Littler The Global Guide Quarterly

Labor and employment law updates from around the globe

Littler's Global COVID-19 At a Glance Reports

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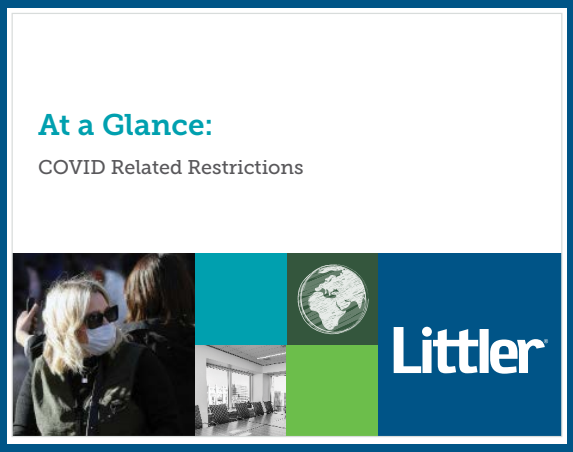

Quarter 2, 2021

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Geida Sanlate, Littler Editor

Australia

COVID-19 Vaccination Reporting Mandatory for Aged Care Providers

New Order or Decree

Author: Naomi Seddon, Shareholder – Littler

Effective June 15, 2021, weekly reporting of employee vaccination status is mandatory for all providers of residential aged care services in Australia. Further, on June 28, 2021, the government announced that it will be mandatory for all employees in the aged care sector to be vaccinated against COVID. Employees have until mid-September to have their first dose to be permitted to continue working.

For all other employers, while employers can strongly recommend that their employees obtain a vaccination, most will not be able to enforce it unless doing so will amount to a "lawful and reasonable direction." Essentially, employees would need to be working in a high-risk environment for an employer to impose a mandatory vaccination requirement; and even then, exceptions may apply (for example, if an employee's medical condition prevents vaccination). Accordingly, employers are encouraged to seek advice before implementing an employee COVID vaccination policy.

FWC Provides Provisional View on Definition of Casual Employment

New Regulation or Official Guidance

Author: Naomi Seddon, Shareholder – Littler

In April 2021, a Full Bench of the Fair Work Commission (FWC) released a discussion paper, reviewing (among other things) how relevant terms in modern awards interact with the new definition of "casual employee" in the Fair Work Act 2009 (Cth) (FW Act). Pointing out that "engaged as a casual" type definitions in modern awards are not consistent

with the new definition of casual employee in s 15A of the FW Act, the FWC noted that the model clause may cause uncertainty and difficulty in relation to the interaction between awards and the FW Act, and that removing the model clause from modern awards and replacing it with a reference to the NES entitlement would make the awards operate consistently with the FW Act. The matter is listed for hearing on June 24-25, 2021. We will provide further updates of important developments.

Leave for Miscarriage Proposed

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler

Following a wide-spread public campaign, proposed new legislation was introduced by the government on June 23, 2021, which, if passed, will change the paid compassionate leave entitlement in Australia to include leave for miscarriage for grieving parents. The change proposes to provide up to two days of paid leave for those who miscarry before 20 weeks and the leave would be available to the person who miscarries as well as their partner. The leave will be offered to anyone employed under the Fair Work Act, which covers private companies and the Commonwealth public service. Further updates will be provided as the Bill progresses through parliament.

Bill to Amend Sex Discrimination Law

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler

On June 24, 2021, the government introduced the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021, seeking to amend both the Fair Work Act 2009 (FW Act) and the Sex Discrimination Act 1984 (SD Act). Among other measures, the bill seeks to establish a prohibition on sex-based harassment, make "stop orders" available in sexual harassment cases, align the SD Act with the Work Health and Safety law, extend the SD Act to public servants, add sexual harassment as a valid reason for dismissal, amend the discretionary ground on which a complaint under the SD Act can be terminated and extend the timeframe to do so, and modify the existing entitlement to compassionate leave to include leave for miscarriage.

Key Employment Law Changes Effective July 1, 2021

Upcoming Deadline for Legal Compliance

Author: Naomi Seddon, Shareholder – Littler

Employers in Australia should implement changes to their employment agreements and payroll processes to comply with several employment law changes that will be effective July 1, 2021, some of which include increases to (1) the minimum wage, (2) the high-income threshold and compensation limit, and (3) superannuation guarantee.

The national minimum wage increased to $772.60 a week ($20.33 per hour) and the minimum wage rates of pay (including allowance and expense amounts) under modern awards increased by 2.5%. In some modern awards, the increase has been delayed until September and November 2021, but the remaining increases are effective July 1. The high-income threshold increased from $153,600 to $158,500. This amount represents the jurisdictional limit for unfair dismissal claims. Additionally, the maximum compensation that an employee can be awarded in an unfair dismissal claim has also increased from $76,800 to $79,250. The superannuation guarantee increased from 9.5% to 10%. Employers must now pay superannuation on ordinary time earnings at the rate of 10% up to the applicable jurisdictional limit. Superannuation is scheduled to increase from July 1 each year until 2025 when it will reach 12%.

Austria

Voting Age for the Works Council

New Legislation Enacted

Author: Markus Loescher, Partner – Gerlach | Littler

The minimum age for eligibility to participate in works council elections was lowered from 18 to 16. This means that 16- and 17-year-olds also count towards the number of employees entitled to vote. From five employees entitled to vote onwards, a works council can be formed and general protection against dismissal applies. Be that as it may, there is still no obligation to install a works council in Austria.

Equalization of Blue- and White-Collar Workers

New Legislation Enacted

Author: Paul Moosmann, Associate – Gerlach | Littler

The law on the equalization of blue-and white-collar workers, which would initially have come into force on July 1, 2021, has now been postponed again to October 1, 2021. The most important point for employers is the extension of the notice periods for workers who are dismissed after September 30, 2021. Therefore, we recommend adjusting the termination clauses in employment contracts and fixing the termination option to the last day of the month. If this is not done, under the new law, termination of workers will only be possible as of each calendar quarter.

New Short-Time Work Directive, with Application Deadline of August 18, 2021

Upcoming Deadline for Legal Compliance

Author: Markus Loescher, Partner – Gerlach | Littler

The current short-time working policy will be extended for the last time from July 2021 to June 2022. Deadline for application is August 18, 2021. There are now two models. The first model applies to businesses that are particularly impacted by the pandemic, either those affected by lockdowns or regulatory actions or businesses that experience a 50% decrease in sales in Q3 2020 compared to Q3 2019. The minimum working time for this model is now 30% and the net replacement rate remains the same (80-90%). The second model applies to all other businesses. Employers must take a 15% discount from current subsidy levels. The minimum working hours for this model must be 50%, with a mandatory vacation reduction of one week per two months of short-time work.

Brazil

COVID-19: Suspension of Employment Agreements and Reduction of Salary/Hours

New Legislation Enacted

Authors: Marilia Nascimento Minicucci, Partner and Pamela Gordo, Associate – Chiode Minicucci | Littler

On April 28, 2021, President Bolsonaro issued Executive Order No. 1,045/2021, which allows employers to suspend employment agreements and reduce employees' salary and hours (by 25%, 50% or 70%), for up to 120 days, as a COVID-19 measure. The order will be in force until August 25, 2021.

The suspension and reduction measures may be adopted through collective bargaining agreements or individual employment agreements between employer and employee, depending on the employee's salary and education level, as follows: (i) Employees with a monthly salary equal to or lower than BRL 3,300.00 – collective bargaining agreement or written individual agreement; (ii) Employees with a university degree and a monthly salary equal to or higher than BRL 12,867.14 – collective bargaining agreement or written individual agreement; (iii) Other categories of employees – as a rule, only through a collective bargaining agreement, but the Executive Order introduces a few exceptions to this rule.

COVID-19: Law Ordering Removal of Pregnant Workers from On-Site Work Activities

New Legislation Enacted

Authors: Marilia Nascimento Minicucci, Partner and Pamela Gordo, Associate – Chiode Minicucci | Littler

On May 13, 2021, Law No. 14,151/2021 was published, establishing that, during the COVID-19 public health emergency, pregnant employees shall be removed from on-site activities, without prejudice of their remuneration. Nevertheless, they are allowed to carry out their activities at home, through teleworking or other ways of remote work, provided that their activities are compatible with the telework regime.

Currently, the law does not provide for any penalties for noncompliance, nor does it address cases where a pregnant employee receives aid based on illness from the Social Security Institute (as opposed to the employer funding her salary) or when telework is not compatible with the activities performed by her for the employer.

Approval of Remote Apprenticeship Activities

New Legislation Enacted

Authors: Marilia Nascimento Minicucci, Partner and Pamela Gordo, Associate – Chiode Minicucci | Littler

On June 23, the Ministry of Economy issued Ordinance SEPEC/ME No. 4,089/2021, authorizing, until December 31, 2021, remote professional apprenticeship programs (using information and communication technology). The training entities, together with the companies that comply with the apprenticeship quota, must ensure that the apprentices have access to the technological equipment and infrastructure necessary and adequate for their activities.

COVID-19: Labor Measures

New Order or Decree

Authors: Marilia Nascimento Minicucci, Partner and Pamela Gordo, Associate – Chiode Minicucci | Littler

On April 28, 2021, President Bolsonaro issued Executive Order No. 1,046/2021, which provides several employment measures to address the COVID-19 public health emergency. The measures, which may be adopted during a 120-day period (starting on April 28, 2021) cover: Telework, advance of employees' vacation, advance of blanket vacation, enjoyment and advance of holidays, bank of hours, suspension of administrative requirements related to occupational safety and health, deferral of collection of the Employment Guarantee's Fund – FGTS, and extension of working hours for health-related facilities.

The Executive Order, initially set to expire after 60 days, was extended for another 60 days, *i.e.*, until August 25, 2021.

ANPD's Guidance on Processing Agents and Person in Charge

New Regulation or Official Guidance

Authors: Marilia Nascimento Minicucci, Partner and Pamela Gordo, Associate – Chiode Minicucci | Littler

On May 28, 2021, the National Data Protection Authority (ANPD) issued guidance defining processing agents and persons in charge, within the context of the processing of personal data. Among other things, the guidance clarifies: (i) the possibility of having joint controllers – where two or more entities control the personal data (based on Section 26 of the EU's GDPR); (ii) the possibility of having a sub-processor; and (iii) the possibility of the person in charge being either an employee of the company or an outsourced worker/outside company.

While the ANPD's guidance does not carry legal authority, it contains significant clarifications on the role of processing agents and persons in charge, within the context of Brazil's LGPD (General Law of Data Protection).

