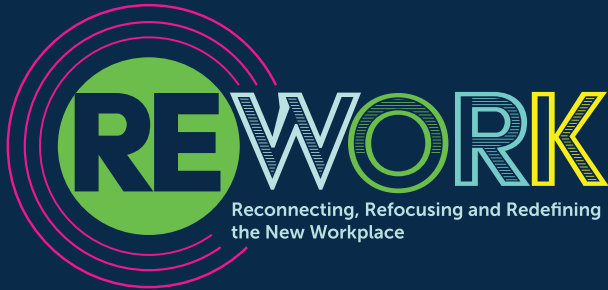


The Global Guide Quarterly

LABOR AND EMPLOYMENT LAW UPDATES FROM AROUND THE GLOBE

Littler



The 2023 Littler European Executive Employer Conference

Amsterdam, Netherlands | 7-8 November 2023

QUARTER 3, 2023

Read the latest headlines from our featured countries. To receive the Global Guide Quarterly by email, subscribe at www.littler.com/subscribe-GGQ.

CONTENTS

Australia	Finland	Malaysia	South Korea
Austria	France	Mexico	Sweden
Brazil	Germany	Netherlands	Switzerland
Canada	Honduras	Norway	Thailand
China	Hungary	Peru	United Kingdom
Colombia	India	Philippines	United States
Costa Rica	Indonesia	Poland	Venezuela
Denmark	Ireland	Portugal	Vietnam
Dominican Republic	Italy	Puerto Rico	
El Salvador	Kingdom of Saudi Arabia	Russia	

Australia

Changes to Unpaid Parental Leave

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

As of July 1, 2023, the amended Fair Work Act offers greater flexibility for employees taking unpaid parental leave, to align with updates made to the Paid Parental Leave scheme. Employees can take up to 100 days (increased from the previous 30-day entitlement) of their 12-month unpaid parental leave flexibly at any time within 24 months of their child's birth or adoption. Pregnant employees can access their flexible unpaid parental leave up to six weeks before the expected date of birth. Both parents can take up to 12 months unpaid parental leave at any time during the 24-month period after the birth or placement of their child. Also, they can both request up to an additional 12 months of unpaid leave.

Paid Family and Domestic Violence Leave for Small Businesses

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

As of August 1, 2023, employees of small business employers (with fewer than 15 employees) can access 10 days paid leave to deal with family and domestic violence, even if a contract gives less. This leave entitlement replaces the previous five days of unpaid family and domestic violence leave under the National Employment Standards. This leave is available to full-time, part-time and casual employees and it is not pro-rated for part-time or casual employees.

An employee's paid leave entitlement is available in full immediately and resets on their work anniversary (i.e., it does not accumulate from year to year). It is a paid minimum leave entitlement, like annual leave or paid sick and carer's leave. Employers must not include certain information on an employee's pay slip about taking paid family and domestic violence leave.

Express Interaction Rule for Workplace Determinations and Enterprise Agreements

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

Effective July 1, 2023, the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 amends the Fair Work Act 2009 to include an express interaction rule for workplace determinations and enterprise agreements. The Fair Work Commission (the national workplace relations tribunal, the FWC) can make a workplace determination that sets terms and conditions of employment in replacement of an enterprise agreement in some circumstances. Once a workplace determination made by the FWC commences, the previous enterprise agreement no longer applies to the covered employee. This amendment offers certainty for employers and workers by confirming the common understanding of how workplace determinations and enterprise agreements interact.

Protections for Migrant Workers

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

Effective July 1, 2023, the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 amends the Fair Work Act 2009 to ensure the application of Australian workplace laws and conditions to migrant workers. The amendment clarifies that (1) migrant workers continue to have workplace rights and entitlements regardless of their migration status under the Migration Act 1958 (the Migration Act), (2) a breach of the Migration Act does not affect the validity of an employment contract or a contract for services.



This amendment makes explicit that a migrant working in Australia is entitled to the benefit of the Fair Work Act, regardless of their migration status. This includes, but is not limited to, circumstances where a migrant worker (1) has breached a work-related visa condition, (2) does not have work rights, or (3) does not have the right to be in Australia. The operation of any sanctions under the Migration Act for breaches of immigration law remain unaffected.

