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Labor and employment law updates from around the globe

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Australia

Paid Parental Leave Amendment (Work Test) Bill 2019

New Legislation Enacted

Author: Naomi Seddon, Shareholder - Littler United States

On October 28, 2019, the Paid Parental Leave Amendment (Work Test) Bill 2019 was passed, to enable the paid parental leave work test period for a pregnant woman in an unsafe job to be moved from the 13-month period prior to the birth of her child to the 13-month period before she needs to cease work due to the hazards connected with her employment and the subsequent risk to her pregnancy. The law also extends the permissible break in the paid parental leave work test to enable parents to have a gap of up to 12 weeks between two working days and still meet the work test. Employers should be aware of the practical implications of these new provisions.

Queensland Company and Directors Charged with Industrial Manslaughter

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

On October 25, 2019, a recycling company and its directors were the first Queensland company to be prosecuted for industrial manslaughter under section 34C of the Work Health and Safety Act 2011 (Qld). This prosecution is the first of its kind in Australia under State safety legislation, which is designed to punish companies and senior management whose conduct grossly falls below the standard required and which warrants criminal punishment. The company was accused of negligently causing the death of a worker by failing to separate a mobile plant from pedestrians, after a man was hit and killed by a reversing forklift at a wrecking yard. Two directors were also prosecuted for failure to ensure that the business had those systems in place. Under section 34C, the PCBU (Person Conducting a Business or Undertaking) can be fined up to $10 million for breaches of the Act and directors of PCBUs can also be fined up to $600,000 and be subject to up to five years imprisonment for reckless conduct. Since the complaints were laid, both Victoria and the Northern Territory have amended their legislation to include similar offences into their respective workplace health and safety Acts. Companies should be mindful of the laws in respect to employee safety and in the increased scrutiny that is being placed on directors who fail to ensure that their companies are compliant with health and safety laws.

High Court Agrees to Hear Personal/Carer's Leave Case

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

On December 13, 2019, the High Court granted the Australian Government and a food manufacturer special leave to appeal a contentious decision on calculating sick and carer's leave. The parties argue that the decision potentially can cost employers an extra $2 billion a year. The appeal deals with the meaning of "10 days of paid personal/carer's leave"

in section 96 of the Fair Work Act and is an important decision for all employers with nonstandard shift arrangements. Since the decision was published in mid-2019, it has caused confusion and uncertainty among employers about the correct way to calculate the entitlements. Prior to the 2019 decision, it had been understood that full-time staff who worked a 38-hour week were entitled to accrue 76 hours of personal leave each year, based on the number of ordinary hours they worked over a normal two-week period. However, the decision effectively changed the wording of the provisions regarding how leave is to be accrued to "10 days" per year.

Welcome Guidance for Foreign Entities on Australia's New Modern Slavery Law

New Regulation or Official Guidance

Author: Naomi Seddon, Shareholder - Littler United States

The Australian Government has published the "Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities," which is designed to assist entities with reporting obligations under Australia's new Modern Slavery Act 2018 (Cth). The Guidance has now included some clarification for foreign entities that are carrying on their businesses in Australia *through an Australian subsidiary* as it has now been made clear that the parent foreign entities of such subsidiaries are generally expected to be *excluded* from the reporting requirements under the Modern Slavery Act. Typically, it will only be the Australian subsidiary that is potentially required to report, rather than the foreign parent of the local Australian subsidiary itself being required to report. The Guidance also contains welcome detailed information on what constitutes an entity's operations and supply chains. It is now clear that a reporting entity is not required to monitor or report on the modern slavery risks associated with how consumers use the products it supplies, which had previously been a concern when the draft laws were initially released.

No Leniency for Employers for Underpayment Claims

Important Action by Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

The Fair Work Ombudsman has made it clear in 2019 that businesses will no longer be given leniency for failing to pay employees correctly even in situations where they self-report underpayments (which has historically been viewed favorably by the Ombudsman). Identification of underpayments and associated record keeping obligations is now a key focus for both the Ombudsman and the Fair Work Commission. Further, the Federal Government is also considering introducing criminal sanctions for deliberate and systematic "wage theft" and the exploitation of vulnerable workers, due to increased public pressure following several high profile cases. The common issues that are now targeted by these bodies include the misclassification of workers, annualized salaries that fail to comply with minimum rates and allowances under applicable awards, ordinary hours and overtime payments, failure to pay applicable penalty rates and loadings, and failure to pay superannuation correctly on all ordinary time earnings (OTEs). Employers should be reminded that conducting regular audits of their workforce to ensure compliance with Australia's employment laws should be a priority as there is now little tolerance for noncompliance, enforcement is on the rise, and tougher laws are expected to be implemented for noncompliance this year.

Brazil

New Ordinances Streamline Employer Reporting Requirements

New Legislation Enacted

Author: Renata Neeser, Shareholder - Littler United States

Brazil continues to streamline employer submissions of required employment data by integrating more workplace reporting requirements into the eSocial system. Coming on the heels of the Economic Freedom Act (Law 13.874/2019), which contains several provisions to consolidate and digitize employment information, two recent ordinances provide employers an easier process to submit employment data to the government. One ordinance applies to reporting requirements for the RAIS and CAGED systems, and another addresses digitizing the Employee Registration Book. Most of the provisions within these ordinances take effect on January 1, 2020.

Provisional Measure # 905 – A New Mini Labor Reform

New Legislation Enacted

Authors: Renata Neeser, Shareholder - Littler United States and Marilia Minicucci, Partner - Chiode Minicucci Advogados in São Paulo, Brazil

Provisional Measure # 905 (PM), published on November 12, 2019, establishes a new type of labor relationship in Brazil. The PM aims to reduce the alarmingly high unemployment rate affecting younger workers in the country, and to promote hiring by giving employers an alternative means to do so at lower costs. Specifically, the PM creates the *Green and Yellow (GY) Employment Contract*, a new employment contract model, which: Targets workers ages 18 to 29 who are seeking their first employment opportunity; Is limited to a two-year period; Has simpler and more flexible rules; And provides for less-encumbering employment taxation. The maximum salary to be paid to the GY employees is equivalent to one and a half times the Brazilian federal minimum wage which, in 2020, is BRL1,039.00 (approximately USD$255.00) per month; one and half times that amount equals BRL 1,558.50 (USD$383.00). Thus, the new employment contract model is directed at less-experienced workers, who are most intensely affected by the unemployment rates. The PM is temporary and may expire as early as February 20, 2020, unless extended by Congress.

New Timetable for eSocial Submissions

New Regulation or Official Guidance

Author: Renata Neeser, Shareholder - Littler United States

The implementation of the Brazilian employment reporting system eSocial continues to be modified. The recent Ordinance 1.419 has substantially delayed the obligation for the public sector (groups 4, 5 and 6), but has also brought some respite to the private sector. Ordinance 1.419 provides new timetables for eSocial submissions, outlining those by categories for large, micro and small businesses.

Canada

Ontario: Bill 124, for a Sustainable Public Sector for Future Generations, Enacted

New Legislation Enacted

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

On November 7, 2019, the Ontario government passed Bill 124, the Protecting a Sustainable Public Sector for Future Generations Act, 2019. The Act applies to employers in the public sector such as public school boards, post-secondary institutions, and hospitals, their employees, and unions representing their employees. The purpose of the legislation, which requires a three-year "moderation" period, is to "ensure that increases in public sector compensation reflect the fiscal situation in the Province, are consistent with the principles of responsible fiscal management and protect the sustainability of public services."

Minimum Wage Increases in Manitoba and Prince Edward Island

New Order or Decree

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

As of October 1, 2019, Manitoba's minimum wage increased from $11.35 per hour to $11.65 per hour. In addition, pursuant to a Regulation EC2019-764 dated November 16, 2019, Prince Edward Island increased its minimum wage from $12.25 per hour to $12.85 per hour effective April 1, 2020.

