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LABOR AND EMPLOYMENT LAW UPDATES FROM AROUND THE GLOBE

Littler

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Geida D. Sanlate, Littler Editor

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Angola

New Rules for Health, Safety and Environment Services Providers

New Legislation Enacted

Authors: Elieser Corte Real, Partner and Head of Employment, and Nuno Gouveia, Partner and Head of Employment Miranda Alliance – Fátima Freitas e Associados

Presidential Decree No. 179/24, August 1, 2024, approving the new Regulations on the Licensing for the Exercise of Health, Safety and Environment Services (HSE), has been published and is in effect. The new Regulations establish the rules on HSE services, their registration and authorization procedure before the General Inspectorate of Labor. The new rules are applicable to all companies that already have HSE services in operation.

The new rules require companies to issue an annual report on HSE services that must be prepared in accordance with the form defined by the Regulations. The new statute also regulates occupational medicine activities, the types of medical examinations required by law and the issuance of the respective fitness certificates, using the official forms. Companies providing HSE services that have registration and licensing applications still pending have 15 days to adapt their authorization requests to the new legal requirements.

Angola Ratifies the 2006 Maritime Labor Convention

New Legislation Enacted

Authors: Elieser Corte Real, Partner and Head of Employment, and Nuno Gouveia, Partner and Head of Employment – Miranda Alliance – Fátima Freitas & Associados

By means of Resolution no. 108/24, of September 23, 2024, Angola finally approved for ratification the 2006 the Maritime Labor Convention (MLC). The MLC marks a significant step for the national maritime sector. The Convention is a cornerstone of the global regulatory framework for ensuring high standards in maritime transport. By adopting it, Angola reinforces its commitment to safeguarding the rights of maritime employees, particularly in relation to safe, fair, and decent working conditions.

This development is a crucial milestone in the ongoing effort to improve labor standards for seafarers, aligning Angola with international best practices and enhancing the welfare and protection of maritime employees.

Australia

"Closing Loopholes No. 2" Reform Takes Effect

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Michael Whitbread, Of Counsel – Littler

The Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 took effect on August 26, 2024. Changes include:

- The right of employees to "disconnect" after work hours
- A new statutory definition of employment
- A requirement to give casual employees a Casual Employment Information Statement
- Clarification of the definition of a casual employee, and the process for conversion of a casual employee to permanent employee status
- The process for dealing with impasses in collective/enterprise bargaining negotiation
- The creation of "model terms" for enterprise agreements and enhancements of the rights of "employee-like" workers such as gig workers, and more

Employers should consider the extensive reforms from end to end, particularly how the new "right to disconnect" may necessitate changes to working hours practices. Independent contracting arrangements should be reviewed to consider the new definition of employment. Handbooks and template contracts for casual employees should also be reviewed, and employers engaging in enterprise agreement negotiations will need to consider whether any changes to their bargaining strategy is warranted. Companies engaging labor in the "gig economy" should give close attention to the changes affecting their workforce.

Sexual Harassment Claimants Protected from Cost Orders in Most Cases

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Michael Whitbread, Of Counsel – Littler

Australia's federal Parliament has passed legislation protecting sexual harassment claimants from costs orders in most circumstances. Costs orders can still be made where claims are found to have been instituted vexatiously or without reasonable cause, where a party's unreasonable act or omission caused the other to incur costs, or where a successful respondent did not have a significant advantage over an applicant in terms of power and resources.

Employers may see an uptick in claims following the reforms and should update litigation risk assessments and defense strategies accordingly.

Flawed Investigatory and Disciplinary Processes Assessing Allegations of Sexual Harassment: Lessons for Employers

Precedential Decision by Judiciary or Regulatory Agency

Authors: Naomi Seddon, Shareholder, and Michael Whitbread, Of Counsel – Littler

Australia's industrial tribunal, the Fair Work Commission, has ordered a mining company to pay a former employee one week's pay following flawed investigatory and disciplinary processes assessing allegations of sexual harassment. In this case, the employee was found to have made vulgar and sexually harassing comments and behavior toward two female members of the cleaning staff.

Although the Commission agreed that there was a valid reason for termination, it raised a number of concerns with the fairness of the employer's investigatory and disciplinary processes. It found that the employer failed to provide the employee a sufficient opportunity to respond to allegations, which should have been seven days under the employer's investigatory policy. The Commission also found that the employer rushed the investigatory process so that HR staff did not have to work over the looming long Easter holiday weekend, and that the investigator was not external or independent.

Employers should ensure that they follow their own stated investigatory processes, and that external investigators act genuinely independently. Investigations should not be rushed out of convenience. Investigatory interviews should be conducted in person, and investigatory questions should appropriately probe and test factual assertions, avoiding leading questions.

If Approved, Privacy Reform Bill Will Introduce Significant Changes

Proposed Bill or Initiative

Authors: Naomi Seddon, Shareholder, and Michael Whitbread, Of Counsel – Littler

After lengthy consultation and lobbying efforts, the Australian Government has proposed the Privacy and Other Legislation Amendment Bill 2024 (the Bill). The Bill seeks to address certain key concerns raised during consultation, including greater transparency on the use of automated decision-making by computer programs, clarifying the process for overseas transfers, and criminalizing the act of menacing or harassing an individual by exposing their personal data online (*i.e.*, doxing). The Bill also seeks to introduce a statutory tort for serious invasions of privacy.

If the Bill passes as proposed, employers will need to review privacy policies when using automated decision tools such as resume screening software. Company policies will also warrant review, including serious privacy interference and doxing as forms of serious or gross misconduct justifying a disciplinary process. Overseas transfer mechanisms will need to be reviewed, *e.g.*, for cloud storage of candidate and other non-employee data. Although there is no proposal at this time to remove the Privacy Act's exemption for employee records, the government intends to introduce future rounds of reform.

Probes Continue into Construction Union

Trend

Authors: Naomi Seddon, Shareholder, and Michael Whitbread, Of Counsel – Littler

Federal Attorney-General Mark Dreyfus announced in August that the Construction, Forestry and Maritime Employees Union would be taken over by an appointed administrator for at least three years after investigations led to accusations of bullying, intimidation and corruption within the union. An eminent barrister appointed by an external administrator of the union to report on alleged infiltration by outlaw motorcycle gangs reportedly found inadequate its efforts to rid itself of criminal elements. Police are also reported to be continuing investigations of alleged fraud within the industry.

While for now the concerns appear to be limited to the construction industry, employers engaging in enterprise bargaining – particularly in connection to labor hires – should pay close attention to developments and seek advice as needed.

Austria

Uncertainty of Future Economic Development Not an Objective Justification for Repeated Use of Fixed-term Employment Contracts

Precedential Decision by Judiciary or Regulatory Agency

Authors: Patricia Dasch, Associate, and Armin Popp, Associate – Littler Austria

The repeated use of fixed-term employment contracts (a series of successive fixed-term contracts) is only lawful if, in the individual case, the series of individual fixed-term contracts is justified by special social or economic reasons. The employer has the burden of assertion and proof that the reasons for the series of fixed-term employment relationships were objectively justified.

Economic reasons may also be considered as objective reasons for a series of fixed-term contracts, however, these cannot be limited to merely shifting the business risk. For example, the uncertainty of further economic development due to the poor economic situation alone is not an objective justification for a series of fixed-term employment contracts, but rather a typical business risk that the entrepreneur has to bear.

Duration of Remuneration in the Event of Termination During Sick Leave

Precedential Decision by Judiciary or Regulatory Agency

Authors: Patricia Dasch, Associate, and Armin Popp, Associate – Littler Austria

If an employee on sick leave is dismissed or if the employment relationship is terminated by mutual agreement during or because of sick leave, the entitlement to continued remuneration during the sick leave remains in force for the duration provided for by law, even after the end of the employment relationship. This entitlement is, however, limited: while no new entitlement to continued remuneration arises at the beginning of a new work year during the uninterrupted sick leave after expiration of the notice period or the end of the employment relationship, the entitlement to the continued remuneration that was not exhausted in the prior working year does not expire.

Training Cost Reimbursement Agreements Require the Signature of Both Parties

Precedential Decision by Judiciary or Regulatory Agency

Authors: Patricia Dasch, Associate, and Armin Popp, Associate – Littler Austria

Employee training costs paid by the employer can only be reclaimed based on a separate training cost reimbursement agreement. Apart from the substantive requirements of such an agreement, a training cost reimbursement agreement is also always subject to the written form requirement.

In a recent decision by the Austrian Supreme Court, it was determined that the written form requirement is only met if the agreement has been signed by both parties to the employment contract. If the training cost reimbursement agreement is signed only by the employee, the written form requirement is not met. A violation of the written form requirement renders the agreement invalid, which means that the employer cannot reclaim the training costs.

Belgium

Checklist of Required Data When Employing Foreign Workers Through Subcontracting

New Legislation Enacted

Author: Michelle Briers, Associate – Reliance | Littler

To tackle illegal employment through subcontracting more effectively, the Flemish government improved chain liability, and introduced a duty of care. According to this duty of care, companies working with subcontractors in the Flemish Region (*i.e.*, northern region of Belgium) are required to request certain data from these subcontractors (including a copy of the passport and residence/work permit of non-EU nationals). This obligation applies as of January 1, 2025. The data should be verified through an application, which is currently being developed, before employment begins.

Changes in Regional Legislation on Working with Non-EU Nationals

New Legislation Enacted

Author: Yne Machiels, Partner – Reliance | Littler

Over the last few months, the three Belgian regions (Flanders, Brussels and Wallonia) have updated their legislation on work permits for foreign employees, which have recently entered into effect or are entering into effect in the coming weeks. Some important changes include:

- Flanders: Whereas previously an application for a single permit (combining a work and residence permit) for the "residual category" (*i.e.*, workers who do not fall under a special category) could be filed after a labor market survey, this option is now limited to so-called shortage professions.
- Brussels is changing its salary thresholds from annual salaries to monthly salaries, only considering the "basic salary," – and no longer including end-of-year premiums or double vacation pay. For single work permits covering multiple years, it will no longer be mandatory for employees to submit wage information annually to the administration to check for compliance with the wage limits.
- Wallonia has implemented a reduced salary threshold for highly qualified staff younger than 30 years old. For the residual category, an application can be made after a labor market test, proof of which can be provided in several ways.

Brazil

New Ordinances Amend Three Regulatory Norms

New Order or Decree

Authors: Marília Nascimento Minicucci, Shareholder, and Pâmela Almeida da Silva Gordo, Senior Associate – Chiode Minicucci Advogados

On August 28, 2024, three new Ordinances were issued by the Ministry of Labor and Employment (Ordinances #1,418, 1,419 and 1,420), amending Regulatory Norms #16, 1 and 18, respectively.

It is specifically worth mentioning the changes brought by Ordinance #1,419, as they make it easier for professionals to understand and execute the Occupational Risk Management Program (PGR) within companies, in addition to expanding the approach to ergonomic and psychosocial risk factors.

Postponement of Effective Date of Ordinance Revoking Authorization for Work on Sundays and Holidays

New Order or Decree

Authors: Marília Nascimento Minicucci, Shareholder, and Pâmela Almeida da Silva Gordo, Senior Associate – Chiode Minicucci Advogados

On July 29, 2024, Ordinance #3,665/2023 had its effective date postponed to January 1, 2025, by Ordinance #1,259/2024. For reference, Ordinance #3,665/2023 revokes the permanent authorization previously granted to a few sectors of the economy (*e.g.*, retail trade and trade in general) for work on Sundays and holidays.

New Normative Instruction Regulates the "Equal Pay Law" in Brazil

New Regulation or Official Guidance

Authors: Marília Nascimento Minicucci, Shareholder, and Pâmela Almeida da Silva Gordo, Senior Associate – Chiode Minicucci Advogados

On September 18, 2024, the Ministry of Labor and Employment issued Normative Instruction # 6/2024, regulating the "Equal Pay Law" of 2023 (Law #14,611/2023).

Among other provisions, the new Normative Instruction states that: (i) the disclosure of the pay transparency reports, which were required to be posted by companies with more than 100 employees in Brazil, must ensure that no individual employee information is made public; (ii) in the event that a Labor Inspector verifies an unjustified pay gap between men and women, the employer will be notified to present an Action Plan to Mitigate Pay Inequality within 90 days; (iii) the employer must ensure that representatives from the employees' trade union, as well as representatives of the employees in the workplace, are guaranteed the opportunity to participate in the preparation and execution of the Action Plan. The Instruction also provides for mandatory items that must be contained in the Action Plan. The Instruction became effective on the date of its publication.

Canada

Ban on Use of Replacement Workers in Strikes or Lockouts in Federally Regulated Workplaces to Become Effective on June 20, 2025

New Legislation Enacted

Authors: Rhonda Levy, Knowledge Management Counsel, and Monty Verlint, Partner – Littler LLP

On June 20, 2024, Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012* (Bill C-58) received Royal Assent. Bill C-58, which will go into effect on June 20, 2025, prohibits an employer from using the services of replacement workers to perform all or part of the duties of bargaining unit employees who are on strike or locked out in federally regulated workplaces, subject to exceptions. Once effective, the new law will influence how an employer in a federally regulated workplace conducts itself during strikes and lockouts.

Read the full article on Littler.com.

Ontario's Digital Platform Workers' Rights Act, 2022 Coming into Force on July 1, 2025

New Legislation Enacted

Authors: Rhonda Levy, Knowledge Management Counsel, and Monty Verlint, Partner – Littler LLP

On September 5, 2024, the Ontario government proclaimed that the new Digital Platform Workers' Rights Act, 2022 (DPWRA) will come into force on July 1, 2025. The Ontario Government also filed O Reg 344/24 under the DPWRA, which contains further rules and obligations, and will also come into force on July 1, 2025.

The DPWRA establishes rights for gig workers who perform "digital platform work" (*i.e.*, "provision of payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform" but not including taxicab or limousine services), and obligations for "operators" (*i.e.*, a person that facilitates, through the use of a digital platform, the performance of digital platform work by workers).

For detailed information, visit Littler.com.

