Littler The Global Guide Quarterly

Labor and employment law updates from around the globe

Quarter 2, 2019

Read the latest headlines from our featured countries.

Australia

Minimum Wage Increase

New Legislation Enacted

Authors: Naomi Seddon, Shareholder and Merille Raagas, Counsel - Littler United States

On July 1, 2019, employees under the national minimum wage and the modern award minimum wage (and in some cases, employees under a registered agreement) are set to receive an increase of 3% from the first payment period on or after that date. Last year's increase was 3.5%, which is relatively more than this year's upcoming increase. This will affect nearly 2.2 million of Australian employees who have payments set under a particular modern award and 180,220 employees who are paid at adult minimum wage rates. We recommend for employers to review their current payment arrangements for employees covered by a modern award and make sure that any increase applicable will be paid from the first full pay period on or after July 1, 2019, as per the new minimum wage rates. This would also include any casual loadings for casual employees or any other loadings or penalties applicable.

Changes, Effective July 1, 2019

New Legislation Enacted

Authors: Naomi Seddon, Shareholder and Merille Raagas, Counsel - Littler United States

Several changes in the law, affecting businesses, will be in effect as of July 1, 2019, which include: Under the new whistleblower laws, which take effect on July 1, 2019, large Australian proprietary companies are now required to introduce a Whistleblower Policy, with the mandatory content as set out in the Corporations Act 2001. The new whistleblowing laws will cover any disclosures made on or after the commencement of this legislation. Moreover, the high income threshold is set to increase from AUD145,400 to AUD148,900 per year. The maximum compensation for an unfair dismissal claim has also increased to AUD72,700, which is 50% of the high income threshold. Last, the maximum super contribution base for 2019 and 2020 is AUD55,270. This amount was indexed in line with the Average Weekly Ordinary Time Earnings (AWOTE) each year.

Evidentiary Presumption Where Employer Fails to Keep Employee Records

Precedential Decision by Judiciary or Regulatory Agency

Authors: Naomi Seddon, Shareholder and Merille Raagas, Counsel - Littler United States

In 2017, the Fair Work Act 2009 (the Act) was amended, in part, to create a new evidentiary presumption for a court to presume that an employer has in fact underpaid its workers if the employer failed to keep the relevant employee records (such as pay slips, PAYG certificates, etc.). This amendment was enacted due to a number of high-profile businesses that destroyed employee records to avoid penalties for underpayment of workers. The Federal Circuit Court of Australia is expected to test this new evidentiary presumption in the case of *Fair Work Ombudsman v A&K Property Services Pty Ltd & Ors*, where nine workers alleged underpayment and the employer failed to produce the employment records, claiming instead that they were "reconstructed." It is important for employers to ensure that employee records are kept for at least seven years after the termination of employment and employees should be made aware of their rights to access these records.

Canada

Ontario: Amendments to Employment Standards Act and Labour Relations Act

New Legislation Enacted

Authors: Rhonda B. Levy, Knowledge Management Counsel and Monty Verlint, Partner - Littler Canada

Bill 66, Restoring Ontario's Competitiveness Act, 2018, received Royal Assent on April 3, 2019, and amended the Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA). Amendments to the ESA pertain to the responsibility for preparing and publishing the poster containing information about employee rights and employer obligations under the ESA; the employer's responsibilities in relation to the poster; employer responsibilities to employees working more than 48 hours in a week; and employer responsibilities in regard to averaging an employee's hours of work for the purpose of determining the employee's entitlement to overtime. Amendments to the LRA involve the removal of certain public-sector entities from the construction labor relations model in the statute. The amendments to the ESA are in effect. Some amendments to the LRA came into force on Royal Assent. The balance will come into force on a day to be named.

Amendments to Quebec's Pay Equity Act

New Legislation Enacted

Authors: Rhonda B. Levy, Knowledge Management Counsel and Monty Verlint, Partner - Littler Canada

On April 10, 2019, Bill 10, An Act to amend the Pay Equity Act mainly to improve the pay equity audit process (Act), came into force. The purpose of the Act is to make amendments to the Pay Equity Act to improve the pay equity audit process. Examples of such amendments include, among other things, the requirement of a "participation process" for certain employers who decide to conduct a pay equity audit alone, and amendments to the procedure for dealing with complaints filed following a pay equity audit conducted by an employer alone.

Amendments to British Columbia's Employment Standards Act and Labour Relations Code (LRC)

New Legislation Enacted

Authors: Rhonda B. Levy, Knowledge Management Counsel and Monty Verlint, Partner - Littler Canada

Significant amendments to British Columbia's Employment Standards Act (ESA) pursuant to Bill 8, Employment Standards Amendment Act, 2019, include, among other things, the addition of two new leaves (Domestic or Sexual Violence Leave and Critical illness Leave (both in force on Royal Assent)), and the elimination of an exemption for directors or officers from personal liability for unpaid wages where a corporation was in receivership or subject to insolvency proceedings. Amendments to British Columbia's Labour Relations Code (LRC) pursuant to Bill 30, Labour Relations Code Amendment Act, 2019 include, among other things, modifying the definition of picketing, providing the Labour Relations Board (Board) with authority to certify a union when there has been an unfair labor practice, and adding consequences upon the failure of parties to file a collective agreement with the Board. All but one Bill 30 amendment came into force on Royal Assent.

Amendments to Prince Edward Island's Employment Laws Adds a Domestic Violence Leave

New Legislation Enacted

Authors: Rhonda B. Levy, Knowledge Management Counsel and Monty Verlint, Partner - Littler Canada

On June 12, 2019, Bill 116, An Act to Amend Employment Standards Act (No. 3), received Royal Assent, which will amend Prince Edward Island's Employment Standards Act by adding a Domestic Violence Leave, effective November 1, 2019. Employees will be entitled to take up to a three day paid leave of absence and up to an additional seven days without pay to deal with the consequences of domestic violence, intimate partner violence, or sexual violence, provided they have been employed for a continuous period of three months. The leave may be taken

intermittently or in one continuous period. Regulation EC2019 – 188 clarifies that the leave may be taken to seek medical attention, assistance from a victim services organization, counselling, legal help or child protection, or to relocate.

Ontario: Risk of Liability for Rehiring Employee with History of Perpetrating Sexual Harassment

Precedential Decision by Judiciary or Regulatory Agency

Authors: Rhonda B. Levy, Knowledge Management Counsel and Monty Verlint, Partner - Littler Canada

A recent decision of the Court of Appeal for Ontario, *Colistro v. Tbaytel*, puts employers in Ontario on notice that if they re-hire an employee who has a history of victimizing a current employee by sexual harassment or otherwise, and the current employee finds continued employment intolerable, they risk liability for constructive dismissal. The decision further cautions employers that, absent an offer to accommodate the employee to avoid imposing mental suffering on the employee, they also risk liability for intentional infliction of mental suffering. Finally, this case illustrates that an employee who successfully sues an employer may be required to pay the employer's costs if there is a substantial disparity in the damages sought by the employee and the damages awarded by the court.