Ontario: Enforceability of Without-Cause Termination Provisions

Precedential Decision by Judiciary or Regulatory Agency

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

On October 3, 2019, the Superior Court of Justice in Ontario sent the message that if an employee is fired without cause and the without-cause termination provision is a clear, separate and stand-alone clause that does not violate the Employment Standards Act, it will likely be enforced. However, if an unenforceable just-cause termination provision and an otherwise enforceable without-cause termination provision are within a single clause, the whole clause may be unenforceable.

Cannabis Regulations: Legal Production of Cannabis-infused Products

New Regulation or Official Guidance

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

When Canada's Cannabis Act and supporting regulations came into force on October 17, 2018, the adult recreational use of dried and fresh cannabis was made legal at the federal level. However, the consumption of edible cannabis, or the use of cannabis extracts and cannabis topicals (cannabis-infused products), was not made legal at the same time. On October 17, 2019, amendments to the Cannabis Regulations that govern the legal production of cannabis-infused products came into force. As federal license holders are required to provide 60 days' notice to Health Canada of their intent to sell new products, cannabis-infused products will not appear in physical or online cannabis stores until mid-December 2019.

Ontario: Compliance Report Deadline

Upcoming Deadline for Legal Compliance

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

In Ontario, under the Accessibility for Ontarians with Disabilities Act (AODA), compliance reports must be completed by December 31, 2019, by designated public sector organizations, and private sector organizations and not-for-profit organizations with 20+ employees. The AODA requires "employers to make their workplace practices accessible to potential or current employees with disabilities."

Colombia

Prohibition from Working with Underage Children Due to Past Crimes

New Order or Decree

Author: Laura Buriticá Córdoba, Attorney at Law - Littler Colombia

Under the recently published Decree 753 of 2019, individuals convicted of crimes against the sexual freedom, integrity and education of underage children cannot work in positions, offices or professions that involve children. Further, any public or private entity that fails to conduct an adequate background check within the employment context to identify individuals with such convictions is subject to economic penalties.

Hiring Foreigners for Apprenticeships

Precedential Decision by Judiciary or Regulatory Agency

Author: Laura Buriticá Córdoba, Attorney at Law - Littler Colombia

On October 2, 2019, the Labor Ministry provided guidance on the possibility for employers to hire foreigners for apprenticeships, as a mechanism for students to gain work experience based on their education. As per the Labor Ministry, this practice is possible only if the foreigner has a student visa that allows for apprenticeship.

Colombia Becomes an OECD Member

Precedential Decision by Judiciary or Regulatory Agency

Author: Laura Buriticá Córdoba, Attorney at Law - Littler Colombia

On October 22, 2019, the Constitutional Court ratified the entry of Colombia as a member of the Organization for Economic Co-operation and Development (OECD). As a result, Colombia has new obligations relative to labor and social matters, including labor organization, outsourcing, collective matters, union rights, etc.

Pension Affiliation and Obligation to Inform

Precedential Decision by Judiciary or Regulatory Agency

Author: Laura Buriticá Córdoba, Attorney at Law - Littler Colombia

The Labor Chamber of the Supreme Court recently clarified that administrators are not exempted from providing all required information to their affiliates for purposes of the social security system for pensions. The required information includes characteristics, conditions, risks, etc.

Costa Rica

Amendment to Alimony Law Grants More Time to Pay Christmas Bonus

New Legislation Enacted

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

Law No. 9788, which was published and came into effect on December 12, 2019, amends the Alimony Law to allow debtors to pay the Christmas Bonus (called Aguinaldo) until December 21 of each year. Prior to this reform, all alimony debtors had until December 15 to pay the Aguinaldo to the beneficiary (former spouse, child, dependent, etc.), but employers had until December 20 to pay employees the Thirteenth Month (also called Aguinaldo). Thus, debtors in some cases had to pay an extra installment of their alimony without having received their Christmas Bonus.

National Wages Council Approves Increase to Minimum Wages

New Order or Decree

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

On October 23, 2019, the National Wages Council approved a 2.53% increase to the minimum wage for all private sector employees. An additional increase of 2.339% was approved for domestic employees, to continue the trend of closing the gap between their minimum wage and that of other employees. These increases become effective on January 1, 2020, and are mandatory for all employees earning minimum wage, or whose wage would fall below the new minimum.

Denmark

A Case of Double Discrimination

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

A Danish district court has confirmed that the dismissal of a female wheelchair user who had just returned from maternity leave contravened both the Anti-Discrimination Act and the Act on Equal Treatment of Men and Women. The employer alleged that the termination was based on its financial situation. The court found that the employer had failed to meet its burden of proof to explain why this specific employee should be made redundant, in spite of the special protection against dismissal that she enjoyed due to her disability. The court awarded the employee a total compensation under both legal bases of approximately 12 months' salary.

Data Protection Agency Changes Practice Regarding Images on the Internet

New Regulation or Official Guidance

Author: Tina Reissmann, Partner - Labora Legal

The Data Protection Agency has changed its practice in relation to publication of images on the Internet. When photos of people are published on the Internet, it constitutes processing of personal data if the people photographed are identifiable. When assessing whether an image can be published without consent, the Data Protection Agency has until now distinguished between "portrait photos" and "situational images," depending on whether the purpose of the image was to depict a person or a situation/activity. So far publication of portrait photos has required consent from the person photographed. In contrast, situational images could be published without consent. Instead of distinguishing between portrait photos and situational images, the Agency will make an overall assessment of each individual image and the purpose of the publication to evaluate if the image can be published on the Internet without consent from

the person(s) photographed. The data controller – including employers – must therefore prior to publishing an image determine the basis of the processing, including the purpose of the publication. In addition, the data controller must make sure that the people photographed are aware that the image will be published to safeguard their rights, including their right of access.

The Danish Government's Legislative Program for 2019/2020

Proposed Bill or Initiative

Author: Tina Reissmann, Partner - Labora Legal

The Government recently announced a list of bills it expects to introduce during the new parliamentary year. The measures that are particularly relevant for the field of labor and employment law concern the right to early retirement, jobs on flexible terms, the issuing of tax cards to third-country nationals, annulment of the repeal of taxation of free telephone and internet, as well as amendments of the laws on pensions, sick benefits, working environment, immigration, among others.

Where's the Limit for #MeToo Actions?

Important Action by Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The social partners and the Danish Working Environment Authority recently launched a campaign to prevent sexual harassment, as well as unacceptable and offensive conduct in the workplace. Against the backdrop of the #MeToo movement, last year, the Danish Parliament adopted a Bill to amend the Act on Equal Treatment of Men and Women. The amendment has helped focus attention on sexual harassment in the workplace. Now the social partners and the Working Environment Authority have joined forces for the campaign *Where's the Limit?*, further bringing into focus the prevention of sexual harassment. The goal of the campaign is to prevent unacceptable and offensive conduct at the workplace and, thus, aiming at creating a working environment and workplace free from sexual harassment. As part of the campaign, a website has been set up to provide material regarding the subject. Such material includes a campaign video and a leaflet with ten recommendations on how to prevent and handle sexual harassment. A tool for dialogue has also been developed, comprising a range of dialogue cards intended to facilitate discussions about and prevention of sexual harassment at the workplace.