SCC Decision Offers Potential Insight into Privacy Rights for Private-Sector Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Rhonda Levy, Knowledge Management Counsel, and Monty Verlint, Partner – Littler LLP

In *York Region District School Board v. Elementary Teachers' Federation of Ontario*, the Supreme Court of Canada (SCC) provided recommendations for how an alleged breach of an employee's right to privacy under the *Canadian Charter of Rights and Freedoms* should be analyzed. Although the SCC did not explicitly reference the reasonable expectation of privacy in private-sector workplaces, the analysis undertaken in the case may be worthy of consideration in the private-sector context.

For detailed information, visit Littler.com.

OCA Finds Aggravated Damages Award Can Be Made Without Medical Evidence of Diagnosable Psychological Injury

Precedential Decision by Judiciary or Regulatory Agency

Authors: Rhonda Levy, Knowledge Management Counsel, and Monty Verlint, Partner – Littler LLP

The Court of Appeal for Ontario (OCA) recently held that an employee may be awarded aggravated damages for an employer's bad-faith conduct during the employee's dismissal even in the absence of medical evidence identifying a diagnosable psychological injury. In *Krmpotic v. Thunder Bay Electronics Limited*, 2024 ONCA 332, the OCA also rejected the notion that expert medical evidence is required to show whether a terminated employee is physically incapable of mitigating their damages during a reasonable notice period.

BCCA Affirms Enforceability of Termination Clause That Incorporated by Reference Notice and Severance Provisions of Canada Labor Code

Precedential Decision by Judiciary or Regulatory Agency

Author: Rhonda Levy, Knowledge Management Counsel, and Monty Verlint, Partner – Littler LLP

In *Egan v. Harbour Air Seaplanes LLP, 2024 BCCA 222*, the British Columbia Court of Appeal upheld a lower court's decision that a termination clause in an employment agreement was enforceable because it was neither ambiguous nor non-compliant with the Canada Labor Code (CLC). The employee's employment contract contained a termination clause, which incorporated by reference the notice and severance provisions of the CLC.

For detailed information, visit Littler.com.

China

China Set to Raise Mandatory Retirement Ages for All Employees Beginning in 2025

New Order or Decree

Authors: Xi (Grace) Yang, Of Counsel, and Rob Flemer, Of Counsel – Littler

On September 13, 2024, the Standing Committee of the 14th National People's Congress approved a plan to extend the mandatory retirement ages for men and women over an extended period. Beginning on January 1, 2025, the mandatory retirement age for men will begin rising from age 60 to age 63, gradually implemented over a 15-year period. For women, blue-collar workers' retirement age will increase from 50 to 55 and white-collar employees' retirement age will increase from 55 to 58, also over the same 15-year period.

There are other amendments including rules regarding early or delayed retirement, as well as pension insurance contribution year requirements. While the immediate effect of these changes on employers and employees will be minimal, it is recommended that multinational employers start planning to ensure compliance.

Colombia

New Law on Sexual Harassment in the Workplace and Universities

New Legislation Enacted

Author: Juan José Cataño, Associate – Godoy Córdoba | Littler

Law 2365 of 2024 stipulates that its scope of application is not limited to employment relationships but extends to any relationship within the employment context, regardless of the type of affiliation. Thus, companies will be required to address any instances of sexual harassment that may occur in the context of service contracts, or involving apprentices, interns, trainees, and other individuals participating in the work environment.

Additionally, the law specifies that a single instance of inappropriate conduct can be considered harassment, in contrast to Law 1010 of 2006, which required that conduct be persistent and demonstrable to be classified as harassment.

Importantly, the Sexual Harassment Law establishes a six-month protection period from the date the sexual harassment complaint is filed, safeguarding the victim and their witnesses from any unilateral termination that may occur during this time. This represents a significant shift from how protections were previously handled for employees reporting workplace harassment, where such protections were only established following an administrative, judicial, or internal control decision confirming the occurrence of harassment.

Congress Passes Major Reform to the Pensions System

New Legislation Enacted

Author: Juan José Cataño, Associate – Godoy Córdoba | Littler

The Pension Reform Bill (the Bill) focuses on the creation of a multi-pillar system, aiming to increase coverage and ensure long-term sustainability. Article 3 of the Pension Reform Bill establishes the Structure of the Comprehensive Social Protection System for Old Age, Disability, and Common Cause Death, structured around four main pillars:

- Solidarity Pillar: The Bill guarantees basic income for elderly individuals and significantly disabled people who lack a source of income to ensure a dignified life.
- Semi-Contributory Pillar: Offers an economic benefit, financed by the national budget and the individuals' own contributions, for 65-year-old men and 60-year-old women who have not met the requirements for a contributory pension. It includes these individuals in the Periodic Economic Benefits Program (BEPS).
- Contributory Pillar: For dependent and independent workers, public servants, and individuals with the capacity to pay, this pillar provides a pay-as-you-go component in which workers earning up to 2.3 times the minimum wage will have to pay their contributions into a private fund. There is also a complementary individual savings component for people with incomes above 2.3 times the minimum wage. The pension is determined by the sum of both components, provided the requirements of the pay-as-you-go component are met.
- Voluntary Savings Pillar: This is for those who make voluntary savings through financial system mechanisms. It complements the total amount of the integral old-age pension system.

Collective Agreements with Non-Unionized Employees

Precedential Decision by Judiciary or Regulatory Agency

Author: Juan José Cataño, Associate – Godoy Córdoba | Littler

The Constitutional Court has conditionally upheld the constitutionality of Article 481 of the Substantive Labor Code and declared Article 70 of Law 50 of 1990 constitutional, regarding collective agreements with non-unionized employees. According to the high court, the coexistence of collective agreements reached with non-unionized employees and collective conventions executed with unions does not infringe on the rights of collective associations and collective bargaining.

Furthermore, the court held, the existence of collective agreements with non-unionized employees is not contrary to the state's obligation to encourage and promote collective bargaining with unions. The court clarified that collective bargaining is not exclusive to trade unions, as, according to constitutional jurisprudence, collective agreements signed with representatives of non-unionized workers fall under the right to collective bargaining.

Croatia

Proposed Changes to Unemployment Benefits and System

Proposed Bill or Initiative

Authors: Marija Gregoric, Partner, and Matija Skender, Senior Associate – Babic & Partners Law Firm

In Q3 2024, the Croatian Ministry of Labor submitted for public consultations Draft Amendments to the Labor Market Act (Draft Amendments). The Labor Market Act most notably regulates the system of unemployment benefits and policy measures aimed at increasing the employment rate.

The Draft Amendments are not envisaged as a top to bottom reform of the system, but rather a fine tuning of the existing mechanisms to better align the system with the current employment trends. Among the most notable

amendments are 1) a slight increase in unemployment pay between the 91st and 181st day of unemployment; 2) lowering the prior employment period requirement for unemployment pay from nine months to six months for employees younger than 30; and 3) the possibility for employees to continue receiving unemployment pay in cases where, shortly after hiring, the employer and employee terminated the employment by agreement.

If Approved, Public List Will Identify "Bad Employers" and "Good Employers" as Part of Registration Monitoring Program

Proposed Bill or Initiative

Authors: Marija Gregoric, Partner, and Matija Skender, Senior Associate – Babic & Partners Law Firm

In late September 2024, the Croatian Ministry of Labor submitted for public consultation the Draft Regulation on Publishing Data on Employers Who Underwent Employment Registration Monitoring. This draft regulation aims to create a public registry featuring two distinct lists of employers:

- "List of Bad Employers," which will list those found liable for failing to register their employees
- "List of Good Employers," showcasing employers that were monitored and found compliant with employee registration and salary payment rules

The primary goal of the Draft Regulation is to encourage employers to comply with employment laws, particularly those related to undeclared work, such as hiring without formal contracts, failing to register employees with the Croatian Pension Insurance Institute, and violating regulations regarding foreign workers. The incentive for compliance is the opportunity for employers to be listed as "Good Employers," provided they consent to their inclusion.

However, there is growing concern that employers might be added to the "List of Bad Employers" as soon as an inspection authority identifies irregularities, even if the employer intends to appeal the findings before an administrative court. Although the regulation allows employers to request removal from the "bad" list if a court eventually rules in their favor, administrative court cases often take two or more years to resolve. This delay could result in significant reputational damage for employers, as they would face public scrutiny before being able to fully defend themselves in court.

New Round of Tax Reform Further Reduces Income Tax

Proposed Bill or Initiative

Authors: Marija Gregoric, Partner, and Matija Skender, Senior Associate – Babic & Partners Law Firm

The reform of the Croatian tax system has been going strong from 2016. The next step in the reform, recently announced by the Croatian Ministry of Finance, is focused on introducing a special type of real estate tax, aimed at repairing the growing imbalance in the housing market.

Considering the projected additional income from the real estate tax, the reform would also reduce the tax on individuals' income. In this regard, the Draft Amendments to the Income Tax Act, submitted for public consultation in September 2024, provide for a slight increase in the non-taxable personal deduction (also applicable to deductions for reported dependents), as well as a possible reshuffle of the local government tax rates (*i.e.*, cities and municipalities).

A Step Towards Making the Entire Case Law of Croatian Courts Publicly Available

Proposed Bill or Initiative

Authors: Marija Gregoric, Partner, and Matija Skender, Senior Associate – Babic & Partners Law Firm

The Croatian legal community has long debated the advantages and drawbacks of making case law publicly accessible. Currently, only a limited number of court decisions are processed and published. However, in late September 2024, the Croatian Ministry of Justice took a significant step forward by submitting for public consultation a Draft Regulation on Anonymization, Publication, and Browsing of Court Decisions.

While it is still uncertain when the majority of Croatian court rulings will become publicly available, this development is particularly exciting for employment law practitioners. Soon, they will have the opportunity to search and analyze case law on underrepresented topics, such as TUPE transfers (Transfer of Undertakings Protection of Employment) and dismissals for underperformance, which are currently hard to access or entirely absent from public records. This marks a potential breakthrough for those seeking deeper insights into employment law in Croatia.

Denmark

Amendments to the Danish Act on Working Hours Has Entered into Force

New Legislation Enacted

Authors: Bo Enevold Uhrenfeldt, Partner, and Maria Nordahl Hansen, Associate – Littler Denmark

On January 23, 2024, the Danish Parliament adopted a bill, the Danish Working Time Act, which, among other things, obliges employers to have a working time registration system that registers employees' daily working hours. The new rules on time registration came into force on July 1, 2024.

All employers are now required to implement an objective, reliable, and accessible time registration system to measure each employee's daily working hours. The system does not need to precisely record the start and end of working time, but it must be possible to record deviations from normal working hours.

One Month Delay in Employee's Dismissal for Establishing Competing Business Did Not Constitute Inaction

Precedential Decision by Judiciary or Regulatory Agency

Authors: Bo Enevold Uhrenfeldt, Partner, and Maria Nordahl Hansen, Associate – Littler Denmark

On July 4, 2024, the Eastern High Court ruled that establishing a competing business during one's employment and inquiring whether colleagues wanted to change companies constituted disloyal behavior. Furthermore, the Eastern High Court ruled that the delay of almost a month from the time the employer became aware of the disloyal behavior to when the employer dismissed the employee did not constitute inaction.

The High Court found it reasonable for the employer to seek a complete understanding of the business establishment before proceeding with the dismissal.

European Court of Justice Ruling Regarding Overtime Pay for Part-time Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Bo Enevold Uhrenfeldt, Partner, and Maria Nordahl Hansen, Associate – Littler Denmark

On July 29, 2024, the European Court of Justice ruled in the joined cases (C-184/22 and C-185/22) on a question regarding overtime pay to part-time employees. The case raised two key questions: 1) whether the collective bargaining agreement was in violation of the Framework Agreement on Part-Time Work, and 2) whether the collective bargaining agreement resulted in discrimination based on gender, given that most part-time employees are women.

The European Court of Justice ruled that part-time employees who only receive overtime pay for hours worked in excess of the normal working hours for full-time employees in a comparable situation would be contrary to EU law prohibiting discrimination against part-time employees. In addition, the European Court of Justice ruled that the objective factors presented in the case could not justify the discrimination.

Employee Entitled to Salary During Period from Notification of Intended Dismissal until Actual Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Authors: Bo Enevold Uhrenfeldt, Partner, and Maria Nordahl Hansen, Associate – Littler Denmark

A September 3, 2024, Supreme Court ruling established that an employee was entitled to salary during the period from the notification of an intended dismissal until the actual dismissal. The Supreme Court found that the employment relationship did not end until the actual dismissal, and consequently the employer was required to pay wages to the employee until the actual effective date of termination.

Egypt

Disbursement of Proceeds of Service Charges in Hotel and Tourist Establishments

New Order or Decree

Authors: Alia Monieb, Partner and Head of Employment, and Rawan Roshdy, Associate – ADSERO - Ragy Soliman and Partners

Decree No. 177 of 2024 regarding disbursement of service charges in hotel and tourist establishments (the Disbursement of Proceeds Decree) has cancelled ministerial Decree No. 125 of 2003 (the Previous Decree). The reason behind the cancellation of the Previous Decree is that on the May 4, 2024, the Supreme Constitutional Court in its ruling No. 166 of 20J held certain provisions from the Previous Decree to be unconstitutional, and accordingly cancelled it in whole.

It is worth noting that Egyptian Labor Law provides that the definition of employee salaries includes gratuities obtained by the employee, if granted on a customary basis and determined by certain regulations, which includes the percentages granted by customers in consideration for services at touristic establishments.

Restrictions on Training Centers' Names

New Order or Decree

Authors: Alia Monieb, Partner and Head of Employment, and Rawan Roshdy, Associate – ADSERO - Ragy Soliman and Partners

On June 13, 2024, the Minister of Labor issued Decree No. 143 of 2024 stating that companies involved in vocational training are not allowed to use the names of countries, regions, continents, or international geographic areas in their company or training center's trade name. Additionally, they may not use any words that are offensive to a group or sect, or promote discrimination against a particular group, or include the following terms (Academy - Institute - College - University - National - International).

The decree also allows for the cooperation between training centers and international entities or training centers outside Egypt, subject to the fulfillment of certain conditions.