Canada

New Federal Statutory Holiday on September 30, 2021

New Legislation Enacted

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

On June 3, 2021, the federal government's Bill C-5, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation) received Royal Assent. This bill amends the Canada Labour Code to provide for annual observance by the federal government and federally regulated workplaces (e.g., airlines, banks, interprovincial transportation companies, telecommunication companies, etc.) of a new statutory holiday on September 30, the National Day for Truth and Reconciliation. While provincially regulated workplaces are not subject to this new statutory holiday, some employers may voluntarily decide to recognize it.

Employer's Liability for Severance Depends on Size of Global Payroll

Precedential Decision by Judiciary or Regulatory Agency

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

The Ontario decision (docketed 2021 ONSC 4290) establishes that to determine whether liability for statutory severance pay under the Ontario Employment Standards Act, 2000 will attach, employers must consider the size of their global payroll. If an employer's payroll in Ontario is less than $2.5 million but its global payroll is $2.5 million or more, the employer will still be liable for severance pay under the ESA (as long as the employee in question has at least five years of service).

Punitive Damages for Supervisor's Conduct

Precedential Decision by Judiciary or Regulatory Agency

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

In the Ontario Court of Appeal (OCA), an employer appealed a jury's $150,000 punitive damage award against the employer. The OCA denied the appeal. This decision puts employers on notice that if the conduct of a supervisor in their workplace demonstrates that the supervisor has little regard for the safety of an employee, the supervisor's conduct may be considered the employer's conduct, potentially resulting in liability for significant punitive damages.

Viability of Constructive Dismissal Claim Due to COVID-19 Layoff

Precedential Decision by Judiciary or Regulatory Agency

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

Just six weeks after holding that Ontario Regulation 228/20 (IDEL Regulation) under the *Employment Standards Act, 2000* did not remove an employee's common law right to claim constructive dismissal arising from a layoff during the COVID-19 pandemic, the Ontario Superior Court of Justice (SCJ) came to the opposite conclusion. In a decision *(docketed 2021 ONSC 3135*), the SCJ decided that the IDEL Regulation precludes an employee who was laid off during the pandemic from claiming constructive dismissal at common law. We will report further on any appeal or important development.

Whether CERB Should be Deducted from Damages for Wrongful Dismissal

Precedential Decision by Judiciary or Regulatory Agency

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

To date, few decisions in Canada have considered whether the amount of the Canadian Emergency Response Benefit (CERB) employees receive after their job termination should be deducted from their damages in lieu of common law reasonable notice. CERB was a program, now closed, the federal government set up to provide financial support to employed and self-employed Canadians who were directly affected by COVID-19.

In *Iriotakis v. Peninsula Employment Services Limited, 2021 ONSC 998*, the Ontario Superior Court declined to reduce the employee's entitlement to damages in lieu of reasonable notice by the amount of Canada Emergency Response Benefit (CERB) he received. In *Hogan v. 1187938 B.C. Ltd., 2021 BCSC 1021*, the Supreme Court of British Columbia recently distinguished Iriotakis when it deducted the employee's CERB payments from his damages for wrongful dismissal. Based on the reasoning of the Ontario and BC courts in these cases, it appears that the decision whether to deduct CERB payments may depend on whether they will put the employee in a better position economically than they would otherwise be.

China

Newly Revised Regulations on Occupational Health Management at the Workplace

New Legislation Enacted

Author: Nancy Zhang, Special Counsel – Littler

The newly revised Regulations on Occupational Health Management at the Workplace, which came into effect in February 2021, clarify the employer's responsibilities to prevent occupational disease. Employers must provide employees with work environment and conditions that comply with the laws, regulations and national occupational health standards and requirements. Moreover, employers must implement effective measures to protect employees' health.

Data Security Law Will Come into Effect on September 1, 2021

New Legislation Enacted

Author: Nancy Zhang, Special Counsel – Littler

On June 10, 2021, the National People's Congress, China's top legislative authority, passed the People's Republic of China (PRC) Data Security Law (DSL), which will come into force on September 1, 2021. Under the new law, individuals, companies, and organizations have various degrees of responsibility for data security, and multiple competing regulators at the central and local level have enforcement responsibility. This adds a further layer to the existing system in the Cybersecurity Law.

Hefty Penalties Under the Revised Safety Production Law

New Legislation Enacted

Author: Nancy Zhang, Special Counsel – Littler

The revised Safety Production Law enhances liabilities on entities and people in charge of the entities. For example, it increases penalties for violations from "RMB 200,000 to 20 million" to "RMB 300,000 to 100 million yuan." It also increases the fines for people in charge of the entity from "30% to 80%" of their annual income to "40% to 100%." These provisions will become effective on September 1, 2021.

Second Draft Personal Information Protection Law Under Review

Proposed Bill or Initiative

Author: Nancy Zhang, Special Counsel – Littler

China issued a second version of the draft Personal Information Protection Law for public comments until May 28, 2021. As compared with the first version, the second version has some material changes, including: (1) The data processor is not required to obtain the consent of data subjects for processing publicly available personal information within a reasonable scope; (2) the processing of a minor's personal information must meet a high standard; and (3) the Cyberspace Administration of China will provide a standard contract for cross-border data transfer.

Colombia

New Work from Home Law

New Legislation Enacted

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

Newly enacted Law 2088 of 2021 defines "work from home" (WFH) as enabling employees, when exceptional and occasional circumstances occur, to temporarily (up to six months) carry out their work duties or activities outside the place where they usually perform such duties and activities without modifying the nature of the contract. Through the WFH modality, the employer maintains the power to terminate the WFH arrangement when the exceptional circumstances that gave rise to such modality are no longer present. It does not require modification of the Internal Labor Regulations.

Significant Tax Deduction for Payroll Relative to Employee's First Employment

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

In April 2021, the government issued Decree 392 of 2021, which adds Article 108-5 to the Tax Law, granting a tax benefit to taxpayers who are obliged to file income and supplementary tax returns. Taxpayers can now deduct 120% of the payments they make for payroll relative to employees who are under the age of 28, provided it is the employee's first employment. Further, the decree defines the parameters for accessing the tax deduction, including the conditions precedent to qualifying as first employment.

COVID-19: Vaccination Administered by Private Entities

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

In June, the government issued Resolution 840 of 2021, which provides guidelines enabling the private sector to import or purchase COVID-19 vaccines. Among other things, it provides for the private sector to assume the cost, importation, storage, distribution and application of the vaccines. Further, the resolution provides guidelines concerning the use of health care providers, vaccination processes and procedures, required informed consent, and selection process for administering the vaccine. The resolution makes multiple references to guidelines issued by the Ministry of Health and Social Protection.

Government Aid for Employment of Youth

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

In June 2021, the government issued Decree 688 of 2021, to increase the formal employment of young people. The decree establishes that employers can receive a monthly contribution of 25% of the minimum wage paid to employees who are between the ages of 18 and 28 during 2021. The decree further defines "employer" to include natural persons, legal entities, among others.

Costa Rica

Public Registry of Individuals Who Engaged in Sexual Harassment

New Legislation Enacted

Author: Marco E. Arias Arguedas, Partner – BDS, Member of Littler Global

On April 29, 2021, Law 9969 became effective. This law amends the Law Against Sexual Harassment in the Workplace and Education, to require all employers, in the public and private sector, maintain a registry of all individuals disciplined for engaging in sexual harassment in the workplace. The registry must identify the disciplined individuals, and the disciplinary measure imposed (and when), but must not identify the victim. The registry is accessible to anyone with a legitimate interest, so anyone, even third parties, can request access to the registry.

Amended Law Allows Employers to Further Reduce Working Hours

New Legislation Enacted

Author: Marco E. Arias Arguedas, Partner – BDS, Member of Littler Global

On May 17, 2021, the Legislative Chamber amended Law No. 9832 to allow employers affected by the COVID-19 pandemic to reduce employees' working hours, something that our system previously prohibited. The amended law allows employers in the tourism and transportation sectors, as well as other industries, to continue asking for permission to reduce working hours. Employers can now seek four additional authorizations of three months each, for up to twelve months of reduction in working hours. Employers must continue to ask the Ministry of Labor for authorization and would be well advised to seek legal counsel as to the proper basis for doing so.

Bill to Overhaul Employment Relationships in Public Sector

Proposed Bill or Initiative

Author: Marco E. Arias Arguedas, Partner – BDS, Member of Littler Global

The Legislative Chamber approved, in first debate, a bill that almost completely overhauls how employment relationships in the public sector are handled. Among other changes, this bill would replace the "bonuses system" for salaries in the public sector, where employees' income have many components that increase exponentially over the years and can create inequities in comparison with the private sector, with a "global salary scheme" that eliminates those components. If the project clears the constitutional review, it will be subject to a second debate and new vote before it can become law.

Denmark

Whistleblower Law

New Legislation Enacted

Author: Tina Reissmann, Partner – Labora Legal

On June 24, 2021, the Danish Parliament passed a law to protect whistleblowers. The new law implements the EU-Directive on Whistleblowers in Danish legislation, making it mandatory for employers with more than 50 employees to establish internal whistleblowing schemes.

Breach of Loyalty Obligation Caused Summary Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner – Labora Legal

In a precedential decision, the court found that a manager who was summarily dismissed because she had entered into a contract with one of the company's business partners in her own name and without consent from the company had breached her loyalty obligation to the company.

Employer Not Liable for Experienced Employee's Fall From 30 Feet

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner – Labora Legal

A company was not found liable for the damages, which an employee suffered, when he fell from 30 feet, because he was not sufficiently secure. The High Court found that with 25+ years of experience, he should have been aware of the insufficient security.

New Rules for Psychological Working Environment

New Regulation or Official Guidance

Author: Tina Reissmann, Partner – Labora Legal

The Working Environment Authority has introduced new psychological working environment rules as a result of a political decision in the Danish Parliament. The new guidelines – which are the first rules ever to focus on the mental/psychological well-being of employees – will primarily focus on: (i) High emotional demands at work; (ii) Big workloads; and (iii) Conflicts at the workplace.

El Salvador

Bitcoin Can Be Used to Pay Salaries

New Legislation Enacted

Author: Jaime Solís, Partner – BDS, Member of Littler Global

On June 8, the Legislative Assembly approved a law that recognizes "bitcoin," one of many and perhaps the most well-known cryptocurrency, as legal tender in El Salvador. The purpose of the law is to allow bitcoin to be legally used in "any transaction." Only those persons or entities who evidently do not possess the means to accept payment in bitcoin are exempted from having to accept it. The broadness of the law means even salaries could potentially be paid in bitcoin. However, President Nayib Bukele has expressed that no one will be forced to accept bitcoin.

European Union

Holiday Pay for Period Between Unlawful Dismissal and Reinstatement

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Dónall Breen, Associate – GQ | Littler

On June 25, 2021, the European Court of Justice (CJEU) held that, under the Working Time Directive (2003/88/EC), workers who are found by a national court to have been unlawfully dismissed and are then reinstated are entitled to holiday pay in respect of the period between dismissal and reinstatement. The CJEU found it would be unfair for a worker who is denied the ability to work because of their employer's wrongful act to suffer as a result.

