend\)%20Regulations%202020.pdf](https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Rights%20(P%20R%20G%20F)%20(Amend)%20Regulations%202020.pdf)

MEXICO

OUTSOURCING

To reduce the use of illegal outsourcing, on November 12, 2020, President López Obrador announced a bill that, if enacted, will have a significant impact on

outsourcing, by banning subcontracting of personnel and only allowing the provision of specialized services, which are not part of the corporate purpose or business activity of the beneficiary of the services. Those service providers must obtain an authorization by the Labor Ministry. Such authorization is important so as not to incur fines (which were increased significantly) and to make the expense tax-deductible. This bill bans the use of insourcing companies (using companies owned by the same corporate group) that had been previously used in Mexico for better control of profit sharing among related companies.

TELEWORK

In December 2020, Congress approved reforms to the Federal Labor Law regarding telework (in force as of January 2021) (the Reform). In general terms, the Reform creates an employer obligation to provide, install and maintain all the equipment and tools that the employee will need to conduct remote work, including any telecommunication services and paying for a proportional part of the employee's electricity bill. Telework will be permitted if it is mutually agreed, not occasional or sporadic, and if it is done for more than 40% of the total work shift. Special telework rights include: (a) the right to disconnect (respecting the time limits of the employee's work shift); (b) that telework is voluntary for both parties; (c) reversibility (return to on-site modality); (d) privacy; and (e) special provisions for psychosocial or ergonomic risks.

CREATION OF NEW LOCAL LABOR COURTS

In November 2020, the first phase of the implementation of labor reform in the judicial system started, in which the Conciliation and Arbitration

Labor Boards (parts of the Executive branch) stopped receiving new claims and/or collective bargaining agreements, to give way to Local Labor Courts—new judicial institutions created to hear labor matters. Eight Mexican states have already created new Local Labor Courts, where labor-related matters will be adjudicated. These states have also created local offices of the Federal Center for Labor Conciliation and Registration, where employees should exhaust pre-litigation conciliation efforts and where collective bargaining agreements are now presented. In October 2021, 14 Mexican states will join in the implementation of this new judicial system.

NEW TERMS OF THE PENSION SYSTEM

In December 2020, Congress approved a bill that modifies the pension system in Mexico. By modifying the Mexican Social Security Law and the Employee Retirement Law, Congress limited the commissions charged by the *Administradoras de Fondos para el Retiro* (fund administrators) in Mexico to a 0.54% and increased retirement payments from 6.5% to 15%, increasing the employer's obligations from 5.5% to 13.88%. The increase will be take place incrementally over the next several years.

USMCA LABOR IMPLICATIONS

On July 1, 2020, the US-Mexico-Canada Agreement (the USMCA) entered into force and replaced its predecessor, the North American Free Trade Agreement. The USMCA accelerates compliance of new robust labor protections, including rights related to collective bargaining, and a new dispute mechanism known as the “Rapid Response Mechanism.” Some of the new labor-related trade obligations for Mexico under the USMCA include: (1) implementing legislation establishing worker rights to

hold secret ballot votes in union leadership elections, challenge existing collective bargaining representatives, and approve new and existing collective bargaining agreements; and (2) establishing an independent entity to verify the validity of collective bargaining agreements and independent courts to settle labor disputes. Mexico has created new courts to address labor disputes (see above) and is still working on eliminating protective collective bargaining agreements, which favored employers and did not give voice to employee concerns. Under the USMCA, penalties for breaching these rights range from losing preferential tariffs to prohibiting exports to Canada or the United States.

MOZAMBIQUE

LAWS

Law 10/2020 (Management and Reduction of Disasters Risk)

This law approves the legal regime of Management and Reduction of Disasters Risk, which declares the Situation of Public Calamity.

Decree 102/2020 (Measures against COVID-19)

The purpose of this decree is to establish prevention and combat measures against COVID-19 during the Situation of Public Calamity.

The companies have to apply and implement some of those measures in their facilities, such as the use of masks and/or visors, frequent hand washing with soap and water, interpersonal distance of at least 1.5 meters, cough etiquette, no sharing of personal utensils, body temperature measurement before the start of the working day, airing of facilities,

disinfection of premises and equipment with recommended solutions, and reducing the number of people at meetings or gathering places to no more than 40 attendees. Finally, except in cases where the operation of the state cannot be postponed, citizen-employees who are at high risk of hospitalization or serious illness from COVID-19 have priority to be excused from on-site work, and employees exhibiting fevers or flu symptoms should not be allowed at the work site.

MYANMAR

OCCUPATIONAL HEALTH AND SAFETY

Though originally passed in March 2019, Myanmar's Occupational Health and Safety Law (OHS) reshaped much of the employment environment in Myanmar in 2020. OHS was aimed at the development and implementation of workplace health and safety measures in the country—something that became an even higher priority with the outbreak of COVID-19. It also had the goal of reducing and eliminating workplace accidents, the spread of diseases in the workplace and other occupational hazards. Prior to the enactment of the OHS, there was no specific legislation in Myanmar that governed occupational health and safety, although relevant provisions could be found in the Factories Act of 1951 and the Shops and Establishments Law of 2016. While some of the provisions under the OHS mirror the requirements under the Factories Act and the Shops and Establishments Law, the OHS goes further, including establishing the National Occupational Health and Safety Council of Myanmar to facilitate the administration of the OHS. Further, the OHS also introduces the requirement for certain enterprises to register themselves with the Factory and General Labor Laws Inspection Department and for such

enterprises to appoint an Occupational Health and Safety Manager or Committee. The OHS also specifies the obligations of employers and employees. Businesses and their employees in Myanmar should take note of the requirements under the OHS because failure to comply with the new law may lead to administrative action, imprisonment, fines or a combination of all three.

To mitigate COVID-19's impact in Myanmar, the government announced a number of labor-related relief policies. For example, on March 20, 2020, the Social Security Board (SSB) announced that it would allow employers to make social security payments quarterly instead of monthly. In June 2020, the SSB also provided limited social security contribution assistance to qualified injured workers.

By Orders dated September 20, 2020 (Order No. 107/2020), and September 22, 2020 (Order No. 108/2020), the Ministry of Health and Sport allowed employees in certain industries to work from home. Employees of certain essential businesses, however (e.g., financial services, food production, medical supplies, etc.), may not take advantage of these Orders.

On December 29, 2020, the Ministry of Health and Sports extended related public statements, orders, directives and notifications on the control and prevention of COVID-19 until January 31, 2021.

NETHERLANDS

KEY LEGISLATION

The Balanced Labour Market Act (BLMA) was enacted on January 1, 2020. The BLMA affects a

number of aspects of the employer-employee relationship.

Severance Payments Expanded to All Employees

Under the BLMA, all employees, regardless of how long they have worked for an employer, are now entitled to a statutory transition payment (the severance payment) if their employer terminates the employment relationship. Previously, only employees who had been employed for two years or longer were entitled to the statutory severance payment. The severance payment is calculated as follows: one-third of a monthly salary for each full year of employment. For any additional period of employment of less than one year, the severance payment is calculated pro rata. The severance payment is capped at one year's salary or €84,000 for 2021 (severance payment amounts are updated yearly), whichever is higher. (More information available [here](#).)

Employers May Now Rely on a Combination of Grounds of Dismissal

Before the BLMA was enacted, unilateral dismissal of an employee was, in principle, only possible if the employer could demonstrate that one of the enumerated grounds for dismissal listed in the Dutch Civil Code applied entirely to the case at hand. However, under the BLMA, employers may now combine several grounds for dismissal listed under the Dutch Civil Code. For example, employers can now cite poor job performance and an impairment of working relations to justify dismissal. However, in the event that the court terminates an employment contract based on a combination of reasons, the court may award extra severance pay in addition to the severance payment. This extra severance pay cannot

exceed 50% of the severance payment. (More information available [here](#).)

The BLMA Extends the Chain Rule

In Dutch employment law, the chain rule determines the maximum period during which parties may enter into consecutive fixed-term employment contracts, as well as the maximum number of consecutive fixed-term employment contracts. The BLMA extends the maximum period under the chain rule from two years to three years but does not change the maximum number of consecutive fixed-term employment contracts (which remains at three years). As was the case before the BLMA came into force, the chain is broken if there is an intermission of at least six months between consecutive contracts. The updated chain rule is applicable to contracts terminated on or after January 1, 2020. An applicable collective labor agreement (CLA) may set out a different regime. In such a case, the CLA governs. (More information available [here](#).)

On-Call Contracts

In addition to the aforementioned changes, the BLMA extends the rights of on-call employees. Effective January 1, 2020, on-call employees must be called on by the employer at least four days in advance. The employer must call on the employee in writing or electronically. If notice of less than four days is given, the employee is not obligated to comply with the call. On-call employees remain entitled to salary if a call is fully or partially withdrawn within four days before work commences. Furthermore, if an on-call employee has been employed for a period of 12 months or longer, the employer must offer the employee an employment contract with fixed hours (i.e., not an on-call contract but a "regular" employment contract) within one month. The

working hours included in this employment contract must, at a minimum, amount to the average working hours of the on-call employee over the previous 12 months. (More information available [here](#).)

KEY CASES

COVID-19 Case on Employer Accountability and Continued Salary

As was to be expected, courts rendered myriad decisions related to COVID-19. Several of these cases related to the payment of salary. In accordance with Article 7:628 of the Dutch Civil Code, the employer must continue to pay the employee's salary even where the employee cannot perform their duties as a result of circumstances for which the employer should reasonably be held accountable. On May 29, 2020, the Oost-Brabant court ruled that employers should reasonably be held accountable where employees cannot perform their duties because no work is available because of the COVID-19 crisis. In keeping with this, the employer is obligated to continue to pay the employee's salary for the duration of the time that work is unavailable. (More information available [here](#).)

X/City of Amsterdam Case – Party Intent Is Irrelevant to Whether an Agreement Constitutes an Independent Contractor Contract or Employment Contract

The difference between employment contracts and independent contractor agreements has been the topic of much discussion over the years. The difference is not always clearly defined, though the distinction significantly impacts the applicability of fiscal, social security and employment laws. Generally speaking, even if a contract is labeled as an independent contractor's agreement, it legally and technically qualifies as an employment contract if it meets the

following criteria: (i) performance of services, (ii) under the authority of the counterparty, in return for (iii) remuneration. On November 6, 2020, the Dutch Supreme Court ruled that, contrary to what was commonly recognized by lower courts, the parties' intent is irrelevant with regard to the question of whether a contract meets the criteria of an employment contract. As such, the manner in which the parties to the contract behave in practice has become even more significant in determining whether the contract constitutes an employment contract. (More information available [here](#).)