Electronic Receipts Regarding Irregular Employees

New Order or Decree

Authors: Alia Monieb, Partner and Head of Employment, and Rawan Roshdy, Associate – ADSERO - Ragy Soliman and Partners

On May 1, 2024, the Ministry of Labor issued Decree No. 94 of 2024 about regulating electronic clearances or statements of irregular employment. Electronic clearances or statements regarding irregular employees, issued by the electronic platform for irregular employees' services at the labor directorates, must be considered valid and treated as official documents. Additionally, any electronic clearance previously issued by the competent labor directorates prior to the implementation of this decree will be accepted.

In this respect, labor directorates where the platform has been activated must provide an electronic link for assigning companies to verify the clearances or electronic statements issued by them.

Method to Determine Exact Salary for Deduction under the Fund Law

New Regulation or Official Guidance

Authors: Alia Monieb, Partner and Head of Employment, and Rawan Roshdy, Associate – ADSERO - Ragy Soliman and Partners

Various periodic circulars were issued with respect to the application of some of the provisions of the Fund Law. Periodic Circular No. 61 of 2024, in relevant part, outlined the method to determine the exact salary that is subject to the monthly 0.05% deduction, as provided under Article 8 of the Fund Law. The Fund Law establishes funds to honor the victims, missing, and/or injured of war and security operations and their families.

In light of the above, the Vice Minister of Finance of the National Treasury has endorsed what the Ministry of Finance decided during its committee meeting on April 4, 2024, (issued in July 2024) which led to the conclusion that the salary subject to the deduction addressed by Article 8 of the Fund Law is the fixed salary inclusive of any fixed variables.

Finland

Unemployment Security Act Amendments

New Legislation Enacted

Authors: Samuel Kääriäinen, Partner, and Severi Nordlund, Associate – Dottir Attorneys Ltd

On September 2, 2024, the Unemployment Security Act was amended to extend the employment requirement from six months to 12 months. The employment requirement refers to the period an employee must have worked before becoming unemployed to qualify for earnings-related or basic unemployment benefits. Additionally, the employment requirement is now "monetized," meaning it is no longer tied to a specific number of working hours per month but rather to the wages earned. In the future, one month of employment will be accumulated if the employee earns at least 930 euros in a calendar month, and half a month will be accumulated if the employee earns between 465 and 929 euros in a calendar month.

The Act on the Repeal of the Job Alternation Leave Act Entered into Force

New Legislation Enacted

Authors: Samuel Kääriäinen, Partner, and Severi Nordlund, Associate – Dottir Attorneys Ltd

The Act on the Repeal of the Job Alternation Leave Act came into force on August 1, 2024. As a result of this change, job alternation leave is no longer possible in Finland. However, if an employee started their job alternation leave before August 1, 2024, the leave will be governed by the law that was in effect prior to this date.

Supreme Court Rules Employer Discriminated Against Employees Bound by Union Overtime Ban

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner, and Severi Nordlund, Associate – Dottir Attorneys Ltd

The case concerned a situation where the employer offered some employees the opportunity to work overtime on weekends as piecework, despite an overtime ban declared by the trade union. The compensation paid to the employees for the work included, in addition to the calculated hourly wage and overtime pay, Sunday pay and weekly rest compensation, even though the overtime work was not performed on a Sunday.

The Supreme Court found that the employer had provided an extra benefit to those employees who agreed to work overtime during the trade union's declared overtime ban. By doing so, the employer discriminated against the plaintiffs based on their union activities compared to employees who were not bound by the overtime ban, and the employer was therefore obligated to compensate the plaintiffs in accordance with the Non-discrimination Act.

Legislation to Facilitate Local Bargaining Submitted to Parliament

Proposed Bill or Initiative

Authors: Samuel Kääriäinen, Partner, and Severi Nordlund, Associate – Dottir Attorneys Ltd

A bill to facilitate local bargaining has been submitted to Parliament for review. The bill would allow negotiation of company-specific collective agreements by removing restrictions that have so far limited bargaining to the national level for unions. The goal of the legislation is to make local agreements possible for all companies, regardless of whether the company is a member of an employers' association or the nature of employee representation within the company.

Currently, several laws contain provisions that prohibit the application of collective agreement clauses that deviate from the law and require local agreements in non-unionized workplaces. The reforms are intended to go into effect on January 1, 2025.

Increasing local agreements is one of the government's reforms aimed at making Finland's labor market more flexible.

France

CS3D: A Revolution in Social and Environmental Risk Management

New Legislation Enacted

Author: Bettina Paredes Potressoff, Knowledge Management Counsel – Littler France

The CS3D (the EU's Corporate Sustainability Due Diligence Directive) was adopted by the European Parliament on June 13, 2024, and will come into force on July 25, 2024, with incorporation into national legislation expected by July 26, 2026. The European Commission published an FAQ on August 7, 2024, to clarify its application, scope, and possible exemptions.

Inspired by a 2017 French law, the CS3D aims to prevent social and environmental risks for companies with more than 1,000 employees or 450 million euros in sales. Companies must draw up vigilance plans, including risk mapping and alert mechanisms while guaranteeing respect for labor rights.

In the event of non-compliance, companies can be liable for damages, with sanctions and fines. The directive also promotes social responsibility practices. At the same time, a chamber dedicated to the duty of care cases has been set up at the Paris Court of Appeal, which has handed down decisions against companies. These decisions underline the importance of accountability and clear identification of due diligence obligations.

Dismissal When Telecommuting Abroad Violates Company Policy

Precedential Decision by Judiciary or Regulatory Agency

Author: Bettina Paredes Potressoff, Knowledge Management Counsel – Littler France

On August 1, 2024, the Paris Industrial Tribunal (*Conseil de prud'hommes de Paris*) upheld the dismissal for serious misconduct of an employee who had been illegally teleworking in Canada without authorization. The company had a policy limiting teleworking, which the employee violated by concealing her situation and failing to comply with a formal notice to return to the office. The risks to the company included tax and social security implications, as well as breaches of data protection legislation.

The ruling raises questions about the consequence of unauthorized teleworking in the EU, where the risks would be lower. Nevertheless, dismissal for misconduct is still possible in the event of a clear breach of company policy. This decision helps to establish a body of case law in an area that is still unclear. This case may be appealed.

Employee Can Present Illicitly Obtained Evidence

Precedential Decision by Judiciary or Regulatory Agency

Author: Bettina Paredes Potressoff, Knowledge Management Counsel – Littler France

On June 6, 2024, the French Supreme Court ruled (no. 22-11.736) that an audio recording made by an employee without the employer's knowledge was admissible as evidence of a work-related accident and inexcusable fault. The employee, a victim of violence, produced this evidence to establish the nature of the accident. Despite the disloyal nature of the evidence, the Court ruled that its admission was justified, as it was essential to prove the facts, and the invasion of the employer's privacy was proportionate to the objective pursued.

This ruling is in line with the new case law of the plenary session of the French Supreme Court (ruling of December 22, 2023, No. 20-20.648), which held that evidence obtained illicitly or unfairly may be used in civil proceedings if it is indispensable and the infringement of the other party's rights is proportionate.

French Data Protection Authority Publishes Guide on Complying with EU's AI Act

New Regulation or Official Guidance

Author: Bettina Paredes Potressoff, Knowledge Management Counsel – Littler France

European Regulation (EU) 2024/1689, published in the Official Journal of the European Union on July 12, 2024, established rules for artificial intelligence (AI Act) and came partially into force on August 1, 2024, with full application expected in two years. This regulation classifies AI systems according to four levels of risk: unacceptable, high risk, specific in terms of transparency, and minimal.

In France, the French Data Protection Authority published a guide on July 12, 2024, to help companies comply with these new requirements, including aspects such as risk management and transparency. Non-compliant companies risk fines of up to 7% of their worldwide sales.

In addition, on September 25, 2025, over 100 companies signed the European AI Pact, promoting early adoption of the principles of the AI Act. This pact aims to encourage ethical AI, but some critics consider it symbolic. The European Commission also supports AI innovation with initiatives such as AI Factories to help start-ups develop industrial and scientific applications.

Germany

New Legislation on the Appropriate Remuneration of Works Council Members

New Legislation Enacted

Author: Dr. Stefanie Reiche, Counsel – Littler Germany

On July 25, 2024, clarifying provisions regarding the appropriate remuneration of works council (WC) members came into force. In accordance with German Law, WC members may neither be favored nor discriminated against, particularly with regard to remuneration, which must correspond to that of comparable employees. The legislative initiative was triggered by a ruling of the Federal Court of Justice (BGH, decision of January 10, 2023, ref. 6 StR 133/22), in which the court found that the management of a company may be criminally liable for embezzlement if they grant excessive remuneration to a WC member.

In order to reduce the risk of criminal liability, the new regulations provide:

- Comparable employees must be determined at the time of taking office; a later re-determination can only be made for objective reasons
- The employer and the WC, or the individual WC member, can come to an agreement regarding comparability, which can only be reviewed for gross errors; the same applies to the granting of benefits when its objective criteria are met

Companies should use these new standards to review the current compensation of their WC members.

Legal Shift in Germany: Stricter Scrutiny of Medical Sick Leave Certificates

Precedential Decision by Judiciary or Regulatory Agency

Authors: Matthias Pallentin, Partner, and Jonas Möllenkamp – Littler Germany

In Germany, there has been a significant change in the legal handling of sick leave certificates. In a ruling of September 18, 2024, the Federal Labor Court confirmed that employers can challenge the authenticity of sick leave certificates if they precisely match the notice period, thereby questioning the legitimacy of sickness claims. Previously, employers faced difficulties proving false sickness claims, but now the burden of proof can be shifted to the employee if the medical sickness certificates raise reasonable doubt.

This development, driven by increasing sick leave rates, supports employers' rights to withhold wages if the validity of a medical certificate is questioned. Overall, the courts are strengthening employers' position against potentially fraudulent sickness claims.

Prima Facie Evidence of Termination Delivery by Registered Mail

Precedential Decision by Judiciary or Regulatory Agency

Author: Philipp Schulte, Associate – Littler Germany

Terminations in Germany require the delivery of original wet-signed termination letters to the employee. The notice periods start once the termination letter is physically received by the employee. If the letter is placed in the employee's letterbox within regular delivery hours, the letter is considered received on that day. In a recent decision by the Federal Labor Court (BAG, decision dated June 20, 2024 - Ref No. 2 AZR 213/23 - published August 2nd, 2024), the judges found that the receipt of delivery via registered mail signed by the postal worker provided *prima facie* evidence that delivery happened during regular delivery hours even though the receipt only showed the date and not the time of receipt.

Employers are well-advised to ensure termination letters are received by the employee in time. Where month's end is fast-approaching, employers can consider hiring courier services to ensure timely delivery rather than relying on the postal service. Employers whose personnel authorized to sign termination letters are not based in Germany should allow for additional time during the termination process to ensure timely delivery to the employee in Germany.

Recording of Working Hours: The Hamburg Administrative Court Implements the Rulings of the Federal Labor Court

Precedential Decision by Judiciary or Regulatory Agency

Author: Alke Helene Sundermann, Senior Associate – Littler Germany

In a decision dated August 21, 2024 (15 K 964/24), the Hamburg Administrative Court referred to the May 14, 2019 EU Working Time Directive, which required all EU member states to ensure that employers establish systems that objectively, reliably, and transparently record employees' working hours, as well as the September 13, 2022 Federal Labor Court ruling, which required employers to record working hours. The Hamburg Administrative Court confirmed that employers must already record working hours based on existing law, specifically the German Occupational Health and Safety Act (ArbSchG). The court clarified that this obligation does not require additional legislative action; it is already binding under current regulations.

This is a significant point because the employer involved argued that the law was not yet applicable without further legal enactment. The court dismissed this view, stating that employers are already required to document working hours, including the start and end times of daily work as well as overtime, in compliance with European Union directives.

The ruling is important for companies in Germany as it highlights the requirement for immediate compliance with time recording obligations, rather than waiting for further legal clarifications. While the court emphasized that employers have flexibility in how they implement their time tracking systems, it also put pressure on them to ensure compliance with the law now. Failure to do so could result in high fines.

Hungary

New Rules on Free Health Checks

New Legislation Enacted

Author: Zoltán Csernus, Attorney-at-Law – VJT & Partners Law Firm

As of September 1, 2024, employers are no longer required to provide free medical health checks for employees before they start working and at regular intervals during the employment, except in cases specified by law or if the employer orders it. However, as of September 28, according to ministerial decrees, such free medical health checks must be provided in the economic sectors supervised by the Minister of Economy, the Minister of Transport and Construction, the Minister of Agriculture, the Minister of Interior and the minister supervising the Prime Minister's office.

From now on employers will have to check the relevant ministerial decrees to determine whether their activity is covered by these decrees, and if it is, they will have to provide free medical health checks for employees before they start working and at regular intervals during employment.

Employee's Obligation to Mitigate Damages

Precedential Decision by Judiciary or Regulatory Agency

Author: Zoltán Csernus, Attorney-at-Law – VJT & Partners Law Firm

The Supreme Court ruled that if, after an unfair dismissal, the employee does not apply for unemployment benefits, does not cooperate with the labor authorities to find a new job, and cannot prove they actively searched for a new job, the employee breached their obligation to mitigate the damages due to unfair dismissal and cannot claim damages from the employer due to loss of income.

India

Tamil Nadu: Government Implements Key Amendments to Shops and Establishments Act for Enhanced Compliance and Safety

New Legislation Enacted

Authors: Vikram Shroff, Partner, and Nipasha Mahanta, Associate – AZB & Partners

The Tamil Nadu Shops and Establishments (Amendment) Act, 2023 went into effect on July 2, 2024. The key changes include:

- Mandatory Registration: Every establishment employing at least 10 employees must register by submitting an online application in the prescribed form along with the required fee within six months of commencing business, for new establishments, and within one year from the amendment's July 2, 2024, effective date for existing establishments. Employers must display the registration certificate prominently and inform the labor inspector of any changes, or closure, within 30 days from such change. Additionally, if a registration certificate is lost or damaged, employers must apply for a duplicate and pay the required fee.
- Deemed Registration: The inspector is required to issue a registration certificate within 24 hours of application submission; if not done, the registration is automatically deemed granted.
- Facilities for Employees: Employers are required to provide sufficient supply of drinking water, adequate number of latrines and urinals, suitable rest and lunchrooms equipped with drinking water, proper ventilation, lighting, and clean furnishings and first-aid facilities.