European Union (Community)

EU Approves Directive on Whistleblowing and Internal Channels for Reporting

New Legislation Enacted

Authors: Juan Bonilla, Partner and Jennifer Bel, Attorney at Law - Cuatrecasas

On October 23, 2019, the European Parliament approved the Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law. The Directive, officially published on November 26, 2019, seeks to harmonize rules on the protection of certain individuals (workers, the self-employed, shareholders, and persons belonging to the management body, volunteers, unpaid trainees, or any person working under the supervision and direction of contractors, subcontractors and suppliers, as well as reporting persons whose work-based relationship is yet to begin) that report unlawful activities or abuse of law regarding the following areas: public procurement, financial services, product safety, transport safety, protection of the environment, nuclear safety, food and feed safety, public health, consumer protection, protection of privacy and personal data, financial interests of the European Union, and breaches relating to the internal market. The Directive aims at providing a common, high level

of protection to people who acquire the information they report through their work-related activities and who run the risk of work-related retaliation. It suggests establishing both the internal and external channels and procedures for reporting, conditions and measures for the protection of reporting persons, and penalties applicable to individuals or legal persons that hinder reporting or take retaliatory measures against reporting persons. Internal channels are compulsory for companies employing more than 50 employees. The deadline for transposing the Directive is December 17, 2021.

No Entitlement to Rearrange Holiday in Excess of EU Minimums When Sickness Disrupts Holiday

Precedential Decision by Judiciary or Regulatory Agency

Authors: Darren Isaacs, Partner and Ben Smith, Trainee Solicitor - Littler United Kingdom

On November 19, 2019, the European Court of Justice (CJEU) considered the extent of an employee's right to rearrange "sickness-affected" holiday (i.e., holiday booked that is disrupted by a period of sickness). The employee in this case was entitled to more paid holiday under a local collective bargaining agreement than the EU mandatory minimum amounts. When a period of illness coincided with a pre-booked period of holiday, the employee was prevented by local law from rearranging all of this "sickness-affected" holiday – she could only rearrange two days of the period of holiday as this was all that remained of her EU-mandated minimum holiday. The CJEU upheld the validity of the local law. This decision reaffirms the CJEU's consistent approach to holiday, which has seen the court focus only on outlining principles that apply to the EU minimum holiday entitlement and permitting member states to differ in how they treat any additional holiday entitlement offered under local law.

Breadth of Employees' Right to Freedom of Expression within Context of Breach of Confidentiality

Precedential Decision by Judiciary or Regulatory Agency

Authors: Darren Isaacs, Partner and Lisa Rix, Associate - Littler United Kingdom

On November 5, 2019, the European Court of Human Rights (ECtHR) considered whether the right to freedom of expression under Article 10 of the European Convention on Human Rights extended to opinions that were of interest only to certain professions and were not demonstrably of public interest. This arose in the context of the dismissal of an HR professional for breach of his employer's confidentiality standards when operating a knowledge-sharing website aimed at other HR professionals. Hungarian courts had found this dismissal to be fair. The ECtHR confirmed that the right to freedom of expression extends to such niche opinions. To assess the fairness of a dismissal, courts must properly balance the employee's right to freedom of expression against the employer's rights to protect its business interests. Here, relevant factors to consider were the nature of the opinion expressed, the employee's motives, the extent of any damage caused to the employer, and the severity of the sanction imposed by the employer. Employers should bear in mind the breadth of the right of freedom of expression and ensure that they consider the above four factors when deciding on sanctions for employees who breach confidentiality.

Covert Surveillance Did Not Violate Privacy Rights, European Court of Human Rights Holds

Precedential Decision by Judiciary or Regulatory Agency

Authors: Darren Isaacs, Partner and Dónall Breen, Associate - Littler United Kingdom

On October 17, 2019, the European Court of Human Rights (ECtHR) considered whether the use of hidden cameras to monitor suspected workplace theft by a number of supermarket cashiers violated their privacy rights under Article 8 of the European Convention on Human Rights. The case was appealed from Spain, where the courts had decided that the monitoring was lawful because it was a proportionate intrusion of privacy (the test to be satisfied under EU law). The ECtHR agreed, concluding that the fact that the employer had not informed the employees in advance was

merely one factor, which was not determinative in assessing the proportionality of the act. In view of the employees' limited expectation of privacy on a shop floor, the limited duration of the monitoring, the small number of people who were allowed to see the footage, and the fact that telling staff about the cameras could have jeopardized the prospect of catching the thieves, the ECtHR agreed with the Spanish courts that the employer had not acted unlawfully.

Launching of the European Labor Authority (ELA)

New Regulation or Official Guidance

Author: Tina Reissmann, Partner - Labora Legal

The free movement for workers is a tenet of the EU and the single market. To ensure compliance and cooperation between Member States regarding the regulation of fair labor mobility and social security systems, the Council and the Parliament has approved the establishment of the European Labor Authority (ELA). The ELA will support Member States, businesses and citizens by facilitating information and services about rights and obligations; facilitate cooperation between Member States in the enforcement of EU law; mediate in cross-border disputes; and support cooperation between Member States in addressing the issue of undeclared work. The goal is to promote fair mobility and social security coordination. With the goals of simplifying the life of national authorities and fighting undeclared work, the ELA is expected to help save costs and raise earnings at the national level.

Finland

Minimum Age for Continued Unemployment Allowance Rises

New Legislation Enacted

Author: Antti Rajamäki, Counsel - Dottir Attorneys, Ltd.

The minimum age for continued unemployment allowance for unemployed persons born on 1961 and thereafter will rise to 62 years. An unemployed person can receive unemployment allowances for a maximum of 500 days. However, an aged unemployed person is entitled to continued unemployed allowance also after the 500 days if he or she has filled certain age limit before fulfillment of the 500 allowance days. As of January 1, 2020, the age limit for unemployed persons born on 1961 or thereafter will raise from 61 to 62.

New Working Hours Act

New Legislation Enacted

Author: Antti Rajamäki, Counsel - Dottir Attorneys, Ltd.

As of January 1, 2020, the new Working Hours Act will be in force. The main reforms and amendments expand the possibilities and flexibility to organize the regular working hours.

Employment of Laid-Off Employee Did Not Lapse Automatically Due to Disability Pension

Precedential Decision by Judiciary or Regulatory Agency

Author: Antti Rajamäki, Counsel - Dottir Attorneys, Ltd.

On December 12, 2019, the Supreme Court of Finland ruled that the employment of a laid-off employee did not lapse automatically due to a full disability pension. Instead, after the full disability pension was granted, the employee terminated his employment. At the time of termination, the employee had been laid-off over 200 days. Under these circumstances and pursuant to Chapter 5, Section 7, Subsection 3 of the Finnish Employment Contracts Act, the employee was entitled to his notice period salary. This ruling now regulates this kind of situation, which the Employment Contracts Act does not expressly regulate.

A Working Committee Set Up to Update Compensation for Noncompetition

Proposed Bill or Initiative

Author: Antti Rajamäki, Counsel - Dottir Attorneys, Ltd.

The Finnish Ministry of Economic Affairs and Employment has set up a working committee to update the regulation concerning an employer's obligation to compensate employees' noncompetition periods. Currently, the compensation obligation concerns noncompetition periods exceeding six months. The government's purpose is to limit the use of noncompetition clauses in employment agreements where the legal preconditions for the noncompetition obligation are clearly not met.

A1 Certificate Enabled through New Electronic Service

Important Action by Regulatory Agency

Author: Antti Rajamäki, Counsel - Dottir Attorneys, Ltd.

On November 25, 2019, the Finnish Center for Pensions launched a new electronic service through which employees and employers can apply the A1 certificate for posted employees. The A1 certificate shows which country's social security law is applied to an employee while he works abroad and to which country the employer should pay the social security contributions. The new service enables the download of the certificate into the employee's mobile device and can be received even within the day of filing the application. The service is offered in Finnish, Swedish and English.

France

Reporting Harassment to Third Parties Constitutes Slander

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner - Littler France

When reporting facts that can form the basis for a complaint of harassment (moral or sexual), the employee is protected from discipline: no sanction can be enforced against said employee; otherwise, it would be presumed void. Except that this protection is cancelled out if the employee acted in bad faith. In addition, the employee is protected from slander suits. Invalidating such protection, on November 26, 2019, the criminal chamber of the French Supreme Court ruled that if the employee reports the facts outside of the company's inner circle, the protection against slander is no longer valid. In that case, the employee reported the facts of a harassment complaint when she emailed, from her professional inbox, not only the alleged offender, but also his son, another employee, an executive, the labor inspectorate and her spouse.