Psychotherapist Case – The Closed Dismissal System Does Not Protect Employees Who Defrauded the Employer into Hiring Them

An employee interviews for the position of psychotherapist and director at a healthcare institution. His resume states that he is a member of multiple specialists' associations and that he has completed several medical courses. The employee is offered an indefinite employment contract and named statutory director. Not long thereafter, the employer is informed by a specialists' association that the employee is not, in fact, a member, nor is there any proof that he completed the courses listed on his resume. The employer proceeds to annul the shareholders' resolution naming the employee director and moves to annul the employment contract extrajudicially. The latter action is unusual, as Dutch employment law utilizes a so-called closed dismissal system, meaning that the grounds and methods for dismissal are exhaustively listed in the Dutch Civil Code. However, after a challenge by the employee, the Dutch Supreme Court ruled on February 7, 2020, that the closed dismissal system is not intended to protect an

employee who acts fraudulently when entering into an employment contract. As such, the closed dismissal system does not preclude the extrajudicial annulment of an employment contract based on fraud. (More information available [here](#).)

NICARAGUA

WORKPLACE HARASSMENT AND ITS PROTECTION THROUGH THE SPECIAL PROCESS OF FUNDAMENTALS RIGHTS

Although protection against workplace harassment is not considered a fundamental right by the Declaration on Fundamental Principles and Rights at Work (adopted by the International Labour Organization in 1988), the Labor and Social Security Process Code included it in article 111. Article III considers that workplace harassment might be a manifestation of discrimination or a way to cover it up. As a result, workplace harassment lawsuits are processed through a special procedure referred to as “Protection to Union Freedom and Other Fundamental Rights,” which allows access to a special legal process and the possibility (if workplace harassment is proven) to receive compensation, as long as it is formally requested and quantified in the lawsuit and reasonably ordered by the labor authority. (More information available [here](#).)

NORTH MACEDONIA

EMPLOYMENT-RELATED MEASURES FOR SUPPORT IN OVERCOMING THE CONSEQUENCES OF COVID-19

During 2020 the country faced a health and economic crisis resulting from the COVID-19 pandemic. In

attempt to provide support for overcoming the consequences of the pandemic, the government adopted multiple employment-related measures, decrees and laws during the state of emergency. These measures included financial support for sole proprietors and employers in the form of subsidizing salaries for the employees of the entities affected by the crisis, subsidizing the payment of contributions from the mandatory social security, special rules for application of labor laws during the state of emergency in terms of prolonging maternity leave and manners of using annual leave of employees during imposed quarantine as well as freezing the increase of minimum wage. In addition, measures for support of employees who have lost their jobs as result of the pandemic were implemented in the form of providing financial allowance payable by the state to employees who lost their job, regardless of previous years of experience and grounds for termination of the previous employment, in duration of two months. The measures also referred to restricting payment of bonuses and salary compensations to public institution employees during the state of emergency. Deadlines which were to expire during the state of emergency, connected to realization of rights arising out of pension and disability insurance, insurance in event of unemployment as well as employment of persons with disabilities, were prolonged to ensure proper protection and ensure all concerned parties are able to enjoy their rights provided by applicable laws.

FREEZING THE MINIMUM WAGE INCREASE DURING STATE OF EMERGENCY

Although according to law the minimum wage was set to increase in April 2020, because of the pandemic and the crises resulting out of it, the minimum wage was frozen and during April, May and June was paid

in net amount of MKD 14,500 (approx. €235). After expiration of this period the planned increase occurred, and minimum wage is now paid in gross amount of MKD 21,776 (approx. €355), *i.e.*, in net amount of MKD 14,934 (approx. €243).

ALIGNING OF REGULATIONS

Amendments to the Labor Law and Law on health and safety at work were made to harmonize the provisions regulating inspection supervision and prescribed fines with the newly adopted Law on Inspection and Law on Misdemeanors.

NORWAY

COVID-19-RELATED MEASURES

The most defining aspect of Norwegian employment law in 2020 has been changes to the legislation because of the ongoing COVID-19 pandemic. Similar to many other countries, a large number of employers were forced to perform layoffs when Norwegian society was shut down from mid-March 2020, where many of the layoffs happened virtually overnight. In an effort to mitigate the impact the pandemic could have on the companies and employees' economy, the Norwegian government implemented a number of employment-related measures.

Employers are obligated to pay the employees' salaries during the initial phase of temporary layoffs, called the employers' period. In an attempt to prevent permanent layoffs and mitigate the financial consequences for the employers, the employers' period of the temporary layoffs was reduced from 15 workdays to two workdays but was later expanded to 10 workdays. Furthermore, the maximum duration an employee may be temporarily laid off has been

expanded from a maximum of 26 weeks within the last 18 months to 52 weeks within the last 18 months.

The Norwegian government has also implemented several measures to mitigate the economic impact for employees. Notable examples include expansions in the number of days of possible sick leave and other personal days because of the pandemic that the National Insurance will compensate, and contribution from the National Insurance to temporarily laid off employees having been increased.

#METOO SUPREME COURT RULING

In December 2020, the Norwegian Supreme Court passed a ruling in a case where a female employee had been sexually harassed by two customers in the workplace. The employee, who worked as a mechanic in a business with only male coworkers, had experienced unwanted advances from two customers, among other by being patted underneath her sweater on the small of her back and by being tickled several times, as well as being patted on the bottom. The question for the Supreme Court was whether this constituted sexual harassment. Both customers were found guilty of sexual harassment, as the advances had had a sexually character and had been unwanted and annoying for the employee.

In the court cases before the District Court and Court of Appeal, the employer was also charged with neglecting to prevent the sexual harassment. However, as the verdict from the Court of Appeal was not appealed by the employer; only the customers' conduct was tried by the Supreme Court. Nevertheless, the case has shown that employers may be liable for financial damages caused by customers if the employer fails to prevent that employees are harassed in the workplace.

EQUAL TREATMENT OF PERMANENT AND HIRED EMPLOYEES

In November 2020, the Norwegian Supreme Court passed a ruling in a case where two hired employees claimed to be unequally treated in the company's bonus scheme. The question was whether the bonus scheme was considered to be "salary" pursuant to the Norwegian implementation of Directive 2008/104/EC of the European Parliament and of the Council of November 19, 2008, on temporary agency work, and thus whether the requirement regarding equal treatment was applicable.

In the case, the annual bonus was decided based on the company's results and goal achievement, as well as the employees' collective work contribution. The Supreme Court found that as long as the bonus was regarded as "compensation for performed work," it was considered "salary," regardless of whether the bonus is a company-wide bonus or an individual bonus scheme. Furthermore, the court found that the objective of obtaining actual equal treatment must be an important factor when interpreting the term "salary." On that basis, the Supreme Court found that the bonus scheme was considered "salary," which meant that the hired employees was entitled to the bonus as well.

TRANSFER OF UNDERTAKING FROM GOVERNMENT-OWNED COMPANY TO PRIVATE UNDERTAKING

In the summer of 2020, the Supreme Court tried a case regarding employees' rights when their employments were transferred to a new company as a part of a transfer of undertaking. In this case, the employees were transferred from a government-owned company

to a private undertaking and in the process had their notice periods and early retirement schemes changed.

In Norway, there are separate laws regarding employees' rights and obligations for civil servants and other employees. The Civil Servants Act offers the employees longer notice periods. The employment agreements the employees had entered into when starting their employment with the government-owned company made reference to the Civil Servants Act's rules, without specifying the length of the notice periods. According to the employer, the intention was to provide information regarding where the notice periods were found. However, the court found that the reference made the notice periods individual terms, which would transfer to the new employer. The court found that if the intention was solely to provide information, this must be explicitly stated.

Furthermore, the government-owned company had two pension schemes, which in short were early retirement schemes. Pursuant to the Norwegian Working Environment Act, the new employer may choose not to be bound by the transferring company's pension schemes regarding pension due to age, pensions for widows and disability pensions. The court found that the pension schemes were considered pension because of age, even though the schemes applied to cases of early retirement, as the schemes entailed a normal exit from the working life for the relevant employees.

POLAND

The Polish government enacted an array of legislative measures in 2020 addressing subject matter ranging from the pandemic to an increase in the minimum wage. The Polish Supreme Court handed down an important decision on the viability of a condition

precedent to non-competition agreements. A description of these developments is below.

AN INCREASE IN THE MINIMUM WAGE

As of January 1, 2021, the minimum monthly wage for persons working under employment contracts has been increased from 2,600 zlotys to 2,800 zlotys gross. The minimum hourly wage for persons rendering work or services to entrepreneurs under mandate or service agreements has also been increased from 17 zlotys to 18.30 zlotys gross. (More information available [here](#) and [here](#).)

REGULATIONS RELATED TO COVID-19

The COVID-19 pandemic dominated employment legislation last year, which was focused on minimizing the negative effects of the pandemic and finding the most effective solutions. In response to the pandemic, Poland launched COVID-19-related legislation called the Anti-Crisis Shield that aimed to give as much protection as possible to employees against dismissal and prevent employment establishments from closing. The Anti-Crisis Shield has been subject to several changes and is still amended as circumstances require. Among other things, the Anti-Crisis Shield provides the following protections and employer obligations:

Facilities for Employers

The Anti-Crisis Shield provides for: (i) the subsidization of employee remuneration; (ii) the possibility to reduce working time; (iii) a temporary exemption from the obligation to pay social security contributions for certain employees; and (iv) the right to terminate non-competition agreements after the termination of employment with seven days' notice or limit severance pay, compensation or other cash

benefits payable by the employer to the employee upon the termination of an employment agreement up to 10 times the minimal remuneration. The terms and conditions as well as the admissible period of using these particular solutions were specified in detail by the provisions of the Anti-Crisis Shield.

Remote Work

Remote work is not regulated by the Polish Labour Code. This caused problems for employers during the pandemic because they were required to allow employees to work from home. The Anti-Crisis Shield has temporarily regulated remote work and specified some general rules under which remote work can be performed during the pandemic. The Anti-Crisis Shield also allows employees, under certain conditions, to work remotely if they are in quarantine or isolation.

Employee Health and Safety

COVID-19 forced employers to ensure that special rules of safety for their employees were in place. These rules were often related to the reorganization of workplaces. Anti-COVID-19 ad hoc regulations obliged employers to ensure:

- (i) Social Distancing: A distance of 1.5 meters between workstations unless impossible due to the nature of the performed tasks; and
- (ii) Personal Protective Equipment (PPE): Personal Protective Equipment (PPE): Employers must provide PPE related to fighting epidemics and other personal protective measures, like disposable gloves and hand sanitizer. Employers may also require employees to cover their mouth and nose in the workplace if another person is in the same room. (More information available [here](#).)