EU's Equal Pay Law Supports "Equal Value" Claims Brought in Domestic Courts in EU Member States

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Chris Coombes, Associate – GQ | Littler

On June 3, 2021, the European Court of Justice (ECJ) held that Article 157 of the Treaty on the Functioning of the European Union (TFEU) has direct effect in relation to equal pay claims based on equal value and, therefore, can be directly relied upon by claimants in domestic courts in EU member states. The CJEU also confirmed that, as long as there is a "single source" which is responsible for determining claimants' and comparators' pay, their work and pay could be compared for the purposes of determining equal pay claims, even if the two groups work in different establishments. This decision could lead to more equal pay claims in the EU, as it potentially makes it easier for claimants to rely directly on the principles of EU equal pay law and draw a comparison with employees working in a different role in a different establishment.

European Commission Adopts Adequacy Decision for the UK, Under GDPR

New Regulation or Official Guidance

Authors: Darren Isaacs, Partner and Deborah Margolis, Associate – GQ | Littler

On June 28, 2021, the European Commission adopted an adequacy decision for the UK under the General Data Protection Regulation (GDPR). Following Brexit, the UK would be a "third country" for data transfer purposes, such that additional safeguarding measures would need to be put in place. The adequacy decision recognizes that the UK has incorporated GDPR into domestic law and provides adequate protection to individuals and that as a result, personal data may flow freely from the UK to the EU, and vice versa. The adequacy decision is limited to four years and any future divergence in the UK's data privacy rules will be kept under review. In practice, this means that UK companies can continue operating under the same data privacy framework when dealing with EU citizens' personal data.

Finland

Employer's Post-Employment Obligation to Re-Employ Dismissed Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd.

On June 10, 2021, the Supreme Court of Finland ruled on a case relating to employer's post-employment obligation to re-employ employees dismissed due to financial and production-related grounds. The re-employment obligation actualizes if the employer needs to recruit employees to same or similar positions in which the dismissed employees worked during a period of four or six months after the employment ended.

In this case, during the re-employment period, the employer became aware of a likely need to recruit a new employee due to a recent resignation, but the actual recruitment decision was made after the re-employment period had ended. The Supreme Court ruled that the employer did not violate its obligation to re-employ when the employer made the actual decision regarding the new recruitments after the obligation expired. The Supreme Court concluded the employer had not postponed the decision-making beyond the end of the re-employment period merely to evade the re-employment obligation.

Applicability of Collective Agreement Based on Company's Industry

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd.

On June 14, 2021, the Supreme Court of Finland ruled on a case relating to employer's right to apply the same generally binding collective agreement to all its employees, instead of being obligated to apply a different one to a group performing different work than most. Generally binding collective agreements are applicable to all companies operating in the same industry regardless of whether they have chosen to take part in the national collective bargaining system.

The employer had applied one collective agreement to all its employees based on its main industry. Two employees claimed that the employer should apply another generally binding collective agreement to their employment since their duties were different. The Supreme court ruled that the activities carried out by the two employees did not form a separate and independent unit in relation to other activities of the company. Thus, the employer could apply the collective agreement based on the main industry of the company.

Excessive Overtime Work Can Constitute an Occupational Health Offense

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd.

On June 23, 2021, the Supreme Court of Finland ruled that excessive amount of overtime work can constitute an occupational health offense. Such conclusion had not been clearly stated in the previous case law. The maximum overtime hours had been exceeded to an extreme. Thus, the employer had violated its general obligation to ensure the safety of its employees as well as its obligation to identify and assess the risks related to the work. Further, the employer had not ensured that the employees were not subjected to heavy workloads that endangered their health.

France

When a Code of Conduct Becomes Part of a Company's Rules of Procedure

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

Policies and documents setting forth the obligations related to discipline can be considered part of a company's rules of procedure. On May 5, 2021, the French Supreme Court ruled that a company's code of conduct can be considered part of the company's rules of procedure, even if not formally incorporated into the same document. The rules and procedures must be approved by the works council and sent to the local labor authority. If every requirement is satisfied, the code of conduct is fully enforceable and part of the company's internal rules of procedure.

Principle of Equal Treatment and Settlement Agreements

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

Within a collective redundancy, a company entered into settlement agreements with some employees, where the employees negotiated additional compensation through a social plan as part of modifications to the settlement agreements. Having heard about those settlements, other employees in a similar situation requested the same benefits and compensation. On May 12, 2021, the French Supreme Court ruled that an employee cannot raise the principle of equal treatment to obtain the same benefits and advantages resulting from a settlement agreement entered into between the employer and other employees.

New Disclosure Obligation for Mobility and Transportation Platforms and Hubs

New Order or Decree

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

On April 22, 2021, Decree no. 2021-501 became law. Starting in March 2022, platforms dedicated to mobility and transportation must publish on their website information and data regarding the working time and the earnings of workers using their services during the preceding civil year. The purpose of this new legislation is to provide more transparency in the relationships between the platforms and the workers using their services. The information and data collected shall include the length of each service provided, average duration of each service, the amount of earnings, and the waiting time before each order. These data must be collected on March 1 of each year. Noncompliance with this obligation can subject the owners to a fine.

Representation of Independent Workers in the Digital Platform Sector

New Order or Decree

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

To promote an efficient dialogue between platforms and workers using their services, on April 21, 2021, the French government issued Order no. 2021-484, enabling independent workers to select their own representation. The main covered activities are car transportation services and grocery delivery. Under the new law, the workers will vote for a trade union organization, which will then appoint its own representatives. The representatives will benefit from a protection against dismissal during their mandate and until six months after the expiration of this mandate. A national election to select the organization will be held every four years; the first one to be held by December 31, 2021, at the latest.

Germany

Obligations Under the German Supply Chain Act

New Legislation Enacted

Author: Jan-Ove Becker, Partner – vangard|Littler

On June 11, 2021, the German Supply Chain Act (Lieferkettengesetz) was passed, requiring German and multinational companies, including foreign companies with branches or subsidiaries in Germany, to oblige their direct suppliers to comply with human rights in all aspects of their workers' employment. The Act imposes specific due diligence obligations, as well as limits and consequences of their duty, including (but not limited to): (a) establishment of mechanisms to identify human rights abuses or environmental violations; (b) requirement to draft a policy statement

on their human rights strategy; (c) introduction of the intervention of mandatory preventive and remedial measures in the event of risk identification and (d) establishing of complaint (whistleblowing) procedures for affected workers.

The law also imposes documentation and reporting obligations, as well as the publication and filing of nonfinancial business reports. Noncompliant companies risk comprehensive fine sanctions. The German Supply Chain Act comes into effect on January 1st, 2023, for companies with more than 3,000 employees, and also on January 1st, 2024, for companies with 1,000 employees. The calculation of the number of employees is based on the total number of employees in Germany of all Group companies, including employees posted abroad.

Extension of Rights of Works Council

New Legislation Enacted

Author: Lara Müller-Esch, Associate – vangard|Littler

On June 18, 2021, the Works Council Modernization Act (Betriebsrätemodernisierungsgesetz) came into force, which facilitates the election and establishment of works councils, but primarily contains several technical innovations. For example, works councils will be able to hold virtual works council meetings in the future and works agreements can be signed with a qualified electronic signature.

Additionally, provision was made for the involvement of an expert for the works council when assessing the use of artificial intelligence in work processes. Moreover, it was determined that the employer is the "controller" within the meaning of Art. 4 (7) of the GDPR General for actions of the works council, and that the works council has a right of co-determination for "structuring mobile work provided by means of information and communication technology."

No Extension of Obligation to Offer Remote Work

New Regulation or Official Guidance

Author: Dagmar Lessnau, Senior Associate – vangard|Littler

The temporary statutory obligation to offer remote work expired on July 1, 2021, though most pandemic-related regulations to be observed at the office remain effective. Employers must continue to implement appropriate technical and organizational measures to ensure compliance with hygiene and distance standards (e.g., lower room occupancy, reduced personal meetings, distance of 1.5 meters, partition walls, proper ventilation, and sanitary supplies). The provision of at least 10 sqm2 of office space per employee is no longer applicable, however.

Furthermore, company hygiene plans must be updated after carrying out a new infection risk assessment and free COVID-19 testing must be granted at least twice per calendar week for employees at the office/travelling (except for employees who are fully vaccinated or recovered from COVID-19). Evidence of offering testing shall be retained until September 10, 2021.

European Commission's Draft Regulation on Use of Artificial Intelligence

Proposed Bill or Initiative

Author: Jan-Ove Becker, Partner – vangard|Littler

On April 21, 2021, the European Commission proposed regulations on the use of Artificial Intelligence (AI), which would represent the world's first legal framework for the future use of AI. The aim is to provide companies and the European economy with important competitive advantages (i.e., secure legal framework for investments and innovations) through the early regulation of AI processes.

The draft proposes comprehensive regulation on the use of AI, identifying four levels of risk and technical requirements for its use. The Commission's proposal ensures that AI Systems deployed in the European market are

safe and respect existing law on fundamental rights and Union values and user safety. The proposal must go through the Union legislative process, which regularly takes one and a half to two years and will consequently go through several amendments.

Failure to Pass German Whistleblower Act

Proposed Bill or Initiative

Author: Dr. Sabine Vianden, Associate – vangard|Littler

The Whistleblower Protection Directive (EU) 2019/1937 of the European Parliament and of the Council must be implemented by European Member States by December 17, 2021. The Directive creates an obligation to establish internal reporting channels for legal entities in the private sector (with 50 or more employees) and the public sector for infringements of Union law in order to protect whistleblowers. In addition, it obliges member states to establish external reporting channels with the authorities and to provide whistleblowers with protection from retaliation.

A draft of the German Whistleblower Protection Act was more far-reaching than the European Directive, seeking to apply the law to notifications of infringements of national law and protect persons affected by the notification. Ultimately, the governing parties failed to agree on a draft, so the future of a new draft remains uncertain.

Honduras

Minimum Wage Increases, Effective July 1, 2021

New Order or Decree

Author: Marielos Acosta, Associate – BDS, Member of Littler Global

On Tuesday, June 15, 2021, representatives from management and labor in the private sector agreed to an increase to the minimum wage, with the help of the Government in a mediator role. The increase ranges between 4.01% and 8%, effective July 1. Companies with 1 to 50 employees must pay an increase of 4.01%, while those that employ 51 to 150 individuals will pay 5%. Employers with more than 150 employees will need to increase minimum wages by 8%.