View additional Canadian federal statutory changes and other notable changes in the Canadian federal sphere here.

Central America

Costa Rica | Additional Provisions of the Tax Plan Enforceable as of July 1, 2019

New Legislation Enacted

Author: Marco Arias, Partner - BDS, Member of Littler Global

On July 1, 2019, additional provisions of Law No. 9635, commonly known as the "Fiscal Reform," came into effect. Although part of the Law passed in December of 2018, these provisions were not enforceable until July 1. Among these provisions are additional tax brackets of 20% and 25% for higher-salary earners, that come on top of the 10% and 15% tax brackets that have existed for many years. All of these are marginal rates. Additionally, the Law created a new Value-Added Tax (VAT) that is now in effect and impacts many aspects of a company's regular operations.

Costa Rica | Several Companies Join "National Stoppage"

Trend

Author: Francisco Cerda, Partner - BDS, Member of Littler Global

Because of the socio-economic crisis that Nicaragua currently is battling, some companies have joined a movement or trend known as "National Stoppage" (Paro Nacional). From a legal standpoint, however, employers are not authorized to suspend work, payment of salaries, or other labor benefits.

Panama | Duration of Temporary Permits for Expats Extended

New Order or Decree

Author: Irma Marcela Montenegro Vásquez, Associate - BDS, Member of Littler Global

On May 28, 2019, the President of Panama and the Minister of Labor signed Executive Decree No. 20, which modifies the duration of temporary permits for foreign workers. Beginning on May 29, foreign nationals with work visas will receive an authorization to work that will remain valid for two years and be renewable for three additional years. Prior to this decree, permits had to be renewed annually.

Colombia

Companies No Longer Required to Pay Social Security Contributions for Independent Contractors

New Legislation Enacted

Author: Irene Duarte, Attorney-at-Law - Littler Colombia

Pursuant to Act 1955 of 2019, companies are no longer obliged to pay social security contributions for their independent contractors. Act 1955, among other provisions, states that independent contractors must pay their health and pension contributions monthly.

Disciplinary Procedure Notifications Communicated through Social Media

Precedential Decision by Judiciary or Regulatory Agency

Author: Irene Duarte, Attorney-at-Law Littler - Colombia

The Labor Ministry recently issued an opinion on whether an employer may notify a worker about a disciplinary decision, through a social media application, such as WhatsApp. Per the Labor Ministry, the communication will be valid only if (i) the internal working regulations of the company expressly allows it; (ii) the employee has a mobile phone as a work tool; and (iii) the company guarantees the employee's right to due process (as required under the law and in Judicial Decision 593 of 2014 of the Constitutional Court).

Unemployment Aid Savings Available to Finance Studies Abroad

Precedential Decision by Judiciary or Regulatory Agency

Author: Irene Duarte, Attorney-at-Law - Littler Colombia

Pursuant to Act 50 of 1990, employees can collect funds from their Unemployment Aid Fund savings once their employment contract terminates or for living or educational purposes while the contract is still in force. Per a recent opinion issued by the Ministry of Education, employees can collect their savings to cover college education expenses, including for studies abroad. To claim such funds, the employee must provide the required documentation to prove that the funds will be used for college expenses.

Employment Termination Agreement with Sick Employees

Precedential Decision by Judiciary or Regulatory Agency

Author: Irene Duarte, Attorney-at-Law - Littler Colombia

The Labor Chamber of the Supreme Court recently clarified what companies must consider for an agreement to terminate an employment contract with a sick employee to be valid. First, the reason for the termination cannot be the employee's sickness or health condition. Second, the agreement must expressly remark that both parties are aware of the employee's health situation. Otherwise, a labor judge may invalidate the termination agreement.

Denmark

Amendments to Concept of Industrial Accidents to Cover "Temporary" Injuries

New Legislation Enacted

Author: Tina Reissmann, Partner - Labora Legal

The Danish Parliament recently amended the Danish Workers' Compensation Act for the purpose of, among other things, easing the requirements for when an injury can be recognized as an industrial injury. The new Act specifically sets out that "temporary" injuries may also be recognized as industrial accidents. Examples of temporary injuries

include a wound, strain or minor psychological reaction healing or passing by itself within a short period of time. The decisive factor as to whether the injury can be characterized as temporary is, pursuant to the legislative material, if the injury has psychological or physical consequences "which in any way affect the general condition or daily life of the injured person either on a temporary or permanent basis." The new Act comes into force on January 1, 2020. Thus, the easing of the concept of industrial accidents does not apply to cases concerning accidents occurring before this date.

Supreme Court Ruling on the Danish Anti-Discrimination Act

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The Danish Supreme Court recently established that an employer's dismissal of a disabled employee with a publicly-funded, reduced-hours job when he reached the mandatory retirement age and the public funding lapsed did not conflict with the Anti-Discrimination Act. First, the termination of the public subsidy based on the employee reaching the statutory retirement age cannot be considered discrimination based on age or disability. Second, the subsidy was a clear condition for the employment. Since the basis of the employment had lapsed as a consequence of the cessation of the reduced-hours working scheme, the dismissal was not in conflict with the law.

Functional Impairment under the Danish Anti-Discrimination Act

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The Danish Western High Court was not satisfied that an employee's functional impairment at the time of dismissal could be expected to be a long-term one – and for that reason, the employee did not have a disability within the meaning of the Danish Anti-Discrimination Act. If an employee has a functional impairment rendering the employee unable to function on equal terms with other employees, the employee does not necessarily have a disability as defined in the Danish Anti-Discrimination Act. This also requires that the functional impairment can be considered a long-term one at the time of dismissal. That was the key issue before the Danish Western High Court in this case.

Dress Code Not in Conflict with Danish Act on Equal Treatment of Men and Women

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The Danish Board of Equal Treatment found that a workplace dress code setting different attire rules for men and women was not in conflict with the Danish Act on Equal Treatment of Men and Women. The Board of Equal Treatment found that the company's dress code set requirements for professional and formal attire for both men and women. Taking into account the open-office landscape and visits from international customers and business partners, the Board of Equal Treatment held that the company's enforcement of the dress code was not in conflict with the Act.

The Christmas Party: Summarily Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

Behave appropriately – also at the Christmas office party. This is clearly illustrated by this case, where a dismissals tribunal had to decide if the employer was justified in summarily dismissing a middle manager, who had behaved in a sexually offensive way at the Christmas office party towards a female colleague from another department. The umpire found that the middle manager had behaved in a sexually offensive way towards the female employee at the Christmas office party, which constituted gross misconduct. The fact that the case involved a manager who had displayed this kind of behavior towards an employee was an aggravating factor and it did not matter that the

manager and the employee worked in separate departments or that the manager had had an immaculate employment record for more than 25 years. Accordingly, the summary dismissal was justified and the tribunal found in favor of the employer.