Further Introduction of Employee Capital Plans (PPK)

As we mentioned in the last edition of the Global Employment Law Year in Review, the Act on Employee Capital Plans (Act) came into effect on January 1, 2019, and introduced an additional pension-saving vehicle. The Act divided employers into four groups, which will sequentially introduce this special pension scheme. Employers from the first group (entities with at least 250 workers) were required to comply with the PPK in 2019. The process is still ongoing, and, due to the COVID-19 pandemic, compliance by the second group (entities that hired at least 50 employees as of June 30, 2019) was delayed by six (6) months to coincide with that for the third group (entities employing at least 20 people), both of which had to begin compliance in 2020. The fourth and final group is to apply the PPK scheme in 2021.

Amendments to the Labour Code

New amendments to the Labour Code that aim to improve the efficiency of the enforcement of maintenance payments entered into force on December 1, 2020. The changes extended the catalog of offenses to discourage employers from illegally employing maintenance debtors, as well as paying the above-mentioned debtors' remuneration in a higher amount than stated under the applicable contract, without making any deductions for maintenance payments. A fine in the amount of PLN \$1,500 to PLN \$45,000 may be imposed on the employer if:

- (i) The employer does not confirm the employment contract concluded with the employee in writing before allowing the employee to work if such employee is a maintenance debtor and is in arrears with the fulfilment of maintenance payments for a period longer than three (3) months; or

- (ii) The employer pays such employee a remuneration higher than that resulting from the concluded employment agreement without making any deductions to satisfy maintenance payments.

Amendments to the Act on Posted Employees

The Polish Act on Posted Employees was amended as Poland implemented EU Directive 2018/957, passed on June 18, 2018, concerning the posting of workers in the framework of the provision of services. A "posted worker" is an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting, or a hiring out through a temporary agency.

The amendments specified the principles of posting employees. In particular, they varied the conditions that should be guaranteed to employees depending on the period of posting. The new regulations also extended the scope of the State Labour Inspectorate's competences, in particular, granting the power:

- (i) To receive reasoned notifications to extend the posting period by six months; or
- (ii) To request information from employers, entrepreneurs, the Social Security Institution (ZUS), tax offices or other public administration bodies regarding the posting of an employee from the territory of the Republic of Poland and to request information in the case of suspected violations of the member state's provisions to which the employee was posted.

(More information available [here](#).)

Conditional Non-Competition Agreement

In a Supreme Court case (judgment dated February 20, 2020, I PK 241/18), the parties concluded a non-

competition agreement after the termination of employment. The agreement included a condition precedent, i.e., the non-competition obligation and the obligation to pay compensation will apply if the employer submits a written declaration on the last day of the employment contract at the latest; otherwise, the non-competition agreement terminates on the last day of the employment.

The Supreme Court confirmed that the conclusion of such agreement under the condition precedent is lawful and it does not oppose principles of social coexistence. (More information available [here](#).)

PORTUGAL

LAWS

COVID-19 Legislation

Several laws were approved to mitigate the effects of the pandemic, including:

- Decree-Law no. 79-A/2020: establishing an exceptional and transitory regime of work reorganization, intended to minimize the risks of transmission of COVID-19
- Decree-Law no. 10-G/2020, altered by Decree Law no. 14-F/2020: establishing a simplified layoff legislation, granting additional financial support per employee to companies, for purposes of the payment of wages during the period of temporary reduction of working hours or suspension of employment contracts
- Decree-Law no. 46-A/2020: creating additional support for the progressive resumption of activity in companies experiencing a business crisis with temporary reduction of the normal work period
- Decree-Law no. 90/2020: modifying the extraordinary support related to the progressive resumption of activity in companies experiencing a business crisis
- Decree-Law no. 101-A/2020: changing the additional support for the progressive resumption of activity in companies experiencing a business crisis and clarifying the temporary regime of absences justified by the need to assist family members
- Resolution of the Council of Ministers no. 114/2020: approving a set of new measures aimed at business and employment in the context of the COVID-19 pandemic

Decree-Law 109-A/2020 (Minimum Wage)

The minimum wage, already increased from 2019 to 2020 from €600 to €635, was once again increased to €665 for 2021. It is expected to reach €775 by 2023. (More information available [here](#).)

Decree-Law 101-E/2020 (Posting of Employees in the Framework of the Provision of Services)

On December 8, 2020, Decree-Law no. 101-E/2020 was approved by the Council of Ministers, replacing Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC. (More information available [here](#).)

The main new features of this law are: (i) an increased protection of posted workers (workers who are temporarily sent to another EU member state by their employer) for fraud and abuse situations; (ii) the development of the concept of remuneration, reinforcement of the monitoring and control of secondments (for situations in which the secondment

lasts longer than 12 months, requiring the companies to guarantee all the conditions granted by the law and by an eventual Collective Labour Agreement); and (iii) the requirement to disclose, on official websites and in formats accessible to people with disabilities, information on the working conditions to which workers posted in Portuguese territories are entitled.

Ministerial Order 122/2020 (Amendment to the Regulation of the System of Incentives to Entrepreneurship and Employment)

This amendment, primarily focused on the industry and tourism sector, is intended to strengthen and boost the competitiveness of micro and small enterprises, particularly those located in inland territories. It is also focused on the expansion and modernization of national productive capacity, through maintaining employment levels, a crucial factor for local economies. Companies are given priority for accessing the law's benefits based on a number of criteria, including the newly added criteria of maintenance of the labor work force and the investment in the interior. (More information available [here](#).)

Parliament Resolution 87/2020 and Presidential Decree 59/2020 (Approval and Ratification of the Protocol of 2014 to the Forced Labour Convention of 1930 (No. 29), Adopted by the International Labour Conference at Its 103rd Session, Held in Geneva on June 11, 2014)

Portugal ratified the Protocol of 2014 to the Forced Labour Convention of 1930. The Protocol aims to reaffirm that measures of prevention, protection and remedies, such as compensation and rehabilitation, are

necessary to effectively continue to suppress forced or compulsory labor. (More information available [here](#).)

Ministerial Order 2/2020 (Informal Caretaker Regime)

The Law no. 100/2019, given effect through Ordinance 2/2020, regulates the terms of recognition and maintenance of the informal caretaker statute. Key features include the conciliation between professional activity and care providing activities, granting rights to informal caretakers that are equivalent to parental rights. (More information available [here](#).)

CASE LAWS

Court of Appel of Coimbra, Procedure 4354/19.7T8CBR-A.C2 (Paychecks and Personal Data)

The *Tribunal da Relação de Coimbra* (Court of Appeal of Coimbra) heard a case that required the analysis of other employees' paychecks to determine whether a specific employee had experienced discrimination through the payment of wages. The court decided that the amount of the other employees' salary, including all salary components, must be disclosed without reference to any other information included in the paychecks, since this additional information constituted personal data (as defined by the General Data Protection Regulation). (More information available [here](#).)

RUSSIA

SIGNIFICANT CHANGES TO THE RUSSIAN LABOUR CODE

The COVID-19 pandemic accelerated the switch to new forms of work and the need to adopt flexible work styles for the future. New Russian legislation, effective as of January 1, 2021, significantly changed the Russian Labour Code and introduced different types of remote and combined work, allowing far more flexibility to employers than in the past. The new legislation also sets out additional regulations on managing employee workflow electronically.

As of January 1, 2021, employees can work remotely on a permanent or temporary basis. Temporary remote employment can either be continuous for a maximum period of six months or periodic (*i.e.*, a combination of remote and in-office work). Further, in exceptional cases, such as a natural or industrial disaster or workplace accident, or based on the decision of federal or local authorities, an employer can temporarily transfer employees to a remote work regime without the employees' consent. Any temporary transfer to a remote work regime must be documented. Such documentation must include: (a) grounds for the temporary transfer; (b) list of employees put on remote work; (c) duration of the transfer to remote work; (d) a plan outlining the ways employees can fulfill their work duties and reimbursement of employee equipment and other work-related expenses; and (e) a plan that outlines the details of remote work (*i.e.*, work hours and methods of communication employees are expected to use while working remotely). Once the temporary transfer period ends, employers must bring the employee back to work in-office and the employee must return to the office. The law further outlines certain remote work

conditions. For example, employee salaries cannot be reduced because they are working remotely, all communication time is to be logged as work time and the employer is expected to provide all work equipment. (More information available [here](#).)

IP ISSUES LINKED TO REMUNERATION FOR EMPLOYEE PATENTABLE OBJECTS

As a general business rule, employers in Russia hold exclusive rights to patentable objects (*i.e.*, inventions, utility models, industrial designs) created by their employees during the course of their work. The employer, however, must follow certain procedures to formalize its right to the patentable object: First, the employer must identify the employee as responsible for creating the patentable object, either by including this job responsibility in the employee's contract or job description or specifying the patentable object's creation as one of the employee's tasks. Then, the employer must file an application for a patent, transfer the right to obtain a patent for the employee's invention, or inform the employee about the confidential nature of the patentable object within four months from the date that the employee notifies the employer of their invention (*i.e.*, when the employee completed the project). Once the employer completes this second step, the employee has a right to receive remuneration for the creation of the patentable object above and beyond their salary.

Decree (No. 1848) passed on November 16, 2020, and which took effect on January 1, 2021, establishes new rules that cover employee remuneration of such patentable objects. The Decree increases the minimum amount of employee remuneration for the employer's use of such objects—from one to three average salaries for work-related inventions, and from one to two average salaries for utility model or industrial

design per each year of use. The new rules apply unless different terms are otherwise agreed to in writing between the employer and employee. In light of this, employers should review and revise existing agreements with employees, if necessary. (More information available [here](#).)

SUPREME COURT REVIEWS DISMISSAL PRACTICE

The Russian Supreme Court reversed several lower court cases on various employment issues, including, but not limited to, cases on staff redundancy and violation of the Russian Labour Code. For example, in a staff redundancy case, the Supreme Court reversed two lower court decisions in favor of an employer who had dismissed an employee for staff redundancy, claiming that there were no vacant positions in the employee's branch of the company at the time of dismissal. The Supreme Court disagreed, ordering a retrial based on its holding that a branch is a subdivision of a company and, as such, the employer should have identified all vacant job roles throughout all of the company's branches.

In another case, the Supreme Court emphasized that it would not be possible to dismiss an employee for absenteeism where the employer verbally approved the employee's remote employment.