Karnataka: Permission for All Shops and Commercial Establishments in Karnataka to Operate on a 24x7 Basis on All Days of the Year

New Legislation Enacted

Authors: Vikram Shroff, Partner, and Nipasha Mahanta, Associate – AZB & Partners

Effective September 27, 2024, the Karnataka state government, which includes the city of Bengaluru, issued a law permitting all shops and establishments in the state of Karnataka to operate on a 24x7 basis on all days of the year for three years, subject to certain conditions.

The applicable conditions include:

- Provision of one day off per week for all employees for rest and the appointment of additional staff to accommodate this
- Payment of wages, including overtime wages, to employees' bank accounts
- Limiting working hours, including overtime, to 10 hours per day; limiting overtime to 50 hours in a period of three consecutive months
- Engaging female employees between 8:00 P.M. and 6:00 A.M. is subject to obtaining written consent, and providing adequate protection, including transportation at the main entrance of the establishment, facilities like restrooms, washrooms, safety lockers, and an internal complaints committee per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India

Violation of these conditions for operation on a 24x7 basis will lead to penalties against the employer per the Karnataka Shops and Commercial Establishments Act, 1961, which provides for monetary penalties of up to INR 2,000 (approx. USD 24).

Lock-In Periods in Employment Contracts Held Valid and Enforceable

Precedential Decision by Judiciary or Regulatory Agency

Authors: Vikram Shroff, Partner, and Nipasha Mahanta, Associate – AZB & Partners

In the case of *Lily Packers Private Limited v. Vaishnavi Vijay Umak*, the Delhi High Court clarified the enforceability of lock-in period clauses in employment contracts, affirming their constitutional validity. The court emphasized that such clauses protect employers from high employee turnover costs and secure their investment in training employees.

The employment contract at issue included a three-year lock-in period during which the employee could not terminate her employment. The employee left the company prematurely after one year and two months, leading to a dispute. The court ruled that reasonable lock-in periods do not violate fundamental rights as they are entered into with mutual consent. These clauses help maintain organizational stability and continuity, particularly in roles where significant training is involved. The judgement held that through lock-ins, the employer cannot attempt to restrain employees from seeking post-termination employment. The court also held that disputes arising from breaches of employment contracts or lock-in clauses are considered contractual disputes and are arbitrable under the Arbitration and Conciliation Act, 1996.

The judgment reinforces that lock-in periods serve legitimate business interests without imposing unreasonable restrictions on employees' rights to seek employment after the contract's termination. It also highlights the importance of transparency and informed consent in employment agreements.

Union Ministry of Labor and Employment Launches Initiative to Provide Social Security Benefits for Gig Workers

Important Action by Regulatory Agency

Authors: Vikram Shroff, Partner, and Nipasha Mahanta, Associate – AZB & Partners

On September 16, 2024, The Central Ministry of Labor and Employment announced a significant initiative to extend social security benefits to gig and platform workers by inviting platform aggregators to register their workers on the "e-Shram" portal.

Key points include:

- Registration Process: The Ministry has issued an advisory with a Standard Operating Procedure (SOP) that outlines the responsibilities of platform aggregators, which include registering workers and maintaining updated data.
- Universal Account Number (UAN): Once registered, platform workers will receive a UAN, granting them access to key social security benefits.
- API Integration: The government has successfully tested API integration with several aggregators to facilitate the registration process.
- Regular Updates: Aggregators are required to regularly update worker details, including work engagement and payments, and report any exits promptly.
- Grievance Redressal: A toll-free helpline (14434) has been established to assist with onboarding and resolving technical issues.

Registration is essential for ensuring that workers can access various social welfare programs, while also helping create an accurate registry of beneficiaries.

Union Minister Launches SHe-Box Portal to Enhance Workplace Safety for Women

Important Action by Regulatory Agency

Authors: Vikram Shroff, Partner, and Nipasha Mahanta, Associate – AZB & Partners

On August 29, 2024, the Central Ministry of Women and Child Development launched the new SHe-Box portal in New Delhi.

Key features of the SHe-Box portal include:

- Centralized Repository: It serves as a repository for information related to Internal Committees and Local Committees that handle complaints of sexual harassment. The portal is open for both organized or unorganized sectors, in public or private organizations, and for domestic workers.
- Complaint Registration: Female employees can file complaints easily, track their status, and ensure timely processing by the relevant committees.
- Confidentiality Assurance: The portal provides assurance complaints will be handled confidentially, protecting the identities of those who report harassment.

Indonesia

Employer Obligations Under New Law on Maternal and Child Welfare

New Legislation Enacted

Author: Syahdan Z. Aziz, Partner – SSEK Law Firm

On July 2, 2024, the Government of Indonesia enacted Law No. 4 of 2024 regarding Maternal and Child Welfare During the First Thousand Days of Life (Law 4/2024), which affects employers in Indonesia and their obligations to working mothers and fathers. Law 4/2024 sets out several rights of working mothers and fathers, including rights to maternity leave; leave due to miscarriage; adequate facilities and time to express breast milk while at work; sufficient time off in their children's best interest; and affordable daycare.

Employers should begin the process of ensuring compliance with Law 4/2024 considering that the government is expected to issue implementing regulations for the new law within the next two years.

Clarification on Employment of Foreign Workers in New Capital

New Regulation or Official Guidance

Author: Stephen Igor Warokka, Partner – SSEK Law Firm

Indonesia issued Government Regulation (GR) No. 29 of 2024 on August 12, 2024, to amend GR No. 12 of 2023 on the Issuance of Business Licenses, Ease of Doing Business, and Investment Facilities for Business Actors Within the Capital City of Nusantara (Ibu Kota Nusantara or IKN). The purpose of the regulation is to attract investors to IKN and areas of Kalimantan that are part of the IKN economic superhub.

This new amendment, among other things, clarifies that companies that conduct business and/or activities in IKN may employ foreign workers and be granted work permits for a period of 10 years, which are extendable. Businesses that employ foreign workers in IKN must appoint an Indonesian worker as a "companion worker" to the foreign worker; carry out education and job training for the companion workers based on the requirements of the positions occupied by the foreign workers; and return the foreign workers to their home country at the end of their work in Indonesia.

Payment System Providers Must Submit Funding Plans by December 13, 2024

Upcoming Deadline for Legal Compliance

Author: Winnie Yamashita Rolindrawan, Partner – SSEK Law Firm

Indonesia's central bank, Bank Indonesia, issued BI Regulation No. 5 of 2024 regarding the Standardization of Competencies in the Payment Systems Field. One of its requirements is that payment service providers, payment system infrastructure providers, rupiah management service providers, and non-bank foreign exchange business activity providers in Indonesia allocate sufficient funds to develop and strengthen their human resource competencies.

The regulation requires affected companies to determine the funds required and subsequently report their funding plan to Bank Indonesia, with a deadline of December 13, 2024, to submit the funding plans for 2025.

Ireland

Parent's Leave Extended to Nine Weeks

New Legislation Enacted

Authors: Niall Pelly, Partner, and Lisa Collins, Associate – GQ | Littler

The Parent's Leave and Benefit Act 2019 has been amended to increase the entitlement to parent's leave from seven to nine weeks. The implementing legislation took effect on August 1, 2024.

Labor Court Finds in Favor of Employer in Training Case

Precedential Decision by Judiciary or Regulatory Agency

Authors: Niall Pelly, Partner, and Lisa Collins, Associate – GQ | Littler

In a recent case, the Labor Court found that the employer was not required to pay any of the costs incurred by the complainant in obtaining expert assistance and attending an unapproved training session.

Based on its obligations under the Transnational Information and Consultation of Employees Act, 1996, the employer provided training by independent legal experts for European Works Council (EWC) members. Not satisfied that the training met the requirements under the 1996 Act, some EWC members attended an additional training course in Germany, despite the employer indicating that it would not cover the cost of this training. The EWC members also retained an expert from the EWC Academy in Hamburg, without seeking pre-approval from the employer for the cost of this expert.

The Labor Court found that the training the employer provided satisfied its obligations under the 1996 Act, and that the employer was not required to pay any of the costs involved in obtaining the expert assistance.

Israel

Comprehensive Amendment to the Privacy Protection Law

New Legislation Enacted

Author: Michal Feinberg-Doron, Partner – N. Feinberg & Co.

On August 14, 2024, a comprehensive amendment to the Privacy Protection Law (the Law) was published and will enter into effect in August, 2025. The statutory amendment enhances the basic right to privacy of personal data and strengthens the enforcement capabilities of the Privacy Protection Authority in the Ministry of Justice regarding violations of the law and non-compliance with legal requirements on data security. The law also enhances the response to cyber threats and aligns with European privacy protection laws.

The statutory amendment identifies certain types of "personal information" as "information of special sensitivity," in line with international standards for personal data protection, as established in the European Union's General Data Protection Regulation (GDPR). The statutory amendment addresses the following key areas:

- Expansion of the supervisory and enforcement powers of the Privacy Protection Authority, including imposing significant financial penalties for violating the provisions of the Law and data security regulations
- Requiring a privacy protection officer in any organization whose primary activities involve processing a significant amount of sensitive personal data or a significant amount of surveillance or systematic monitoring of individuals
- The amendment eliminates the obligation for private sector entities to register their managed databases, except for databases maintained by those involved in the trading of information

Including Sales Commissions in Overtime Pay

Precedential Decision by Judiciary or Regulatory Agency

Author: Michal Feinberg-Doron, Partner – N. Feinberg & Co.

The National Labor Court issued a judgment in a class action filed against an insurance company concerning the inclusion of sales commissions in overtime paid to employees. The commissions constituted a significant component of the employees' wages and was included in the calculation of pension insurance. The National Labor Court approved the case to be heard as a class action and ruled that there was a reasonable possibility that the class action would succeed.

Accordingly, the commissions will be included in calculating overtime pay, thereby establishing a new legal precedent.

Italy

Penalty for Employers Providing Sub-Standard Accommodations to Foreign Employees

New Order or Decree

Author: Carlo Majer, Partner, and Martina Vianello, Associate – Littler

On September 17, 2024, Decree Law No. 131 (Save Infractions Decree), went into effect and introduced a penalty for those who violate Article 24 of Legislative Decree 286/1998 (so-called Consolidated Immigration Act).

Specifically, Article 9 of Decree Law 131/2024 provides for an administrative fine of EUR 350 to EUR 5,500 for each foreign employee that the employer provides with sub-standard accommodations or at an excessive fee, or if the employer withholds the fee from employee's salary. The rent is always considered excessive when it is more than one-third of the employee's salary.

Conversion of Fixed Term Contracts to Permanent Contracts and Compensation in Excess of 12 Months' Salary

New Order or Decree

Authors: Carlo Majer, Partner, and Elena Piccinelli, Associate – Littler

Legislative Decree 131/2024, which came into force on September 17, 2024, introduced some changes to the rules for the conversion of fixed-term contracts into permanent contracts.

In cases involving conversion of unlawful fixed-term contracts into indefinite term contracts, article 11 of the law allows a judge to award the employee more than 12 months' salary. The current indemnity amount, which is 2.5 to 12 months' salary, remains in effect but can be exceeded if the employee proves they have suffered greater damages.

The law also cancelled a rule that allowed collective bargaining agreements to halve the 12 months' salary indemnity.

New Protocol to Ensure People with Disabilities Have Full Access to Employment Opportunities

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Martina Vianello, Associate – Littler

On September 17, 2024, the Ministry of Labor and Social Policy, signed a Memorandum of Understanding between the National Council of the Order of Labor Consultants and the National Association of Families and People with Intellectual Disabilities and Neurodevelopmental Disorders (Anffas) to ensure that people with disabilities have full access to employment opportunities.

Constitutional Court Ruled on Reinstatement After Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Authors: Carlo Majer, Partner, and Francesca Bonavina, Associate – Littler

On July 16, 2024, the Italian Constitutional Court affirmed that reinstatement must apply when the material facts on which the dismissal was based cannot be ascertained by the Court, even when the reasons that prompted the company to dismiss the employee are not subject to review by the Court.

Kingdom of Saudi Arabia

New Social Security Law

New Legislation Enacted

Authors: Sara Khoja, Partner, and Sarit Thomas, Knowledge Management Counsel – Clyde & Co.

The Council of Ministers enacted a new Social Insurance Law on July 3, 2024, which exclusively applies to new employees. This new legislation maintains the existing Civil Pension and Social Insurance laws for current contributors, with some exceptions related to retirement age and pension eligibility. The new law targets individuals entering both public and private sectors who have no prior contributions under the existing laws.

For new hires, the contribution rate starts at 18% for the first 12 months, split equally between the employer and employee. After the first year, the rate gradually increases monthly until it reaches 22%. Additionally, unemployment insurance contributions are set at 1.5%, also shared evenly between the employer and employee.

Current contributors are generally unaffected by the new law unless they are under 50 years of age or have less than 20 years of service. These individuals will face changes in retirement age and contribution periods. The new retirement age for these contributors will be between 58 and 65 years, with an initial increase of four months based on their age as of the amendment's effective date. However, those aged 50 years or older, or with 20 or more years of service, will not experience any changes in their retirement provisions.

Significant Amendments to the Labor Law

New Legislation Enacted

Authors: Sara Khoja, Partner, and Sarit Thomas, Knowledge Management Counsel – Clyde & Co.

The Council of Ministers approved significant amendments to the Labor Law. The amendments include modifications to 38 existing articles, the removal of 7 articles, and the introduction of 2 new provisions.