Austria

Labor Market for Refugees from Ukraine

New Regulation or Official Guidance

Authors: Jakob Zochling, Senior Associate, and Markus Loescher, Shareholder – Littler Austria

Since April 2023, Ukrainian citizens holding a refugee certificate can access the Austrian labor market. This means, they can be hired out through a labor leasing arrangement. In fact, a large number of Ukrainians find their first job in Austria via a labor leasing company. They are frequently employed in the tourism industry.

The Austrian Public Employment Service (AMS) recently updated their website with necessary information, urging Ukrainians to register with the AMS, to receive assistance with finding a job. The information is available in English, German, Ukrainian, and Russian.

Simplified Access for Third-Country Nationals

New Regulation or Official Guidance

Authors: Armin Popp, Attorney-at-Law, and Markus Loescher, Shareholder – Littler Austria

In order to work in Austria as a third-country national, a Red-White-Red Card (or other type of residence document that allows employment) is generally required. In exceptional cases, the Labor Market Service can issue an employment permit if the position cannot be filled otherwise. Normally, the approval of the regional advisory board of the Labor Market Service is required for this. Since July, this approval can be waived if the employment of the foreign person is required for particularly important reasons.

Brazil

New Gender Pay Equality Law

New Legislation Enacted

Authors: Marília Nascimento Minicucci, Shareholder, and Pâmela Almeida da Silva Gordo, Associate – Chiodo Minicucci Littler

Law #14,611/2023, enacted on July 4, 2023, amended the Brazilian Labor Code and introduced several measures to guarantee salary equality between women and men. The law requires private companies with 100 employees or more to publish semiannual reports on salary transparency and remuneration criteria, with due observance of the General Data Protection Law. Further, employers must make available specific channels for employees to report salary discrimination and implement (and promote) workplace diversity and inclusion programs.

Moreover, the law establishes steep penalties for companies that fail to comply with gender pay equality and increases the applicable fine, which will be ten times the amount of the new salary owed to the discriminated employee. The fine can be doubled in the event of recurrence. Further, penalties for noncompliance include an administrative fine of up to 3% of the company's payroll, limited to 100 minimum wages (i.e., BRL 132,000 in 2023), without prejudice to other penalties that may apply.



The “Women’s Friend” Label for Companies

New Legislation Enacted

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

Law #14,682/2023, enacted on September 21, 2023, creates the “Women’s Friend” label for companies that adopt practices aimed at the professional inclusion of women who have experienced domestic and family violence. To receive the label, companies must comply with two of the four requirements under the new law, one of which consists of “having a policy to increase women’s participation in the organization’s senior management positions.”

New Rules for the Workers’ Meal Program

New Order or Decree

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

Decree #11,678/2023, which became effective on August 31, 2023, provides new rules for the Workers’ Meal Program (PAT). Among other things, the new decree restricts benefits that may be granted to legal entities that benefit from the PAT and on the portability of amounts.

Canada

Ontario Appeal Court Finds Independent Contractors Must Mitigate Upon Early Termination of Fixed-term Agreement

Precedential Decision by Judiciary or Regulatory Agency

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

In *Monterosso v. Metro Freightliner Hamilton Inc.*, 2023 ONCA 413, the Ontario Court of Appeal found that independent contractors have a duty to mitigate their damages upon the early termination of a fixed-term agreement.

British Columbia Appeal Court Finds Employer Vicariously Liable for Employee’s Willful Violation of Customers’ Privacy

Precedential Decision by Judiciary or Regulatory Agency

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

In *Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331, the British Columbia Court of Appeal (BCCA) confirmed that an employer may be found vicariously liable when its employee violates Section 1 of the province’s Privacy Act (Act), provided the employee’s conduct is “sufficiently related” to conduct authorized by the employer. Section 1 of the Act provides that it is a statutory tort for a person, willfully and without a claim of right, to violate the privacy of another.

Ontario Appeal Court Refuses to Impose Constructive Trust Over Proceeds of Sale of Defrauding Employee’s Wife’s Property

Precedential Decision by Judiciary or Regulatory Agency

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

Sase Aggregate Ltd. v. Langdon, 2023 ONCA 554, demonstrates the process an employer may be expected to undertake to recover employee-stolen funds when the proceeds of the fraud are traced to the assets of a “stranger to the fraud.”