DIGITAL REGISTER OF WORK EXPERIENCE

Russia's Electronic Recording Law became effective as of January 1, 2020. Under the law, employers must record all information about labor activities of their employees in electronic form and submit this information to the Pension Fund of the Russian Federation (PFR). For those employees hired for the

first time after December 31, 2020, labor books will be maintained in electronic form only. However, employees who requested that their records be kept in hard copy form before December 31, 2020, will enjoy that right even after subsequent employment. All data submitted to the PFR will be available only to governmental bodies. The Electronic Recording Law is intended to mitigate the risks of potential disputes with dismissed employees about a failure to provide or tardy provision of a labor book and simplify document flow. (More information available [here](#).)

NEW RULES FOR SEVERANCE PAYMENTS

On August 13, 2020, new rules came into force regarding severance payments provided where employees were terminated due to business liquidation or redundancy. Where an employee is terminated due to liquidation, all severance payments must be made before liquidation is complete. Employees are entitled to a severance payment of one month's salary, to be paid on the last day of work. Employees may also apply for monthly payments covering the period during which they search for jobs. Under the new rules, employees must apply for these payments within 15 days after the second month from the date of dismissal and, again, after the third month from the date of dismissal. [check with local counsel to make sure this is correct] The employer, in turn, must pay the employee within 15 calendar days from the date of the employee's application for such payments. If an employee finds a job before the end of a month, the employee will be paid a *pro rata* share. Employer payouts are monthly, but the employer may, at any time and within its discretion, pay out the above-mentioned monthly payments in a one-time lump sum payment amounting to two months' salary. (More information available [here](#).)

SAUDI ARABIA

AMENDMENT TO THE IMPLEMENTING REGULATIONS OF THE LABOR & WORKMEN'S LAW

The year began with COVID-19, and the Saudi Arabian Ministry of Human Resources & Social Development (MHRSD) quickly issued an amendment on April 6, 2020, to add a new Article 41 to the Implementing Regulations (IRs) of the Labor & Workmen's Law (LWL). In essence, the new IRs Art. 41 explains LWL Art. 74.5 (which states that force majeure is a valid reason for termination of employment) in the context of COVID-19.

The new IRs Art. 41 becomes applicable in cases where the Kingdom has adopted, on its own accord or based on recommendations of a recognized international organization, specific actions resulting in a requirement to reduce working hours of employees. When this occurs, in essence there are three "hurdles" that must be overcome as an alternative prior to termination of employment on the basis of *force majeure*:

- a) Reducing the employee's salary in correspondence with a reduction in the employee's working hours;
- b) Putting the employee on annual leave as part of their annual leave entitlement; or
- c) Putting the employee on unpaid leave.

The amendment is vague and refers to a period of no more than six months during which these measures may be applied, but does not specify clearly when that six-month timeframe begins—i.e., from the date of the government's adoption of pandemic measures or from the date of agreement of temporary contract terms.

EXPLANATORY NOTE TO IRS ART. 41

Following issuance of the new IRs Art. 41, the MHRSD issued a formal guidance note clarifying the amendment on May 3, 2020.

The guidance note clarified that *force majeure* is an extreme situation where performance of the contract by one party is rendered permanently impossible due to unforeseen circumstances. Therefore, the period of six months referred to under IRs Art. 41 is essentially an examination period to determine whether the circumstance affecting the performance of the employment contract is in fact a permanent situation (in which case termination for *force majeure* is permissible), or instead is just a temporary condition.

In addition, the guidance note clarified that a reduction in salary and working hours may not exceed more than 40% of the employee's total wage, and that the employee may not refuse this temporary measure for a period of up to six months so long as the reduction in wage does not exceed more than 40%.

With respect to the option for annual leave, the guidance note confirmed the position of LWL Art. 109 that it is the employer's right to determine the dates of the employee's annual leave regardless of the existence of any force majeure circumstances and, therefore, the employer may on its own accord require the employee to exhaust their annual leave allotment during the six-month *force majeure* examination period; however, since the employee's entitlement is a fully paid annual leave, the guidance note clarified that the employee must be paid during the annual leave on the basis of the full wage which preceded the force majeure circumstances (i.e., not on the basis of salary reduced by 40%).

Finally, unpaid leave is permitted under LWL Art. 116 but must be agreed to by the employee. The employer cannot force the employee to take unpaid leave but should offer it to the employee during the *force majeure* period as an alternative to termination of employment.

In sum, the guidance note clarifies that termination of employment on the basis of *force majeure* under LWL Art. 74.5 is impermissible unless: (a) the force majeure circumstances have continued for more than six months; (b) the parties have exhausted all three alternative options to termination; and (c) the employer has not taken advantage of government subsidies (whereby the General Organization of Social Insurance paid partial salaries of a certain number of Saudi Arabian employees, if the employer applied for such aid).

In the event of any impermissible termination of employment, the employee is entitled to the indemnities and penalties set out in the law, which shall be based on the employee's full wage that pre-existed the force majeure circumstances.

REFORMATION OF EXPATRIATE LABOR

Under Saudi Arabia's *kafala* (sponsorship) system, expatriate employees are required to be sponsored by a local company registered in Saudi Arabia. The sponsor is deemed the employer for all intents and purposes under the LWL and is granted significant control over the employee. For example, the employee may need to obtain the employer's permission to transfer sponsorship to a different employer, for an exit visa to leave the Kingdom and so on.

Traditionally, the *kafala* system has been criticized by human rights and employee rights organizations because the potentiality for abuse of power can arise.

Highly skilled and educated expats (whom the Kingdom seeks to attract in line with Vision 2030) often refuse job offers in the Kingdom due to the *kafala* system and for this reason many headquarters with significant business in the Kingdom are actually located in Dubai.

In November, MHRSD announced a reformation of the *kafala* system and that a new system for expatriate workers would be put in place by March 2021. Under the new law, among other things, expatriate employees will be free to transfer jobs after completing one year of service with the original employer and will not need the employer's permission for an exit visa to leave the Kingdom.

SAUDIZATION OF IT SECTOR

"Saudization" is a colloquial term to describe the Kingdom's general agenda to train, develop and enhance the Kingdom's local citizenry and to decrease the unemployment rate of local citizens. Saudization is in essence a balancing act between the local workforce and the expat workforce. The agenda of Saudization is implemented in a multitude of different ways, including targeting certain types of work for a ban on foreign recruitment. For example, cashier jobs at retail sales outlets was one of the main jobs previously dominated by foreign expatriate labor, which was Saudized; therefore, only Saudi nationals may work in these positions.

On October 5, 2020, the MHRSD announced Saudization of IT jobs in the private sector, which applies to all entities who employ five or more people in any IT-related function. The affected areas include telecommunication engineers, computer and network engineers, software development specialists, technical support staff, business analysts and software programmers.

A minimum wage for those employed in this sector has also been set. It will start at 7,000 riyals for specialist professions and 5,000 riyals for technical professions.

SAUDIZATION OF ACCOUNTING JOBS

On December 23, 2020, the MHRSD issued a Ministerial Decision on the Saudization of accounting jobs in the private sector. The rule is applicable to companies where five or more employees work in accounting jobs.

The rule also sets a minimum salary to be paid to Saudi Arabian accountants; otherwise, they will not be counted toward the employer's Saudization ratio in the Nitaqat system, which classifies companies on a color-coded scale based on the proportion of Saudis employed in the total workforce. The minimum salary is 6,000 riyals per month for Bachelor's degree holders and 4,500 riyals per month for Diploma holders.

PROBABLE SAUDIZATION OF MARKETING JOBS

On October 26, 2020, the MHRSD signed a cooperation agreement with the Human Resources Development Fund (or Hadaf) and the Marketing Association to train, qualify and employ nationals in marketing professions in the private sector.

This is currently an informal arrangement to grow and incentivize the participation of Saudi Arabian citizens in these jobs. However, this is likely the first step toward a formal Saudization of the marketing sector by law, similar to that which was applied to the IT and accounting sectors in 2020.

WAGE PROTECTION SYSTEM

Under the Wage Protection System (WPS), which was originally introduced in August 2013, employers are required to deposit employees' salaries into in-Kingdom bank accounts. However, the WPS was implemented in stages, beginning with the largest organizations with the largest numbers of employees.

The 17th and final stage of WPS was implemented on December 1, 2020, whereby the smallest employers with four or fewer employees became subject to the requirement to deposit employees' salaries into in-Kingdom bank accounts.

PART-TIME WORK REGULATIONS

On May 9, 2020, MHRSD approved the rules for part-time work, which came into effect in July 2020.

The new rules define part-time work where the working hours are less than half of the normal working hours of the company, noting that only Saudi employees are considered for purposes of the rules.

Saudi nationals working part-time will be included in the calculation of Saudization levels in the company according to the Nitaqat system and they will be registered with the General Organization for Social Insurance as part-time employees.

SELF-EMPLOYMENT REGULATIONS

Because of a robust labor law and protection of employee rights, Saudi Arabia does not have a well-defined independent contractor regime in place for individuals who seek to work in a freelance capacity and not under an employment contract. However, on December 13, 2020, the Ministry of Commerce announced they have issued the rules regulating the

free professions or self-employment which include classifying them into three groups including practitioners, specialists and experts.

Essentially, a freelancer or independent contractor must register as such with www.freelance.sa and obtain a printout license from MHRSD. On the portal, the applicant will choose the nature of services they wishes to provide. If the nature of the services is such that an additional license is required (e.g., a physician, accountant, lawyer, engineer, etc.), then the applicant must upload proof of the same to obtain the required printout. Note that non-Saudis generally may not engage in freelancing and independent contracting, because they are only permitted to work for the sponsor.

This is a welcome development for companies in Saudi Arabia who are apprehensive of working with freelancers and independent contractors temporarily, as the labor law could apply to the relationship if the services extend for more than 90 days. Such companies should conduct a due diligence on freelancers and independent contractors, including examination of the www.freelance.sa printout.

SERBIA

LEGISLATION

Law on Agency Employment

After years of legal vacuum, the first Law on Agency Employment in Serbia started applying as of March 1, 2020, and finally introduced the legal framework for staff leasing of employees. The law regulates the conditions under which staff leasing is possible, the rights and obligations of agency workers, the equal status of agency workers and comparable employees, the conditions for licensing of staff leasing agencies, and the relation between agency and user employer, as

well as their liability towards the agency workers. (More information available [here](#).)

The Rulebook on Preventive Measures for Safe and Healthy Work to Prevent the Occurrence and Spread of an Epidemic of Infectious Diseases

The Rulebook on Preventive Measures for Safe and Healthy Work to Prevent the Occurrence and Spread of an Epidemic of Infectious Diseases was adopted on June 29, 2020 (the Rulebook). The Rulebook closely regulates preventive measures, which employers are obliged to apply to prevent the occurrence and spread of infectious diseases and eliminate the risks for safe and healthy work of employees, as well as other persons in the work environment, when the competent authority declares an epidemic of infectious diseases. Among other things, the Rulebook inter alia stipulates that employers are obliged to adopt a “Plan of Implementation of Measures for Preventing the Occurrence and Spread of an Infectious Disease Epidemic,” which represents an integral part of the risk assessment act in terms of the law regulating safety and health at work.