The key areas of amendments include:

- New Definition of Resignation: Employees can now resign with a written declaration, and employers must respond within 30 days, with the possibility of delaying acceptance for up to 60 days if justified by business needs but must notify employees in writing within the first 30 days.
- Overtime Compensation: It can be substituted with compensatory leave upon employee consent, with further details to be provided in the Implementing Regulations.
- Employee Benefits: Employers are mandated to include accommodation and transportation or equivalent allowances as part of the employee's overall benefits package.
- Probation Period: It is capped at 180 days and must be specified in the employment contract. Holidays during the probation period will be clarified in the upcoming Implementing Regulations.
- Fixed-term Contracts for Non-KSA Nationals: Non-KSA national workers must have written, fixed-term contracts, defaulting to one year if unspecified, with automatic renewal if employment continues.
- Maternity Leave: It is extended to 12 weeks with full pay, split between six weeks post-delivery and six weeks starting up to four months before the due date.
- Parental Leave: Fathers are entitled to three days of paid leave within seven days of the birth.
- Bereavement Leave: It includes three days of paid leave for a sibling's death.
- Termination of Employment: Bankruptcy is now a valid reason for contract termination.

- Notice Periods: Notice period for termination is now set at 30 days for employees and 60 days for employers for indefinite contracts.
- Penalties for Violations: Employers offering manpower services without proper certification now face fines between SAR 200,000 and SAR 500,000.
- Sector-specific Changes: Maritime workers on ships below 500 tons are now subject to the Labor Law, with specific provisions to be detailed in a future Ministerial Resolution.

The amendments were published in the *Legal Gazette* on August 23, 2024, and will take effect on February 20, 2025, 180 days after publication.

Lebanon

Amendment to the National Social Security Law

New Order or Decree

Authors: Fadi Nader, Partner, and Maya Moughanni, Partner – Bridge Legal Group

Pursuant to Decree No. 13619, issued by the Council of Ministers on July 10, 2024, the amount of monthly family allowances provided for under Articles 46 to 48 of the National Social Security Law will be capped at LBP 2,250,000, and will be distributed between the spouse (instead of wife as provided for in Decree no.12599) and children as follows:

- LBP 600,000 for the spouse (husband or wife)
- LBP 330,000 for each child, up to five children

Malaysia

Amendments to the Personal Data Protection Act 2010

New Legislation Enacted

Author: Adryenne Lim Sue Yee, Associate – Skrine

The Personal Data Protection (Amendment) Bill 2024 was passed by Parliament in July 2024 and will become law after Royal Assent and publication.

Key changes for employers include: (i) A mandatory requirement to appoint a data protection officer responsible for compliance with data laws; and (ii) Biometric data is now classified as "sensitive personal data." This means that employers must now: (i) Appoint a data protection officer; and (ii) Obtain explicit consent from employees when processing biometric data, such as fingerprints, to meet stricter standards for handling sensitive personal data.

Leave of Court is Required When Commencing an Action or Proceeding Against a Liquidated Company

Precedential Decision by Judiciary or Regulatory Agency

Author: Adryenne Lim Sue Yee, Associate – Skrine

On July 15, 2024, the Court of Appeal held that leave of court is required to bring an action against a company in liquidation. This requirement applies to unjust dismissal claims even though the applicable provision, Section 20(3) of the Industrial Relations Act 1967 (IRA), does not address the issue of liquidated companies. The court determined that Section 451(2) of the Companies Act 2016, which requires leave to sue a liquidated company, prevails over Section 20(3) of the IRA.

Mexico

Amendment to Official Holidays in Mexico

New Legislation Enacted

Authors: Erick Fernández Mata, Associate, and Tania Terrazas, Shareholder – Littler

On September 30, 2024, an amendment to Article 74 of the Federal Labor Law was published in the Official Gazette of the Federation. This article lists the official holidays to be observed in Mexico, including the day on which each President begins their term every six years, which previously took place on December 1.

As a result of a reform to the Constitution in 2014, each new President will now take office on October 1 every six years. The amendment to the Federal Labor Law establishes October 1 every six years, and not December 1, as an official holiday.

Netherlands

Proposed Bill Introducing Bereavement Leave

Proposed Bill or Initiative

Authors: Wouter Heere, Associate, and Eva Schneiders, Associate – Clint | Littler

The proposed bill introducing Bereavement Leave (*Wetsvoorstel invoering rouwverlof*) aims to introduce paid bereavement leave for working parents with minor children. The plans are as follows:

- A statutory minimum of five days' bereavement leave, in case of full-time employment. These days will be paid for by the employer.
- Leave from the day of a funeral until one year after the death of either a parent or a minor child.

The Bill was submitted to the House of Representatives on July 12, 2024, but the House of Representatives and the Senate have yet to approve it, and it is not yet certain if and when the Bill will enter into force.

Increase in Statutory Minimum Hourly Wage from July 1, 2024

Legal Compliance

Authors: Wouter Heere, Associate, and Eva Schneiders, Associate – Clint | Littler

From July 1, 2024, the statutory minimum hourly wage increased from EUR 13.27 per hour to EUR 13.68 per hour for all workers aged 21 and over.

Nigeria

Retroactive Payments Due to New National Minimum Wage

New Legislation Enacted

Authors: Ugonna Ogbuagu, Partner, and Sinmiloluwa Lala, Associate – AELEX

On July 29, 2024, the President of Nigeria signed the National Minimum Wage (Amendment) Act 2024. This amendment sets the new minimum wage at NGN 70,000, an increase from previous sum of NGN 30,000. The amendment applies retroactively from May 1, 2024, requiring employers to compensate employees for any wage differences from that date. Also, the Act shortened the wage review cycle from five years to three years. Accordingly, the new minimum wage of NGN 70,000 is set to expire and be reevaluated in 2027.

Employers are required to implement the new minimum wage immediately, including retroactive payments to be made from May 2024. Employers must also maintain comprehensive records of their compliance with the Act and review all relevant statutory deductions to ensure that accurate payments are made in accordance with the updated wage structure.

Mandatory Social Health Insurance for Employees in Lagos State, Nigeria

New Order or Decree

Authors: Ugonna Ogbuagu, Partner, and Sinmiloluwa Lala, Associate – AELEX

On July 16, 2024, the Governor of Lagos State, Nigeria issued an Executive Order (the Order) under the National Health Insurance Authority (NHIA) Act, 2022 and the Lagos State Health Scheme Law, 2015, mandating enrollment of all employees resident in Lagos State, Nigeria in a Social Health Insurance Scheme either from the Lagos State Health Management Agency or any private provider accredited by the National Health Insurance Authority and registered with the Lagos State Government to access healthcare services within the State.

While Lagos State has aligned with the NHIA Act through this Order, employers in Lagos State, as well as those with employees across multiple states, must ensure compliance with this Order for their Lagos-based employees. Given that the NHIA Act is a Federal legislation, it is advisable for employers to expect similar regulations in other states to align with the NHIA Act.

Reasonable Time in Employee Investigations

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ugonna Ogbuagu, Partner, and Adejumoke Ademola, Associate – AELEX

In assessing whether an employee has been given adequate time to prepare their defense, on August 13, 2024, the National Industrial Court of Nigeria (NICN) ruled that summoning an employee to appear before an investigative committee within 24 hours, especially outside their usual place of work, did not allow sufficient time for the employee to defend against the allegations made. The sensitive nature of the allegations (sexual harassment) and the power differential between the employee and the complaining party did not justify the short timeline.

Consequently, the court held the employee's termination was wrongful, awarding compensation in the form of two years' salary.

Norway

Stricter Contract Rules and Probation Limitations Under the Working Environment Act

New Legislation Enacted

Author: Maria Skuggevik Slotnes, Senior Associate – Littler Norway

New amendments to the Working Environment Act came into effect on July 1, 2024, aligning Norwegian law with the EU Working Conditions Directive. These changes include updated requirements for employment contracts, such as specifying the employee's workplace flexibility and their rights to paid absences, including sick leave and parental leave. Contracts must now also outline termination procedures, and any additional remuneration outside of salary must be clearly detailed.

Employment agreements signed after July 1, 2024, must comply with these new rules, and contracts must be provided within seven days. New limitations on probationary periods have also been introduced, with temporary employment probation not exceeding half the employment duration or six months.

Learn more at Littler.no.

No Occupational Injury Insurance for Injury During a Break at Home

Precedential Decision by Judiciary or Regulatory Agency

Author: Maria Skuggevik Slotnes, Senior Associate – Littler Norway

The Supreme Court ruled that a doctor who injured her foot during a break at home was not "at work" and thus not entitled to occupational injury coverage. The injury occurred while she was walking in her garden during a weekend shift break. The Court reasoned that injuries sustained during breaks at home fall outside the scope of occupational injury insurance. Additionally, the ruling clarified that home office coverage only applies while actual work is being performed, excluding injuries occurring during non-work activities at home.

Learn more at Littler.no.

Peru

Modernization of the Pension System

New Legislation Enacted

Authors: César Gonzáles Hunt, Partner, and Amable Vasquez Baiocchi, Associate – Philippi Prietocarrizosa Ferrero DU & Uría

On September 24, 2024, Act 32123 was published. This law extends pension protection to all citizens whether they have a labor relationship or not, or a prior pension system affiliation. It introduces significant changes to the current pension system, unifying both the national and private systems into one sole legislation.

Approval of Mandatory Notification via Electronic Mailbox for the Ministry of Labor

New Regulation or Official Guidance

Authors: César Gonzáles Hunt, Partner, and Amable Vasquez Baiocchi, Associate – Philippi Prietocarrizosa Ferrero DU & Uría

The Supreme Decree 004-2024-TR published on August 30, 2024, approves the mandate of the electronic notification via electronic mailbox for all communications from the Ministry of Labor and Promotion of Employment. The electronic notification has the same effect as physical notification.

Philippines

Illegally Dismissed Probationary Employees Now Entitled to Full Back Wages Until Reinstatement

Precedential Decision by Judiciary or Regulatory Agency

Authors: Emerico O. de Guzman, Of Counsel, and Franchesca Abigail C. Gesmundo, Senior Associate – Angara Abello Concepcion Regala and Cruz Law Office

On July 31, 2024, the Philippine Supreme Court clarified the judgment to be awarded to illegally dismissed probationary employees. Previous rulings have limited the amount of back wages awarded to illegally dismissed probationary employees to the unexpired portion of the probationary period. In this decision, the Supreme Court stated that it is more in keeping with the protections accorded to employees to award these employees with full back wages from the time their compensation was withheld until they are reinstated.

Poland

Changes in the Law Due to the Floods

New Legislation Enacted

Authors: Miłosz Awedyk, Partner, and Michał Fijak, Associate – PCS | Littler

For almost a month, southern Poland has been struggling with one of the largest floods in the country's history. Due to the current state of natural disaster in many affected municipalities, numerous ad hoc legal regulations have been introduced, including those in the field of labor law. In particular, employers may entrust employees

with work of a different type than that provided in the employment contract, when necessary due to the effects of flooding at the employer's workplace. In such cases, the employee retains the right to their previous remuneration, in accordance with the applicable rules for calculating remuneration for vacation leave.

A "Flood Law" is also being drafted that among other things would prohibit employers from instructing an employee to work overtime; expand opportunities for an employee to request leave on demand; and grant an employee's request to shorten working hours for a specified period of time.

Minimum Wage and the Benefits Increases

New Legislation Enacted

Authors: Miłosz Awedyk, Partner, and Michał Fijak, Associate – PCS | Littler

The second wave of minimum wage increases was introduced on July 1, 2024. This is the last increase scheduled for 2024. As of July 1, 2024, the minimum monthly wage is PLN 4,300, and the minimum hourly rate is PLN 28.10. Along with the increase in the minimum wage, the amounts of some employee benefits and allowances were also increased, such as: allowances for night work or the amount of sickness benefit.

New Laws Protecting Minors in the Workforce

New Legislation Enacted

Authors: Miłosz Awedyk, Partner, and Michał Fijak, Associate – PCS | Littler

As of August 15, 2024, new laws providing standards for the protection of minors entered into force. In consequence, employers who employ minors (*e.g.*, in vocational training) must, *inter alia*, introduce and apply appropriate procedures for protecting minors, including the protection of minors from sexual crimes. The procedures should indicate how the employer and other employees should react in the event of a suspected crime and how to help the minor.

Draft Bill on Minimum Wage

Proposed Bill or Initiative

Authors: Miłosz Awedyk, Partner, and Michał Fijak, Associate – PCS | Littler

In August, Polish authorities began work on implementing the EU minimum wage directive. The draft bill envisages the introduction of the minimum wage as a basic salary, which means that other components such as bonuses will not be included. It also provides that salaries should be updated at least every four years, considering, among other things, purchasing power or the general level of wages.

The draft also provides for major changes to the Labor Code, *e.g.*, a new type of crime and offense related to the employer's violation of the right to wages. Failure to pay wages for at least three months will be punishable by a fine, restriction of liberty or imprisonment for up to two years. According to the plan, work on the law is expected to be completed this November.

Portugal

Financial Support to Companies Hiring Unemployed Citizens

New Legislation Enacted

Authors: David Carvalho Martins, Partner and Head of Employment, and Gabriela Plácido Alves – DCM | Littler

Ministerial Order No. 220/2024/1, of 23 September, 2024 grants employers financial support for signing open-ended, full-time employment contracts with unemployed citizens, registered in "IEFP" (administrative entity). The amount of financial support is 12 times the value of the social support index (the IAS), currently EUR 509.26. This financial support may be increased by 35%, depending on employee characteristics, such as health status and age, among other factors.

The forms and submission platforms for employers are not yet available.

Statutes of Limitations for Labor Claims

Precedential Decision by Judiciary or Regulatory Agency

Authors: David Carvalho Martins, Partner and Head of Employment, and Gabriela Plácido Alves – DCM | Littler

In a recent ruling, the Appeal Court of Porto (ACP) held the following:

- The applicable statute of limitations for claims arising directly from the employment relationship is set forth in the Labor Code - one year from the day after the employment contract ended.
- However, claims resulting from an agreement to revoke the employment contract would be subject to the ordinary statute of limitations set forth in the Civil Code, *e.g.*, credits resulting from a posthumous stock options plan could be included in a civil expiration rule (up to 20 years).

When is an Employment Contract Null and Void of Effects?

Precedential Decision by Judiciary or Regulatory Agency

Authors: David Carvalho Martins, Partner and Head of Employment, and Nuno Abranches Pinto, Partner – DCM | Littler

The Portuguese Supreme Court of Justice recently ruled on the legal implications of employment contracts for company board positions in Portugal. The Court clarified that employment contracts between a director and a company may be (depending on the contractual model) considered null and void if executed during the director's tenure, including contracts with a holding or group company. However, according to Article 125 of the Labor Code, once the director's position ceases, the employment contract may be retroactively validated from the start of its execution, provided the prohibition period has ended.