Hungary

Hungary's Controversial Anti-Pedophilia Law: Workplace Implications

New Legislation Enacted

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

Hungary's new anti-pedophilia law (criticized for an equivocal prohibition of "LGBTQI propaganda" among minors) amends, among other things, the Labor Code. The new law prohibits employers engaged in raising, supervising, tending, caring of minors or providing services of entertainment, pastime and sport to minors to conclude employment with persons who have a record of conviction for crimes against children (including different sex crimes), or are facing a criminal process for such crimes. If an employee falls under this prohibition, the employer is obliged to terminate the employment with immediate effect.

Termination of CBA Affects the Working Timeframe

New Legislation Enacted

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

Working timeframe is a working time scheduling which can be introduced unilaterally by the employer. Under working timeframe, the working time of daily eight hours can be achieved as an average during the length of the working timeframe, thus the daily working time can change. Specifically, it can be more or less than eight hours, and thus no overtime is paid for working more than eight hours, as it is compensated by less than eight hours of working time on other days.

The statutory maximum length of working timeframe is six months, but a collective bargaining agreement can set its length to 36 months. Termination of the collective bargaining agreement (CBA) did not affect the already introduced working timeframe, but the newly introduced amendment of the Labor Code stipulates that termination of the CBA does not affect the already introduced working timeframe for three months, and after that the working timeframe must be terminated.

India

Karnataka State – Increase in Unused Annual Leave Carry Forward Limit

New Order or Decree

Authors: Trent Sutton, Shareholder and Isha Malhotra, Of Counsel – Littler

Under an amendment to the Karnataka Shops & Establishments Act, employees can now carry forward up to 45 days of unused annual leave to the next year. The previous limit had been 30 days.

Karnataka State – Relaxation in the Rules of Employing Women at Night

New Order or Decree

Authors: Trent Sutton, Shareholder and Isha Malhotra, Of Counsel – Littler

Most states in India generally prohibit employment of women at night. Only certain companies can apply for an exemption (those in IT/ITeS services) to employ women at night. However, last year, Karnataka government allowed all commercial establishments to employ women at night, subject to certain conditions, including obtaining consent, providing free transport, and certain restrictions on hours of work that women can perform at night.

Guidance on COVID-19 Vaccination at Workplaces

New Regulation or Official Guidance

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

In April 2021, the Ministry of Health and Family Welfare (MoHFW), Government of India, released its Guidance on COVID-19 Vaccination at Workplaces (Government & Private), permitting private employers to collaborate with private COVID-19 vaccination centers to inoculate employees over the age of 45 years.

The government subsequently clarified, through a letter dated May 21, 2021, to allow vaccination of employees over the age of 18 years and their family members and dependents at workplace vaccination centers owing to the MoHFW's Liberalized Pricing and Accelerated National COVID-19 Vaccination Strategy.

Introduction of Four New Labor Codes

Proposed Bill or Initiative

Authors: Trent Sutton, Shareholder and Isha Malhotra, Of Counsel – Littler

Indian government is set to introduce four new Labor Codes, namely Code on Wages, 2019; Industrial Relations Code, 2020; Code on Social Security, 2020; and Occupational Safety, Health and Working Conditions Code, 2020, with a view to simplify and merge the plethora of labor legislations that currently govern the Indian labor landscape. The enactment of the codes was set for mid-2021, however, it has been deferred indefinitely. While the aim of introducing the Labor Codes is "ease of doing business in India," employers can expect changes in current compliance requirements for minimum wages, social security, employee representation, etc., after enactment of the new Labor Codes.

Extension of Timeline for Mandatory Verification and Linking of Aadhar Number

Upcoming Deadline for Legal Compliance

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

Effective September 1, 2021, employers are limited to make provident fund contributions filings only for those employees whose Aadhar numbers have been verified and linked with the Universal Account Number (UAN), a unique number allocated by the Employees' Provident Fund Organisation (EPFO), pursuant to Section 142 of the SS Code. This is further to a new circular issued by the EPFO extending the implementation deadline, which initially was set for June 1.

Ireland

Parent's Leave Extended and Changes to Adoptive Leave

New Legislation Enacted

Author: Niall Pelly, Partner – GQ | Littler

On April 1, 2021, the Government commenced the family leave provisions under the Family Leave and Miscellaneous Provisions Act 2021, which introduced two significant changes. First, it extended Parent's Leave entitlement from two weeks to five weeks. The change will have retrospective effect, meaning the increase is available for any child born or adopted on or after November 1, 2019. Further, the period during which this leave can be taken has been extended from 12 to 24 months.

Second, Adoptive Leave and Adoptive Benefit was extended to male same sex couples and

adoptive couples can now choose which of them will avail of adoptive leave, with paternity leave and benefit being available for the other parent.

Government Extends Employment Wage Subsidy Scheme until December 31

New Legislation Enacted

Author: Niall Pelly, Partner – GQ | Littler

On June 1, 2021, the Government announced that the Employment Wage Subsidy Scheme (EWSS) will remain in place until December 31, 2021. Under the EWSS scheme, employers and new firms in sectors impacted by COVID-19 whose turnover has fallen 30% get a flat-rate subsidy per week based on the number of qualifying employees on the payroll, including seasonal staff and new employees. For Q3 2021, the Government will maintain the status quo for EWSS, including the enhanced rates of support and the reduced rate of Employers' PRSI with a modification to widen eligibility.

Government Publishes Code on the Right to Disconnect

New Regulation or Official Guidance

Author: Niall Pelly, Partner – GQ | Littler

On April 1, 2021, the Government published the Code of Practice for Employers and Employees on the Right to Disconnect (the Code). The purpose of the Code is to provide guidance on best practice to employers and employees in relation to the right to disconnect. There are three rights underpinning the Code: (i) the right of an employee to not have to routinely perform work outside their normal working hours; (ii) the right not to be penalized for refusing to attend to work matters outside of normal working hours; and (iii) the duty to respect another person's right to disconnect.

Failure to follow a Code of Practice is not in itself an offense. However, a statutory Code of Practice is admissible in evidence in any relevant proceedings before the Workplace Relations Commission and/or the Labor Court. If applicable, in assessing the potential liability of an employer for breaches of employment law, the extent to which an employer has complied with a relevant Code of Practice is not determinative but can be considered.

Government Seeks to Establish New Statutory Sick Pay Scheme

Proposed Bill or Initiative

Author: Niall Pelly, Partner – GQ | Littler

On June 9, 2021, the Government approved the drafting of the General Scheme of the Sick Leave Bill 2021, which would bring into effect a statutory sick pay scheme in 2022. Currently, in general, employees have no legal right to be paid while they are on sick leave from work, but this is due to change from 2022. The draft scheme seeks to introduce: (i) Paid sick leave for up to three sick days in 2022, to be increased to five days in 2023, seven days in 2024, and 10 days in 2025; (ii) A rate of payment for statutory sick leave of 70% of normal wages to be paid by employers (up to a maximum €110 per day); and (iii) A right for workers to take a complaint to the WRC where they are not provided with a company sick pay scheme.

To be entitled to paid sick leave under the new scheme, employees must be working for their employer for at least six months. They will also need to be certified by a GP as unfit to work.

Italy

COVID-19: Dismissal Bans and Salary Support Measures

New Order or Decree

Author: Carlo Majer, Partner – Littler

On May 19, Law Decree 41/2021 was approved as a COVID-19 measure. This decree sets different expiration dates on the ban on terminations. In brief, for the NCBA for the industrial section, the ban expires on June 30, 2021. However, if the employer received CIGO subsidy (to cover furlough), the ban is extended until December 31, 2021. For the NCBA for the trade sector, for companies that use the FIS program (for short-time work), the ban is extended until October 31, irrespective of the use of the FIS.

Additionally, under Law Decree 99/2021, effective July 1, 2021, employers in the fashion and textile industrial sector who suspend or reduce their activities due to COVID-19 may apply for a paid furlough subsidy, known as "CIGO", that would provide up to 17 weeks of salary support, covering from July 1 to October 31, 2021. For the business sector, although the dismissal ban is scheduled to expire on July 1, 2021, companies that may no longer benefit from the government's paid furlough subsidy program may apply for an extraordinary measure providing 13 weeks of salary support, to be used by December 31, 2021.

Data Protection: Employee Monitoring

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner – Littler

On May 13, 2021, the Data Protection Authority issued a sanctioning measure against the Municipality of Bolzano (*i.e.*, the employer), as a result of a complaint filed by an employee who, in the course of a disciplinary proceeding, had discovered that he had been constantly monitored by his employer. Regardless of the occurrence of a specific Unions' agreement regulating this kind of monitoring, it is not permitted to surveil and monitor employees' internet browsing indiscriminately: any monitoring activities shall always be carried out in compliance with the Workers' Statute (Law no. 300/1970) and applicable data protection laws (including the Data Protection Authority's ruling and guidelines).

Whether Dismissal Ban Protects Executives (Dirigenti)

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner – Littler

In its recent Order no. 3605/2021, the Court of Milan ruled that employees classified as executives (known as "dirigenti") are not protected under the ban on dismissals. This order is significant because it appears to settle this issue where the Court of Rome had previously issued two rulings that were inconsistent within each other. In the first case, the Court of Rome found that executives were protected under the ban; in the second case, the court reversed itself, finding that the executives may be dismissed notwithstanding the ban. Therefore, it appears that the Court of Milan's decision is conclusive as to the exclusion of executives from the ban.

COVID- 19: Smart Working Measure Extended

New Regulation or Official Guidance

Author: Carlo Majer, Partner – Littler

In its website, the Labor Ministry announced that Smart Working, a COVID-19 emergency measure which allows flexibility in how private sector employees carry out their work, has been renewed and extended until December 31, 2021. To apply for this scheme, the only requirement is for employers to register the agreement with the employee on an online system.

Malaysia

Exemption of Levy

New Legislation Enacted

Authors: Sara Lau Der Yin, Partner and Sareeka Balakrishnan, Associate – Skrine

Under the Pembangunan Sumber Manusia Berhad (Exemption of Levy) (No. 2) Order 2021 (Order), any employer in the industries and carrying out activities listed in the Schedule of the Order to whom the Pembangunan Sumber Manusia Act 2001 applies, is exempt from paying a levy to the Human Resources Development Fund. The exemption is in force from June 1, 2021, to December 31, 2021, and applies to employers who have registered with the Pembangunan Sumber Manusia Berhad from March 1, 2021, to June 30, 2021.

COVID-19: Extension of Phase 1 Restrictions

New Legislation Enacted

Authors: Sara Lau Der Yin, Partner and Sareeka Balakrishnan, Associate – Skrine

Presently under the nationwide lockdown, Full Movement Control Order (FMCO), no economic sectors can operate, except essential economic and service sectors subject to the approval from the Ministry of International Trade and Industry (MITI). Work from home is allowed. The current Phase 1 FMCO that was implemented on June 1, 2021, was extended on June 29, 2021. The government will consider moving to Phase 2 when it meets specific metrics on daily COVID-19 cases and vaccination rates.