The official version of the Rulebook on Preventive Measures for Safe and Healthy Work to Prevent the Occurrence and Spread of an Epidemic of Infectious Diseases (in Serbian) is available [here](#).

COVID-19 State Aid

During 2020, the Serbian government issued several regulations that determined the conditions and criteria for using the state aid for remedying the negative effects and serious disruptions to the economy caused by the COVID-19 pandemic. The main aid instruments were direct grants for payment of employees' salaries and postponement of salary tax and social contributions. This aid was granted to all

Serbian resident legal entities and entrepreneurs as well as branch offices and representative offices of non-resident legal entities.

SLOVENIA

LEGISLATION

COVID-19-Related Interim Measures

Because of the COVID-19 epidemic, many labour-related interim measures were adopted, such as payment of a crisis allowance to certain employees who are working during the epidemic, subsidized reduction of working hours, extension of the period to use annual leave, partial reimbursement of salary compensation for employees who were ordered to wait for work at home, and exemption from payment of social security contributions.

Short summaries of all adopted COVID-19 related interim measures (in English or Slovene, as available) are available at:

- <https://www.gov.si/en/news/2020-03-29-the-government-adopts-the-anticorona-legislative-package/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/drugi-paket-ukrepov-za-omilitev-posledic-epidemije/>
- <https://www.gov.si/en/news/2020-05-20-government-adopts-the-third-anti-corona-package/>
- <https://www.gov.si/en/news/2020-06-29-measures-taken-in-the-frame-of-acp4-prepare-slovenia-for-the-second-wave-of-the-novel-coronavirus/>

- <https://www.gov.si/en/news/2020-09-24-5th-package-of-anti-corona-measures-focused-on-the-labour-market-and-health-sector/>
- <https://www.gov.si/en/news/2020-11-11-acp6-measures-relating-to-work-family-and-social-affairs/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/sedmi-paket-ukrepov-za-omilitev-posledic-epidemije-ppk7/>

Full texts of Anti-Corona Acts are available at:

- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/prvi-paket-ukrepov-za-omilitev-posledic-epidemije/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/drugi-paket-ukrepov-za-omilitev-posledic-epidemije/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/tretji-paket-ukrepov-za-umilitev-posledic-epidemije-ppk3/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/cetrty-paket/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/peti-paket-ukrepov-za-omilitev-posledic-epidemije-ppk5/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/sesti-paket-ukrepov-za-omilitev-posledic-epidemije-ppk6/>
- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/sedmi-paket-ukrepov-za-omilitev-posledic-epidemije-ppk7/>

Amendments to the Employment Relationships Act

In addition to many interim measures related to the pandemic, the seventh Anti-Corona Act, adopted on December 29, 2020, permanently amended Article 89 of the Employment Relationships Act. Pursuant to the amendment, an employer may terminate an employment contract on 60 days' notice without stating a justified reason (cause) if the employee qualifies for an old-age pension in accordance with the Pension and Disability Insurance Act. The amendment has been criticized by legal experts and trade unions, as it may result in forced retirement and, as such, may constitute a violation of human rights and principles.

The official consolidated version of the Employment Relationships Act (in Slovene) is available [here](#).

COURT DECISIONS

Carryover of Annual Leave (Supreme Court of the Republic of Slovenia, ref. no. VIII Ips 42/2019 dated January 14, 2020)

Pursuant to the fourth paragraph of Article 162 of the Employment Relationships Act, annual leave that was not used before the end of the calendar year or by June 30 of the following calendar year because of employee illness, injury, maternity or childcare leave, may be used by December 31 of the following calendar year. According to the recent judgment of the Supreme Court of the Republic of Slovenia, this rule shall not be applicable if the employee was not given an actual opportunity to use the annual leave by December 31 of the following year. In such cases, the employee is entitled to use any remaining part of annual leave even after December 31 of the following year. (More information available [here](#).)

Non-Compete Clause (Supreme Court of the Republic of Slovenia, ref. no. VIII Ips 7/2020 dated June 9, 2020)

The Supreme Court of the Republic of Slovenia established that the autonomy of the contractual parties with regard to the conclusion of a non-compete clause is limited in such a manner that the parties are not allowed to agree on a non-compete clause that includes an employee's unconditional obligation to refrain from engaging in competitive activities and an employer's conditional obligation to pay the compensation for compliance with a non-compete clause. The Supreme Court of the Republic of Slovenia stated that it would be against the principle of equality if the obligation to pay the compensation for compliance with a non-compete clause was conditioned on an employee's ability to demonstrate his unsuccessful efforts in finding alternative employment comparable to his average monthly salary before termination of the employment contract. (More information available [here](#).)

Existence of the Employment Relationship (The Higher Labour and Social Court, ref. no. Pdp 1088/2018 dated March 28, 2019)

In the present case two companies cooperated based on a contract on provision of services. The services were performed by an employee of the contracting company who later filed a lawsuit seeking a determination of the existence of an employment relationship with the company for which he was performing services on behalf of his employer. The Higher Labour and Social Court adjudicated that the elements of employment relationship may exist between the employee and the company for which he is performing services, despite the fact that the employee is already employed with the contracting company. The Higher Labour Court did not render a

substantive decision on the matter; it only returned the case to the first instance court, which ruled in favor of the employee in October 2020. (More information available [here](#).)

SOUTH AFRICA

NEW AMENDMENTS REGARDING PARENTAL LEAVE TAKE EFFECT

New amendments regarding parental leave (including adoption and surrogacy) provided for in the South African Labour Laws Amendment Act, 2018 and incorporated into the Basic Conditions of Employment Act, 1997 (the BCEA) took effect as of January 1, 2020.

Under Section 25A of the BCEA, an employee who becomes a new parent is entitled to at least 10 consecutive days of parental leave, which may commence on the day that the employee's child is born, the date that the adoption order is granted, or the date that the child is placed in the care of a prospective adoptive parent by a competent court, whichever date occurs first. Section 25B of the BCEA gives an employee who is an adoptive parent of a child below the age of two the right to adoption leave of at least 10 consecutive weeks or parental leave in terms of Section 25A. Under Section 25C of the BCEA, employees who are commissioning parents in a surrogate motherhood agreement are entitled to either commissioning parental leave of at least 10 consecutive weeks or parental leave of at least 10 consecutive days. The commissioning parents can elect which of the parents will take which leave. Parental, adoption and commissioning parental leave will be unpaid but employees can submit claims to the Unemployment Insurance Fund to qualify for payment for such leave. It is important to note that the

previously existing family responsibility leave provisions (save for leave when a child is born) remain intact and, in addition to the above new types of leave, employees remain entitled to take family responsibility leave in instances where the employee's child is sick or in the event of a death in their immediate family. (More information available [here](#).)

PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)

The majority of the provisions of the Protection of Personal Information Act 4 of 2013 (POPIA) came into effect on July 1, 2020. POPIA was promulgated in 2013 to give effect to the constitutional right to privacy. This includes protection against the unlawful collection, retention, dissemination and use of personal information. POPIA aims to protect personal information in accordance with international regulations by imposing minimum conditions for the processing of personal information. Additionally, POPIA regulates the flow of personal information outside of the borders of the Republic of South Africa and establishes the Information Regulator, an independent juristic body tasked with implementing POPIA and the Promotion of Access to Information Act. POPIA requires employers to implement policies, which ensure that employee and client personal information is handled and processed in accordance with the law and the new provisions of POPIA. Parties who process personal information are required to be fully compliant with POPIA by July 1, 2021. POPIA is similar, with a number of important exceptions, to the EU's General Data Protection Regulation (GDPR). (More information available [here](#).)

EMPLOYERS FACING CHANGED OPERATIONAL REQUIREMENTS MAY DISMISS EMPLOYEES WHO REFUSE TO

NEW TERMS AND CONDITIONS OF EMPLOYMENT

In the case, *National Union of Metal Workers of South Africa and Others v. Aveng Trident Steel (a division of Aveng Africa (Pty) Ltd) and Another* (CCT178/19) [2020] ZACC 23, the Constitutional Court critically analyzed Section 187(1)(c) of the Labour Relations Act 66 of 1995 (the LRA). This section provides that it is automatically unfair for an employer to dismiss an employee as a consequence of the employee's refusal to accept the employer's demand relating to a matter of mutual interest between them. The correct interpretation of the section has been the subject of much debate. In particular, courts have grappled with the extent to which employers can lawfully and fairly dismiss employees who refuse to agree to changes to terms and conditions of their employment, in light of this provision. The Constitutional Court distinguished Section 187(1)(c) from dismissals for operational requirements in terms of Section 189 of the LRA. After lengthy litigation in the Labour Court and the Labour Appeal Court, the Constitutional Court upheld the reasons and findings of the Labour Court and Labour Appeal Court, finding that in the event that an employer's genuine, justifiable and commercially sound operational requirements (i.e., retrenchment or redundancy) require that an employee agree to new terms and conditions of employment, the employer is entitled to dismiss employees who do not agree to such new terms and conditions. This would not constitute an automatically unfair dismissal as contemplated by Section 187(1)(c) of the LRA because the real reason for the dismissal is not the employee's refusal to accept a demand but is based on the employer's real business needs. However, employers must be able to prove that the dismissal was necessitated by the employer's genuine

operational requirements. (More information available [here.](#))

CONSTITUTIONAL COURT UPHOLDS DOMESTIC WORKERS' RIGHTS

This judgment in *Mahlangu & Another v. Minister of Labour and Others* [2020] ZACC 24 has been lauded as a landmark victory for domestic workers in South Africa, who have historically been one of the most marginalized groups in society. The Constitutional Court found that South Africa was party to various international instruments that protected domestic workers' rights to equality and accordingly, it was inexplicable that they were excluded from benefits under the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (COIDA). The Constitutional Court also considered the purpose of COIDA being a vital piece of social legislation, which gives effect to the constitutional right to social security. It considered that domestic workers are a particularly vulnerable group in South African society because of the intersection of their race, gender and class. The Constitutional Court, having considered relevant international instruments, constitutional values and the circumstances of South Africans, concluded that no legitimate objective is served by excluding domestic workers from COIDA, and that Section 1(xix)(v), excluding domestic workers, was unfairly discriminatory and declared it unconstitutional with retroactive effect from April 27, 1994. (More information available [here.](#))

BUSINESSES CANNOT RETRENCH EMPLOYEES DURING BUSINESS RESCUE PROCEEDINGS

South African Airways (SAA) was placed in business rescue on December 5, 2019, following years of

mismanagement and financial difficulty. During the course of business rescue proceedings, the business rescue practitioners (BRPs) issued notices under Section 189A of the LRA, informing employees that SAA was contemplating retrenchment. An application was brought before the Labour Court in *National Union of Metalworkers of South Africa (NUMSA) obo Members and Another v. South African Airways (SOC) Ltd and Others* [2020] 6 BLLR 588 (LC), seeking an order declaring the issuing of Section 189A notices unlawful or unfair, on the basis that they were issued prior to the publication of a business rescue plan. The Labour Court was required to determine whether it was procedurally unfair to issue Section 189A notices prior to the publication of a business rescue plan per the terms of the Companies Act 71 of 2008 (Companies Act). The Labour Court held that the wording of Section 136(1) of the Companies Act indicated that employees' jobs could not be terminated in the course of business rescue proceedings, except in the course of natural attrition or by employee consent. Accordingly, the business rescue proceedings effectively placed a moratorium on retrenchments until a business rescue plan is published and the retrenchments are included in the plan. The Labour Court held that where there is an interpretation of Section 136 that promotes job security, that interpretation ought to be preferred. The effect of this judgment is that a BRP is not entitled to retrench employees in the absence of a business rescue plan. This places the BRP in the unenviable position of being unable to retrench employees during the business rescue process, thus making it more difficult to effectively rescue a distressed business as envisioned in the Companies Act. (More information available [here](#).)