Company boards are well advised to carefully consider this legal framework, especially within the contexts involving corporate group relationships or single-company scenarios.

Puerto Rico

Hair Style Discrimination Is Now Statutorily Prohibited in Puerto Rico

New Legislation Enacted

Authors: Verónica Torres Torres, Attorney-at-Law, and Mariel Torres – Schuster LLC | Littler

On July 24, 2024, the Governor of Puerto Rico signed Act 106-2024, as the Law Against Discrimination Based on Hair Styles. This law adopts as public policy the express prohibition of discrimination in the offering of public services, employment, education, and housing, in the public and private sectors, based on individuals' protective hairstyles or hair textures, which are regularly associated with a particular race or national origin. The Act defines protective hairstyles as those used to maintain curly hair naturally, including, but not limited to, tight rolls or curls, locs, twists, braids, Bantu knots, and afros. In addition, the Act provides that no person shall be denied access, service, or equal treatment on public sites and businesses, as defined in the Puerto Rico Civil Rights Act, for having such protective styles or hair textures.

Therefore, all agencies, instrumentalities, departments, public corporations of the Executive Branch of Puerto Rico, as well as the municipalities, the Legislative and the Judicial Branch, are ordered to revise their personnel policies to clearly state the public policy against discrimination of any sort. Likewise, every private employer and private educational institution in Puerto Rico must adopt or modify its policies in compliance with this law.

Secretary of Labor Clarifies Implementation of Remote Work Regime

New Regulation or Official Guidance

Authors: Verónica Torres Torres, Attorney-at-Law, and Mariel Torres – Schuster LLC | Littler

On September 10, 2024, the Puerto Rico Secretary of Labor issued an Opinion (No. 2024-02) to clarify and provide additional information about the application of Act No. 27-2024, known as the "Act to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Bases in Puerto Rico." The new

guidance clarifies that employment relationships between covered employers from out-of-state jurisdictions and remote employees domiciled in Puerto Rico are governed by their employment agreements when all the following conditions are met: (i) the employee is an "exempt employee" under the Fair Labor Standards Act and Puerto Rican regulations; (ii) resides in Puerto Rico; (iii) the employer is covered by Act No. 27-2024; and (iv) the employee works remotely.

If an employee relocates to Puerto Rico on a non-domiciled basis to work remotely for a covered employer, the covered employer is exempt from Puerto Rico state employment laws, including those related to benefits and insurance. In these situations, the employment relationship will be governed by the employment agreement or, if none exists, by the laws of the employee's original domicile. Furthermore, employees of airlines that establish air bases or crew bases in Puerto Rico who are covered by collective bargaining agreements are excluded from Puerto Rico employment law protections and will be governed solely by their agreements.

Puerto Rico Supreme Court Clarifies Employment Claims Inheritance Rights

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sashmarie Z. Rivera López, Attorney-at-Law, and Mariel Torres – Schuster LLC | Littler

On June 21, 2024, the Supreme Court of Puerto Rico decided that claims for wrongful termination and age discrimination are transferable to the employee's heirs following the employee's death. The Supreme Court affirmed that the heirs of an aggrieved employee have standing to replace the deceased and continue any claim pending before the courts. Moreover, they have standing to initiate the labor claim that their deceased could not file before death. However, the participation of the heirs in these situations is limited to defending the rights of the deceased exclusively.

Accordingly, this Supreme Court ruling sets a precedent for labor law in Puerto Rico, affirming that claims for wrongful termination and age discrimination do not expire with the death of the employee.

Romania

Significant Changes to the Public Pension System

New Legislation Enacted

Author: Corina Radu, Partner – SCA Magda Volonciu & Associates

Effective September 1, 2024, Law 360/2023 changed the public pension system in Romania, aiming to improve the fairness, transparency and sustainability of the system. The most relevant amendments are related to the retirement age in Romania:

- Allowing employees to continue working until the age of 70 under certain conditions and with the employer's annual consent
- Reducing the standard retirement age for certain categories
- Provisions regarding early retirement, disability pensions, pension calculation formulas, and recalculation of pensions etc.

While under the previous legislation the standard retirement age was 65 for men and 63 for women, the standard retirement age is now 65 for both men and women. This change will be attained by increasing the standard retirement ages according to the staggering set out in Annex no. 5 to the law. One of the amendment's aims is to encourage people who meet the retirement conditions to continue working until the age of 70, with the employer's annual consent.

The new law was enacted on December 4, 2023, and most of its provisions became effective on September 1, 2024, while others became effective on January 1, 2024.

New Procedure for Employment of Ukrainian Citizens from the Ukraine Armed Conflict Zone

New Order or Decree

Author: Corina Radu, Partner – SCA Magda Volonciu & Associates

Starting September 20, 2024, Order No. 1938/30 July 2024 came into force, providing a new procedure for the employment of Ukrainian citizens coming from the Ukraine armed conflict zone and seeking work in Romania, without documents proving their professional qualification or experience.

Ukrainian citizens in this category can register at county employment agencies or at the Bucharest employment agency, or contact an employer directly, and must provide a solemn declaration stating relevant information about their professional experience and qualifications.

Recordings of Phone Conversations Can be Used as Evidence in Labor Disputes, Even Without the Interlocutor's Consent

Precedential Decision by Judiciary or Regulatory Agency

Author: Corina Radu, Partner – SCA Magda Volonciu & Associates

On September 16, 2024, the Panel for Preliminary Ruling on Questions of Law of the High Court of Cassation and Justice ruled that evidence in a recording of a telephone conversation between an employee and another employee or representative of the employer is admissible in a lawsuit against the employer, even if the recording was made without the consent and/or prior information of the interlocutor.

However, admissibility is conditioned on ensuring a fair balance between the right to submit evidence and the right to privacy. Accordingly, the evidence must be indispensable to the case and strictly proportional to this purpose.

The decision is binding starting with the date of its publication in the *Official Gazette of Romania*, and for the court that submitted the referral, from the date of its delivery on September 16, 2024.

Russia

New Terms of Stay for Foreigners in Russia

New Legislation Enacted

Authors: Mateusz Krajewski, Associate, and Marcin Sanetra, Partner – PCS | Littler

The President of Russia has signed a law introducing a new expulsion regime for foreigners who violate the rules of stay in the country or commit an offense. The new law also reduces the period of temporary stay in Russia, without a visa, to 90 days per year. Previously, foreigners arriving in the country without a visa could stay in the country for a cumulative period of 90 days in each period of 180 days.

The law was enacted on August 8, 2024, and will be fully effective as of February 4, 2025.

Additional Guarantees for Employees

New Legislation Enacted

Authors: Mateusz Krajewski, Associate, and Marcin Sanetra, Partner – PCS | Littler

According to new Federal Law No. 268-FZ dated August 8, 2024, the Labor Code will regulate the work of interdepartmental commissions. These authorities will be established in each Russian region and their primary purpose will be to prevent the emergence of wage debts.

In addition, the law provides for annual paid leave to working disabled persons for at least 30 calendar days.

Transmission of Information on Employees Subject to Military Service

New Legislation Enacted

Authors: Mateusz Krajewski, Associate, and Marcin Sanetra, Partner – PCS | Littler

Effective August 8, 2024, employers will be able to interact with military enlistment offices through the register of military registration, which is expected to be introduced no earlier than November 1, 2024, to report on the hiring and dismissal of a person subject to military service, changes in their personal data and transfers to another position.

South Africa

Pay Gap Disclosure

New Legislation Enacted

Author: Tracy van der Colff, Partner and Head of Employment – OWP Partners

Although they are not yet operational, the Companies Amendment Bills promulgated on July 30, 2024, have been signed into law.

The relevant amendments require all public and state-owned companies to prepare and implement a remuneration policy, report pay gaps between the highest and lowest paid workers and provide additional remuneration to help reduce the gap.

Settlement Agreements During Retrenchment

Precedential Decision by Judiciary or Regulatory Agency

Author: Tracy van der Colff, Partner and Head of Employment – OWP Partners

A Labor Court decision on July 30, 2024, highlights important considerations for an employer when contemplating a mutual employment termination agreement during a retrenchment process. In the case at bar, the document signed by the parties included a clause ostensibly waiving claims against the employer in exchange for a severance package. Despite that clause, the employee referred an unfair dismissal dispute to the Bargaining Council claiming that the employer misled him into signing the agreement. The commissioner held that no retrenchment process had been followed and that the employee had been unfairly dismissed.

The employer took the matter to the Labor Court which found that the Bargaining Council's decision was reasonable and held that the employer could not use a mutual termination agreement to circumvent its statutory obligation to consult with the employee. Once the employer commenced discussions with the employee regarding its operational requirements, the employer was required to comply with the relevant statutory consultation process.

Although the judgment has been met with some criticism, if and until it is overturned, a more risk averse approach would be to first commence the statutory consultation process with affected employees and offer mutual termination as one of the alternatives to retrenchment.

National Minimum Wage Submissions

Proposed Bill or Initiative

Author: Tracy van der Colff, Partner and Head of Employment – OWP Partners

The Department of Employment and Labor published a notice calling for inputs on the national minimum wage and possible changes for 2025. Interested parties were invited to make submissions by September 30, 2024.

The Department advised that it will publish its annual report, making its formal recommendations, towards the end of 2024.

South Korea

Confirmation of the 2025 Minimum Wage

New Regulation or Official Guidance

Authors: Hyunjae Park, Partner, and Johnny Hong, Associate – Kim & Chang

On August 5, 2024, the Ministry of Employment and Labor (MOEL) announced the minimum wage for 2025, KRW 10,030 per hour, a KRW 170 increase from the 2024 minimum wage. The monthly minimum wage for 2025 will be KRW 2,096,270 based on 40 hours of work per week and 209 hours of work per month. The same minimum wage will apply to all businesses regardless of the business type.

The government plans to provide active support for implementation of the new minimum wage through education, consulting, labor audits, etc.

Strengthened Sanctions against Unpaid Subrogation Payments

New Regulation or Official Guidance

Authors: Hyunjae Park, Partner, and Johnny Hong, Associate – Kim & Chang

Under Korea's subrogation payment policy, the government pays a certain portion of unpaid wages to employees on behalf of employers (Subrogation Payments) and subsequently collects these payments from the relevant employers. In theory, employers must pay back Subrogation Payments to the government, but the collection rate has stayed at around 30 percent due to lack of sanctions imposed against employers.

Pursuant to the amendment to the Enforcement Decree of the Wage Claim Guarantee Act (the Amendment), the government can share a list of employers that fall under the following criteria with the credit information agency, which can impose certain disadvantageous measures on the employers (*e.g.*, higher interest rate, restrictions on loans and credit card issuance, etc.):

- Employers that have failed to pay back Subrogation Payments for at least 1 year
- Employers whose overdue Subrogation Payments exceeds KRW 20 million

Moreover, the Amendment allows the government to entrust its collection efforts to the Korea Asset Management Corporation, which is a professional collection agency. The MOEL expects employers to avoid non-payment of wages and the collection rate to increase as a result of the Amendment.

Spain

New Law on Equal Representation and Balanced Presence

New Legislation Enacted

Author: Victoria Villanueva Gimeno, Partner – Abdón Pedrajas | Littler

Organic Law 2/2024 of August 1 on Equal Representation and Balanced Presence of Women and Men (LORP), applies to listed companies and defines equal representation and balanced presence of women and men as a situation in which no more than 60% nor less than 40% of each sex is represented, although this requirement may not apply if the representation of women exceeds 60%. If a listed company does not meet these targets, it must adjust its selection procedures to ensure compliance.

To this end, a system should be put in place that allows for a comparative assessment of the skills and abilities of each candidate. This system should be based on clear, neutral and unambiguous criteria, ensuring a non-discriminatory process at all stages of selection. Similarly, the selection criteria must be transparent so that applicants are not discriminated against.

Additional Social Security Solidarity Contribution, Effective January 1, 2025

New Legislation Enacted

Authors: Sonia Cortés García, Partner, and Maria Luisa Riu Cobo, Associate – Abdón Pedrajas | Littler

A new so-called Social Security solidarity contribution (approved in 2023) is to become effective on January 1, 2025, aimed at contributing to pensions' long-term sustainability. This will result in an increase of social security contributions for employees earning above the contribution cap (EUR 4,720 per month). The increased contribution rate will be approximately 1% for 2025, but it is planned to range from 5.5% to 7% after 2025.

Interpretation of New Extended Paid Leave in Case of Relatives' Hospitalization

Precedential Decision by Judiciary or Regulatory Agency

Author: Amparo Bru, Senior Associate – Abdón Pedrajas | Littler

A Spanish law has recently extended paid leave for relatives from two to five days after a serious accident or illness, hospitalization or surgery without hospitalization, which requires home rest.

The National Court recently held that discharge from the hospital does not in itself determine the end of the paid leave. If, after the accident, serious illness, hospitalization or operation, the five days of paid leave have not been used up, and rest at home has been prescribed, the family member is entitled to the remaining paid leave days.

Furthermore, the Court points out that, given that this type of leave is mostly taken by women, any interpretation doubts that may arise must be resolved by applying a gender perspective in order to avoid indirect discrimination.

Return of Compensation for Non-compete Agreements Declared Null and Void

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonia Cortés García, Partner, and Maria Luisa Riu Cobo, Associate – Abdón Pedrajas | Littler

The Spanish Supreme Court has ruled (STS 548/2024) that when a post-contractual non-compete clause is declared null and void, the employee must reimburse the company for the non-compete consideration paid by the company. However, if the amount to be reimbursed is disproportionate, the company may claim at least a proportional reimbursement. If the company does not request reimbursement of a proportional amount of the consideration, courts will rule against reimbursement of any part of the consideration.

Declaration of Unfairness of Disciplinary Dismissal for Failure to Give the Employee a Hearing

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonia Cortés García, Partner, and Maria Luisa Riu Cobo, Associate – Abdón Pedrajas | Littler

Regional High Courts of Justice are finding that a disciplinary dismissal is unfair where the employee has not been given a chance to submit allegations prior to being terminated for disciplinary or performance reasons. The courts' reasoning is based on the ILO Convention 158 (art. 7), ratified by Spain, even though Spanish law only provides such right to workers' representatives. Some courts have imposed compensation for damages for procedural default, rather than declaring the termination unfair.