There are now 24 sectors listed as essential services. Based on FMCO SOPs, attendance at premise is only allowed for essential services at not more than 60% capacity at one time for both management and operational staff. Interdistrict and interstate travels are also prohibited, with certain exceptions. Business hours are limited to 8pm with certain exceptions. All businesses open for operations must comply with the SOPs issued by the National Security Council (NSC), and the sector-specific SOPs, where applicable. Employers are required to comply with any updated SOPs.

COVID-19 Restrictions and Mitigation Measures

Proposed Bill or Initiative

Authors: Sara Lau Der Yin, Partner and Sareeka Balakrishnan, Associate – Skrine

On June 15, 2021, the Prime Minister of Malaysia announced a National Recovery Plan (NRP) to transition out of the COVID-19 crisis. Under the four-phases of the NRP, the country will transition from one phase to another, based on metrics of daily COVID-19 cases and rate of vaccination. Phase 1 is for movement control, where only essential services can be provided, selected sectors can operate at limited capacity, and interstate travel will be restricted.

During Phase 2, economic activities will resume in stages, only listed selected sectors will operate, and social activities and interstate travel will still be prohibited. In Phase 3, all economic activities will be allowed to operate subject to strict SOPs and capacity limits, except activities that are at high risk for infections. In Phase 4, all economic sectors will be opened, with more social activities allowed including interstate travel and domestic tourism.

New COVID-19 Financial Aid Relief

Important Action by Regulatory Agency

Authors: Sara Lau Der Yin, Partner and Sareeka Balakrishnan, Associate – Skrine

On May 31, 2021, the government launched the Strategik Memperkasa Rakyat Dan Ekonomi Tambahan (Pemerkasa +), an additional COVID-19 financial relief package. Under Pemerkasa +, the application for Wage Subsidy Program is extended until July 31, 2021, for employers to receive cash subsidy for each applicable employee. Pemerkasa + also has various incentives, such as cash aid for lower income groups, relief for loan repayments, postponement of tax penalties, among other benefits.

COVID-19: The Pemulih Financial Aid Package

Important Action by Regulatory Agency

Authors: Sara Lau Der Yin, Partner and Sareeka Balakrishnan, Associate – Skrine

On June 28, 2021, the government launched a program known as "Pemulih," which provides financial support for businesses and employers, individuals and households and additional vaccination support. Pemulih extends the Wage Subsidy Program to support up to 500 workers per employer with assistance of RM600 per worker for four months. There will be a payment for two months for all sectors in the Phase 2 of the National Recovery Plan (NRP), and a further payment for two months for the sectors categorized under the negative list in the Phase 3 of the NRP.

Unlike the previous wage subsidy programs, there are no salary limit conditions for the Wage Subsidy Program under Pemulih. Hence, employers may apply even if their employees earn more than RM4,000 a month. Additionally, this program will grant automatic exemption from paying a levy to the Human Resources Development Fund for qualifying employers.

Netherlands

Raise of Statutory Minimum Wage

New Legislation Enacted

Author: Eric van Dam, Partner – Clint | Littler

Twice a year the statutory minimum wage is revised, in January and July. As of July 1, 2021, employees aged 21 and older are entitled to at least a gross wage of € 1.701, per month for fulltime work, whether this is 36, 38 or 40 hours per week. The number of hours a fulltime workweek has can differ per company and is often agreed upon in collective labor agreements.

Online Travel Company Qualifies as Intermediary Travel Agency

Precedential Decision by Judiciary or Regulatory Agency

Author: Eric van Dam, Partner – Clint | Littler

On April 9, 2021, the Dutch Supreme Court overruled two lower courts and found that an online travel company qualifies as intermediary in the formation of agreements between accommodation providers and guests, bringing together supply and demand for travel arrangements. The Court ruled that the company falls under the definition of an (online) travel agent. Travel agencies are required to enroll in the travel sector's pension fund. With this ruling the Supreme Court annulled an earlier ruling of the appeal court and returned the case to the appeal court. That court must assess whether the company meets the other criteria for mandatory enrollment in the pension fund.

Employer May Not Withhold Salary for Working Hours Missed Due to COVID-19

Precedential Decision by Judiciary or Regulatory Agency

Author: Eric van Dam, Partner – Clint | Littler

During the pandemic, many companies were forced to temporarily decrease the working hours of employees, due to a diminished demand for companies' services or to ensure safety in the workspace. It was unclear whether companies could ask employees to make up for the missed working hours, since this subject is not regulated by law. The court now ruled that the reduced productivity falls within the risk sphere of employers, which is why employees were entitled to payment of their full salary, although they worked less during the pandemic. Employers are not allowed to require employees to make up for the "missed" working hours and to withhold salary from the periodic payment once the hours are not made up for before a certain moment in time.

Working from Home Still Not a Right, Employer Permission Still Needed

Precedential Decision by Judiciary or Regulatory Agency

Author: Eric van Dam, Partner – Clint | Littler

Although working from home has become more common due to the pandemic, employees are still not entitled to decide to work from home without permission of their employer. The statutory right of employers to give instructions comprises the right to determine where the employee performs the work. According to the court, refusing to travel to the workplace due to bad weather conditions qualifies as a refusal to carry out the work, but does not justify a dismissal with immediate effect. More official and clear warnings and other lighter sanctions will have to precede such

dismissal. The employee is awarded salary over the notice period and the statutory transition payment, but no fair compensation since her attitude caused disturbance of the relationship.

Legislative Proposal for the Protection of Whistleblowers Act

Proposed Bill or Initiative

Author: Eric van Dam, Partner – Clint | Littler

On June 1, 2021, the Dutch legislator submitted a bill to the House of Representatives to implement EU Directive 2019/1937, which must be done by all EU Member States before December 17, 2021. The bill obliges public and private companies with at least 50 employees to install an internal reporting office through which employees can report breaches of EU law and malpractices under Dutch law. Furthermore, whistleblowers will no longer be obliged to first report internally and their protection against detriment and liability procedures will be strengthened by introducing a reversed burden of proof. A company will then have to proof the lack of a relation between detriment of a reporter and the report or why the reporter should be held liable.

Norway

New Measures Against Work-Related Crime

New Legislation Enacted

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The Parliament has adopted new legislation to prevent and counteract work related crime: (i) Wages must be paid into employees' accounts via a bank transfer (not by cash), which will contribute to reducing the extent of undeclared work and improve employees' financial situations; (ii) Criminal penalties for wage theft (including fine and imprisonment), for an employer who fails to pay wages or other remuneration to the employee, pays too little to the employee, or demands repayment of wages already paid; and (iii) Criminal penalties for business leaders who fail to establish an occupational pension scheme or comply with the minimum requirements of the Act on Mandatory Occupational Pensions. The new provisions will be effective from January 1, 2022.

The After-Effect of a Collective Agreement

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

In a June 2, 2021 judgment, the Supreme Court ruled on the after-effect of collective agreements. The dispute concerned the extent to which nurses at a retirement home could retain the benefit of salary-increase provisions that followed from a previous collective agreement, after the employer had changed employers' organization, and the parties therefore were bound by a new collective agreement. The Supreme Court held that the provision on salary increases for long service in a collective bargaining agreement must be regarded as individual wage terms that become part of the individual's employment contract, and that they do not lapse following the termination of the collective agreement. The question of whether expired collective agreements can remain effective in individual contracts must now be considered conclusively clarified by the Supreme Court.

New Law on Business Transparency and Human Rights

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

On June 14, 2021, the Parliament passed the new Transparency Act to promote companies' respect for fundamental human rights and decent working conditions. The Act applies to larger enterprises which are domiciled in Norway, and which offer goods or services in or outside Norway, as well as foreign enterprises which are taxable in Norway, and which offer goods or services in Norway.

The companies covered by the Transparency Act must carry out due diligence assessments in accordance with the OECD's guidelines for multinational companies. The companies must also publish a report on the due diligence assessment. The report must be updated and published by June 30 each year. In addition, the companies must provide information on how the company handles actual and potential negative consequences for fundamental human rights and decent working conditions to anyone who submits a written request.

Amendments to Work from Home Regulations

Proposed Bill or Initiative

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

Regulations on "work from home" (WFH) have gained new relevance during the pandemic. The Ministry of Labor and Social Affairs has now sent out a proposal for changes to the regulations, for consultation, to adapt the rules to current technological and social realities. Among other things, the Ministry proposes: (i) Clarification of the scope of the regulations; (ii) An exception from the requirement for a written agreement where WFH is due to orders or recommendations from the authorities; (iii) Clarification that the provision on the working environment also covers psychosocial conditions; and (iv) That the Norwegian Labor Inspection Authority will have competence to supervise compliance with the regulations.

Retaliation Cases After Whistleblowing to be Handled by Anti-Discrimination Tribunal

Proposed Bill or Initiative

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

If an employee believes themself to be the subject of illegal retaliation for having reported censurable conditions at the employer's undertaking, the employee must take legal action to clarify the dispute in the court. The financial risk involved implies that there are few notification cases that are processed in the courts. To strengthen the protection of whistleblowers, the Government proposes to establish a low threshold offer where the Anti-Discrimination Tribunal is given the authority to decide disputes about alleged retaliation after whistleblowing.

Peru

Modification to the Labor Productivity and Competitiveness Law

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

Amending article 29 of the Labor Productivity and Competitiveness Law, the newly enacted Act 31152 protects against dismissal female employees who are pregnant, or in their period of giving birth, lactation or nursing if these employees are providing services under the part-time regime or are at their trial period with the employer. That the dismissal will be void if it occurs during the trial period represents a significant exception since the general rule is that employees do not acquire protection against unlawful dismissals during the trial period. The new law entered into effect on April 2, 2021.

Authorization for Withdrawal of CTS Funds

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On April 23, 2021, Act 31171 became law, authorizing the withdrawal of the compensation for time of service (CTS). CTS is a benefit employees receive twice a year, in the amount of half a remuneration, which is deposited in a bank account that employees can access only upon the termination of the employment relationship. The possibility of withdrawal is meant to cover economic needs caused by the pandemic and allows the free disposition of one hundred percent of the deposits. The benefit is available until December 31, 2021.

Authorization for the Withdrawal of Pension Funds

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On May 7, 2021, Act 31192 was issued, allowing affiliates to a Private Pension Entity to withdraw up to a total of PEN 17,600 from their pension funds. Affiliates can access this benefit only once and if they do not meet the requirements to access the Early Retirement Scheme for Unemployment.

Extension of Remote Work Scheme

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

Emergency Decree 055-2021, published on June 24, established extraordinary and complementary measures to promote growth in the economy and further extended the authorization for Remote Work until December 31, 2021.