LABOUR APPEAL COURT CLARIFIES FACTORS OF WHEN RETRENCHED

EMPLOYEE IS STATUTORILY ENTITLED TO A SEVERANCE PACKAGE

Section 41(1) of the BCEA provides that a retrenched employee is entitled to severance pay equal to at least one week's remuneration for every year of completed service with the employer. This obligation to pay severance pay is curtailed by the provisions of Section 41(4) of the BCEA, which provides that a retrenched employee is not entitled to severance pay if that employee unreasonably refuses an offer of alternative employment. The Labour Appeal Court, in *Edward Lemley v. Commission for Conciliation Mediation and Arbitration & Others* (PA6/2018) [2020] ZALAC 6; (2020) 41 ILJ 1339 (LAC); [2020] 7 BLLR 676 (LAC), found that the purpose of Section 41(4) of the BCEA is clear and that the reasons why the legislature included the limitation on severance pay was to incentivize an employer to provide alternatives to employment and accordingly limit job losses due to retrenchment. The Labour Appeal Court confirmed the principle of Section 41(4) of the BCEA and that the question of whether an employee is entitled to a severance package is not only determined by considering the reasonableness of the employer's offer alone but must also taken into account (i) the reasons why the employee refused the alternative employment, and (ii) the employee's conduct when refusing the offer of alternative employment. (More information available [here](#).)

UNIONS LIMITED TO TERMS OF THEIR GOVERNING CONSTITUTIONS

Section 4(1)(b) of the LRA provides that "every employee has the right to join a trade union, subject to its constitution." In *National Union of Metal Workers of South Africa v. Lufil Packaging* (Isithebe) [2020] ZACC 7, the Constitutional Court was required to

decide whether the National Union of Metal Workers of South Africa (NUMSA) was entitled to organizational rights at Lufil's workplace and, more specifically, whether the union was entitled to represent members who did not qualify as members under the terms of its constitution. The Constitutional Court ruled in favor of Lufil and held that NUMSA is bound by its own constitution and has no powers beyond what is contained therein. It could not be accepted that this interpretation was an infringement of the right to freedom of association, since nothing prevented NUMSA from amending its constitution so long as it complied with its governing amendments. The Constitutional Court held that a union's constitution is not only a contract between the union and its members, but is also a source of information to employers in the industries in which the unions operate. It would violate the constitutional values of accountability, transparency and openness if unions were allowed to act outside of the scope of their constitution. (More information available [here](#).)

SPAIN

LEGAL PROVISIONS

Dismissal Because of Absenteeism Repealed

Royal Decree-Law 4/2020, of February 18, repealed article 52.d) of the Spanish Workers' Statute, which regulates termination of employment contracts because of employee absences from work, even if justified, provided that these absences were intermittent and reached specific percentages. As a result, effective February 2020, employers are prohibited from terminating employment relationships based on employee absenteeism. (More information available [here](#).)

Remote Work

Royal Decree-Law 28/2020, of September 22, on remote work is applicable to employees who render services from home or at the place chosen by them for at least 30% of their working time within a three-month reference period. Among other things, the law requires the execution of a written agreement between employer and employee that sets forth the rights and obligations of both parties (employment conditions, professional training, working time, etc.). (More information available [here](#).)

Equality Plans, Transparency and Equal Pay

Royal Decree 901/2020, of October 13, on equality plans and their registration, provides that all companies with 50 or more employees must have an equality plan, following a negotiation procedure. Royal Decree 902/2020, of October 13, on equal pay between women and men provides mechanisms for ensuring pay transparency is effective, including payroll records and equal pay audits. (More information available [here](#) and [here](#).)

RELEVANT DOCTRINE AND CASE LAW OF 2020

Judgment of the Labour Chamber of the Supreme Court, of January 29, 2020

If a company delivers a dismissal letter to an employee by means of a certified mail (burofax), the 20-day statute of limitation to file a lawsuit against the company for unfair (or null and void) dismissal starts when the employee collects the certified email from the post office. Therefore, the 20-day time period to challenge the dismissal begins when the employee first has the opportunity to read the contents of the dismissal letter. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of January 29, 2020

The backpay salary awarded after a successful claim for unfair dismissal brought by an employee must be paid by the company to employee through the date of notice of the judgment declaring the dismissal null and void. Thus, if the dismissal was initially declared fair/valid and, afterwards, on appeal, it is declared null and void, the backpay salary must be paid through the date of notice of the appellate court judgment. (More information available [here](#).)

Judgment of the Labour Chamber of Supreme Court, of February 4, 2020

If an employee's dismissal is determined to be unfair (i.e., without cause), the employer must specifically elect either to pay severance compensation or to reinstate the employee. If the employer does not specifically elect to pay severance, the employer must reinstate the employee in their previous job position. Thus, the mere deposit of the severance compensation in the court's bank account does not itself constitute a valid election to terminate the employment relationship. (More information available [here](#).)

Judgment of the Labour Chamber of the National High Court, of February 10, 2020

Security companies have no authority to require their newly hired employees (security guards) to produce their prior criminal records since it was not deemed necessary for signing the employment contract. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of February 12, 2020

An employee hired through a handover contract (fixed-term employment contract to replace employees who retire partially) was entitled to a severance compensation equivalent to 11 days' salary

per year of service when their contract is terminated because of the total retirement of the replaced employee. (More information available [here](#).)

Judgment of the Labour Chamber of the High Court of Justice of Catalonia, of February 21, 2020

The High Court ruled that app-based food delivery workers are common employees and not self-employed workers. Therefore, termination of such a worker must be considered an unfair dismissal. (More information available [here](#).)

Judgment of the Labour Chamber of the National High Court, of April 17, 2020

The National High Court found a collective dismissal null and void because the company (a) did not negotiate the conditions of the collective dismissal with the employees' legal representatives; (b) failed to deliver the relevant documentation to the employees' legal representatives; and (c) did not meet the formal requirements of notice of its decision to the employees. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of June 11, 2020

The Supreme Court found that the collective bargaining agreement applicable to the employees of a company that provides different services for clients should be determined by the "real activity" carried out by the employees in accordance with the services rendered to the client. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of June 18, 2020

The Supreme Court ruled in favor of three employees who were entitled to terminate their employment relationships according to article 50.1.c) of the

Workers' Statute and, therefore, to receive the statutory severance compensation. The company committed a serious breach of its obligations (not paying the relevant contributions to the social security system) because it paid part of the employees' salary in cash directly to the employees rather than reflecting this salary in their monthly payslips. (More information available [here](#).)

Judgment of the Court of Justice of the European Union, of June 25, 2020

The Court of Justice of the European Union found that employees who are reinstated after an unfair/null and void dismissal are entitled to take their paid annual leave (holidays) that should have accrued from their dismissal through the date of their reinstatement. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of September 4, 2020

If a senior executive employment contract is terminated by virtue of the company's withdrawal, the senior executive is entitled at least to the statutory severance compensation: seven days of salary in cash per year of service, capped at six months' pay. According to the Supreme Court, this severance compensation is exempt from the employees' personal income tax. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of September 15, 2020

The Supreme Court ruled in favor of a company that dismissed an employee who used the company car during her sick leave and annual paid leave. The Court rejected the employee's arguments that the installation of a GPS in company car violated her right to privacy and data protection rights. The employee was previously informed of the installation and the

conditions of use of the company car. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of October 22, 2020

A clause that provides the payment of a bonus under the condition that the employee must be an employee of the company until the end of the period of accrual is valid. Therefore, if the employee voluntarily terminates their employment relationship during the period of accrual of the bonus, they will be not entitled to it. (More information available [here](#).)

Judgment of the Court of Justice of the European Union, of November 11, 2020

The Court of Justice of the European Union construed the reference periods provided in Article 1(1)(a)(i) and (ii) of Council Directive 98/59/EC related to collective redundancies. Employers are required to look both backward and forward from an individual dismissal (over the relevant 30 or 90 days) to determine whether the threshold number of redundancies is met over the reference period. (More information available [here](#).)

Judgment of the Labour Chamber of the Supreme Court, of December 29, 2020

The Supreme Court declared that an employment contract for a specific task or service could not be of a temporary nature when the employee's functions are not independent and self-contained from the company's activity. In this case, the Court held that companies providing services to third parties (clients) could not enter into fixed-term employment contracts whose term is the same as the services provider agreement between the company and the client. (More information available [here](#).)

SWITZERLAND

SWISS COURT DECISIONS

Supreme Court Decision 4A_395/2018: Termination of a Contract during Initial Minimum Term

A permanent employment contract with an initial minimum term, in this case fixed 12 months, is to be treated like a temporary employment contract until the end of that minimum term. Therefore, it cannot be terminated ordinarily, but for good cause according to [Article 337](#) of the Swiss Code of Obligations. Irrespective of the rightfulness of such an extraordinary termination, the employment contract ends effective immediately.

The Supreme Court held that even though the employer has not terminated the employment contract without notice, but with a shortened notice period until end of a month, the termination is still to be considered as an extraordinary termination and not a faulty, ordinary one, but can still lead to damage compensation.