Damages for Failure to Investigate or Act to Address a Complaint of Harassment

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner - Littler France

Under the French Labor Code, an employer must undertake any action necessary to prevent any conduct that constitutes harassment. On November 27, 2019, the French Supreme Court ruled that when informed of a harassment situation involving an employee, employers must initiate an internal investigation and, if necessary, act. An employer who fails to act is noncompliant with its general obligation to prevent professional risks and may be liable for damages even if the harassment allegations ultimately are proved false.

New Framework for Executive Compensation

New Regulation or Official Guidance

Author: Guillaume Desmoulin, Partner - Littler France

New Decree No. 2019-1234 published on November 27, 2019, and pursuant to the Action Plan for Business Growth and Transformation law creates a binding new framework for executive compensations regarding some limited companies and limited stock partnerships. The new framework requires two votes of the general meeting of shareholders and creates a system of sanctions. Every year, a first ex ante vote will be held on the compensation policy of every managing executive. This policy must comply with the company's interest, contribute to its sustainability and be a full part of the company's business strategy. Its content and terms are outlined in Decree No. 2019-1235, also dated November 27, 2019. A second ex ante vote will be held on the details of the executive's compensation during the previous financial year, with an eye to equal distribution, allowing a comparison between the executive's compensation and the average employee salaries.

Corporate Social Responsibility for Collaborative Platforms

Proposed Bill or Initiative

Author: Guillaume Desmoulin, Partner - Littler France

The French professional mobility bill (*Loi d'Orientation des Mobilités*) strengthens guarantees for workers who, through collaborative platforms, carry out "an activity of driving a chauffeured passenger car or of delivering merchandise using a two-wheel or three-wheel vehicle." The bill details the information given, by the platforms, regarding the offered services and forbids penalties related to an eventual worker's refusal. Workers are free to choose their schedule and disconnect during the scheduled hours. The bill also provides the possibility of a corporate social responsibility charter, defining both rights and obligations as well the charter's specific content. If approved, the establishment and respect of the charter will not create a subordination relationship between the platform and the worker.

Hungary

Child Labour Without the Authority's Permit

New Legislation Enacted

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

As from January 1, 2020, a person under the age of sixteen may be employed in cultural, artistic, sporting or advertising activities without permission of the child protection authority; only a prior notification of 15 days before the employment is required.

More Opportunity for Parental Part-Time Jobs

New Legislation Enacted

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

The amendment to the Labor Code increased the opportunity of employees with small children to demand part-time job from their employer. At the employee's request, the employer needs to modify the employment contract into a part-time contract for four hours per day (instead of eight hours per day) if the employee's child is younger than the age of four. If the employee has three or more children, then until the child reaches the age of six. The previous age limits were three and five years, respectively.

Parental Unpaid Leave in Case of Child Adoption and Unpaid Leave for Grandparents

New Legislation Enacted

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

The amendment to the Labor Code granted employees with the right to take a three-year unpaid leave in a case of child adoption. If the adopted child is older than three years, then the adopting employee will be entitled to six months of unpaid leave. The amendment also granted employees who are grandparents the right to have an unpaid leave until the child who is under their care reaches the second year of age.

Increase to the Statutory Minimum Wage

New Legislation Enacted

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

The government's new decree increased the statutory minimum wage by eight per cent. Accordingly, as of January 1, 2020, the statutory minimum wage for unskilled employees is HUF 161,000 (approximately EUR 487). For employees in job positions requiring at least secondary school, the minimum wage is HUF 210,600 (approximately EUR 640).

India

Commercial Establishments in Karnataka Permitted to Remain Open 24/7, for Three Years

New Order or Decree

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On October 11, 2019, the State Government of Karnataka has issued a notification permitting shops and commercial establishments in the State of Karnataka employing at least 10 persons to remain open on 24 by 7 basis on all days of the year. The notification stipulates certain conditions relating to compliance with the maximum daily hours of 8 hours and weekly hours of 48 hours, payment of overtime wages, consent requirements and transport arrangements for women employees working in shifts. The notification is valid for three years.

Factories Permitted to Schedule Women Employees for Night Shift

New Order or Decree

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On November 20, 2019, the State Government of Karnataka issued a notification allowing women employees in factories to work during night hours (i.e., from 7pm until 6am). The employer is required to comply with certain health, safety and security conditions, besides prohibition of sexual harassment at the workplace, providing transportation facilities for women employees, engaging sufficient security guards and having CCTV footage to ensure safety of the women employees. The employer is also required to provide certain amenities and facilities including rest rooms, canteen facility and rest intervals.

Code on Industrial Relations introduced in Lok Sabha

Proposed Bill or Initiative

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On November 28, 2019, the draft Code on Industrial Relations, 2019 (IR Code) was introduced in the lower house of the Parliament, Lok Sabha. It was subsequently referred to the Parliamentary Standing Committee on December 23, 2019, to give its report within three months. The IR Code consolidates three major federal level labor laws

pertaining to industrial relations, being the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946. While the IR Code proposes to change some of the existing provisions of the laws, it also proposes certain new provisions including on negotiating unions, mandating the employer to recognize trade union and formation of a worker re-skilling fund.

Code on Social Security introduced in Lok Sabha

Proposed Bill or Initiative

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

Having been introduced in Lok Sabha (lower house of the Parliament), the draft Code on Social Security, 2019, was referred to the Parliamentary Standing Committee on December 23, 2019, and the report of the Committee is to be submitted within three months. With replacing and consolidating various labor laws, the Social Security Code proposes to introduce certain new definitions and provisions, including in relation to gig workers and platform workers. The proposed new law seeks to replace or consolidate the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act); the Employees' State Insurance Act, 1948 (ESI Act); the Payment of Gratuity Act, 1972; the Employees' Compensation Act, 1923; the Maternity Benefit Act, 1961; the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; the Cine Workers Welfare Fund Act, 1981; the Building and Other Construction Workers Welfare Cess Act, 1996; and the Unorganized Workers' Social Security Act, 2008.

Registration of IC Made Mandatory for Noida

Upcoming Deadline for Legal Compliance

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On November 14, 2019, the District Magistrate of Gautam Buddha Nagar (a district in Uttar Pradesh) issued a notification directing employers to form an Internal Complaints Committee (IC) pursuant to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SH Act). As a result, employers in that region are required to upload all relevant information about their IC on the Sexual Harassment Online Redressal (SHOR) website (https://www.shorapp.in) / SHOR app by November 30, 2019, and also upload the annual IC report for 2019 on the SHOR website / app by January 31, 2020.

Ireland

Supreme Court Confirms When an Employee is Entitled to Legal Representation

Precedential Decision by Judiciary or Regulatory Agency

Author: Emmet Whelan, Partner - ByrneWallace

On November 11, 2019, the Supreme Court upheld last year's decision of the Court of Appeal in the case of *Iarnród Éireann/Irish Rail v Barry McKelvey*. The Supreme Court has confirmed that employees are not normally entitled to legal representation in disciplinary proceedings. Entitlement to legal representation will arise only in exceptional circumstances.

High Court Issues Judgment in Important Restrictive Covenants Case

Precedential Decision by Judiciary or Regulatory Agency

Author: Emmet Whelan, Partner - ByrneWallace

On December 23, 2019, the High Court dismissed a former employer's attempt to prevent its departing chief operations officer (COO) from joining a rival company. The restrictive covenant stated that the COO would not join competitors for a year following termination of his employment. The High Court held that the clause was

unenforceable, as it went beyond what the former employer had shown to be justified. The written judgment has not yet been released; we will provide a report as soon as it is.