Amendments to the Safety and Health at Work Act

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On June 26, 2021, Act 31246 became law, in part amending the Safety and Health at Work Law. The amendments guarantee the health of employees before an epidemiological and sanitary risk, and focus on the obligation to perform medical examinations and deliver personal protection equipment.

Philippines

Revised Procedural Guidelines in Voluntary Arbitration Proceedings

New Order or Decree

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On February 5, 2021, the National Conciliation and Mediation Board implemented its revised procedural guidelines for the conduct of voluntary arbitration proceedings, effective on June 27, 2021. The rules of procedure cover grievances arising from interpretation or implementation of a collective bargaining agreement, company rules and regulations, personnel policies, and established practices, or such other controversies involving an employer-employee relationship. Most significant of the revisions is a confirmation that a Motion for Reconsideration may be availed of within 10 days from receipt of an adverse decision by a voluntary arbitrator.

Procedures on Distribution of COVID-19 Vaccines for Private Entities

New Order or Decree

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On June 3, 2021, the Department of Health and National Task Force against COVID-19 issued a Joint Memorandum Circular on the procedure on distribution of COVID-19 vaccines for private entities. Specifically, the Memorandum Circular stipulates provisions on applications and submissions of requests, a definition of who may be designated by private entities as recipients of privately procured vaccines, contents of a multiparty supply agreement, payment to manufacturers, and importation, arrival, pick-up, delivery, and distribution of vaccines.

Promotion of COVID-19 Vaccination in the Private Sector

New Regulation or Official Guidance

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

The Department of Labor and Employment issued Labor Advisory No. 8, series of 2021 on May 1, 2021. This Advisory applies to all establishments and employees in the private sector and reinforces the Philippine government's position on the COVID-19 vaccine. In this Advisory, all employees in the private sector, except those who are ineligible or disqualified for health reasons, are highly encouraged to get inoculated with COVID-19 vaccine. Employers, on the other hand, shall continue to urge their employees to avail of their own vaccination program, if any, or their respective local government units and seek appropriate assistance from concerned government agencies in the administration of COVID-19 vaccine.

COVID-19 Reporting

New Regulation or Official Guidance

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

Beginning April 30, 2021, establishments are strongly advised/encouraged to submit the monthly Workplace COVID-19 Prevention and Control Compliance Report (WAIR COVID-19 Form) through the online DOLE Establishment Report System. Employers are likewise reminded that WAIR COVID-19 Form shall be submitted every 30th day of the month with or without any COVID-19 case in their workplace to DOLE.

Poland

Vaccination Incentives Are Not Discriminatory

Precedential Decision by Judiciary or Regulatory Agency

Authors: Robert Stępień, Partner and Miłosz Awedyk, Senior Attorney-at-Law – PCS | Littler

The Legal Department of the Polish State Employment Inspectorate (Państwowa Inspekcja Pracy) recently confirmed that vaccination incentives for employees are not discriminatory. The Inspectorate's statement, though nonbinding, serves as important guidance, especially since trade unions and politicians had argued that granting additional days off or additional payments for people who agree to be vaccinated against COVID-19 is discriminatory.

The Inspectorate noted that while employers should treat all employees equally, there is no illegal discrimination if an unequal treatment is justified by "objective reasons." Besides the duty not to discriminate, the law imposes a duty to ensure safe working conditions. The Inspectorate concluded that since vaccination itself reduces health hazards at work, extra days off for vaccination and recovery after vaccination are allowed and justified as objective reasons.

Breathalyzers in the Workplace

Proposed Bill or Initiative

Authors: Robert Stępień, Partner and Jakub Grabowski, Attorney-at-Law – PCS | Littler

A new bill has been introduced, which seeks to authorize employers to conduct noninvasive alcohol level tests (breathalyzers). If enacted, employers will be required to establish the rules for conducting such tests in the company's internal workplace regulations. The draft bill also provides that employers can keep the test result for six months, except that this period can be extended if disciplinary actions were taken against the employee or the result is needed as evidence in a court case.

The current Polish regulations do not explicitly authorize employers to test employees' alcohol level, which creates uncertainty about the issue. In our opinion, employers can conduct such tests given their duty to ensure the health and safety of the workplace. In practice, breathalyzer tests are common in many sectors (e.g., factories, construction sites, etc.). The draft bill mentioned above should finally resolve any doubts in this regard.

New Work from Home Regulations on the Way

Proposed Bill or Initiative

Authors: Robert Stępień, Partner and Miłosz Awedyk, Senior Attorney-at-Law – PCS | Littler

Despite some temporary COVID-19 measures, Poland does not have remote work regulations, under which employers may order employees to work from home (WFH). The government has introduced a bill to replace the existing telework regulation, which is inadequate for the current reality, and establish a remote work model that would allow employers to implement a fully remote or hybrid system. The hybrid system would allow flexibility for employees to work some days from the company's premises and other days from home or another location.

As proposed, the bill seeks to allow employers to implement WFH arrangements unilaterally. If enacted into law, employers will need to issue internal workplace regulations, establishing the rules on communication, health and safety, data security, equipment use, reimbursement for related expenses, etc. Expenses to be reimbursed would include electricity and internet, which employers would be required to pay as a whole or in lump sums.

The New Polish Order: An Upcoming Revolution in Income Taxes and Social Security?

Proposed Bill or Initiative

Authors: Robert Stępień, Partner and Jakub Grabowski, Attorney-at-Law – PCS | Littler

The government has recently announced a new strategy called "The New Polish Order," which will introduce a set of reforms, including modifications to the income tax and social security contributions. No draft bill has been presented yet, but the initiative is being widely discussed.

The income tax threshold that is free of tax is to be increased from about EUR 1,800 to approximately EUR 7,000 per year. The mandatory public healthcare contributions (constituting 7.75% of employee's monthly income) would not be deemed as cost for tax purposes (which currently is the case), making the higher tax threshold indiscernible for people earning middle-class incomes and increasing the tax burden for people with higher earnings. There will be no limit for this contribution, which means that it will be paid from the total earnings of employees or B2B contractors, which in turn may cause B2B contracts to become less favorable for contractors.

Portugal

Measures Supporting Return to Business

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Margarida Laires, Associate – Garrigues Portugal SLP Sucursal

With the enactment of Decree Law no. 32/2021, of May 12, companies can reduce normal working hours by 100%, per employee, up to 75% of the company's workforce during the month of July. With respect to the month of June 2021, companies can reduce up to 75% of the normal work period for all the employees at their service.

In the case of companies in the sector of bars and discotheques, among others (covered by a government order), in the month of June 2021, the reduction of the normal work period may be up to 100%, without limit as to the number of employees.

Amendments to the Recognition of Professional Qualifications Regime

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Margarida Laires, Associate – Garrigues Portugal SLP Sucursal

Law no. 31/2021, of May 24, which entered into force on June 1, 2021, transposed into national law Directive 2013/55/EU of the European Parliament and of the Council of November 20, 2013, which allows the recognition of professional qualifications obtained in another Member State of the European Union by a national of a Member State wishing to exercise in Portugal, in a self-employed capacity or as an employee, a regulated profession not covered by another specific system.

New Conditions and Procedures Concerning Payments to Social Security

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Margarida Laires, Associate – Garrigues Portugal SLP Sucursal

Ordinance no. 80/2021, of April 7, sets out new terms and procedures concerning the settlement of any debts/payments outstanding to Social Security in installments, covering payments that would be due until December 31, 2021.

Social Security may authorize up to a maximum of six monthly installments. When the debt amount covered by this settlement exceeds (i) EUR 3,060 for natural persons or EUR 15,300 for legal persons, this six-month threshold may be extended for an additional six months (total 12 months).

Mandatory Remote Work Regime

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Margarida Laires, Associate – Garrigues Portugal SLP Sucursal

Resolution of the Council of Ministers No. 74-A/2021, of June 9, establishes that, remote work in specific situations (namely employees who are covered by the exceptional regime for the protection of immunodeficiency and chronically ill people) is mandatory to the entire national territory. As regards to the remaining cases (i.e., outside of the above-mentioned specific situations), it is only mandatory for municipalities at high risk. "High-risk counties" are those with a 14-day cumulative incidence of COVID-19 cases per 100,000 inhabitants greater than 120/100,000 in two consecutive evaluations.

Similar resolutions are being enacted almost on a weekly basis, adding to the list of municipalities covered by these measures.

Puerto Rico

Loosening of COVID-19 Restrictions

New Order or Decree

Authors: Anabel Rodríguez-Alonso, Capital Member and Irene Viera, Associate – Schuster Aguiló LLC | Littler

As businesses reopen, face coverings remain popular as a preventative measure. Numerous jurisdictions across the country have encouraged – or mandated – citizens to wear face coverings when out in public, especially when social distancing cannot be maintained effectively. Some directives also obligate employers to provide masks to their employees. Puerto Rico has adopted the CDC guidance for masks and fully vaccinated individuals. Fully vaccinated individuals in closed spaces that do not serve the public are not required to use masks if all individuals inside the closed area are fully vaccinated. Fully vaccinated individuals are not required to use masks when outdoors. Mask use is recommended for individuals who are not fully vaccinated, even when outdoors.

Additionally, Puerto Rico has continued to relax COVID-19 restrictions and guidelines. For example, Executive Order 2021-043, in effect from June 7, 2021 until July 4, 2021, relaxed the maximum capacity limits for establishments and the mask requirements for fully vaccinated individuals.

Quarantine and Isolation Defined in Executive Orders

Trend

Authors: Anabel Rodríguez-Alonso, Capital Member and Mariela Rexach-Rexach, Capital Member – Schuster Aguiló LLC | Littler

The terms "quarantine" and "isolation" have become ubiquitous during the COVID-19 pandemic and while they are sometimes used interchangeably, they are indeed different. Regulation 125 of Puerto Rico's Department of Health (Department of Health) provides distinct definitions for each term, setting forth the applicable procedures and penalty for noncompliance. As applied to the COVID-19 pandemic, the Department of Health has issued preliminary guidelines, specifying the duration of quarantine and isolation periods required because of COVID-19 infection, exposure or suspected exposure, which, in turn, also depend on specified circumstances.

Puerto Rico has followed, yet sometimes expanded, the CDC's guidelines for quarantine and isolation. While the definitions for quarantine and isolation in Regulation 125 closely resemble those of the CDC, the Department of Health's guidelines are silent as to the required duration of quarantine and isolation. As such, Executive Orders issued by the Governor during the COVID-19 pandemic have filled this void.