European Union

Court Holds Member States Must Require Employers to Adopt Systems to Record All Employee Working Time

Precedential Decision by Judiciary or Regulatory Agency

Authors: Thomas Griebe, Shareholder and Thorben Klopp, Associate - Littler Germany

On May 14, 2019, the European Court of Justice (ECJ) ruled that, in order to guarantee employees' rights, EU Member States "must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured." In the past, Member States such as Germany and Spain have only required employers to keep track of overtime, but not of regular working time. This approach will now most likely no longer be sufficient. Even though the decision does not bind employers directly, they can treat the ECJ's decision as an opportunity to revise their internal time-recording systems. A forward-looking early approach may prove helpful in terms of smoothly adopting a system compliant with future regulations following the ECJ's decision.

Business Travel Within EEA Requires a Social Security Certificate

Trend

Authors: Jan-Ove Becker, Partner and Dagmar Lessnau, Associate - Littler Germany

German and other European employers must ensure that employees who are traveling to another European Economic Area (EEA) state or Switzerland for business-related reasons carry a social security certificate called an A1 certificate. Employers must apply for these certificates electronically. All employers in Germany and other European countries should take steps to comply with the A1 electronic application procedure and ensure that their payroll program includes the electronic application function. Authorities have started auditing companies for compliance. Noncompliance could lead to a fine of up to 10,000 euros (approximately US$11,167).

Finland

Amendment to Law Simplifies Terminations of Employment Contracts

New Legislation Enacted

Author: Samuel Kääriäinen, Partner - Dottir Attorneys Ltd.

On July 1, 2019, the amendment to Chapter 7, Section 2, Subsection 1 of the Employment Contracts Act (55/2001) comes into force. The amendment makes it easier for small employers (with some 20 or less employees) to fulfill the legal grounds for terminating employment contracts. The practical impact of the amendment is, however, expected to be limited and the threshold for dismissal will continue to be high even for small employers.

New Government Expected to Alter the Course of Rendering New Legislation

Trend

Author: Samuel Kääriäinen, Partner - Dottir Attorneys Ltd.

The new Finnish government was appointed on June 6, 2019. Consisting of more left-wing political parties than the previous one, it is expected that the government will return to the traditional course of rendering new employment legislation only in close cooperation with the national labor market organizations. This is likely to alter the recent trend of passing new legislation regardless of the resistance of the central labor unions.

France

Index on Equal Remuneration Between Women and Men

New Order or Decree

Author: Guillaume Desmoulin, Partner - Littler France

Pursuant to Decree No. 2019-382, dated April 29, 2019, each company over 50 employees must calculate the salary gaps between women and men and publish the results on their website. When the results exceed a predefined threshold, the employer must take corrective measures either through a bargaining agreement or through the implementation of unilateral decision to avoid a financial penalty. Companies in noncompliance will face a formal notice to remedy the situation within a set deadline. The results on payment gaps between women and men are also to be included in the company's central database.

Posted Workers: New Rules and Penalties for Noncompliance

New Order or Decree

Author: Guillaume Desmoulin, Partner - Littler France

Decree No. 2019-555, dated June 4, 2019, sets forth the rules and obligations applicable to posted workers and their employers, defining the term "illegal employment" and the corresponding penalties and controls, and outlining the required content for the relevant declaration. As of July 1, 2019, the declaration must mention the name of the company's representative based on national territory, in charge of overseeing the posted worker during the entire period. Some industries are exempted of such obligation if they resort to posted workers for a short period of time or for an occasional event (e.g., artists, sportsmen, apprentices on temporary mobility, seminar participants, etc.). The French labor administration may penalize noncompliant employers or ban them from being able to post workers.

Difference in Treatment in CBA: No General Presumption of Justification

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner - Littler France

Under French labor law, a difference in treatment arising between occupational categories within a collective bargaining agreement (CBA) is presumed to be justified because it has been negotiated and signed by the unions, who represented the rights and interests of employees. However, the French Supreme Court recently ruled that this presumption cannot be applied if the difference in treatment arises between employees on the sole basis of their presence on a designated workspace, and that the professional, economical and familial impacts of a transfer of business need to be considered. This is an extension of a previous precedent, set in 2015, when the French Supreme Court first ruled over a case on difference of treatment within a CBA between occupational categories.

Variable Compensation Cannot Be Based on Employer's Sole Will

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner - Littler France

Under French law, compensation, alongside work performance and subordinate relationship, is one of the key elements of an employment relationship. It is a constant precedent that neither one of the parties, especially the employer, can make unilateral decisions affecting the contractual compensation. On that basis, the French Supreme Court recently ruled that an employer unlawfully unilaterally determined a variable compensation calculated on a fixed percentage fee.

Germany

Remuneration of Business-Related Travel Time in Germany

Precedential Decision by Judiciary or Regulatory Agency

Authors: Jan-Ove Becker, Partner and Dagmar Lessnau, Associate - Littler Germany

According to a recent decision from the German Federal Labor Court, necessary travel time spent in the employer's interest generally has to be compensated like working time. This decision impacts business travel, especially for multinational companies. The ruling does not, however, result in a general or unlimited compensation claim for all travel time spent for business purposes.

Hungary

Amendments to Labor Code to Implement GDPR

New Legislation Enacted

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

Recent amendments to the labor code implement the GDPR. From a practical point of view, some of these measures were already in place. The use of biometric entry systems (such as fingerprint authentication) is prohibited, with some limited exceptions (for example, to protect the employees' physical integrity and health; or to safeguard dangerous material or assets of exceptionally high value). Moreover, it is now clear that, prior to monitoring work devices (such as e-mail, laptop or internet use), the employer must provide a written notice to employees, outlining why such measures are necessary and proportionate in comparison to the limitation on employee's privacy rights. Likewise, an employer may request criminal background information from an employee only under very limited circumstances.

Risks of a Too-Long Compliance Procedure

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Court ruled that the statutory 15-day deadline to terminate employment with immediate effect for a serious breach must be complied with, even in a case when the employer's competent compliance personnel are on annual vacation or too busy. In the given case, the employer received information from the police on an investigation against one of its employees in June, and the employer's internal compliance department dragged on with the internal audit during the summer, thus breached the statutory 15-day deadline. This deadline commences when the employer's competent body receives the necessary information to decide on the termination of the employment.

Basing Salaries on Age is Discriminatory

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Court ruled that the employer cannot discriminate between employees in terms of their salaries based on their age. The employer cannot pay higher salary to a younger employee (in our case to a personal assistant) if the younger and the older employee perform the same work and the only difference between them is the age.