Sweden

Disability Discrimination

Precedential Decision by Judiciary or Regulatory Agency

Author: Anna Jerndorf, Partner and Head of Employment – TM & Partners

In case AD 2024 No. 66, the Swedish Labor Court examined whether the employer had violated the Discrimination Act (2008:567) by canceling a job interview for a wheelchair-bound applicant applying for an assistant nurse position in a neonatal unit. The main issues in the case were whether the cancellation constituted direct

discrimination and if reasonable accommodations were provided. The court found no evidence of direct discrimination, concluding that the job interview was not canceled solely due to the applicant's disability, but rather based on her ability to perform the required work duties.

Additionally, the court ruled that the employer had not fail to fulfill its accessibility obligations under the law, as the specific care needs of the patients could not be adequately addressed through accessibility measures. Accordingly, the Labor Court ruled that the employer had not breached the Discrimination Act.

Parental Leave

Precedential Decision by Judiciary or Regulatory Agency

Author: Anna Jerndorf, Partner and Head of Employment – TM & Partners

In case AD 2024 No. 72, the Swedish Labor Court examined whether the employer violated the Parental Leave Act (1995:584) by allowing the transition period (*övergångsperiod*) for two employees on parental leave to run during their absence. The company underwent a major reorganization and offered employees reassignments to new positions with lower employment levels. According to the applicable collective bargaining agreement, an employee in such a situation is entitled to a certain transition period, which is also stipulated under the Employment Protection Act (1982:80).

Two of the employees were on parental leave when they received the reassignment offer. The primary issue in the case was whether the company's actions constituted prohibited discrimination under the Parental Leave Act, which safeguards employees from being disadvantaged due to their parental leave. The court also assessed the interpretation of the collective bargaining agreement regarding transition periods and their applicability during an employee's parental leave. The Labor Court concluded that the company had not breached the Parental Leave Act, as the transition period was managed in accordance with the collective bargaining agreement without any discriminatory intent or effect.

Agency Work-Related Rule To be Applied for First Time

Legal Compliance

Author: Anna Jerndorf, Partner and Head of Employment – TM & Partners

As part of the reformed Employment Protection Act (1982:80), the Agency Work Act (2012:854) introduced a new rule. As previously reported, the rule mandates that client companies must offer permanent employment to agency workers who have been placed at the same operational unit within the client company for more than 24 months over a 36-month period. Alternatively, the client company can compensate the worker with two months' salary. This rule, effective from October 1, 2022, is about to be applied for the first time in the near future.

Switzerland

Increase in the Minimum Rates for Child Allowances

New Regulation or Official Guidance

Authors: Ueli Sommer, Partner, and Cedric Bamert, Associate – Littler

Effective January 1, 2025, the minimum child and education allowances in Switzerland will be increased due to the rise in the national consumer price index. The minimum child allowance will rise from CHF 200 to CHF 215 and the minimum education allowance from CHF 250 to CHF 268 per month. The adjustment mainly affects cantons that comply with the minimum rates.

If the allowances in the employee's canton of residence are higher than in the canton where the employee works, an application can be made for a differential payment, which triggers intercantonal compensation. The application can be submitted either by the employer or the employee, with the latter requiring the employer's signature and stamp.

Turkey

Severance Compensation Increase

New Regulation or Official Guidance

Authors: Att. Feridun İzgi, Partner, and Att. Simge Kublay Can, Senior Associate – Balcıoğlu Selçuk Ardıyok Keki Attorney Partnership (BASEAK)

Pursuant to a Communiqué issued by the Ministry of Treasury and Finance on July 5, 2024, the threshold for severance compensation calculation was increased from gross TRY 35,058.58 to gross TRY 41,828.42 for the period between July 1, 2024, and December 31, 2024. If the employee's monthly salary exceeds the threshold amount, the severance compensation should be calculated based on the updated gross threshold.

Regulation of Cross-Border Transfers of Personal Data

New Regulation or Official Guidance

Authors: Att. Feridun İzgi, Partner, and Att. Simge Kublay Can, Senior Associate – Balcıoğlu Selçuk Ardıyok Keki Attorney Partnership (BASEAK)

The Regulation on Cross-Border Transfers of Personal Data (the Regulation), prepared by the Turkish Data Protection Authority (the TR DPA) as a secondary regulation under the Turkish Data Protection Law No. 6698 (the DPL), was published in the Official Gazette on July 10, 2024. The Regulation details the mechanisms introduced within the DPL for data controllers and processors to engage in cross-border transfers of personal data.

Key points include:

- Definitions: The Regulation introduces definitions for "cross-border transfer of personal data," "data exporter," and "data importer," which were not previously included in the legislation.
- Undertakings for Approval: It clarifies the minimum required content of undertakings to be submitted to the TR DPA for approval.
- Binding Corporate Rules (BCRs): The Regulation outlines the procedure for applying for TR DPA approval for BCRs and specifies the minimum required content for BCRs themselves.
- Standard Contractual Clauses (SCCs): It provides clarity regarding the execution procedures of standard contractual clauses and the notification process to be made to the TR DPA. Final versions of the SCCs, along with draft templates and guidelines for BCR applications, were also published by the TR DPA on July 10, 2024.
- Data Processor Responsibilities: Provisions concerning data processors emphasize the responsibility of the data controller to ensure that the data processor implements appropriate measures for data security. Additionally, the data processor must notify the TR DPA regarding the execution of an SCC without requiring explicit instruction from the data controller.
- Transfer Conditions: According to the DPL, in the absence of an adequacy decision or appropriate safeguards, personal data may only be transferred abroad in specific, non-repetitive cases as outlined in the DPL.

Notification Regarding Trade Union Membership

New Regulation or Official Guidance

Authors: Att. Feridun İzgi, Partner, and Att. Simge Kublay Can, Senior Associate – Balcıoğlu Selçuk Ardıyok Keki Attorney Partnership (BASEAK)

In accordance with the Trade Unions and Collective Bargaining Law No. 6356, a notification has been issued concerning the number of workers in various sectors and the membership in trade unions for July 2024. Based on these statistics, trade unions with a membership exceeding 1% of employees will be entitled to submit applications for formal recognition. Statistics not objected to within 15 days of publication will become final. The Turkish Statistical Institute (TÜİK) has published "the Labor Force Statistics" and "Paid Employee Statistics" for July 2024.

Increase in Premiums Rates for Short-Term Insurance

New Regulation or Official Guidance

Authors: Att. Feridun İzgi, Partner, and Att. Simge Kublay Can, Senior Associate – Balcıoğlu Selçuk Ardıyok Keki Attorney Partnership (BASEAK)

Pursuant to the Law on Amendments to Tax Laws and Certain Other Laws and Decree Law No. 375, published in Official Gazette No. 32624 on July 2, 2024, the premium for short-term Insurance, which is fully paid by the employer, has been increased from 2% to 2.25%. This adjustment took effect for the tax return/notification for September 2024.

United Arab Emirates

Revised Criteria for Emiratisation Partners Club Membership

New Legislation Enacted

Author: Charles Laubach, Partner, and Ananya Pandit, Associate – Afridi & Angell

Ministerial Resolution No. 438 of 2024 introduces new criteria for a private sector employer that wishes to obtain a one-year membership in the Emiratisation Partners Club in the UAE. Employers must either achieve an Emiratisation rate triple or more the annual target with at least 30 additional UAE nationals, or collaborate with UAE National Competitiveness Council to train and recruit 500+ nationals annually. Members benefit from reduced work permit and Ministry service fees but must maintain compliance throughout their one-year membership or risk exclusion and potential reimbursement of fee reductions. The Ministry will conduct periodic inspections to ensure adherence.

Resolution of Labor Disputes

New Order or Decree

Author: Charles Laubach, Partner, and Ananya Pandit, Associate – Afridi & Angell

Federal Decree-Law No. 9 of 2024, effective July 29, 2024, amended Articles 54 and 60 of the UAE Labour Law, which deal with individual labor disputes and penalties. On receipt of a request for resolution of a dispute, the Ministry of Human Resources and Emiratisation (the Ministry) will first take steps for amicable settlement. But the Ministry now has the authority to issue binding, enforceable decisions if the value of the claim is less than AED 50,000 or if the dispute results from non-compliance with a decision rendered previously for amicable settlement of a labour dispute.

The party in whose favour the Ministry has issued its decision can directly proceed to court for enforcement. The unsuccessful party may appeal the decision within 15 days. The appeal is to be filed with the Court of First Instance, upon which enforcement of the Ministry's decision shall be stayed. The Court of First Instance is directed to issue its judgment within 30 days, which shall be final and subject to no further appeal.

In case of failure to reach an amicable settlement, it continues to be the case that the dispute will be referred to the applicable court along with a memorandum containing the arguments of the parties and the recommendation of Ministry. The employer may be directed by the Ministry to pay the salary of the worker for up to two months in case of salary suspension.

In another significant change, the statute of limitations for filing labour disputes has been extended from one to two years, commencing from the date of employment termination.

Increased Penalties for Employer Violations

New Regulation or Official Guidance

Author: Charles Laubach, Partner, and Ananya Pandit, Associate – Afridi & Angell

The penalties for employer violations have been enhanced, increasing from a maximum of AED 200,000 to between AED 100,000 and AED 1 million. These penalties apply to the following offenses:

- Employing an employee without obtaining a work permit
- Recruiting an employee without providing work
- Misusing work permits
- Closing business premises without settling employees' entitlements
- Employing a minor illegally

Employers involved in fictitious employment face similar fines, with penalties increasing based on the number of fictitious employees. Employers who were paying fictitious salaries to fictitious employees may also be ordered to pay the amount of such salaries to the Ministry. The Ministry may also initiate criminal proceedings in these cases, but only after a formal request from the Minister or Deputy Minister. Reconciliation is possible before a court ruling if employers pay 50% of the minimum penalty and refund benefits, leading to dismissal of the criminal case. These measures on fictitious employment are designed to deter and punish abuse of the UAE's new Emiratization program.

United Kingdom

New Legal Duty on Employers to Prevent Sexual Harassment in the Workplace

New Legislation Enacted

Authors: Chris Coombes, Senior Associate, and Natasha Adom, Partner – GQ | Littler

Effective October 26, 2024, employers in Great Britain will be under a new legal duty to take reasonable steps to prevent the sexual harassment of their employees in the course of employment. Although employers are already under a duty not to harass employees and can also be liable for acts of sexual harassment by their employees in the course of employment unless they have taken "all reasonable steps" to prevent such harassment, the Worker Protection (Amendment of Equality Act 2010) Act 2023 creates a new, preventative duty.

Key points to note:

- The new duty is to take "reasonable steps" to prevent sexual harassment, not "all reasonable steps"
- The duty only applies to sexual harassment, not harassment on any other protected grounds such as race or disability
- Employers are expected to take reasonable steps to prevent sexual harassment by third parties such as customers, clients, contractors, service users, or delegates at a conference. However, an employee cannot bring a standalone claim against their employer for third party harassment
- The Equality and Human Rights Commission (EHRC) can take proactive enforcement action such as investigating the employer, issuing notices, entering into binding agreements or obtaining injunctions

- Employees do not have a right to bring a legal claim against their employer for failure to comply. However, if there is a finding of sexual harassment, to any extent, the Employment Tribunal must consider to what extent the employer's duty has been complied with, and it may order a compensation increase of up to 25%. Given that compensation is uncapped, this could be a significant increase
- Compliance: On September 26, 2024 the EHRC updated its technical guidance on sexual harassment to explain the scope of the new duty, including the steps that employers will be expected to take. Employers are unlikely to be able to comply with the new duty without having carried out a risk assessment to identify their particular risks and the steps that are reasonable for it to take

Obligations under New Allocation of Tips Law

New Legislation Enacted

Author: Deborah Margolis, Of Counsel – GQ | Littler

The Employment (Allocation of Tips) Act 2023 came into force on October 1, 2024. This is most likely to impact the hospitality sector as it regulates how employers allocate tips, gratuities, and service charges among workers and eligible agency workers, and provides that employer-received tips, gratuities and service charges are to be given to employees in full and allocated fairly and transparently. Failure to comply with the new obligations can lead to various remedies, including the payment of compensation of up to GBP 5,000 for financial loss suffered by the complainant.

The government has also published a Statutory Code of Practice that provides further details on the new laws. Failure to comply with the Code does not give rise to a cause of action itself but it will be admissible as evidence in Employment Tribunal proceedings and tribunals will be required to take the Code into account.

Court Decision and New Law on Fire and Rehire Practice

Precedential Decision by Judiciary or Regulatory Agency

Author: Laura Lobb, Partner – GQ | Littler

In the UK an employer can change an employee's terms and conditions of employment in limited circumstances. Contractual change is most easily effected by agreement. If agreement cannot be reached, some employers take the approach of dismissing the relevant employee(s) and immediately offering reemployment on varied terms and conditions. This process is referred to as "fire and rehire." In a recent case, the Supreme Court issued an injunction preventing an employer from dismissing and re-engaging employees on revised terms. The case was unusual in that the employees' contract, which had been in place since 2007, essentially provided for enhance pay on a permanent basis.

A new statutory Code of Practice on fire and rehire came into effect on July 18, 2024, and the new UK Government has pledged to a) replace this Code (which it considers inadequate) with a new, "strengthened" code of practice and b) reform the area of law to provide "effective remedies." While it is not expected that the practice will be banned outright, the new government's "Plan to Make Work Pay" indicates that in future, fire and rehire may only be permitted in limited circumstances where there is genuinely no alternative, and the employer has followed a proper process involving dialogue with workers.

View for more information.

New Government Employment Law Proposals

Proposed Bill or Initiative

Author: Darcey Phillips, Paralegal – GQ | Littler

The new Labor government has promised to make significant changes to employment law in its "Plan to Make Work Pay," and an Employment Rights Bill is anticipated by mid-October.