Saudi Arabia

Job Seekers Subsidy

New Legislation Enacted

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

A new law, which becomes effective in August 2021, allows eligible individuals to benefit from 15 months of job seeker benefits as follows: (i) SAR 2,000/month for the first four months; (ii) SAR 1,500/month for the next four months; (iii) SAR 1,000/month for the next four months; and (iv) SAR 750/month for the last three months. Applicants must meet several eligibility criteria, including be a KSA national or permanent resident, searching for a job, between the age of 20-40 years, unemployed, below a certain income threshold, among other criteria. During the period in receipt of the benefits, the individual is required to notify of any change in circumstances, comply with any instructions, attend training, education courses, accept appropriate job offers, demonstrate they are searching for jobs. The benefit can cease or be reduced for a number of reasons.

Revised Nitaqat Manual

New Regulation or Official Guidance

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

Under Ministerial Decision No. 182495, dated 11/10/1442 AH, concerning the Developed Nitaqat Program, the Saudi Ministry of Human Resources and Social Development (MHRSD) launched its revised Saudization manual (Nitaqat). The latest version contains three new features, the first being a localization plan to increase organizational stability, the second containing a new Saudization formula directly associated with the number of employees at an organization (rather than using classifications), and the third simplifying the program's characteristics.

COVID-19 Workplace Vaccination Requirements

New Regulation or Official Guidance

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

The Saudi Press Agency has reported that effective August 1, 2021, individuals will be permitted entry into public and private establishments only if they have received one of the KSA-approved COVID-19 vaccines.

Spain

New Rider Law for Digital Platforms

New Legislation Enacted

Author: Sonia Cortés García, Partner – Abdón Pedrajas | Littler

Royal Decree-Law 9/2021, of May 11, amends the Workers' Statute regarding individuals working in delivery of goods through digital platforms (the Rider Law). This law provides that individuals working in the delivery of goods for digital platforms that directly/ indirectly/ implicitly organize, manage and control them and manage the service through digital platform algorithms are deemed to be employees. This provision entitles employee representatives to be informed about algorithms and artificial intelligence parameters, rules and instructions used to decide on employee working conditions, recruitment, termination and profiling.

This has raised concerns by digital platforms involved as regards confidentiality of their trade secrets. Although employee representatives are subject to the duty of secrecy, the disclosure of this information might place their secrets at risk. The Rider Law is to enter into force on August 12, 2021.

Ratification of the European Social Charter

New Legislation Enacted

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate – Abdón Pedrajas | Littler

The European Social Charter is a Council of Europe that guarantees fundamental social and economic rights. The Revised Charter, which has been effective as of May 3, 1996, was finally ratified by Spain on April 29, 2021, with it entering into force on July 1, 2021. Among the labor rights that it broadens and reinforces, the following stand out: (i) Dignity at work by promoting the prevention of sexual harassment and violence in the workplace; (ii) Equal working conditions and equal pay for work of equal value regardless of gender; (iii) Effective access to employment, particularly for people with disabilities; (iv) Employees and employees' representative's protection; (v) Equal treatment and opportunities regardless of gender and family responsibilities; (vi) Minors protection in the workplace; (vii) Protection of maternity; and (viii) Professional advice and training.

Incorrect Use of Temporary Replacement Contracts to Cover Vacancies

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate – Abdón Pedrajas | Littler

The European Court of Justice (ECJ) on its judgment Case C-726/19 of June 3, 2021, ruled that Spanish case law was not applying appropriately the Council Directive 1999/70/EC of June 28, 1999, regarding temporary contracts because it incorrectly allowed the renewal of temporary contracts when the selection period to cover vacancies in the public sector was not yet ended without specifying the term. This is the case also because the case law incorrectly prohibits the assimilation of those workers to "nonfixed indefinite employees" and does not grant them an equal severance. Furthermore, the ECJ has considered that Spanish law does not appear to include any measure intended to prevent and, where appropriate, to sanction the abusive use of this contracts which cannot be justified in purely economic considerations linked to the economic crisis of 2008.

Bill for LGTBI Rights

Proposed Bill or Initiative

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate – Abdón Pedrajas | Littler

On June 29, 2021, the Council of Ministers approved a Draft Bill for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people, a law promoted by the Ministry of Equality and the Ministry of Justice. Among other things, the bill seeks several changes, as follows: (i) The law will no longer consider trans people as sick; (ii) Self-determination of gender; (iii) Allow minors to change their name in the Civil Registry at any age and change their sex from the age of 12; (iv) Lesbian, bisexual and single women will again have access to assisted human reproduction techniques, likewise for trans people with gestational capacity; (v) Allow the filiation of sons and daughters of lesbian and/or bisexual women; (vi) Conversion, aversion or counter-conditioning therapies, in any form, aimed at modifying the sexual orientation or identity or gender expression of a person will be prohibited; (vii) Rights for trans and LGTBI persons in the educational and employment scope; and (viii) New fundamental rights for intersex people (including the right not to suffer any mutilation upon birth).

Guidance on Data Protection and Employment Relationships

Important Action by Regulatory Agency

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate – Abdón Pedrajas | Littler

On May 18, 2021, the Spanish Data Protection Agency, together with the Ministry of Employment and Social Economy and the employer's and trade union organizations, published guidance on Data Protection and Employment Relationships. The guide resolves multiple issues, including recruitment, whether an employer can search a job applicant's social networks, job interviews, collaboration between companies, whistleblowing systems (including preserving the whistleblower's identity), managing sensitive data, data retention, payroll, workday records, transfer of data to other companies, termination of the employment relationship, control of activity, video surveillance, geolocation, attendance, private detectives, transfer of data to trade union representatives and employees' representatives, data protection in compliance with health and safety obligations, use of wearable technology, among other issues.

Sweden

New Regulations on Work Adaptation

New Regulation or Official Guidance

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

As of June 1, 2021, the Swedish Work Environment Authority's new regulations on work adaptation entered into force. The new regulations, which were drafted together with the parties of the Swedish labor market (i.e., trade unions and employer's associations), aim to clarify the employer's responsibility for work adaptation and adjustments under the Work Environment Act. The authority has also issued further guidance on their website.

Bill to Strengthen Protection for Whistleblowers

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

On May 20, 2021, the government introduced a bill to adopt the EU Whistleblower Directive, which would strengthen the protection of whistleblowers. If the bill is enacted, among other things, it would require companies with at least 50 employees to implement special channels for reporting misconduct (so-called whistleblower systems) and ensure the confidentiality of whistleblower's identity.

The new law is proposed to enter into force on December 17, 2021. Companies with 50-249 employees are proposed to have until December 17, 2023, to set up internal whistleblower systems, while other companies have until July 17, 2022.

New Bill on Modernization of Labor Law

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

Based on an agreement between the parties of the labor market, the government has proposed a bill to modernize the Swedish labor law. Proposals include: (i) All employers, regardless of size, be given the possibility to exempt three employees from the order of selection; (ii) If an employee is terminated, the employment will end after the notice period, even if the termination is disputed (i.e., the employee will not remain in service until the dispute has been finally settled); (iii) General fixed-term employment will be replaced by another form of employment called specific fixed-time employment, which will convert into an indefinite employment after 12 months; (iv) Unless otherwise specifically agreed, the employee has a right to full-time employment; and (v) Temporary agency workers shall have a right to an indefinite employment with the customer company if they have been in their service for at least 24 months.

The new legislation is proposed to enter into force on June 30, 2022, and to apply as of October 1, 2022.

Switzerland

A New Care Leave for Parents of Children with Serious Health Condition

New Legislation Enacted

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

As of July 1, 2021, under the New Earnings Compensation Act (NECA), working parents of a minor child whose health is seriously impaired due to illness or an accident are jointly entitled to a care leave of up to 14 weeks per incident and care allowance during the care leave. The parents of a child with a severe health impairment are eligible.

The civil status of the parents is irrelevant. The parents are entitled to care allowance if at least one of them is an employee, self-employed or an employee with a cash salary in the wife's or husband's business and interrupts the employment due to care-related duties. Parents who are unemployed, as well as foster parents, are entitled to care allowance if meeting some conditions.

Timeframe for Entitlement to New Care Leave

New Legislation Enacted

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

The new care leave under the New Earnings Compensation Act can be taken all at once or be split into separate days. If both parents are employees, they are each entitled to a care leave of seven weeks and half of the maximum care allowance, unless they mutually agree on a split. Employees shall inform their employer immediately about the division of the care leave, when and how they wish to take the leave and any subsequent changes.

The entitlement stops at the end of the 18 months' timeframe or after the maximum care allowance has been claimed. It also stops in case the conditions for receiving care allowance are no longer met, e.g. because the child no longer has a severe health impairment. However, if the child reaches the age of majority during the 18 months' timeframe, the entitlement does not stop.

Allowance Under the New Care Leave

New Legislation Enacted

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

Under the New Earnings Compensation Act (NECA), the eligible parents who are entitled to the care allowance can receive a maximum of 98 daily care allowances. They are also entitled to allowances on days off (e.g., Saturday and Sunday). Therefore, two additional daily allowances are paid out for every five working days. This means that the parents can claim 98 daily allowances but can only take 70 actual vacation days. The daily allowance amounts to 80 percent of the average income earned before the entitlement to care allowance started, up to a maximum of 196 Swiss francs per day amounting to a total of 19,208 Swiss francs.

In case of a part-time employment, the level of the allowance is adjusted to the workload. The daily allowances are also paid for days on which the employee does not work. If, due to this limitation, the care allowance does not cover 80 percent of the salary, the employer must pay at least the difference between the daily allowance and 80 percent of the salary. The employer may also voluntarily continue to pay the full salary but is not obliged to do so.

United Kingdom

No Direct Sex Discrimination in Withholding of Allowance Pay During Maternity Leave

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Sanika Karandikar, Associate – GQ | Littler

On April 28, 2021, the UK Court of Appeal found that the City of London Police had not directly discriminated against a female police officer by not paying her a "London allowance" (an additional allowance paid to employees based in London) during her maternity leave. The Court of Appeal held there was no direct sex discrimination because the employer had not paid the London allowance due to the claimant's general absence from duty/unavailability to work, and not because of her maternity leave. This case is very fact-specific but highlights the importance of having clear provisions in maternity polices about entitlements during maternity leave.

Appeal Tribunal: "Gender-Critical" Beliefs Can Be Protected Under Discrimination Law

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Ben Smith, Associate – GQ | Littler

On June 10, 2021, the UK Employment Appeal Tribunal (EAT) held that "gender-critical" beliefs (a broad label but which included in this case a belief that sex is immutable and not to be confused with gender identity) were capable of being protected under UK discrimination law. UK law protects employees from discrimination because of their "religious or philosophical belief." An Employment Tribunal last year had found that the "gender-critical" beliefs in this case were not capable of respect in a democratic society and therefore were not protected. That decision has been overturned by the EAT, who found that only very extreme beliefs such as Nazism and totalitarianism are not protected.