Ireland

Changes to Immigration Law Help Address Skills Shortages

New Legislation Enacted

Author: Emmet Whelan, Partner - ByrneWallace

Three recent developments in the area of corporate immigration will improve access for foreign workers to the Irish labor market. These developments include changes to the list of occupations deemed as critical to the Irish economy and will help to address skills shortages in certain industry sectors, including construction and sports.

New Legislation to Bring Extra Leave and Benefits for Parents

New Legislation Enacted

Author: Emmet Whelan, Partner - ByrneWallace

Two recent developments in the area of parental leave are set to increase the amount of both paid and unpaid leave that can be taken by parents. The Irish Parliament (Oireachtas) has passed the Parental Leave (Amendment) Act 2019, which increases the amount of unpaid parental leave available to parents from 18 weeks to an eventual total of 26 weeks for each child. In addition, the Government announced the Heads of the Parental Leave and Benefit Bill 2019, which seeks to introduce two weeks paid parental leave, rising to seven weeks in 2021, for each parent.

Italy

The Relationship Between Sickness and Paid Holiday Leave to Suspend the Period of Retention of Employment Due to Illness

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On April 17, 2019, the Supreme Court ruled a dismissal due to the employee exceeding the period of retention of employment in case of illness, was unlawful. The employee challenged the dismissal because she had requested to convert the period of illness into paid holiday leave. She also complained that her employer engaged in abusive conduct. The Supreme Court noted that the employee had the right to use the accrued holidays paid leave to suspend the accumulation of the period of employment retention, finding no absolute incompatibility between illness and holidays leave.

Failure to Supervise Justifies Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On June 4, 2019, the Supreme Court held that the dismissal of a manager who failed to supervise a subordinate who, in turn, defrauded the employer was for just cause. Here, the manager, who was head of a bank branch, failed to ensure the proper custody of the ATM cards and their secret codes, also failing to activate the appropriate checks against the abnormal quantity of ATM cards, among other failures. Such omissions allowed one of his subordinates to engage in fraudulent acts against the employer bank. The Supreme Court found that the manager's omissions fully legitimatized his dismissal for just cause.

Dismissal of Pregnant Employee Was Lawful Because Pregnancy Occurred during the Period of Notice

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

An employee who had become pregnant during the period of notice challenged her dismissal. On April 3, 2019, the Supreme Court affirmed the lawfulness of the dismissal, noting that the employee was not objectively pregnant before the start of the period of notice. Therefore, the dismissal was valid and lawful.

Plans to Increase Inspections in 2019

Important Action by Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On April 10, 2019, the National Office of Labor Inspections (INL) published the planning document for surveillance activity for 2019. In addition to illegal work and the so-called "caporalate," the INL expects to intensify supervision in the field of fixed-term contracts, focusing on the correct implementation of the recently amended Dignity Decree. Attention will be paid to medium and large companies that make extensive and frequent use of this type of contract, verifying compliance with the numerical limits and, where applicable, the needs that justify the use of fixed-term contracts.

Japan

New Anti-Power Harassment Law (Anti-Bullying Law) in Japan

New Legislation Enacted

Author: Aki Tanaka, Of Counsel - Littler United States

On May 29, 2019, a new anti-bullying law, known as "Anti-Power Harassment Law," was enacted and will take effect within one year from June 5, 2019. This law requires the employer to take appropriate actions to prevent employees from engaging in "power harassment," which involve activities that take advantage of their powers at work, exceed the employee's necessary and reasonable scope of duties, and may be harmful to the work environment. The new law also prohibits retaliation against the employees who bring the claim of power harassment.

Pressure on Employer to Provide Support to Employees Beyond Retirement Age

Trend

Author: Aki Tanaka, Of Counsel - Littler United States

On May 15, 2019, the government presented the general design of a new law for the stability of employment up to age 70. Currently, employers are required to continue employing employees up to the age of 65, through one of three options: (i) raising the retirement age to 65; (ii) abolishing the retirement age system; or (iii) rolling out the re-hiring system after the age of 60 through 65. Under the new law, however, for employees between the ages of 65 and 70, the employer will be required to select one of seven options: (i) raising the retirement age to 70; (ii) abolishing the retirement age system; (iii) providing a re-hiring system through the age of 70; (iv) referring the new position to another employer; (v) providing some funds to be a freelancer; (vi) assisting the employee to open a new business; or (vii) providing some funds for the employee's activity at NPOs.

Malaysia

Fees for Employment Pass, Visit Pass for Temporary Employment, and Work Pass

New Order or Decree

Author: Tan Su Ning, Senior Associate - Skrine

The Fees (Employment Pass, Visit Pass (Temporary Employment) and Work Pass) (Amendment) Order 2019 (Order 2019) was published on April 30, 2019, and came into effect on April 30, 2019. The provisions under Order 2019 will be amending provisions under the Fees (Employment Pass, Visit Pass (Temporary Employment) and Work Pass) Order 1998 (Principal Order). The monthly fees for Visit Pass (Temporary Employment) for all sectors are revised to RM500.00, save for plantation and agriculture sectors, which are fixed at RM166.67 per month.

Mexico

New Care Leave for Parents of Children with Cancer

New Legislation Enacted

Authors: Tania Terrazas, Associate and Erick Fernández, Associate - Littler Mexico

On June 4, 2019, Mexico's department of labor (STPS for its acronym in Spanish) published a Decree in the Official Gazette of the Federation, amending the social security and labor law, to allow parents to take leave time from work to care for children under the age of 16 who have been diagnosed with cancer and require cancer-related treatment, hospitalization or rest. The Decree takes effect on June 5, 2019. The insured working parent will enjoy a subsidy equivalent to 60% of the last contribution base salary registered by the employer with the Mexican Institute of Social Security (IMSS), provided the employee meets the eligibility threshold.

New Zealand

Workplace Changes for Workers in the Screen Industry

Proposed Bill or Initiative

Authors: Naomi Seddon, Shareholder and Merille Raagas, Counsel - Littler United States

Key changes in New Zealand's workplace relations for the screen sector workers are set to be implemented soon. The New Zealand government has commenced drafting the legislation at the start of June 2019; the law is expected to be passed in mid-2020. The proposed changes aim to clarify whether or not screen sector workers are entitled to employment rights including collective bargaining. Screen sector work will include films, drama serials, commercials and video games. However, the exact coverage will be determined with more specificity in the development process of the legislation and in consultation with the screen industry. The occupational group may include performers, technicians, writers, visual effects artists and game developers. Once the changes are implemented mid next year, contractors will be able to bargain collectively with the help of industry bodies and organizations (i.e., unions or guilds). Set requirements for the union or guild representatives will be drafted and developed under the legislation around initiating, bargaining and ratifying agreements.

Norway

Amendments to Whistleblowing Law

New Legislation Enacted

Author: Ole Kristian Olsby, Partner - Homble Olsby advokatfirma

The whistleblowing law has been amended, to clarify various concepts, including the persons covered under the law, the definition of the term "censurable conditions," how employers can notify responsibly, employers' duty to act, compensation for economic and noneconomic loss, and internal procedures. The amendments enter into force on January 1, 2020.