As part of the reforms, recent developments include:

- The Workers (Predictable Terms and Conditions) Act 2023 will no longer go into effect
- The Trade Union Act 2016 and the Strikes (Minimum Service Levels) Act 2023 will be repealed
- The Low Pay Commission has released a policy paper outlining its updated approach to recommending increases to the National Living Wage (NLW) and National Minimum Wage (NMW), confirming that effective April, 2025, the NLW rate will be raised based on the cost of living. Additionally, the NMW rate for 18- to 20-year-olds will increase over time to reduce the gap with the NLW, a move towards the government's long-term goal of establishing a single adult rate. The Commission will submit its recommendations to the government by the end of October 2024

United States

Supreme Court's 2024 Term Could Transform Labor and Employment Law

Precedential Decision by Judiciary or Regulatory Agency

Authors: Alex MacDonald, Shareholder, and Michael Lotito, Shareholder – Littler

At the end of its 2024 term, the U.S. Supreme Court handed down four decisions limiting the power of federal agencies. Though none of these decisions involved labor and employment law, all of them will affect labor and employment agencies. Agencies like the Department of Labor (DOL), the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), and the Occupational Health and Safety Administration (OSHA) will face new constraints on their discretion. They will have to find new ways to develop policy. They may even face new attacks on their basic structures.

The next few months will say a lot about where labor and employment policy goes. The NLRB, EEOC, DOL, and OSHA already face challenges to major rules. Those rules could prove harder to defend under the Court's recent decisions. And in the long term, these agencies will have to rethink their policymaking strategy. Littler's WPI is following these developments closely and will report major updates. In the meantime, employers should work closely with their counsel to determine how these developments affect their businesses.

Read the full article on Littler.com.

DOL Issues "AI & Inclusive Hiring Framework" Through Non-Governmental Organization

New Regulation or Official Guidance

Authors: Bradford J. Kelley, Shareholder, and Alice H. Wang, Shareholder – Littler

On September 24, 2024, the U.S. Department of Labor (DOL) announced publication of its "AI & Inclusive Hiring Framework" website, described as "a new tool designed to support the inclusive use of artificial intelligence in employers' hiring technology and increase benefits to disabled job seekers." The DOL's AI Framework seeks to chart "a clear course for employers to navigate" implementation of AI systems in the workplace.

The AI Framework consists of 10 focus areas:

1. Identify legal requirements
2. Establish staff roles
3. Inventory technology
4. Work with vendors
5. Assess impacts
6. Provide accommodations

7. Use explainable AI
8. Ensure human oversight
9. Manage incidents
10. Monitor regularly

Although these focus areas appear different from prior DOL and other agency guidance or initiatives with respect to AI, the focus areas largely echo the AI Principles and President Biden's AI Executive Order. For instance, all three urge implementation of AI with human oversight and in an ethical, transparent manner that employees and applicants can understand. Additionally, all three center on employee rights. These similarities serve to underscore two points. First, the federal government encourages the use of AI for workers' benefit. Second, federal agencies are not providing clear guidance or rules relating to employers' implementation of AI systems.

Read the full article on Littler.com.

USCIS Updates Guidance for F-1 Students on OPT and STEM OPT Eligibility

New Regulation or Official Guidance

Author: Carissa Tyler, Associate – Littler

The F-1 nonimmigrant visa status allows non-citizens to study at U.S. colleges and universities. F-1 students may be eligible for off-campus employment under the following programs:

- Curricular Practical Training
- Optional Practical Training (OPT)
- Science, Technology, Engineering, and Mathematics Optional Practical Training Extension (STEM OPT)

General eligibility requirements for off-campus F-1 employment include that the training be related to the student's area of study and be authorized by the Designated School Official and U.S. Citizenship and Immigration Services (USCIS). On August 27, 2024, USCIS updated its Policy Manual to clarify guidance for F-1 students concerning eligibility for post-completion OPT and the period during which F-1 students may apply for STEM OPT extensions.

The updated guidance from USCIS details eligibility requirements for OPT and STEM OPT for F-1 students and U.S. employers. The USCIS policy manual can also be used as guidance for employers in determining how F-1 students can maintain, extend, and potentially gain future eligibility for U.S. employment authorization under the OPT and STEM OPT programs.

Read the full article on Littler.com.

OSHA Unveils Text of Unprecedented Proposed Heat Standard

Proposed Bill or Initiative

Authors: Felicia Watson, Of Counsel, and Chuck Trowbridge, Of Counsel – Littler

On July 2, 2024, the Occupational Safety and Health Administration (OSHA) released the text of its highly anticipated proposed standard that, if finalized, would create the first federal standard aimed at protecting workers from exposure to heat hazards in the workplace, whether indoors or outdoors. The proposed standard is expected to be published in the Federal Register in the coming days.

The proposed standard covers nearly all employers regulated by OSHA, including those in general industry, construction, maritime, and agriculture sectors. Among other requirements, the proposed standard requires

employers to (1) develop a Heat Injury and Illness Prevention Plan (HIIPP) with site-specific information to identify, monitor, and control heat hazards in their workplace; (2) provide specific training for employees, supervisors, and a designated heat safety coordinator(s) with initial and annual refresher training; and (3) keep written or electronic records of indoor temperature monitoring data for a minimum of six months.

Read the full article on Littler.com.

Littler's 2024 AI C-Suite Survey Report

Trend

Authors: Marko J. Mrkonich, Shareholder, and Niloy Ray, Shareholder – Littler

As the adoption of artificial intelligence (AI) spreads across corporate America, the risks are growing in kind. The question on every business leader's mind, then, is how to seize the opportunities created by AI – without exposing their organizations to new vulnerabilities.

Littler's 2024 AI C-Suite Survey Report, which gathers insights from more than 330 C-suite executives located across the U.S., examines how businesses are managing AI in the workplace. While employers have made considerable progress on workplace generative AI policies, the survey finds that 56% still do not have an established policy in place – and many that do lack the teeth and internal alignment needed to make them most effective.

In addition to delving into the key components of these policies, the survey looks at how employers are using both generative and predictive AI in human resources processes while navigating the legal and regulatory risks. It also reveals significant misalignment between different members of the C-suite around how AI is being used in the workplace and efforts to track and enforce generative AI policies.

Read the full report on Littler.com.

Venezuela

New Labor Minister Appointed by the President

New Order or Decree

Author: Gabriela Arevalo, Associate – Littler

On August 27, 2024, the President of the Republic appointed Mr. Eduardo Pinate as the new Minister of Labor. This designation has not yet been published in the official gazette.

Payment in Foreign Currency is an Extraordinary Benefit

Precedential Decision by Judiciary or Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

The Social Chamber of the Supreme Court has issued a decision N° 415, dated August 14, 2024, holding that payment in foreign currency is an extraordinary benefit that must be proven by the employee.

The employee alleged receipt of a salary in Venezuelan currency and foreign currency. However, the employee did not prove to have been paid in foreign currency and therefore, the Court considered that employee's salary was earned only in Venezuelan currency.

Payment of Profit Sharing

Precedential Decision by Judiciary or Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

The Social Chamber of the Supreme Court issued decision N° 448, dated August 14, 2024, holding that the employer had the burden of proving the amount of profit sharing it was required to pay and failed to do so.

Accordingly, the court found the employee was entitled to 90 days of profit sharing that they alleged they earned.

New Monetary Cone

Trend

Author: Gabriela Arevalo, Associate – Littler

The Central Bank of Venezuela has published in the official web site the issuance of two new monetary species for the value of VES 200 and 500. The new monetary cone is currently in circulation.

Vietnam

Law on Social Insurance

New Legislation Enacted

Authors: Bernadette Fahy, Special Counsel, and Tran Thi Kim Luyen, Senior Associate – APFL & Partners Legal Vietnam LLC

On June 29, 2024, the National Assembly of Vietnam enacted Law No. 41/2024/QH15 on Social Insurance (New Law), replacing Law No. 58/2014/QH13 dated November 29, 2014, as amended from time to time.

The New Law introduces various changes regarding employer responsibilities including:

- Expansion of social insurance eligibility to more employees: Employees working under definite-term contracts of at least one month, even if not full-time, are now entitled to participate in social insurance if their monthly salary meets or exceeds the minimum required for compulsory insurance.
- Changes to the salary basis for calculating social insurance premiums: Premiums will now be calculated using a "reference level" set by the government. This reference level will be adjusted based on inflation, economic growth, the capacity of the state budget and social insurance fund. While the base salary remains in effect, the reference level will be equal to it and, once the base salary is abolished and replaced by the reference level, the reference level shall not be lower than the abolished base salary.
- More responsibilities for employers: Employers have additional responsibilities including, notably, registering employees for social insurance participation, compensating employees if employers fail to fully perform their responsibility of paying social insurance, causing damages to the rights and legitimate interests of employees.
- New provisions on delay/evasion of social and unemployment insurance payments: The New Law distinguishes between two separate terms—delay in payment and evasion of payment—which were previously not clearly differentiated.

The new law will take effect on July 1, 2025.

Statutory Minimum Wages for Employees Working Under Labor Contracts

New Order or Decree

Authors: Bernadette Fahy, Special Counsel, and Tran Thi Kim Luyen, Senior Associate – APFL & Partners Legal Vietnam LLC

On June 30, 2024, the Government of Vietnam issued Decree No. 74/2024/ND-CP, which went into effect on July 1, 2024, and increased the monthly and hourly minimum wages for employees working under labor contracts in various geographical regions by approximately 6%.

Specifically:

- Region I: the monthly minimum wage is VND 4,960,000, and the hourly minimum wage is VND 23,800
- Region II: the monthly minimum wage is VND 4,410,000, and the hourly minimum wage is VND 21,200
- Region III: the monthly minimum wage is VND 3,860,000, and the hourly minimum wage is VND 18,600
- Region IV: the monthly minimum wage is VND 3,450,000, and the hourly minimum wage is VND 16,600

Draft Case Law on Determination of Salary Rate to be Used for the Calculation of Compensation Paid to Employees

Proposed Bill or Initiative

Authors: Bernadette Fahy, Special Counsel, and Tran Thi Kim Luyen, Senior Associate – APFL & Partners Legal Vietnam LLC

Based on Decision on cassation No. 05/2023/LD-GDT dated September 14, 2023 of the High Court in Ho Chi Minh City (on review of appellate judgment No. 02/2022/LD-PT dated March 28, 2022, by the People's Court of Binh Duong Province) regarding a labor dispute over the unilateral termination of a labor contract, the Department of Legislation and Science Management under the Supreme People's Court has proposed a draft case law on determining the salary rate to be used for calculating compensation paid to employees (Draft Case Law).

Pursuant to Article 41 of the Labor Code of Vietnam, in cases of unlawful termination of a labor contract by employers, employers must pay the relevant employee a compensation which is calculated on the basis of the salary agreed in the labor contract of such employee. However, in practice, the basis for calculating such compensation is not always clear, and in such a case, if the employer and employee fail to agree upon the employee's salary, the salary used by the employer to make social insurance contributions for the employee will be applied to calculate the compensation.

The Draft Case Law is still under review, and we will provide an update on the outcome of this proposal.

Zambia

Mandatory Requirement to Verify Academic Qualifications of Employees

New Legislation Enacted

Authors: Hope Ndao, Partner, and Peter Chomba, Senior Associate – Mulenga Mundashi Legal Practitioners

Effective August 16, 2024, employers are prohibited from hiring or appointing individuals to positions without having their qualifications verified by the Zambia Qualifications Authority (ZAQA). This new requirement was brought about by the enactment of the Zambia Qualifications Authority Act No. 8 of 2024 and has been met with considerable backlash from the private sector. Some employers have argued that the measure adds another administrative hurdle and increases the cost of recruiting employees.

As the law does not apply retrospectively, the requirement does not impact employees who are already in their current roles. Employers who are convicted of non-compliance with this new requirement may face penalties of up to US $1,526 or imprisonment not exceeding one year or both.

Clarification on Payment of Salary for Employees Retained on Payroll Post-Termination

Precedential Decision by Judiciary or Regulatory Agency

Authors: Hope Ndao, Partner, and Peter Chomba, Senior Associate – Mulenga Mundashi Legal Practitioners

On July 26, 2024, the Constitutional Court clarified the obligations of employers regarding employees whose retirement benefits are not paid by their last working day. The court specified that employers are not liable to make monthly pension contributions to the mandatory statutory pension fund, the National Pension Scheme Authority (NAPSA), for employees who are retained on the payroll pending payment of their pension benefits. These employees must continue to be paid their last applicable salary before their last day of work, until they are paid their pension benefits and removed from the payroll.

Employers are encouraged to ensure that their human resource departments take note of this and do not provide salary increments to or make NAPSA contributions for employees who are retained on the payroll pending payment of pension benefits.

Conflicting Judgments on Payment of Severance Pay to Permanent and Pensionable Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Hope Ndao, Partner, and Peter Chomba, Senior Associate – Mulenga Mundashi Legal Practitioners

On August 22, 2024, the Court of Appeal clarified that employees on permanent and pensionable contracts (permanent contracts) are not entitled to severance pay of 25% of basic pay earned during the contract period. The Court ruled that section 54(1) (c) of the Employment Code Act, 2019 (the ECA) providing for payment of severance payment does not apply to permanent contracts as such contracts do not qualify as fixed-duration contracts. The Court also held that employees who are summarily dismissed due to disciplinary action are not entitled to payment of severance pay.

However, on September 18, 2024, the Court of Appeal issued a conflicting judgment, ruling that under section 54(1)(c) of the ECA, employees on permanent contracts are entitled to severance pay at a rate of 25% of the basic pay earned during the contract period. The Court reasoned that since employees on permanent contracts are not explicitly excluded from payment of severance pay under section 54(3) of the ECA, they qualify for it by implication. The Court further ruled that employers are required to pay accrued benefits, including severance pay, even in cases of summary dismissal for disciplinary reasons. The Court therefore reversed its decision on payment of severance pay to employees on permanent contracts and employees who are summarily dismissed in less than a month.

Based on the rules governing conflicting judgments by the same court, the more recent decision providing for payment of severance pay to employees on permanent contracts and employees who are summarily dismissed is the binding decision, until a contrary decision is made by the Supreme Court.