Expressions of beliefs are not automatically protected, and this decision does not give employees a free pass to express their beliefs in ways that are harassing or harmful in the workplace. However, this decision potentially significantly expands the range of beliefs capable of protection, and therefore employers should handle the growing volume of workplace issues arising from a clash of beliefs with sensitivity and caution as the risk of litigation is high.

Appellate Court Rules on Trade Union Freedom Right in Platform Economy

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Kate Richards, Associate – GQ | Littler

On June 24, 2021, the UK Court of Appeal unanimously held that riders of an online food delivery company do not fall within the scope of the trade union freedom right (concerning freedom of assembly and association) of the European Convention on Human Rights because they are not in an employment relationship with the company for purposes of Article 11 of the Convention. This upheld the earlier decisions of the Central Arbitration Committee and the High Court.

The genuine and unfettered right of substitution given to riders was central to the assessment of nonemployed worker status and the decision shows the importance of personal service when determining this issue. As there was no "employment relationship," the riders were not entitled to be recognized for collective bargaining purposes. This is good news for platform economy companies, however, this decision primarily concerned human rights law and the Court of Appeal acknowledged that the judgment would not necessarily apply to all riders.

Employment Appeal Tribunal: No Sex Discrimination If Paying Less for Parental Leave Than for Adoption Leave

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Alison Sneddon, Senior Associate – GQ | Littler

On March 31, 2021, the UK Employment Appeal Tribunal (EAT) confirmed that it was not sex discrimination for an employer to pay a man on shared parental leave (SPL) less than a woman on adoption leave (AL). In UK law, family leave (including SPL, AL, and maternity leave) is paid at set statutory rates with employers having discretion over whether to voluntarily pay more. The employer in this claim did so for AL but not SPL.

The EAT rejected the claimant's assertion that this was direct sex discrimination. They decided that the correct comparison to make was between a man and a woman on SPL and, as they both would have received the same pay, there was no sex discrimination. The decision is a welcome clarification for employers who want flexibility between the enhanced pay offerings of different leave schemes. However, legal and employee engagement risks of doing so remain.

Winding Down of COVID-19 Furlough Scheme and Other Measures

New Regulation or Official Guidance

Author: Raoul Parekh, Partner – GQ | Littler

On September 30, 2021, the UK's COVID furlough scheme (a government wage subsidy covering 80% of wages, capped at £2,500 monthly) is due to end. It is unlikely to be extended again. From July 1, 2021, the government will reduce its contribution to 70% of wages (up to a maximum of £2,187.50 per month), with employers required to contribute 10% of wages (capped at £312.50 per month). In August and September 2021, the government's contribution will reduce to 60% (capped at £1,875 per month) with employers required to contribute 20% (capped at £625 per month). Employers will need to continue paying social security and pension contributions on furlough pay.

Further, the ability for employers to carry out right to work checks on employees and prospective employees remotely, allowing for original documents to be checked over a video call, is due to end on August 31, 2021. From September 1, 2021, employer right to work checks will again require a face-to-face meeting and inspection of a physical copy of original documents.

United States

July is the New January: A Post-Pandemic Look at Emerging Labor and Employment Law Trends

New Legislation Enacted

Authors: Bruce J. Sarchet, Shareholder and Sarah M. Martin, Associate – Littler

The pandemic seems not to have slowed down state and local lawmakers. Indeed, over 100 new labor and employment laws and ordinances are scheduled to take effect between July 1, 2021, and November 1, 2021. Notably, while some of these laws address COVID-19 and topics concerning return-to-work, most mark a renewed attention to other hot-topic labor and employment issues. Not surprisingly, several states and localities have adopted their own nondiscrimination statutes or expanded the same to recognize new protected classifications. Other popular topics include independent contractors and worker classification, marijuana use and drug testing in the workplace, and repairs to state unemployment insurance systems. Review our survey that tracks many of these laws and ordinances across the country, here.

Spring into Summer and Fall Minimum Wage, Tipped, and Exempt Employee Pay Increases

New Legislation Enacted

Authors: Paul R. Piccigallo, Associate and Sebastian Chilco, Knowledge Management Counsel – Littler

Minimum wage laws can affect businesses of all sizes, whether operating nationwide, in multiple jurisdictions, or only in one state, county, or city. To help manage this challenge, below we provide, essentially, a rates-only update that details scheduled state- and local-level wage increases throughout the summer and fall of 2021 so employers can determine the minimum amount they must pay nonexempt, tipped, and certain exempt employees. Before we chart out these rates, we briefly highlight some notable wage and hour developments that have occurred in 2021. Review these rates, here.

Several States Move to Prohibit COVID-19 Passport Programs

New Legislation Enacted

Author: Geida D. Sanlate, Knowledge Management Counsel – Littler

Several states and local governments have moved to enact laws prohibiting COVID-19 passport programs. In Florida, law SB 2006 prohibits businesses from requiring vaccine passports from patrons and customers. In Georgia and Montana, employers are prohibited from requiring proof of COVID-19 vaccination as a condition for employment. In Arkansas, state, state agencies, and local jurisdictions and officials are prohibited from requiring a vaccine passport as a condition for entry or services. Other jurisdictions have announced their intention to follow suit.

Supreme Court Narrows Claims Available Under Computer Fraud and Abuse Act

Precedential Decision by Judiciary or Regulatory Agency

Authors: Matthew J. Hank and Rachel Fendell Satinsky, Shareholders – Littler

The Computer Fraud and Abuse Act (CFAA) is an anti-hacking statute making it illegal "to access a computer without authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled to so obtain or alter." Violations of the statute may trigger criminal prosecution or civil litigation by private parties. On June 3, 2021, in Van Buren v. United States, the U.S. Supreme Court adopted a restrictive view of the CFAA, making it more difficult for employers to invoke the statute in cases arising from the theft of trade secrets.

There are, however, two ways employers can limit Van Buren's impact. First, employers may craft computer-use policies and procedures expressly forbidding and preventing employees from accessing particular files, folders, and databases. An employee who circumvents such a prohibition likely will have violated the CFAA even under Van Buren's narrow reading of the statute, and an employer may proceed civilly against that employee under the CFAA. Second, in a "disloyal employee" scenario involving the theft of trade secrets, an employer should consider filing a claim for violation of the Defense of Trade Secrets Act, which will provide a basis for federal subject-matter jurisdiction and lessen the need to rely solely on the CFAA for that purpose.

L&E Rulemaking Prominent in President Biden's First Regulatory Agenda

Important Action by Regulatory Agency

Authors: James A. Paretti, Jr. and Michael J. Lotito, Shareholders – Littler

On June 11, 2021, the federal government released its unified federal regulatory agenda for spring 2021, which outlines regulatory and deregulation actions agencies expect to take in the coming months. With over 70 items on the docket, the U.S. Department of Labor (DOL) has indicated plans to overhaul regulations on a host of issues in the coming year, including the treatment of tips under the Fair Labor Standards Act (FLSA), joint employer status under the FLSA, modernizing and updating the Davis-Bacon Act, increasing the minimum wage for federal contractors, and a range of occupational safety and health standards, including an infectious disease standard for employees in health care and other "high-risk" environments. Read the full summary of Biden's Regulatory Agenda, here.

Venezuela

Judicial Judgment on the Use of Foreign Currency

Precedential Decision by Judiciary or Regulatory Agency

Authors: Richard G. Ruiz Fernandez, Associate and Vanessa Raidi, Associate – Littler

The Civil and Social Chambers of the Supreme Court of Justice ratified in their decisions that using foreign currency (dollar, euro, pound, yuan, etc.) to enter into contracts or make labor payments is valid and legal, despite the Bolivar being Venezuela's legal currency. Payments in foreign currency can be made both in foreign currency and in Bolivars based on the official exchange rate set by the Central Bank of Venezuela applicable at the time. This rate is updated daily and allows the value of transactions to be readjusted. The current exchange agreement allows the use of foreign currencies as the sole and exclusive currency of payment.

The use of foreign currency in commercial transactions, and even as currency for the payment of wages and labor compensation, results from the hyperinflation in the Venezuelan economy due to the accelerated loss of value of the Bolivar.

Teleworking Law

Proposed Bill or Initiative

Author: Gabriela Arevalo, Senior Associate – Littler

The Ministry of Labor announced that this year the National Assembly may approve a teleworking law as a COVID-19 measure. If approved, the law will regulate work activity from home, including working hours, the right to disconnect, rest hours, as well as determination of wages, responsibility for connectivity, performance evaluation, and the organization of workers.

To date, employers in Venezuela have implemented work from home based on the Organic Labor Law. Although these provisions do not establish specific rules on teleworking, they do require employers register those working from home, pay the related expenses (such as electricity, internet, phone, maintenance of machines and work tools), as well as grant economic benefits that cannot be lower than those provided by law for those working in the workplace.

Employee Performance Evaluation During Pandemic

Trend

Author: Daniela Arevalo, Senior Associate – Littler

After the pandemic situation in Venezuela and due to the monthly extension of the quarantine by the Executive Power, employers are facing the challenge to assess employee performance during remote work. An important recommendation to help employers with this situation is to adapt the company's processes towards an evaluation by establishing a policy in writing, with objective parameters, and making it known to workers through the electronic means available. This policy may include incentives or bonuses for goals achieved so that workers are incentivized to carry out the proposed work.

In this sense, this option can be very favorable if the employer cannot verify that the worker is complying with their working hours. It is important to notify workers in writing about the result of the evaluation, which may be done through electronic means as corporate mail, and if possible through a video call or teleconference so that the worker can know the strengths and weaknesses and can correct them. Within the remote work framework, employers have several options for methods and formulas to achieve productivity and success. The policies and solutions will vary based on the conditions of each employer and workplace.

Employee Vaccination Should Be Combined with Biosecurity Compliance

Trend

Author: Daniel Jaime, Associate – Littler

Given the surge of COVID-19 infections in Venezuela during mid-May and June 2021, companies have sought to join the Ministry of Health to vaccinate their employees to reduce risks and finally return to work. The priority of the Ministry of Health has been to vaccinate health employees first, then vaccinate (i) employees providing essential services (e.g., food, pharmacy industry, healthcare system, among others), and (ii) the general population, prioritizing the most vulnerable. The government has been supplying the Sputnik and Chinese vaccines, requiring the eligible groups to register and make an appointment on "Patria," an online platform commonly used by the government to give financial aid.

Even if a company may vaccinate its employees under the government's plan, employees can refuse to get vaccinated. Accordingly, it is highly advisable to obtain the employee's written consent prior to the vaccination. Additionally, even if most employees get vaccinated, employees can return to work only if the company meets all government standards on biosecurity (e.g., use of masks, social distancing in the workplace, sanitary practices, etc.). Implementing these measures would prevent transmission of the virus to unvaccinated workers and protect the company from risks should it be subject to a government inspection.