Supreme Court Rules on Threshold for Amendment Terminations

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner - Homble Olsby advokatfirma

In May, the Supreme Court ruled in a case concerning the validity of an amendment termination. The ruling substantiates that the threshold for amendment terminations is lower than that for ordinary complete terminations of employment. The individual circumstances of a case will determine how much lower it is. A comparison of the new and old position will be relevant in this regard.

Proposed Changes to Law on Hiring Agency Workers

Proposed Bill or Initiative

Author: Ole Kristian Olsby, Partner - Homble Olsby advokatfirma

A proposal to amend the provisions concerning agency workers has been submitted for a public hearing, with a deadline for mid-September 2019. The proposal is a follow-up of previous efforts to improve the conditions for hired agency workers and protection against unlawful hiring. It recommends to provide the Norwegian Labor Inspection Authority with authority to supervise compliance with the conditions for hiring agency workers and the principle of equal treatment.

Philippines

Expanded Maternity Leave Law

New Regulation or Official Guidance

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

Pursuant to Section 19 of Republic Act No. 11210, also known as the "105-Day Expanded Maternity Leave Law," the Department of Labor and Employment issued the Implementing Rules and Regulations (IRR) of the law, which paved the way for its full implementation. Significantly, the IRR clarifies the amount of the Maternity Benefit to be received by the female worker, which refers to her "full pay" or her actual remuneration or earnings paid by her employer for services rendered on normal work days, which should not be lower than the minimum wage rate fixed by law.

Guidelines on the Payment of Maternity Benefit

New Regulation or Official Guidance

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

The Social Security System (SSS) recently issued Circular No. 2019-009, which provides for, among others, the amount of Maternity Leave Benefit to be received by the female worker/member. In particular, the Circular provides that employed female workers shall receive their full pay which consists of their: (1) SSS maternity benefit computed based on their average daily salary credit; and (2) salary differential to be paid by the employer, if any. Female workers, however, who are otherwise employed by exempt establishments and enterprises, shall not be entitled to the salary differential and shall only be entitled to receive their SSS maternity benefits.

Imposition of Double Indemnity Against an Employer

New Regulation or Official Guidance

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

The National Labor Relations Commission (NLRC) recently issued En Banc Resolution 01, Series of 2019, which provides for the guidelines in the imposition of double indemnity against the employer for underpayment of wages. The subject Resolution provides that in the event Philippine labor tribunals (i.e., Labor Arbiter and NLRC) finds the employer liable for such underpayment, the employer is given a period of five (5) days from receipt of the decision to pay the wage differential, otherwise double indemnity would be imposed during the execution of the judgement award in favor of the employee.

Implementing Rules and Regulations of Telecommuting Act

New Regulation or Official Guidance

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

Pursuant to the "Telecommuting Act," the Department of Labor and Employment (DOLE) issued the Implementing Rules and Regulations (IRR) of the law, which paved the way for its full implementation. Under the IRR, a telecommuting work arrangement or program may be offered by private sector employers to their employees, on a voluntary basis, upon such terms and conditions as they may be mutually agreed upon. In this regard, a "telecommuting agreement" refers to the mutual consent of the parties, based on the company's telecommuting program, collective bargaining agreement (if any), and other company rules and regulations. Under the IRR, the telecommuting program should stipulate specific guidelines and rules governing the arrangement, including, eligibility; code of conduct; performance evaluation and assessment; use and cost of equipment; work days and/or hours; conditions of employment, compensation, benefits and particularly those unique to telecommuting employees; etc.

Bill, Prohibiting Labor-Only Contracting, Expected to Be Signed into Law

Proposed Bill or Initiative

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

The Senate Bill on the Security of Tenure and End of Endo Act of 2018, which is expected to be approved by President Rodrigo Duterte soon, proposes significant changes to the provisions of the Labor Code of the Philippines on contracting arrangements, among others. Particularly, the Bill has expressly prohibited "Labor-Only Contracting," which occurs when: (1) the job contractor, who merely recruits and supplies or places workers to a contractee, has no

substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; or (2) the workers recruited and supplied or placed by such person are performing activities which are directly related to the principal business of such contractee or are under the direct control and supervision of the contractee.

Portugal

The Creation of the Contract-Generation Measure Introduces New Incentives for Hiring

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Associate - Garrigues Portugal SLP Sucursal

On April 12, 2019, Decree no. 112-A/2019 was published on the official gazette (*Diário da República*), to regulate the creation and implementation of the Contract-Generation measure, which provides financial incentives to companies that hire for long-term employment young individuals searching for their first job. With this measure, the Government attempts to combat unemployment and job insecurity amongst the young adult population. The measure includes various financial incentives for companies, and establishes eligibility criteria. The decree is effective from April 13, 2019, and applicable to all employment contracts entered into since that date.

Puerto Rico

An Employee's Felony Indictment Constitutes Just Cause for Termination

Precedential Decision by Judiciary or Regulatory Agency

Authors: Anabel Rodríguez-Alonso, Managing Capital Member and Erika Berríos-Berríos, Capital Member - Littler Puerto Rico

On April 25, 2019, the Puerto Rico Supreme Court held that a felony indictment constitutes conduct severe enough for a just-cause termination under Puerto Rico's Unjust Dismissal statute, Act No 80 of May 30, 1976 (Act 80). Here, the employee was suspended after criminal charges were filed against him and, subsequently, was terminated after being found guilty of six felony charges. The Court explained that an employer can adopt rules and regulations for the good and normal functioning of the company and may evaluate its employees based on the prevailing moral and public order values. Additionally, the Court noted that the presumption of innocence that applies in the criminal context *does not* extend to the labor and employment context. This case provides greater certainty to employers when deciding the course of action to take when an employee receives a felony indictment, although, a case-by-case analysis is still highly recommended.

Guidelines on the Interpretation of Puerto Rico's Employment Legislation (Part 1)

New Regulation or Official Guidance

Authors: Ana Beatriz Rivera-Bertrán, Member and Daniel Limés Rodríguez, Associate - Littler Puerto Rico

On May 8, 2019, the Puerto Rico Department of Labor published the first edition of its Guidelines on the Interpretation of Puerto Rico's Employment Legislation. The Guidelines provide legal certainty on the Department's interpretation of the laws and regulations that fall within its jurisdiction. The Guidelines also discuss the impact of particular pieces of legislation on employee rights and how to examine the wording of specific statutory provisions in controversy. Although the Guidelines do not create any substantive or procedural rights, they provide a wide range of the Department's official interpretation of employment-related statutes and will probably receive significant attention in the coming years.