Supreme Court Decision 4A_59/2020: Paid Leave/Vacation Includes Entitlement to Commission

A car dealer with a monthly fixed basic salary plus entitlement to commission had four weeks paid leave/vacation. During the paid leave, the car dealer did not receive any commissions. Upon termination of his employment contract, the car dealer requested payment for missed commissions during vacation for the last five years, the maximum that the statute of limitations allowed. The car dealer's claim was denied in the court of first instance.

However, the Supreme Court laid out prior rulings on entitlement to commission during paid leave vacation regarding real estate agents and sales representatives. It was found that neither prior case can be directly applied to a car dealer, and that the decisive question is whether the major part of the deals that lead to employee's commissions were steerable, i.e., could have been closed before or after his vacation. Since the employer did not prove that most of the employee's deals were steerable, the Supreme Court held that the employee was being placed in a worse position during vacation. Therefore, the employee was entitled to generalized commissions during paid leave / vacation since those commissions were part of his salary. (More information available [here](#).)

Supreme Court Decision 2C_316/2020: Home Office Leads to Compensation of Necessary Expenses Which Are Personnel Expenditures

The Supreme Court confirmed its ruling 4A_533/2018 of last year concerning necessary expenses incurred in working from home. If the employer does not permanently offer a suitable workplace to the employee, even if the agreement does not provide for such an arrangement, the employer must reimburse the employee for all expenses necessarily incurred. This ruling is especially relevant during times of a pandemic. Furthermore, the Supreme Court confirmed that such expenses are to be considered personnel expenditures and are therefore deductible if these expenditures can be characterized as compensatory. (More information available [here](#).)

However, this is not to be confused with a government work from home order. For example, since the Federal Council ordered working from home temporarily on Wednesday, January 13, 2021, employers won't need to compensate employees for the cost of electricity,

rent or Wi-Fi for employees who usually do not work from home.

Supreme Court Decision 4A_241/2020: Non-Competition Clauses Are Only Binding If the Employee's Insights Might Cause the Employer Substantial Harm

An employment contract between a coffee roastery and its marketing assistant contained a non-competition clause with a contractual penalty. Immediately after the termination of the employment relationship, the employee started working for a coffee trading and services company. The employer therefore claimed for the contractual penalty, but the employee argued that the non-competition clause was not binding.

The Supreme Court reaffirmed that a non-competition clause is only binding where the employment relationship allowed the employee to obtain knowledge of the employer's clientele, manufacturing and/or trade secrets, and where the use of such knowledge might cause the employer substantial harm (Article 340 Paragraph 2 of the Swiss Code of Obligation). Substantial harm may be found if the employee obtained knowledge of specific technical, organizational or financial information that the employer wants to keep secret. Knowledge that can be acquired in every company of the same industry would therefore not suffice. While the marketing assistant's technical, organizational or financial knowledge could not prohibit her from using her skills for a competitor, her knowledge of the employer's clientele might. In holding the non-competition clause binding, the Supreme Court concluded that since the employee had knowledge of the employer's clientele and was in direct contact with customers, the use of such knowledge for the benefit of the new employer could cause the employer substantial harm.

SWISS LEGISLATION

Amendment of the Swiss Code of Obligation: Rules on Gender Representation

The Swiss Federal Council has put parts of the Amendment of the Swiss Code of Obligation in place early. Beginning in 2021, companies listed on the stock exchange have to either meet Gender Representation Rules on their Boards of Directors and Executive Committees or need to explain both why gender is not represented accordingly and their efforts on the promotion of the lesser represented gender. The quotas of representation are 30% for the board members and 20% for the Executive Committee members of listed companies.

These Gender Representation Rules have now come into effect especially for the commodities sector.

THAILAND

EASING OF ENTRY RESTRICTIONS ON FOREIGN WORKERS DURING THE COVID-19 OUTBREAK

The Ministry of Interior (MOI) issued a notification (Notification re: Exceptions to Restrictions for Foreign Workers from Certain Nations to Enter and Stay in Thailand Specifically for Work, according to the Memorandum of Understanding on Labour Cooperation in Relation to the Circumstances Caused by the COVID-19 Pandemic) dated November 18, 2020, lifting some restrictions for foreign workers from Cambodia, Laos and Myanmar, as of November 1, 2020. The foreign workers will be allowed to enter Thailand for work, provided they qualify as a "foreigner" as defined in this notification. A "foreigner" is defined as a foreign worker with

Cambodian, Lao or Myanmar nationality, who is permitted to work in Thailand for a period of four years, under the Memorandum of Understanding on Labour Cooperation dated March 1, 2006, and whose passport is still valid. Furthermore, qualified foreign workers who complete a four-year employment contract between November 1, 2020, and December 31, 2021, will be allowed to stay in Thailand for another two years. However, they will be required to submit a request to work with the Department of Employment after completing their first year of employment in order to stay in Thailand for another year.

NEW MINIMUM WAGE

At the end of each year, the National Wage Committee of Thailand's Ministry of Labour announces a new minimum daily wage to take effect on January 1 of the next year. However, as of December 2020, there had been no such announcement for 2021.

PERSONAL DATA PROTECTION

The enforcement of some sections of the Personal Data Protection Act (PDPA), which was enacted in 2019 and had been scheduled to take effect in May 2020, has been postponed through May 31, 2021. Though they were granted this extension, all companies that collect, use or disclose ("process") personal data of data subjects (e.g., candidates, employees, customers or suppliers) must be prepared for the enforcement of the PDPA when it becomes fully effective on June 1, 2021.

TURKEY

The COVID-19 pandemic had a significant effect on employment law and important amendments have been made to the Turkish Labor Code no. 4857 (TLC). Two of these amendments had a significant impact on employment relationships: (a) the prohibition of termination by employers; and (b) the right of employers to implement unpaid leave without the consent of employees.

According to Provisional Article 10 added to TLC with the Law No 7244 published in the Official Gazette dated April 17, 2020, and numbered 31102, employment and service agreements could not be terminated by the employer for a period of three months starting from April 17, 2020, except for cases which do not comply with ethics and good faith principles and other similar reasons set forth under subparagraph (II) of paragraph 1 of Article 25 of TLC. The president is entitled to extend such period up to six months. On the other hand, during the abovementioned period, employers are entitled to implement unilateral unpaid leave without the consent of the employees.

With the Presidential Decree No 2707 published in the Official Gazette dated June 30, 2020, and numbered 31171, the periods mentioned above were extended by 1 (one) month until August 17, 2020. According to the latest Presidential Decree dated December 30, 2020, the periods of the termination prohibition and the right of the employer to implement unilateral unpaid leave have been extended until March 17, 2021. The Law No 7252 published in the Official Gazette dated July 28, 2020, and numbered 31199 authorized the president to extend the periods of termination prohibition and the unpaid leave in up to three-month increments, until June 30, 2021. The same law added

the following to the exceptions to the termination prohibition:

- Expiration of the term in employment or service agreements with definite term
- Closure of the business for any reason and cease of its activity
- All kinds of service purchases made according to the relevant legislation and cease of work in construction works

UNITED KINGDOM

THE UK SUPREME COURT CONFIRMS TEST FOR VICARIOUS LIABILITY FOR EMPLOYERS

In the case of *Wm Morrison Supermarkets Plc v. Various Claimants*, [2020] UKSC 12, the UK Supreme Court considered the degree of connection that needs to be established between the employment relationship and alleged wrongdoing for an employer to be held vicariously liable for an employee's actions.

In the case at hand, the employee in question was an internal IT auditor with a grudge against his employer (albeit unbeknown to the employer). The employer had asked him to provide payroll data for its whole workforce to external auditors. However, the employee also posted the data on the internet and sent it to various newspapers, giving rise to claims against the employer for misuse of private information, breach of confidence and breach of statutory data protection law.

The Supreme Court confirmed that the correct UK legal test is that the wrongful conduct must be “so closely connected with acts the partner or employee was authorised to do that, for the purpose of the

liability of the firm or the employer to third parties, the wrongful conduct may fairly and properly be regarded as done by the [employee] while acting in the ordinary course of the firm's business or the employee's employment.”

Both the High Court and Court of Appeal had previously decided that the employer was vicariously liable in these circumstances, essentially because the employee was entrusted with payroll data as part of the role assigned to him.

However, the Supreme Court decided that the employee's conduct was not so closely connected with acts he was authorized to do that it could fairly and properly be regarded as done by him in the ordinary course of his employment. The fact his role provided him the opportunity to commit the data breach was not enough for there to be vicarious liability. Nor was the close temporal link to an authorized act.

While this decision provides some comfort for UK employers that they will not necessarily always be liable for the actions of rogue employees, such claims will nevertheless remain highly fact sensitive. UK employers should continue to implement as many safeguards as practicable against such risks, particularly in the context of data protection. (More information available [here](#).)

PROTECTION OF WORKERS FROM HEALTH AND SAFETY-RELATED DETRIMENT

In addition to employees and independent contractors, UK law recognizes an intermediate category of employment status: workers.

Under UK law, a worker is a person who has entered into or works under a contract of employment or “any

other contract [pursuant to which] the individual undertakes to do or perform personally any work or services for another party [and] whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.”

Workers benefit from more employment rights than independent contractors, but less than employees.

In *R (Independent Workers' Union of Great Britain) v. Secretary of State for Work and Pensions and another*, the UK High Court declared that, by limiting certain health and safety rights to “employees,” the United Kingdom had failed to properly implement aspects of the EU Health and Safety Framework Directive (89/391/EC) and the EU Council Directive on the minimum health and safety requirements for the use by workers of personal protective equipment (PPE) at the workplace (89/656/EC) (the PPE Directive) with regard to workers.

The High Court's decision indicates that workers should: (a) receive the same protection as employees against suffering adverse action if they take steps to protect themselves by refusing to work when faced with serious and imminent danger to their safety (for instance, in respect of COVID-19); and (b) be provided with necessary PPE, in appropriate circumstances.

The IWGB (which brought the case on behalf of its members, who are predominantly gig-economy workers) has urged the UK government to amend UK employment legislation to address the decision. At the time of writing, a formal UK governmental response is still pending. (More information available [here](#).)

CONFIDENTIALITY CLAUSES IN EMPLOYMENT SETTLEMENT AGREEMENTS

When an employer settles an actual or potential employment claim, it often wants to keep the fact that it has done so confidential, to the extent permitted by legal and regulatory obligations. That may well be because the employer is concerned about being seen as culpable or a soft target for other employees.

Therefore, it is fairly standard practice in the United Kingdom for employers to include a confidentiality clause in a settlement agreement, obliging the employee to keep its contents (and, even, the fact that it exists) confidential.