High Court Clarifies an Employer's Obligation in Respect of Sunday Pay

Precedential Decision by Judiciary or Regulatory Agency

Author: Emmet Whelan, Partner - ByrneWallace

Irish law provides that where an employee is required to work on a Sunday (and that fact has not otherwise been taken account in the determination of pay) the employee must be compensated by way of a Sunday premium payment, or paid time off in lieu. In a recent case, the High Court clarified that a statement in the contract that the rate of pay takes account of the requirement to work on Sundays was good evidence of compliance with Irish law on Sunday pay.

Italy

Reserve Quotas for Disabled Employees and Mass Dismissals

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On October 15, 2019, the Italian Supreme Court clarified Article 10 of Law No. 68 of 1999, which protects disabled individuals from dismissal at the end of a collective redundancy procedure. According to the Court, during mass dismissals or in the event of a financial crisis, companies that benefit from salary integration (so-called Cassa integrazione guadagni, CIG) may suspend their obligations to hire disabled employees, except that they cannot dismiss those already hired if the employer violates the quotas reserved for disabled employees.

Hidden Cameras in the Workplace

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On October 17, 2019, the Authority on Italian Privacy commented on a recent decision of the European Court of Human Rights, where the court held that an employer could install hidden cameras without previously notifying employees because of well-grounded suspicion of thefts in the workplace and relevant consequential financial losses. The Authority on Italian Privacy pointed out that, within the Italian legal context, the hidden video surveillance would be allowed only as a method of last resort and, in any case, it can never be considered as an ordinary practice.

Right of the Father to Rest Periods in Case of Self-Employed Mother

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On November 18, 2019, the Italian Social Security Authority stated that an employee who is a father might benefit from the daily rest time provided for by the law for the first year of the child's life, regardless of whether the self-employed mother benefits from a maternity allowance. However, when the mother is a self-employed worker, the father cannot take daily rests during the period in which the self-employed mother is on parental leave; and the father is not entitled to "extra" rest hours that the law provides to working fathers for multiple births. These provisions apply to court claims received but not adjudicated, as well as to past events for which the limitation period has not expired or there has been no final judgment.

Video Surveillance: Whose Express Consent Is Required?

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On December 17, 2019, the Italian Supreme Court affirmed that, even under a criminal law point of view, employees' expressed consent does not eliminate the unlawfulness of the employer's conduct when it installed a video surveillance system without the required trade union agreement or, alternatively, without the authorization of the Territorial Labor Inspectorate, as provided for by Article 4 of Law no. 300/1970. The express consent must come from the employees' representatives or, alternatively, the Labor Inspectorate, since the concerned employees are "weaker parties" in the employment relationship. This case affirms an earlier statement of the Supreme Court from 2017.

Japan

Employment Security Up to the Age 70

Proposed Bill or Initiative

Author: Aki Tanaka, Of Counsel - Littler United States

On December 25, 2019, Labor Policy Council has proposed to the Minister of Health, Labor and Welfare to take legislative actions to provide measures to ensure employees continue working until the age 70. Currently, it is required for employers to continue the employment relationship until employees turn 65. The proposed measures include extension of the retirement age, which currently is 60 to 65, as well as a provision to allow for limited-term employment post retirement age. Also proposed is the option to retain them as independent contractors.

Power Harassment Law, Effective in June 2020

Upcoming Deadline for Legal Compliance

Author: Aki Tanaka, Of Counsel - Littler United States

The new "Power Harassment" law, which was enacted in May 2019, is set to become effective on June 1, 2020, for large companies and in April 2022 for small and medium size enterprises. This law requires employers to take appropriate actions to prevent employees from engaging in activities that take advantage of their powers at work, exceed the employee's necessary and reasonable scope of duties, and otherwise may be harmful to the work environment. Although the determination of what is a large and small employer is based on a number of factors, generally employers with 50 or fewer employees will be considered small.

Use of Paternity Leave

Trend

Author: Aki Tanaka, Of Counsel - Littler United States

Japan has generous paternity leave laws: Fathers can take up to a year of paternity leave just as new mothers can. There are several recent lawsuits filed where male employees allege that they suffered adverse consequences after using paternity leave. While the companies plan to fight these allegations, many have acknowledged that there is a problem with too few fathers taking leave in the private sector. About six per cent of men take paternity leave in Japan, while nearly all women do. Yet, notably, the number of male government workers who used paternity leave is about double that of the private sector. The government has recognized this disparity and is considering various plans to promote the use of paternity leave.

Malaysia

Additional Categories under the Self-Employment Social Security Fund

New Order or Decree

Author: Tan Su Ning, Senior Associate - Skrine

The First Schedule to the Self-Employment Social Security Act 2017 will be amended effective January 1, 2020, to include another 18 categories of self-employed persons who are required to make mandatory contributions to the Self-Employment Social Security Fund. The 18 categories include at least 27 sub-categories. The new categories include self-employed lawyers, accountants, architects, engineers, hawkers, dentists, tuition teachers, doctors, veterinarians, inventors, and household services.

Important Proposals to Amend Employment Law

Proposed Bill or Initiative

Author: Tan Su Ning, Senior Associate - Skrine

Budget 2020, published in October 2019 under the theme of "Driving Growth and Equitable Outcomes toward Shared Prosperity," introduces various proposals, including: (1) an increase to the minimum wage to RM 1,200.00 per month in 2020 for "major cities;" (2) extend the eligibility of employees who are entitled to overtime to those whose monthly wages do not exceed RM 4,000.00; (3) increase maternity leave from 60 days to 90 days (effective 2021); (3) through the new Malaysians@Work initiative, increase employment opportunities by providing wage incentives to workers and incentives for employers to hire certain groups of individuals; (4) expand the coverage of the Employees Provident Fund (EPF) and the Self-Employment Social Security Scheme to self-employed individuals in various sectors; (5) improve the protection and procedures for handling sexual harassment complaints; and (6) amend the Employment Act 1955 to prohibit employment discrimination based on religion, ethnicity, gender, among other characteristics.

Key Amendments to Industrial Relations Law

Proposed Bill or Initiative

Author: Tan Su Ning, Senior Associate - Skrine

On December 19, 2019, the Senate passed the Industrial Relations (Amendment) Bill 2019 (Amendment Bill) to expedite the dispute resolution process when it comes to unfair dismissal claims. An effective date is to be determined. Under existing provisions, the Minister has a discretion to filter out frivolous unfair dismissal complaints and only refer claims which are deemed fit for the Industrial Court's adjudication. Pursuant to the Amendment Bill, the Minister's discretion has been removed. Moreover, parties now have an additional option as it relates to representation during conciliation meetings at the Industrial Relations Department. Aside from being represented by a member of a trade union of employers or workmen or an official of an organization of employers or workmen, both employers and employees now have the option to appoint also any person other than the categories of individuals aforementioned, to represent them. The Amendment Bill also has inserted new provisions in relation to sole bargaining rights. An additional provision has been included in the Amendment Bill to enable the Minister to stop a strike or lock-out in the event the strike or lock-out lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population. Any person dissatisfied with an award of the Industrial Court can appeal to the High Court within 14 days from the date of receipt of the award.

Amendments to Employees Provident Fund

Proposed Bill or Initiative

Author: Tan Su Ning, Senior Associate - Skrine

On December 19, 2019, the Senate passed the Employees Provident Fund (Amendment) Bill 2019. If approved, the amendment would allow the voluntary transfer of a husband's EPF contributions into the account of his wife or wives. The bill, *inter alia*, provides for the deduction of two per cent EPF contributions to the wife or wives and updates provisions to prevent employers who did not pay contributions from leaving the country, without a court order.

Review of Personal Data Protection Laws

Important Action by Regulatory Agency

Author: Tan Su Ning, Senior Associate - Skrine

The Ministry of Communications and Multimedia is currently reviewing the Personal Data Protection Act 2010 to ensure it also applies to those receiving leaked information along with data leakers. The review also seeks to ensure that actions be taken against cross-border hackers activities. The government aims to table the revised law by June 2020.