Guidelines on the Interpretation of Puerto Rico's Employment Legislation (Part 2)

New Regulation or Official Guidance

Authors: Erika Berrios-Berrios, Capital Member and Daniel Quiles Pumarejo, Member - Littler Puerto Rico

Further, the Guidelines discuss employer's obligation to provide reasonable accommodation for an employee's religious practices (upon the employee's written request) and the applicable exceptions. With regards to the interpretation of the Puerto Rico Labor Transformation and Flexibility Act, Act No. 4 of January 26, 2017 (LFTA), the Guidelines discuss the different types of overtime; changes in employee's schedules; and the repeal of the Closing Law (which eliminated previous restrictions on hours and days of operations for covered commercial establishments). Further, the Guidelines discuss the Christmas Bonus Act, clarifying the eligibility and bonus amount requirements and how employers may qualify for an exemption.

Guidelines on the Interpretation of Puerto Rico's Employment Legislation (Part 3)

New Regulation or Official Guidance

Authors: Elizabeth Pérez-Lleras, Capital Member and Sashmarie Z. Rivera López, Associate - Littler Puerto Rico

Further, the Guidelines cover the Caregiver's Leave Act, an amendment to the sick leave provision, clarifying the provision that expressly prohibits employers from counting the use of sick leave as an efficiency criterion or using it to justify disciplinary actions. Concerning women's rights to a paid leave to nurse their infants or to express breastmilk, the Guidelines interpret the eligibility criteria, employer obligations to extend the leave and provide lactation spaces, and remedies for noncompliance. The Guidelines also discuss the prohibition against pay discrimination based on gender, for employees performing comparable job functions or duties (pursuant to PR Equal Pay Act. Notably, the Guidelines outline specific instances in which the salary difference may be justified; affirmative defenses available to employers; and specific pecuniary remedies for violations of the Act.

Implementing Legislation that Prohibits Sexual Orientation and Gender Identity

New Regulation or Official Guidance

Author: José Dávila-Caballero, Counsel - Littler Puerto Rico

The Puerto Rico Department of Labor (PRDOL) revised and updated its Protocol on Sexual Orientation and Gender Identity Discrimination, providing guidance on how to interpret and implement legislation that prohibits sexual orientation and gender identity discrimination. The revised Protocol includes guidelines on new requirements for conducting internal investigations after employees allege sexual orientation and gender identity discrimination; documents that must be generated and kept during investigations; and addressing gender identification requests, including personnel files and record-keeping practices. The Protocol further expands on what constitutes illegal discrimination practices, identifying the conduct the PRDOL considers harassment based on sexual orientation and gender identity. Employers should revise their policies accordingly, as well as train supervisors and personnel handling these types of complaints.

Saudi Arabia

New Legislation of Residence Permits (Known as "Iqamas")

New Legislation Enacted

Author: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co

The "Privileged Iqama" scheme was approved by the KSA Council of Ministers in May 2019 who subsequently published Cabinet Resolution Number 521 of 1440AH, which came into force on May 25, 2019. The scheme seeks to regulate the issuance of residence permits (known as iqamas) to highly-skilled and wealthy foreign nationals

without the need for a local sponsor. The scheme (which benefits professional foreign nationals, such as doctors and engineers) entitles successful applicants and their dependents to a variety of privileges, including; the ability to stay in the Kingdom, obtain visas for their dependents, employ domestic workers, invest in property, be employed in the Kingdom and change employers without any restrictions, freely enter and exit the country, and practice commercial activities as permitted under the Foreign Investment Law. Successful applicants will either be awarded with permanent or one-year renewable residency. Applicants are required to satisfy various criteria in order to be considered.

Certificate of Conformity for Employing Persons with Disabilities

New Legislation Enacted

Author: Sara Khoja, Partner and Sarit Thomas, Professional Support Lawyer - Clyde & Co

From April 24, 2019, companies employing between 50-499 employees and therefore classed as medium-sized companies, wishing to employ individuals registered as disabled, are now required to obtain a certificate of conformity from the Ministry of Labour and Social Development for such employment to be counted towards their Saudisation (nitiqat) rating.

Singapore

Significant Changes to Employment Act, Effective April 1, 2019

New Legislation Enacted

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

Significant changes to the Employment Act (Cap. 91)(the EA) came into force on April 1, 2019. The EA now applies to managers and executives earning more than S$4,500 per month, thus extending coverage by around 430,000. Additionally, the current salary cap for non-workmen who are covered under Part IV of the EA, which contains provisions for more vulnerable employees, has been increased from S$2,500 to S$2,600 per month. The overtime salary cap for non-workmen has been increased from S$2,250 to S$2,600, and is anticipated to benefit an additional 100,000 non-workmen. Further, Employment Claims Tribunals now hears both salary-related disputes and wrongful dismissal claims, instead of the latter being heard by the Ministry of Manpower. Employers should review their employment contracts and frameworks to ensure that they comply with the new employment laws.

Company Fined S$210,000 and Supervisor Jailed for Workplace Accident

Precedential Decision by Judiciary or Regulatory Agency

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

An employer was fined $210,000 for violating the Workplace Safety and Health Act (WSHA) that resulted in a workplace accident on September 14, 2016, where one of its workers was left permanently disabled. For that same accident, the employer's construction foreman was sentenced to nine weeks' imprisonment for his negligent act under the WSHA. Investigations revealed that the construction foreman did not obtain a permit-to-work before carrying out the installation process that left the worker disabled. This sentencing is the second custodial sentence imposed on a supervisor for a negligent act in a workplace. Supervisors have a duty to ensure a safe working environment for workers under their care and forbid unsafe work practices that may put them at risk. The company, as an employer, also had the duty to take reasonably practicable measures to ensure the safety and health of all employees.

High Court Finds No Liability Based on Independent Contractor Status

Precedential Decision by Judiciary or Regulatory Agency

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

The High Court recently rejected a bid by the Central Provident Fund (CPF) Board to recover more than $400,000 in alleged arrears of CPF contributions over seven years for a gym instructor who had worked at a country club. The High Court also cleared the country club of four criminal charges of non-payment of CPF obligations, overturning a district court decision last year to convict the employer. This decision hinged on the High Court's conclusion that the gym instructor was an independent contractor, and not an employee, finding that the three key factors (control, personal service and mutuality of obligations) did not point towards an employment relationship. This case highlights that contracts must clearly state the nature of the relationship. Parties should also act consistently with this classification.

Employer Awarded Only Nominal Damages Despite Employee's Contractual Breach

Precedential Decision by Judiciary or Regulatory Agency

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

The Singapore High Court recently held that an ex-employee had breached his employment agreement and implied duty of good faith and fidelity by engaging in the business of a competitor. However, the Court only awarded the company nominal damages, because the company failed to prove that it had suffered specific pecuniary loss, and that this loss had been caused by the ex-employee. The High Court further held that the non-compete clause in the employment contract did not protect a legitimate proprietary interest and was therefore void as an illegal restraint on trade. The Court also held that the terms of the restraint of trade (in the employment contract) were unreasonably wide. This decision is a useful reminder that covenants in restraint of trade are prima facie void and unenforceable, and should be carefully tailored to each employee. Parties who are considering claims against their former employees should also consider and seek legal advice on whether the losses they have suffered can be causally linked to the former employee's wrongdoing.