Ontario, Canada: Licensing Framework for Temporary Help Agencies and Recruiters in Force July 1, 2023

New Regulation or Official Guidance

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

In December 2021, Ontario passed Bill 27, Working for Workers Act, 2021, which amended the Employment Standards Act, 2000 (ESA) to, among other things, establish a licensing regime for temporary help agencies and recruiters. These amendments did not come into force immediately because the licensing framework first had to be prescribed by Regulation. On June 10, 2023, new Regulations were passed to establish the licensing framework [namely, Reg. 99/23 (Licensing – Temporary Help Agencies and Recruiters), Reg. 101/23 (Termination and Severance of Employment), and Reg. 100/23 (Penalties and Reciprocal Enforcement)], and came into force on July 1, 2023.

Canada Adds Exemptions from Hours of Work Requirements for Certain Employees in Certain Sectors

New Regulation or Official Guidance

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

On August 16, 2023, Canada published Regulation SOR/2023-180 under the Canada Labour Code (CLC), which exempts certain classes of employees in the banking, telecommunications and broadcasting, rail and airline sectors from specified hours of work requirements in the CLC. The amendments related to the banking, telecommunications and broadcasting, and rail sectors come into force on January 4, 2024, while the amendments related to the air sector come into force on June 4, 2024.

China

Interim Measures for the Regulation of Generative Artificial Intelligence Services

New Regulation or Official Guidance

Author: Xi (Grace) Yang, Of Counsel – Littler

On July 10, 2023, the Cyberspace Administration of China (CAC) and several other government departments jointly released the Interim Measures for the Regulation of Generative Artificial Intelligence Services (Generative AI Measures), which took effect on August 15, 2023. These measures apply to the use of generative AI technologies to provide services to the public in China for the generation of text, images, audios, videos, or other content (the generative AI services), subject to certain exceptions.

The Generative AI Measures state that the government will emphasize equally on development of generative AI and security. Moreover, the Generative AI Measures impose comprehensive obligations on generative AI service providers, including content management, data security and privacy, and transparency of Generative AI. If an overseas provider that provides generative AI services to the public within China fails to comply with the laws, administrative regulations or these Measures, the Chinese authority will notify the relevant bodies to adopt technical measures and other necessary actions to address the situation.

Counter-Espionage Law Amended

New Legislation Enacted

Author: Xi (Grace) Yang, Of Counsel – Littler

On July 1, 2023, the Counter-Espionage Law, as amended by the Standing Committee of the National People's Congress, came into force. The law broadened the definition of espionage to give the same protection to “all documents, data, materials, or items related to national security and interests” as state secrets. In addition, the definition of espionage has been expanded to include cyber-attacks against state organs or critical information infrastructure.



Under the new law, the national security authority is empowered to inspect electronic equipment and business facilities, as well as to impose entry and exit bans through the immigration authority. Further, the law expands the application of administrative penalties, imposes fines for minor espionage violations and adds new types of administrative penalties, such as regulatory talks summoned by state security authority, “name and shame,” and temporary seizure or revocation of license. Due to the emphasis on data in the amended law, multinational companies in China should pay particular attention to their daily data handling to ensure data compliance.

China’s Cyberspace Authority Publishes Draft Measures on Personal Information Protection Compliance Audits

Proposed Bill or Initiative

Author: Xi (Grace) Yang, Of Counsel – Littler

On August 3, 2023, the Cyberspace Administration of China (CAC) published a set of short draft measures – Administrative Measures for Personal Information Protection Compliance Audits (Draft Measures), along with an appendix called Personal Information Protection Compliance Audits Reference Points (Reference Points), for public comments. The draft measures would require an annual compliance audit for handlers who process personal data of over one million people and a biennial audit for all other personal information handlers. A voluntary audit may be conducted either internally or by a third-party specialized institution.

The authority may require an audit if it determines there are high risks in personal data processing or upon occurrence of personal data security incidents. In such cases, the government-mandated audit must be conducted by an external specialized institution. The Reference Points set forth the key audited items, covering a range of personal data processing activities including cross-border data transfer. The draft measures would provide additional guidance on the compliance audit requirements under China’s Personal Information Protection Law.

Colombia

Workplace Lactation Law

New Legislation Enacted

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

Law 2306 of 2023, enacted on July 27, 2023, seeks to “protect maternity and promote the creation of safe spaces for breastfeeding.” Under this law, companies must grant two 30-minute breaks during the day for breastfeeding during the child’s first six months. After this period, the employer must grant a single 30-minute break for breastfeeding during the day. This law also promotes the creation of spaces dedicated to breastfeeding and provides different incentives for the creation and promotion of such spaces.