The case of *Duchy Farm Kennels Limited v. Steel*, the UK High Court, however, made clear that including a confidentiality clause in a settlement agreement will not necessarily be enough to enable the employer to take action if the employee breaches confidentiality. In *Duchy*, the claimant asserted that because the respondent had breached the confidentiality provision of a settlement agreement, it was no longer required to pay outstanding settlement amounts per the agreement. The lower court found that even though the respondent had breached the confidentiality provision, the confidentiality clause was not a condition of the agreement giving the claimant a right to unilaterally terminate its contractual obligations. On appeal, the UK High Court agreed, noting that the parties could have stipulated that the confidentiality provision was a condition necessary to enforce the contract and could have specified consequences for such a breach. The High Court further ruled that the breach was not fundamental to the settlement agreement and did not exempt the claimant from

paying amounts owed to respondent under the agreement.

Thus, confidentiality provisions should expressly state that compliance with the term(s) of such provision is a condition of the agreement. If the employer wants to be able to withhold the settlement sums in the event of breach, the drafting needs to spell that out.

The principle in this case will not only apply to confidentiality provisions, and also to the other protective provisions that are often included in settlement agreements and COT3s, for example, that the parties may not make derogatory comments about each other. (More information available [here](#).)

TAXATION OF INDEPENDENT CONTRACTORS

New “off-payroll working” tax rules (commonly known as IR35) apply to the UK private sector as of April 6, 2021. Equivalent rules have applied in the UK public sector since 2017. The new rules had originally been due to take effect as of April 6, 2020, but their implementation was delayed in March 2020 on account of the COVID-19 pandemic. The move will shift responsibility for determining the tax status of individuals who personally provide services through an intermediary “loan out”/personal service company (PSC) from that PSC to the end user client. Each PSC relationship will need to be assessed using “reasonable care,” and a “status determination statement” will need to be issued. Where employment is found, the “fee-payer” (*i.e.*, the end user client, or where there is an intermediary agency, the agency) will be responsible for tax and social security withholdings, together with employer social security contributions at a rate of up to 13.8%. (More information available [here](#).)

UNITED STATES

In addition to fast-paced legislation and rules and regulations related to the COVID-19 pandemic, there were a number of federal law changes and dozens of new state and local laws addressing employment law. Here, we highlight: (1) what we believe to be the most important federal law changes; (2) a brief overview of the latest government approaches to addressing COVID-19 vaccines in the workplace; (3) important decisions by the United States Supreme Court and (4) state legislative trends.

FEDERAL LEGISLATION

The COVID-19 pandemic affected almost every aspect of the employment relationship and required new laws and guidance on a myriad of topics. The most notable federal developments were the passage of two new laws: the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

The FFCRA provided paid leave benefits to employees for absences related to the coronavirus. The law was limited in scope, applying only to employers with more than 500 employees. Although the mandatory paid sick leave requirement expired on December 31, 2020, employers who chose to provide FFCRA sick time and family leave benefits remained eligible for the tax credit through March 31, 2021.

The CARES Act greatly expanded unemployment benefits for those unemployed as a result of COVID-19 by limiting certain eligibility requirements, increasing the unemployment benefit and increasing the length of unemployment availability. The CARES Act also provided an “employee retention” tax credit for employers who kept employees on payroll despite loss of revenues or business suspension due to COVID-19.

COVID-19: VACCINES IN THE WORKPLACE

The COVID-19 pandemic put unprecedented strain on employers of all sizes across all industries. With the COVID-19 vaccination process underway, employers must navigate various workplace issues, including whether they can (and should) mandate vaccination.

The US Equal Employment Opportunity Commission (EEOC), a federal agency established to administer and enforce civil rights laws against workplace discrimination, issued guidance in December 2020 for employers considering a vaccine program. According to the guidance, employers should conduct an individualized assessment in determining whether unvaccinated employees would pose a direct threat at the worksite (*e.g.*, would expose others to COVID-19 at the worksite); employers can adopt a hybrid approach if they implement a voluntary vaccine program but require unvaccinated employees to continue to work remotely.

Further, employers should be careful not to disclose employees' immunization histories; those histories may be protected from disclosure under state statutory or common law. In addition, employers should be wary of running afoul of issues under federal laws, including Title VII of the Civil Rights Act of 1964 (religious accommodation) and the Americans with Disabilities Act (ADA) (disability accommodation), as well as parallel state and local laws.

SUPREME COURT OF THE UNITED STATES AND OTHER SIGNIFICANT COURT DECISIONS

Supreme Court's Decision in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020)

Title VII of the Civil Rights Act of 1964 is a federal law that protects employees against discrimination based on certain characteristics: race, color, national origin, sex and religion. In a landmark decision on June 15, 2020, the Supreme Court expanded the protections afforded by Title VII, ruling that workplace discrimination because of an individual's sexual orientation or gender identity — including being transgender — is unlawful discrimination “because of sex.” Justice Gorsuch, writing for the majority, concluded that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

Supreme Court's Decision in *DHS v. Regents of the University of California*, 140 S. Ct. 1891 (2020)

In 2012, under the Obama administration, the US Department of Homeland Security (DHS) adopted a program known as the Deferred Action for Childhood Arrivals (DACA) to postpone the deportation of undocumented immigrants who had been brought to the United States as children. The program also provided eligible immigrants with work permits, allowing them to obtain social security numbers and pay taxes. In 2017, the Trump administration initiated plans to phase out DACA, triggering multiple lawsuits. On June 18, 2020, the Supreme Court ruled that the Trump administration did not provide adequate and appropriate justification to terminate the

DACA program. The Supreme Court's ruling preserved the ability of about 700,000 individuals, referred to colloquially as "Dreamers," to remain in the United States and be allowed to work.

Supreme Court's Decision in *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367 (2020)

The Women's Health Amendment to the Affordable Care Act (ACA) requires that women's health insurance include coverage for preventive health care, including contraception. The Amendment provided that a nonprofit religious employer who objects to providing contraceptive services may file an accommodation form requesting an exemption to the requirement, thereby avoiding paying for—or otherwise participating in—the provision of contraception to its employees.

The Supreme Court addressed the question of whether the federal government lawfully exempted religious objectors from the regulatory requirement to provide health plans that include contraceptive coverage. The Court found that the federal agencies tasked with promulgating religious and moral exemptions under the ACA had been granted the requisite authority to do so and had, in fact, done so appropriately. This ruling thereby entrenched broad exemptions from the contraceptive mandate for both for-profit and nonprofit employers with sincerely held religious beliefs or moral objections from offering contraception coverage in their group health plans.

US District Court for the Northern District of Illinois's Decision in *Martin v. CareerBuilder, LLC*

The Employee Retirement Income Security Act (ERISA) of 1974 requires plan fiduciaries to act prudently and loyally when making decisions about an

employee investment plan. In July 2020, in *Martin v. CareerBuilder, LLC*, the US District Court for the Northern District of Illinois, a federal district court, held that the plaintiff's allegations about expensive record-keeping costs and imprudent investment options failed to give rise to an inference that the defendants had violated their ERISA obligations.

The plaintiff, a former CareerBuilder employee, sued the company's 401(k) plan fiduciaries for allegedly permitting unreasonable record-keeping fees and imprudent investment options. Among other things, the complaint alleged that 40% of the more expensive funds had remained in the plan for five years before being removed.

The court dismissed the complaint without prejudice, explaining that courts are dissuaded from paternalistically interfering with plan fiduciaries' fund selections. Even if cheaper or better-performing funds might exist, ERISA does not require fiduciaries to scour the market to find the cheapest funds or select index funds instead of other fund types. Further, ERISA protects fiduciaries whose process of reviewing an investment was prudent even if the investment then failed to meet expectations. The CareerBuilder menu offered a mix of 23 options, with expense ratios ranging from 0.04% to 1.06%. The court observed that the defendants had removed some funds and modified the majority of the funds over five years. Such action did not suggest imprudence in managing the options for participants. The court also held that the complaint did not allege objectively unreasonable record-keeping fees in view of similar amounts at issue in other cases. The dismissal was without prejudice, meaning that the plaintiff was given the chance to replead the claims.

TRENDS IN STATE LEGISLATION

Expansion of Paid Sick Leave

Following on the heels of the FFCRA and CARES Act, a number of states passed legislation in 2020 codifying paid sick leave requirements born out of pandemic-era leave legislation. For example, in Colorado, as of January 1, 2021, employers with at least 16 employees must provide earned paid sick leave; employees can use the leave for numerous reasons, including a public health emergency in which a public official has ordered the closure of either the employee's place of business or the school or place of care of the employee's child. The legislation allows the employee to be absent from work to care for the child.

Maine, Nevada and New York also passed mandatory paid sick leave laws.

Privacy

California and Illinois passed legislation addressing consumer and employee data. The California Consumer Privacy Act (CCPA) requires companies meeting certain requirements to take various steps to protect and disclose consumer data. Employers are exempt from some requirements relating to information obtained in the normal scope of the employment process, but this exemption expired at the end of 2020. In Illinois, the Artificial Intelligence Video Interview Act imposes new notification and consent requirements when employers use AI intelligence to evaluate applicant-submitted videos. Employers are also barred from sharing applicant videos, except as necessary to evaluate candidates.

VIETNAM

NEW LABOR CODE TAKES EFFECT

Vietnam's new Labor Code, passed by the National Assembly in November 2019, finally took effect on January 1, 2021, replacing the Labor Code of 2012. Some of the notable changes include an additional national holiday; an increase in permitted overtime hours; an increase in the retirement age to 60 for women and 62 for men; and a clearer definition of "sexual harassment."

As is common practice in Vietnam, the Labor Code was issued with certain provisions not fully fleshed out, with the idea that they would "be detailed later" in subsequent guiding legislation. As of the end of 2020, three government decrees had been issued in this respect. Decree No. 135/2020/ND-CP, dated November 18, 2020, details the phased-in implementation of the new retirement ages, including a grandfather clause. Decree No. 145/2020/ND-CP, dated December 14, 2020, with a hefty 115 articles, guides numerous topics related to working conditions and labor relations. Finally, Decree No. 152/2020/ND-CP, dated December 30, 2020, provides guidance on foreign workers and foreign employers in Vietnam. A wide range of subordinate legislation remains in the legislative queue and is expected to be issued in 2021.

MINIMUM WAGE INCREASE ON HOLD

The region-based minimum wages for non-state employees, which typically see an increase at the beginning of each year, will be unchanged from 2020 to 2021, due to difficulties caused by the COVID-19

pandemic. As of January 2020, there remains a possibility that the minimum wages will be raised mid-year. The current monthly minimum wages range from VND 3,070,000 (\$131 USD) in rural provinces to VND 4,420,000 (\$191 USD) in Hanoi and Ho Chi Minh City.

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