Tripartite Guidelines on Wrongful Dismissal

New Regulation or Official Guidance

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

On April 1, 2019, the Ministry of Manpower, Singapore National Employers Federation and National Trade Union Congress published the Tripartite Guidelines on Wrongful Dismissal. On the same day, wrongful dismissal claims were transferred from the Ministry of Manpower to the Employment Claims Tribunal. The Guidelines provide guidance on what constitutes wrongful dismissal under the Employment Act (Cap. 91). Importantly, the Guidelines clarify that where poor performance is cited as a reason for dismissal, an employer cannot simply dismiss the employee without notice and would need to substantiate it. Further, a dismissal with notice may nonetheless be wrongful if it is made for a wrongful or false reason. Given the ease and low cost of making a claim for wrongful dismissal with the Employment Claims Tribunal, every employer considering terminating an employment relationship should ensure that the separation process and documentation complies with the Guidelines.

Spain

New Whistleblowing Legislation for European Union

New Legislation Enacted

Authors: Juan Bonilla, Partner and Ana Campos, Senior Associate – CUATRECASAS

On April 16, 2019, the European Parliament passed a directive on the *"Protection of persons reporting on breaches of Union law."* This legislation adopts the protection of whistleblowers as a key element in the fight against corruption, cartels, and corporate incompliance. Consequently, it sets forth the obligation to establish internal and external reporting channels as well as an explicit prohibition of retaliation. The obligation of establishing an internal channel affects all legal entities of the public sector and legal entities of the private sector with more than 50 employees. Once published, Member States must transpose this directive within two years.

Obligation to Provide Information on Conditions of Employment

New Legislation Enacted

Authors: Juan Bonilla, Partner and Ana Campos, Senior Associate – CUATRECASAS

The European Parliament has passed a directive on "transparent and predictable working conditions in the European Union," to promote more secure and predictable employment while ensuring labor market adaptability and improving working and living conditions. The directive sets forth minimum rights for employees regarding information about the employment relationship (its duration, compensation, trial period, training, working calendar, social security institutions, etc.). In case the company fails to provide this information, employees shall benefit of any more favorable provisions existing in the Member State. Namely: presumption of indefinite term employment relationship, no trial period or full time employment. Once published, Member States must transpose this directive within two years.

Registration of Daily Working Time

Precedential Decision by Judiciary or Regulatory Agency

Authors: Juan Bonilla, Partner and Ana Campos, Senior Associate – CUATRECASAS

On May 14, 2019, the European Court of Justice ruled on a preliminary ruling requested by the Spanish National High Court (Audiencia Nacional) that all Member States must require employers to set up an objective, reliable and accessible system registering the effective daily working time per employee. Prior to this court ruling, Spain modified the Workers' Statute Act, with effective date of May 12, 2019, requiring that all employers register the start and end of employees' daily working time to verify compliance with maximum daily and weekly working time, and with mandatory resting periods.

Time Spent Voluntarily on Company Events is Working Time

Precedential Decision by Judiciary or Regulatory Agency

Authors: Juan Bonilla, Partner and Ana Campos, Senior Associate – CUATRECASAS

The Spanish Supreme Court (*Tribunal Supremo*) has ruled that time spent outside working hours in company events with clients is working time, even when assistance to such events is willingly decided by the employee. This decision has given rise to some controversy, and has come at a sensitive time, as the obligation to register working time has become compulsory not only in Spain, but in the whole European Union, in order to guarantee compliance with maximum daily and weekly working time, and with mandatory resting periods.

Sweden

New Rules Limit the Right to Take Industrial Actions

New Legislation Enacted

Author: Anna Jerndorf, Partner - Advokatfirman Törngren Magnell KB

On June 18, 2019, the Parliament passed a bill to expand the peace obligation in workplaces with a collective bargaining agreement in place and in disputes, through amendments to the Employment (Co-Determination in the Workplace) Act (1976:580). In order for an employee to participate in an industrial action against an employer who is bound to a CBA, the purpose must be to achieve a CBA and the trade union must have negotiated its demands with the employer. Further, it will not be allowed for an employer or an employee to take industrial actions to exert pressure in a dispute. The new rules will enter into force on August 1, 2019.

Employment Protection Extended to the Age of 69

New Legislation Enacted

Author: Anna Jerndorf, Partner - Advokatfirman Törngren Magnell KB

On June 18, 2019, Parliament amended the Employment Protection Act, to extend employment protection from termination without just cause, until the employee reaches the age of 69. Currently, employees have a right to remain in their employment until they age of 67. With these amendments, once the employee reaches the age of 69, an employer may terminate without just cause through a simplified termination procedure. Other rules under the act, such as notice periods and priority right to re-employment, will also be affected by the new age limit. The new rules will enter into force gradually: on January 1, 2020, the new age limit will be 68 years, and on January 1, 2023, the age limit will be 69 years.

Reduction of Employer's Contributions for Persons under 18 Years Old

New Legislation Enacted

Author: Anna Jerndorf, Partner - Advokatfirman Törngren Magnell KB

On June 18, 2019, Parliament passed a bill on reduced employer's contributions for persons under the age of 18. According to the new rules, the employer's contributions shall be 10.21 per cent for employees who are 15-17 years of age with a maximum salary of SEK 25,000 per month. The aim is to provide opportunities for young people to receive summer jobs and part-time jobs during their studies so that they get work experience and become attractive for future employers. The new rules will enter into force on August 1, 2019 and shall apply to all remuneration paid after July 31, 2019.

Special Investigator Appointed to Review the Swedish Labor Law

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner - Advokatfirman Törngren Magnell KB

The Government appointed a special investigator to analyze the modernization of the Swedish labor law and present a report by May 31, 2020. The investigator must prepare legislative proposals on extended exemptions from the rules on the order of priority; the employers' responsibility for competence development and employee adaptability; lower termination costs; and consider legislative proposals to create a better balance in the employment protection for employees with different employment conditions. The inquiry and its given directives are based on the January Agreement, a political agreement between the Social Democrats, the Centre Party, the Liberals and the Green Party. According to the January agreement, amendments to the Employment Protection Act shall be implemented by 2021.

Switzerland

Employers Must Cover Work Space Expenses for Home Office Work

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ueli Sommer, Partner and Marco Bächtold, Associate - Walder Wyss Ltd.