Right to Disconnect of Employees in Positions of Trust

New Order or Decree

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

Law 2191 of 2022, known as the “Right to Disconnect Law,” grants employees the right not to engage in work-related activities outside work hours. A provision under the law specifically excludes employees in positions of trust or executive or managerial roles who are exempt from the weekly work hour limit.

In Ruling C-331 of 2023, Colombia’s Constitutional Court declared the right to disconnect from work to be a human right that applies to employees in these types of roles. Although these employees are not subject to the weekly work hour limit, they are entitled to rest, and the employer’s power over their employees is not unlimited. Accordingly, employers must guarantee these employees the right to disconnect and employers’ contact with them outside work hours must be guided by a criteria of necessity and proportionality, according to each specific role.



Gradual Reduction of Weekly Working Hours, Effective in July 2023

Trend

Author: Gabriela Pacheco, Associate – Godoy Córdoba | Littler

Law 2101 of 2021, which became effective on July 15, 2023, mandates the gradual reduction of weekly working hours from 48 to 42 over a period of five years. The first reduction is of one hour for year 2023. Accordingly, the maximum amount of weekly working hours for the period between July 15, 2023, and July 15, 2024, is 47 hours.

New Labor Reform is Presented to Congress by the Government

Trend

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

The Colombian Government presented Congress with a set of proposals to reform the Labor Code. Important initiatives included in the proposals are as follows:

- As a general rule, employment contracts must be for an indefinite term, and the duration of fixed-term contracts must be proportional to the employer's temporary needs.
- Apprenticeships must require a special type of work contract, and host companies must be obligated to contribute to the social security system in such cases.
- In cases where employees might be protected under the reinforced job stability laws, termination of their contract must be approved by an administrative or judicial authority.
- Disciplinary procedures within companies must have a minimum duration of five workdays and a maximum of 30 workdays.
- The cost of terminating an employee's contract should vary and increase based on the employee's years of service (e.g., whether the employee has been working in the company for up to one year, one to five years, five to ten years, and ten years and beyond).
- Hours worked between 6:00 a.m. and 7:00 p.m will be considered daytime hours.
- The paternity leave will expand to 12 weeks as of 2026.
- "Essential services" employees can strike as long as a minimum service is provided.
- Union workers must be granted the necessary paid leaves to participate in "union activities."



Costa Rica

Bill to Allow 12-Hour Shifts Advances in Legislative Chamber

Proposed Bill or Initiative

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

Currently, many employers in Costa Rica arrange 12-hour shifts in industrial labors, manufacturing, etc., but those arrangements are deemed illegal because they entail permanent overtime, which the law does not permit. Bill No. 21.182, which was introduced on August 15, 2023, seeks to allow employers in certain industries to seek authorization from the Ministry of Labor to implement 12-hour shifts. The bill provides that working in those shifts will be voluntary, but unlawful for some employees (such as pregnant employees). Additionally, if enacted, employers will be required to pay premiums over the minimum wage.

The bill passed in a first vote. To become law, it will need to pass in a second vote before it is signed by the President and published.

Denmark

Amendments to the Act on Equal Treatment to Counteract Sexual Harassment

New Legislation Enacted

Authors: Bo Enevold Uhrenfeldt, Shareholder, and Maria Nordahl Hansen, Associate – Littler | enevold

Amendments to the Act on Equal Treatment entered into force on July 1, 2023. An important change to the Act is that employers are now expressly obliged to counteract sexual harassment in the workplace and implement specific measures to remedy any such cases. The changes were initiated by a three-party agreement between the Danish government and labor market parties concerning initiatives to counteract sexual harassment in the workplace.

Based on the preparatory legal notes from when the changes were introduced, the amendment is meant to codify case law and emphasize the employer's obligations. There does not appear any actual changes in practice.

Supreme Court Rules on the Scope of a Settlement Made by the Employee's Trade Union

Precedential Decision by Judiciary or Regulatory Agency

Authors: Bo Enevold Uhrenfeldt, Shareholder, and Maria Nordahl Hansen, Associate – Littler | enevold

In a ruling of June 27, 2023, the Supreme Court found that an employee can claim age discrimination under the Danish Anti-Discrimination Act in connection with her dismissal, even though her trade union had – prior to the dismissal – entered into an agreement with the employer on her behalf that precluded her possibility to raise such claim.

The Supreme Court disregarded the settlement and emphasized that the trade union did not have the necessary authorization from the employee to enter into such an agreement on her behalf. However, the employer managed to meet the burden of proof that discrimination was not the basis for the termination.