Netherlands

Employers Must End Dormant Employment

Precedential Decision by Judiciary or Regulatory Agency

Author: Eric van Dam, Partner - Littler Netherlands

On November 8, 2019, the Dutch Supreme Court issued a ruling on dormant employment relationships. The Supreme Court indicated that, because of the "good employer" principle, an employer must cooperate with an employee's proposal to end his or her employment contract by amicable arrangement, with the employee being awarded a sum equivalent to the transition payment. The Supreme Court held that there was no need, when determining the amount of this payment, to link up with the compensation scheme for dismissal due to long-term employment capacity (*Compensatieregeling bij ontslag wegens langdurige arbeidsongeschiktheid*). However, the payment need not be any more than the transition payment that would have been due on termination of the employment contract on the day after the date when the employer could have terminated the employment contract because of the employee's employment incapacity. The employer is not obliged to cooperate with the employee's request if the employer has a justified interest in keeping the employment contract in force. One possible situation for this would be realistic prospects of reintegration for the employee.

Norway

Gender Equality - Obligation to Report Gender Pay Differences

New Legislation Enacted

Author: Ole Kristian Olsby, Partner - Littler Norway

From January 1, 2020, all private companies employing more than 50 employees must conduct a salary survey by gender every second year. If necessary, companies must implement measures to counter discrimination and increase equality and diversity. Further, companies must identify the use of involuntary part-time work. The purpose of the bill is to promote gender equality with a focus on underlying structures.

Workforce Reductions and Length of Service Provisions

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner - Littler Norway

A recent ruling from the Supreme Court states that the principle "length of service" impacts the company's possibility to limit the scope for a workforce reduction. This applies to companies bound by a collective bargaining agreement that contains a provision concerning the use of length of service in workforce reductions.

Panama

Effects of Declaration of December 20, 2019, as a National Mourning Day

New Order or Decree

Author: Ana Carolina Ríos, Partner - BDS, Member of Littler Global

On December 28, 2019, President Laurentino Cortizo and his Cabinet declared December 20, 2019, as a National Mourning Day, in remembrance of the 30th Anniversary of the United States' invasion of Panama, to capture then-president Noriega. This Declaration does not require public or private entities and companies to close and grant leave to employees. Payment is not affected and all work performed in ordinary circumstances on this day should be paid at the rate of ordinary working hours.

Philippines

DOLE Issues Guidelines and Procedures for Work-Related Permits and Visas

New Order or Decree

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

On October 17, 2019, the Department of Labor and Employment (DOLE) published an order providing guidelines on the issuance of a Certificate of No Objection (CNO). The CNO certifies that there is no party objecting to the issuance of a work-related visa to a foreign national. Meanwhile, the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ) are expected to include the CNO as one of the documentary requirements for the issuance of a Special Nonimmigrant Visa (which are issued pursuant to Section 47(a)(2) under Commonwealth Act No. 613). DOLE's Department Order No. 205, Series of 2019, becomes effective on November 5, 2019.

DOLE Rules and Regulations on Service Charges Collected by Hotels, Restaurants, and Similar Establishments

New Order or Decree

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

On November 19, 2019, the Department of Labor and Employment (DOLE) issued an order mandating that 100% of the service charges collected by hotels, restaurants and similar establishments be distributed completely and proportionately among all covered workers (excluding managerial employees) based on actual hours or days of work or service rendered. The shares shall be distributed and paid to the covered employees not less than once every two weeks or twice a month at intervals not exceeding 16 days. The order known as Department Order No. 206, Series of 2019, takes effect on December 11, 2019.

Rules and Procedures Governing Foreign Nationals Intending to Work in the Philippines

New Regulation or Official Guidance

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

On October 17, 2019, several federal agencies published Joint Memorandum Circular No. 001, Series of 2019, to harmonize the regulations on the entry of foreign nationals intending to work in the country, including the relevant visas, alien employment and temporary work permits. Effective November 1, 2019, foreign nationals may secure a working visa, while in the Philippines or prior to entry, subject to their compliance with various documentary requirements. Notably, a joint team shall conduct inspection of establishments employing foreign nationals to ensure their compliance with labor, immigration, and tax laws. The joint inspection team shall consist of the Department of Labor and Employment (DOLE); Bureau of Immigration (BI); and Bureau of Internal Revenue (BIR).

Portugal

Minimum Monthly Wage for 2020

New Legislation Enacted

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

On November 21, 2019, the official gazette published Decree-Law No. 167/2019, which increased the minimum monthly wage to € 635,00, effective January 1, 2020. The minimum monthly wage determined by law prevails over any inferior wage established in an employment contract or collective bargaining agreement. Therefore, starting on January 1, 2020, any employee that is currently receiving a wage inferior to € 635,00 will be entitled to have the wage updated, at least, to that amount.

Unconstitutionality of a Rule under the Portuguese Commercial Companies Code

Precedential Decision by Judiciary or Regulatory Agency

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

The Portuguese Constitutional Court, with judicial decision No. 774/2019, dated December 17, 2019, declared the unconstitutionality of paragraph 2 of Art. 398 of the Portuguese Commercial Companies Code, insofar as it determines the termination of an employment contract, entered into with an employee for less than one year, before the latter is appointed as a director of the employing Company. Under paragraph 4 of Art. 282 of the Portuguese Constitution, the Court's decision does not have retroactive application.

Puerto Rico

Employers in Puerto Rico Precluded from Using Credit Reports or Credit History for Employment Actions

New Legislation Enacted

Authors: Elizabeth Pérez Lleras, Capital Member and Ana Rivera Beltrán, Member - Littler Puerto Rico

On October 8, 2019, the Governor of Puerto Rico signed into law Act No. 150 of October 8, 2019, which prohibits employers from, among other actions, verifying or investigating credit history or credit reports concerning current employees or employment candidates, or from obtaining or ordering such reports from a credit agency. The Act,

however, provides a list of exceptions to its coverage. When these exceptions apply, employers must obtain written consent from the employee or employment candidate in order to be able to request their credit history or report.

Russia

Electronic Labor Books Law Effective January 1, 2020

New Legislation Enacted

Author: Uliana Kozeychuk, Attorney - Littler United States

On December 16, 2019, President Putin signed Federal Act No. 436-F3 mandating employers to maintain electronic "labor books" (along with the hard copies) for every employee's work history, effective January 1, 2020. Moreover, by June 30, 2020, employers must notify all employees about an option to discontinue hard copy labor book. Only those employees who submit a written application can have the hard copy labor book discontinued, but employees hired for the first time after December 31, 2020, will have only electronic books with no hard copy book option. As a result of this new law, the Pension Fund is implementing the new Form C3B-TD to be used for reporting employees' data to the Pension Fund, such as hire and termination dates. The first report will be due by February 15, 2020, to report any data for January and to report employees who applied for electronic labor books. The Ministry of Labor is also implementing the new Form CTD-R, for employers to provide data to employees who switch to electronic labor books, to be made available upon termination or request.

Electronic Records

Trend

Author: Uliana Kozeychuk, Attorney - Littler United States

Aside from a recent Federal Act No. 436-F3 mandating employers to maintain electronic "labor books" (employees' work history) for all of their employees, recent Russian legislation indicates a trend towards electronic record keeping. For instance, proposed changes to Russia Labor Code section 67 would allow electronic formation of employment contracts if the related electronic exchanges meet certain requirements. Conversely, proposed amendments to Labor Code sections 15.1-15.3 would give employees a right to refuse to exchange legally significant communications electronically.