On April 23, 2019, the Federal Supreme Court of Switzerland held that employers must pay for rental costs for private rooms in which an employee works during home office if telework is mandated and/or the employer does not provide a workplace for the employee. Further, compensation is owed for the workspace irrespective of whether any additional rental costs do incur due to home office. In cases of shared usage (private/work), the costs are divided proportionally (i.e. here, an employee working from her/his flat is to be paid the adequate rental costs for one room). Going forward employment agreements must provide for sufficient lump sum payments for employees' home office expenses.

United Kingdom

Enhanced Shared Parental Pay Lower than Enhanced Maternity Pay Not Discriminatory

Precedential Decision by Judiciary or Regulatory Agency

Author: Jake Fleming, Trainee Solicitor - Littler United Kingdom

On May 24, 2019, the UK Court of Appeal held that it is not discriminatory for enhanced shared parental leave pay to be paid at a lower rate than enhanced maternity leave pay. In two separate appeals, which were heard together, the Court of Appeal found that such arrangements are not unlawful. The claims failed due to (i) statutory bars in the Equality Act 2010, which prevent a man claiming sex discrimination where he is not afforded the same special treatment given to women in connection with pregnancy or childbirth, and (ii) because the correct comparator was a female colleague on shared parental leave, as opposed to a colleague on maternity leave.

Improperly Proselytizing at Work Is a Fair Reason for Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Lisa Rix, Associate - Littler United Kingdom

On May 15, 2019, the UK Court of Appeal held that the dismissal of a nurse for improperly proselytizing at work was fair. The nurse had repeatedly entered into religious discussions with patients and did not desist even when given a direct instruction to do so. The Court of Appeal also held that the nurse's right to manifest her religion under the European Convention of Human Rights (ECHR) had not been breached because, although some forms of proselytization are protected by the ECHR, 'improper' proselytization is not protected. 'Improper' proselytization is not clearly described or defined, but most likely means circumstances where there is an element of pressure involved or where employees have been specifically instructed not to proselytize.

Regular Voluntary Overtime Should be Included in Holiday Pay

Precedential Decision by Judiciary or Regulatory Agency

Author: Caroline Baker, Partner - Littler United Kingdom

On June 10, 2019, the UK Court of Appeal held that regular voluntary overtime must be included in any holiday pay calculation under the Working Time Directive (2003/88/EC) (WTD). While this decision expressly upholds the UK Employment Appeal Tribunal's ruling, it will be for the Employment Tribunal to determine, on a case by case basis, whether a particular pattern of voluntary overtime is sufficiently regular and settled such that the voluntary overtime pay should be used to calculate the WTD holiday pay.

Claim Against UK Employer by French Employee Cannot Be Brought in Great Britain

Precedential Decision by Judiciary or Regulatory Agency

Author: Jake Fleming, Trainee Solicitor - Littler United Kingdom

On November 30, 2018, the Employment Appeal Tribunal (EAT) held that an individual living and working in another EU member state, in principle, could be sued in Great Britain. However, on the facts of this case, the claimant was unable to do so. The claimant was a French-qualified lawyer living in Paris and working in the Paris office of a London-based law firm. She claimed that discrimination took place in France. The EAT therefore held that the claims could not be brought in Great Britain since "the connection with Britain was insufficient."

United States

Settlement Agreements Cannot Prevent Nevada Employees from Disclosing Workplace Sex Discrimination

New Legislation Enacted

Authors: Rick Roskelley, Shareholder and Katy Branson, Associate - Littler United States

Under a new Nevada law, effective July 1, 2019, employers that settle certain allegations involving sex discrimination or sexual offenses will not be able to bar the claimant from talking about the existence of the settlement, or the facts and circumstances giving rise to the claim. Assembly Bill No. 248, signed into law by Nevada Governor Steve Sisolak on May 25, 2019, mirrors similar laws passed in California, New Jersey, New York, and other states in the midst of the #MeToo movement. The law's purpose is to prevent employers from silencing employees through the use of nondisclosure agreements, which may operate to let abusers or harassers continue their bad behavior.

Connecticut Enacts Most Generous Paid Family Leave Benefits in the Country

New Legislation Enacted

Authors: Sharon Bowler, Special Counsel and Jason Stanevich, Shareholder - Littler United States

On June 25, 2019, Connecticut enacted into law what appears to be the most generous paid family leave law in the country. P.A. 19-25, "An Act Concerning Paid Family and Medical Leave," creates the Family and Medical Leave Insurance program and provides benefits to employees who take leave for reasons covered under the existing Connecticut Family and Medical Leave Act (CTFMLA). Connecticut joins California, Massachusetts, New Jersey, New York, Rhode Island, Washington, and the District of Columbia in implementing a paid family leave insurance program. This approach differs from that taken by several other states that have opted to require employers to directly provide paid sick leave benefits to employees.

Alabama Enacts Pay Equity Law

New Legislation Enacted

Author: Katherine Suttle Weinert, Counsel - Littler United States

On June 10, 2019, Alabama enacted the state's first wage equity law. The Clarke-Figures Equal Pay Act (CFEPA) mimics, in large portion, the federal Equal Pay Act (EPA), but includes race as a protected classification in addition to sex. The CFEPA also prohibits retaliation based on an applicants' failure or refusal to provide their wage history and sets forth employer recordkeeping requirements. Employers of any size are subject to the act. There is no small employer exception. The CFEPA takes effect September 1, 2019.

Kansas City, Missouri Joins National Movement to Ban Salary History Inquiries

New Legislation Enacted

Authors: Alexandra Hemenway, Associate and Dylan Long, Associate - Littler United States

On May 23, 2019, Kansas City, Missouri, joined the growing list of cities with salary history bans, aligning with a national trend that continues to gain momentum. The ordinance takes effect on October 31, 2019, and applies to any employer in Kansas City that employs six or more employees. The ordinance generally prohibits employers from inquiring about an applicant's salary history. The ordinance also prohibits employers from screening applicants based on their current or previous wages, or other compensation, and prohibits employers from maintaining any requirement that prior wages meet minimum or maximum criteria. Similarly, employers cannot use past wage information to determine whether to offer an applicant a position or to determine the applicant's salary or other compensation. Further, employers may not retaliate against, refuse to hire, or otherwise "disfavor" an applicant because the applicant refused to provide his or her salary history to the employer.

Littler Report: Synthetic Reality & Deep Fakes: Considerations for Employers and Implications of the Rise of Deep Fakes in the Workplace

Trend

Authors: Natalie Pierce, Shareholder and Aaron Crews, Chief Data Analytics Officer – Littler United States

The authors propose a tangible perspective on AI, one where the proliferation of Deep Fakes and the ability to leverage this technology may challenge standards for information dissemination, communication and our most basic assumptions of reality - where once seeing was believing. These inauthentic intrusions not only impact our society generally, and our political system and growing divisions more specifically, but also spill into our workplaces in a way that forces employers to grapple with the often inevitable effects. Employers will need to adjust to this new reality and understand the means of minimizing the potentially negative impact, including the utilization of data analytics to protect companies and their workforces from exploitative uses of false information.