Proposed Changes to the Danish Act on Working Time

Proposed Bill or Initiative

Authors: Bo Enevold Uhrenfeldt, Shareholder, and Maria Nordahl Hansen, Associate – Littler | enevold

On September 14, 2023, the Danish government published a proposed bill for comments. The bill proposes changes to the Danish Act on Working Time, which transposes EC Directive (93/104), concerning certain aspects of the organization of working time.

Based on an agreement between labor market parties, the proposed changes to the Act include: (1) a possibility to conclude “opt-out” agreements concerning the rule of maximum 48 hours of work per week between the employer and certain types of employees; and (2) a duty for employers to register the daily working hours of each employee. The latter proposal is based on case law from the European Union Court of Justice.

Dominican Republic

Ministry of Labor’s Resolution on Use of Internships

Important Action by Regulatory Agency

Author: Javier Suarez, Partner – BDS, Member of Littler Global

On August 24, 2023, the Ministry of Labor issued Resolution 08-2023, known as a “Resolution to Encourage Professional Practices.” This resolution instructs several government agencies and bodies to work towards improving student access to internship and professional practices that enhance their skills and learning opportunities. The resolution also admonished employers that such internships and practices cannot be used to fill positions that would otherwise be occupied by employees, and that such actions would lead to enforcement that will consider the relationship to be one of an indefinite-term employment agreement.

El Salvador

Disciplinary Procedures for Violation of Law for Inclusion of People with Disabilities

New Legislation Enacted

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

On August 31, 2023, the Legislative Chamber of El Salvador once again voted, via expedited process, to postpone the entry into force of the Disciplinary Measures Chapter of the Special Law for the Inclusion of People with Disabilities. The law became enforceable in January of 2021, except for the chapter that regulates the disciplinary measures that would apply for violations of its provisions. The Legislative Chamber has now voted four times to postpone this chapter’s effective date in order to study how to properly execute the provisions contained therein.

As it now stands, this chapter will not go into effect until March 31, 2024.



Finland

Amendments to Employment Contract Act Clarify Definition of Employment Relationship

New Legislation Enacted

Author: Samuel Kääriäinen, Partner – Dottir Attorneys Ltd

Amendments to the Employment Contracts Act became effective on July 1, 2023. Among other things, the amendments clarify the definition of the employment relationship, making it more explicit in ambiguous and unclear situations where the legal nature of employment is subject to interpretation, particularly when distinguishing between an employment relationship and work performed as an entrepreneur (self-employment).

The law provides factors to consider, taking into account the conditions of work, the circumstances under which the work is performed, the intentions of the parties regarding the nature of the legal relationship, and other factors affecting the actual position of the parties in the legal relationship.

Wage Subsidy Reform, Effective as of July 1, 2023

New Legislation Enacted

Author: Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd

Amendments have been confirmed in the following laws: Act on Public Employment and Business Service, Act on the Municipal Experiment on Promoting, the Employment Contracts Act and Unemployment Security Act, all of which came into force on July 1, 2023. These legislative changes are driven by the overarching objective outlined in the previous government program, which is to enhance the utilization of wage subsidies within the private sector.

The primary aim of the wage subsidy system is to facilitate the employment of individuals with diminished work capacity or those in disadvantaged positions. Furthermore, this reform introduces employment support for individuals aged 55 and above.

New Government Program (2023-2027) Introduces Major Plans on Employment Legislation

Trend

Author: Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd

Finland's new right-wing government has published Prime Minister Petteri Orpo's government program for 2023-2027. The new government program contains multiple reforms favoring employers, which have provoked negative reactions from trade unions and will result in striking in Finland. The program contains several proposals that undermine workers' rights with an aim to lift up Finnish economy, such as loosening the use of fixed-term employments, reducing some requirements related to terminations of employment, enhancing the use of local workplace agreements and restricting the right to strike. The legislative changes would be introduced one by one, the earliest taking effect in 2024.



France

New Law Provides Psychological Support for a Miscarriage

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Littler France

Law No. 2023-567 of July 7, 2023, establishes a number of rights and entitlements for female employees who have suffered a miscarriage. In particular, the law creates sick leave with no waiting period for IJSS (daily social security allowances). It also creates special protection against dismissal.

An Employee on Non-Work-Related Sick Leave is Entitled to Paid Leave

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

An employee who was placed on sick leave due to a non-occupational illness brought an action before the industrial tribunal to obtain paid annual leave, which the employee considered to have earned during the suspension of the employment contract. The Court of Appeal upheld the employee's claim and the French Supreme Court upheld the appeal ruling.