Saudi Arabia

Protection Against Inappropriate Behavior or Abuse at Work

New Legislation Enacted

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

Ministerial Resolution No. 20912, dated 02/02/1441, approving the protection controls against inappropriate behavior at work applies to any type of behavioral abuse. The Resolution, which became effective on October 20, 2019, covers all establishments regulated by the Labor Law, including employees and employers, as well as acts of abuse occurring in the workplace, during or because of work, whether during or outside of working hours. Companies must implement preventative measures and set up a committee to investigate related claims and recommend appropriate discipline. The Committee, which must meet a set standard, must issue its recommendation within five working days of the complaint and the employer must formally notify the accused and complainant of the outcome of the investigation and sanction within five working days. Any disciplinary sanction must occur within 30 days of the completion of the investigation.

Key Amendments to Labor Law

New Legislation Enacted

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

Council of Ministers Resolution No. 684, dated 27/11/1440, AH, amending inter alias the Labor Law, introduced various key changes, including: (1) definition of "worker" to include every natural person, male or female, who undertakes work for the benefit of an employer; (2) anti-discrimination provisions, prohibiting employers from discriminating on the basis of sex, disability, age or any other forms of discrimination, whether during the employment, hiring, or advertising phase; (3) setting retirement age to follow the Social Insurance Law, unless the parties agree to continue working after such age; and (4) expanding maternity-related protections to female employees, during the employee's pregnancy and while on maternity leave.

Cancellation of Yellow Band from Nitaqat Program

New Legislation Enacted

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

Through Ministerial Resolution No. 63717 of 1441/03/29, the Ministry of Labor and Social Development canceled the Yellow Band within the Nitaqat program, effective January 26, 2020. Any companies currently in the Yellow Band will automatically move to the Red Band and will be considered noncompliant until their ratings improve.

Saudization Percentages Set for Health and Safety Officers

New Legislation Enacted

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

The Minister of Labor and Social Development has set various Saudization percentages for health and safety officers in different industries. The ratios are set based on the activity undertaken by the company (for example: construction). Ministerial Resolution No. 76509, dated 15/4/1441, requires companies to be 50% compliant by January 1, 2021, and 70% compliant by January 1, 2022.

Suspension on Issuance of Work Visit Visas and Commercial Visit Visas

Important Action by Regulatory Agency

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

On October 24, 2019, KSA suspended the issuance of work visit visas (WVV) and commercial visit visas (CVV) for foreign nationals who currently are only able to obtain visit visas for business. The current visa, however, restricts the ability for such individual to work, a benefit that the previous WVV and CVV system generally permitted.

Singapore

New Tripartite Advisory on Provision of Rest Areas for Outsourced Workers

New Regulation or Official Guidance

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

On December 9, 2019, the tripartite partners (i.e., the Ministry of Manpower, National Trade Union Congress, and the Singapore National Employers Federation) released a Tripartite Advisory on Provision of Rest Areas for Outsourced Workers. The Advisory sets out good practices for service buyers and service providers in providing rest areas for outsourced workers. Amongst other recommendations, the Advisory recommends that service buyers minimally ensure that outsourced workers be provided with facilities to safe keep their belongings and access to water for drinking.

Publication of Workplace Safety and Health (Approved Codes of Practice) Notification

New Regulation or Official Guidance

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

The Workplace Safety and Health (Approved Codes of Practice) Notification 2019 was published in the Government Electronic Gazette on December 6, 2019. The Notification, which became effective on December 16, 2019, adds codes of practices for the filling, inspection, testing and maintenance of gas cylinders for the storage and transport of compressed gases (SS 639: 2018); pneumatic waste conveyance system (SS 642: 2019); and temporary edge protection systems (SS EN 13374: 2018). The Notification also updated the codes of practices for diving at work (SS 511: 2018); electrical installations (SS 638: 2018); and tempo (SS 650: 2019).

New Skills Framework for Workplace Safety and Health

Proposed Bill or Initiative

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

October 4, 2019 - SkillsFuture Singapore, Workforce Singapore and Workplace Safety and Health Council, along with employers, industry associations, education and training providers and the unions, have jointly developed the Skills Framework for workplace safety and health. The Framework provides information on the sector, career pathways, occupations/job roles, skills and competencies, and training programs, to equip the workplace safety and health workforce with the requisite skills and talent to facilitate sector progress. It is intended to benefit four key groups: individuals, employers, education and training providers, as well as government, union and professional bodies.

MOM and TADM Release Inaugural Employment Standards Report

Important Action by Regulatory Agency

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

In October 2019, the Ministry of Manpower (MOM) and Tripartite Alliance for Dispute Management (TADM) released the inaugural Employment Standards Report, highlighting their joint efforts in improving workplace practices and resolving employment disputes. The report notes that MOM adopts a three-pronged approach of education, rectification and enforcement in addressing employment issues. For salary claims lodged between April 1, 2017 and December 31, 2018: (a) 85% were concluded within two months, with the remaining complex claims concluding between two and six months at TADM; (b) 84% of claims were resolved at TADM, while the remaining were referred to the Employment Claims Tribunals (ECT) for adjudication; and (c) 88% of employees, whose employers agreed or were ordered to make payment, fully recovered their salaries at TADM or the ECT, with the recovered sum totaling $29 million.

Spain

Workers of Gig-Economy Platforms are Employees, Madrid's Court of Justice Rules

Precedential Decision by Judiciary or Regulatory Agency

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

On November 27, 2019, the Superior Labor Court of Madrid issued a binding decision on the legal nature of a contractor rendering services under a services contract with a gig-economy platform that offers delivery services. In concluding that the contract has a labor, and not a commercial nature, the Court reiterated the principle that the formal appearance of a commercial relationship between the parties is not relevant if the factual situation during the rendering of services creates a labor relationship. Factors the Court took into consideration include: (1) services were

compensated with a specific amount per work unit, fixed by the platform (company); (2) the platform unilaterally agreed with the restaurants on the prices to pay for the services; (3) the platform owned the infrastructure required for the means of work (e.g., the App and the Algorithm); (4) the individual working for the platform does not assume any commercial risk; and (5) the individual is in a dependent position, as he or she must strictly follow the platform's instructions (e.g., how orders need to be carried out, the permanent control by geo-localization, daily evaluation of performance, and no autonomy to choose the timeframe for rendering services, as this is assigned based on the daily evaluation).

Dismissal Based on Short-Term, Intermittent Absences

Precedential Decision by Judiciary or Regulatory Agency

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

The Spanish Constitutional Court recently validated a dismissal under Section 52.d) of the Workers Statute, consisting of the occurrence, under certain circumstances, of justified, short-term, intermittent absences of employees due to illness. In its ruling dated October 16, 2019, the court considers that this type of dismissal is covered by the freedom of enterprise and productivity, and it does not infringe the fundamental rights to physical and mental integrity or health and safety in the workplace. In these cases, the company needs to pay severance compensation to the dismissed employee of 20 days' salary per year worked, to a maximum of 12 monthly installments. However, the court does not rule on whether this would amount to discrimination if the absence were due to disability caused by long-term illnesses with an uncertain cure.

Severance Payment to Senior Managers Due to Business Withdrawal is Tax-Exempt

Precedential Decision by Judiciary or Regulatory Agency

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

The Spanish Supreme Court issued a ruling on November 5, 2019, modifying its previous case law and considering that, in the event of termination of senior management contracts due to business withdrawal, the legal severance payment of seven days' salary in cash per year of service, with the limit of six monthly payments, is considered the minimum legal compensation and, therefore, tax-exempt income for personal income tax. Consequently, it opens the possibility for senior executives who have received compensation for business withdrawal to request that the tax authorities reimburse the tax paid in the nonprescribed years.

United Kingdom

Leaked Legal Advice Protected Under Privilege, Court of Appeal Holds

Precedential Decision by Judiciary or Regulatory Agency

Author: Sophie Vanhegan, Partner - Littler United Kingdom

On October 22, 2019, the UK Court of Appeal held that a leaked email, in which in-house counsel told a line manager that the company could use a planned reorganization to dismiss someone with a live grievance, was covered by legal advice privilege and could not be relied upon by the claimant in his disability discrimination and victimization claim. The Court of Appeal held that the email contained advice which employment lawyers give day in and day out where an employer wishes to consider an underperforming employee for redundancy selection. This overturned the decision of the Employment Appeal Tribunal that this was not privileged because it was advice to act in an underhanded or iniquitous way. This decision is welcome news to in-house and private practice lawyers alike in that it reinforces the principle that the legal advice privilege is not something that can be easily circumvented.

Hidden Reason for Dismissal Can Be Attributed to Employer, Even if Decision Maker Was Unaware of It, Supreme Court Holds

Precedential Decision by Judiciary or Regulatory Agency

Author: Darren Isaacs, Partner and Deborah Margolis, Associate - Littler United Kingdom

On November 27, 2019, the Supreme Court held in a whistleblowing claim that the principal reason for dismissal was a hidden reason that had been concealed from the person who made the decision to dismiss, not the engineered reason of the employee's line manager (which had been the ostensible reason for the decision-maker's decision). The employee was therefore dismissed for the hidden reason (which was that the employee had made a protected whistleblowing disclosure under UK law), an automatically unfair reason for dismissal.

Employees Can Claim Third-Party Discrimination Only in Limited Circumstances

Precedential Decision by Judiciary or Regulatory Agency

Author: Darren Isaacs, Partner and Mark Callaghan, Associate - Littler United Kingdom

On October 18, 2019, the Employment Appeal Tribunal (EAT) provided useful clarity on the circumstances in which an employee may bring a discrimination claim against their employer for the discriminatory acts of third parties. In this case, the employee, a mental health nurse from a minority ethnic background, was racially assaulted by a patient in circumstances where the employer had failed to prevent and/or protect him against such harassment. The EAT confirmed that an employer will be liable for third-party harassment where the employer has acted (or failed to act) *because of* the employee's protected characteristic (and not just failed to act for a nonprotected reason). The employee's discrimination claim against his employer here failed because the employer's failings were not themselves connected to the employee's ethnic background.

Christian Doctor's Anti-Transgender Views Not Protected, Employment Tribunal Holds

Precedential Decision by Judiciary or Regulatory Agency

Author: Caroline Baker, Partner - Littler United Kingdom

On October 2, 2019, an Employment Tribunal found that a doctor engaged to carry out health assessments for the government's Department for Work and Pensions was not discriminated against on the grounds of religion or belief by being subjected to disciplinary action for refusing to address transgender patients by their chosen pronoun. While the doctor's Christianity is protected under the discrimination law, the Tribunal held that the doctor's particular beliefs that God only created men and women and that a person could not choose their gender, and his lack of belief in and conscientious objection to "transgenderism" were views incompatible with human dignity which conflicted with the fundamental rights of others. As a result, such views were not protected religious or philosophical beliefs under UK discrimination law.

Employment Appeal Tribunal: Validity of Defense to Equal Pay Claim

Precedential Decision by Judiciary or Regulatory Agency

Author: Raoul Parekh, Partner - Littler United Kingdom

On October 11, 2019, the Employment Appeal Tribunal held that an employer was entitled to rely on a defense that a difference in pay between a female HR director and the rest of the male executive team was justified until a further decision (or failure to decide) on the female employee's pay occurred. The initial pay differential was justified by the female employee's lower experience and reduced importance to the business. The first instance tribunal did not have sufficient evidence to conclude that the justification for the pay discrepancy had expired.

Employers will welcome the decision as clarifying that the defense to an equal pay claim remains valid until a discriminatory decision is made (or omitted to be made).

United States

You're Rehired? New California Law Prohibits No-Rehire Provisions in Settlement Agreements

New Legislation Enacted

Author: Corinn Jackson, Principal and Bruce Sarchet, Shareholder - Littler United States

Upending the longstanding practice of employers including no-rehire clauses in agreements resolving employment disputes, California has signed a new law that will prohibit such provisions in employment settlement agreements. Assembly Bill 749 (AB 749) is another #MeToo-inspired bill, following last year's wave of legislation surrounding prohibited harassment in the workplace. Under AB 749, with limited exception, all no-rehire provisions in employment settlement agreements entered into on or after January 1, 2020 in California will be void as a matter of law.

New York Extends Wage and Hour Liability to Top 10 Members of Non-NY LLCs

New Legislation Enacted

Author: Eli Freedberg, Shareholder - Littler United States

New York has amended its Limited Liability Company Law (LLC Law) to hold the top 10 members of a foreign limited liability company liable for wages owed as a result of work performed within New York State, effective February 10, 2020. Previously, the law did not provide that out-of-state LLC members could be liable for wages owed. The amendment (A453) expands LLC Law § 609(c) to expressly hold members of out-of-state LLCs personally liable for "all debts, wages or salaries due and owing" for services performed within the state. Under the LLC Law, the top 10 largest members are determined by the percentage of each member's ownership interest at the start of the period when unpaid services were performed. Those members can be held jointly and severally liable for debts stemming from unpaid services. The LLC Law requires workers claiming missing wages to provide written notice to members that they intend to hold them liable under § 609(c), within 180 days after termination of services.

New York State Bans Discrimination Based on Reproductive Health Decision Making

New Legislation Enacted

Authors: Emma Fursland Diamond, Associate and Devjani H. Mishra, Shareholder - Littler United States

As of November 8, 2019, New York State prohibits employment discrimination based on an employee's or a dependent's "reproductive health decision making." The New York State Legislature passed the bill in January 2019, and Governor Cuomo signed it into law this month. This move comes less than one year after the New York City Council added "sexual and other reproductive health decisions" to the list of protected categories under the New York City Human Rights Law. This statewide measure is likely a response to the federal government's efforts to increasingly regulate this area.

Enforcement of California's Anti-Arbitration Law Put on Hold

Precedential Decision by Judiciary or Regulatory Agency

Authors: Bruce Sarchet, Maury Baskin and Michael J. Lotito, Shareholders - Littler United States

A federal court in California has prevented, at least for now, an expansive anti-arbitration law from taking effect on January 1, 2020. Under Assembly Bill (AB) 51, enacted on October 10, 2019, employers cannot require applicants, employees, and potentially independent contractors in California to waive any right, forum, or procedure established by the California Fair Employment and Housing Act and the Labor Code. Earlier this month, a coalition of national and state trade associations filed suit to enjoin the law from taking effect. The court granted the plaintiffs' motion for a temporary restraining order on December 30, 2019. In its order agreeing to delay the law's effective date, the court

reasoned that the plaintiffs "have raised serious questions regarding whether the challenged statute is preempted by the Federal Arbitration Act as construed by the United States Supreme Court. Plaintiffs' argument that allowing the statute to take effect even briefly, if it is preempted, will cause disruption in the making of employment contracts also is persuasive . . ." The court will hear the parties' arguments on the merits of the motion for a preliminary injunction on January 10, 2020. Employers in California should consult with their labor counsel to analyze options and develop strategies for proceeding in the new year.

Scared to Check the Mail? Employers Face the Return of No-Match Letters

Trend

Authors: Sherril Colombo, Shareholder and Sean McCrory, Associate - Littler United States

In the spring of 2019, the Social Security Administration (SSA) renewed its practice of sending employment eligibility correction request notices (known as "no-match letters") to employers. The SSA had discontinued the practice of sending no-match letters between 2012 and 2018, but has issued more than half a million notices so far in 2019. Against the backdrop of a tight labor market, these letters particularly affect businesses in industries that rely on immigrant workers, including employers in the hospitality, construction, and agricultural industries. No-match letters notify employers of a discrepancy in an employee's information (name, Social Security number) between the SSA's records and the employee's Form W-2. The no-match letters request employers to review the discrepancies through a designated SSA online portal, inform employees of the no-match, and submit corrected information on a Form W-2c within 60 days.