The Supreme Court based its ruling on case law of the European Court of Justice, which makes no distinction between workers absent on sick leave and workers who have actually worked during the same period, in terms of entitlement to paid annual leave. It found that the provisions of the French Labor Code, which make entitlement to paid leave conditional on the performance of actual work, could not be interpreted in conformity with EU law. It therefore ruled that an employee was entitled to paid leave accrued during the non-work-related sick leave.

In two other rulings issued on the same day, the Court of Cassation also stated that (1) the calculation of paid leave entitlement is no longer limited to the first year of sick leave for an employee on sick leave due to an industrial accident, and (2) the statute of limitations on the right to paid leave only begins to run when the employer has given the employee the opportunity to exercise this right in good time. These decisions likely will have significant financial consequences for employers in France.

Economic Redundancy: Total Cessation of Activity Even if Business Continues within the Group

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

The closure of a business is one of the grounds for redundancy recognized by French law, provided that it is total and definitive. In a ruling dated September 20, 2023, the French Supreme Court ruled that the cessation of a company's business can be considered as total and definitive, even if another company in the group has continued a business of the same nature.

Suicide Attempt Linked to the Imminence of Employee's Dismissal Constitutes a Work Accident

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

An employee attempted to end his life at work in 2019. After the health insurance fund refused to cover this incident under the occupational law, the employee appealed. The Court of Appeal rejected the employee's request, noting that the suicide attempt had been made in the workplace, but outside working hours. The employee had learned the day before that the employer had been granted administrative authorization to dismiss him for serious misconduct.

The French Supreme Court censured the appeal ruling, finding that the employee's suicide attempt had been caused by the imminence of his dismissal. It therefore ruled that this was an accident in the workplace.



Ability of an Outsider to Conduct Dismissal Proceedings

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

In a decision dated June 28, 2023, the French Supreme Court ruled that an external consultant, in his capacity as director of a company belonging to the group, was not a “stranger” to the company to which the dismissed employee belonged. The French Supreme Court pointed out that this director had been mandated to act in the name and on behalf of the legal representative of the employee’s company in the context of the company’s operational, administrative and financial management, which included tasks relating to administrative formalities and accounting, as well as human resources management. He had also checked the effectiveness of the internal control system and had imposed a reorganization of processes.

Germany

Recording of Video Surveillance Admissible in Court

Precedential Decision by Judiciary or Regulatory Agency

Author: Kim Kleinert, Associate – vangard | Littler

In a recent ruling, the Federal Labor Court (*Bundesarbeitsgericht*) held that even unauthorized video recordings on the company premises can be used as evidence in court. In the case at hand, an employee had left the factory premises before the start of the shift and nevertheless received wages for the entire shift. The employer dismissed the employee without notice after an anonymous tip-off had led the employer to the evidence captured by surveillance video camera installed at the gate of the premises.

The court noted that if the employer monitors the workplace with a video camera and informs the employee of this by means of signs, the video recording can be used as evidence of misconduct in an unfair dismissal case. This also applies if the surveillance violates data protection law.

Are Works Council Agreements an Adequate Legal Basis for the Processing of Employees’ Personal Data?

Precedential Decision by Judiciary or Regulatory Agency

Authors: Dr. Rajko Herrmann, Partner, and Christina Stogov, LL.M. (Münster), Senior Associate – vangard | Littler

In ECJ Case C-65/23, the European Court of Justice is being asked to rule on whether legislation and/or collective agreements in the member states can lower the standard of data protection established by the GDPR. Specifically, the ECJ must answer six questions on the interpretation of Art. 88 of the GDPR that allows member states to set data protection rules for employees.

This question has been raised in a case where an employer concluded a works agreement with its works council on the use of an IT tool to process employment-related data, which involved data transfer to the U.S. The data processing did not comply with the GDPR data protection principle that “data processing must be necessary.” Therefore, the Federal Labor Court currently is considering the obligation of employers, as data protection controllers, to comply with all GDPR requirements despite a works agreement for the use of the IT tool. A decision by the ECJ can be predicted for the middle of next year.



Transfer of Personal Data from Europe to the U.S.

Important Action by Regulatory Agency

Authors: Christina Stogov, LL.M. (Münster), Senior Associate, and Dr. Rajko Herrmann, Partner – vangard | Littler

On September 4, 2023, the Conference of the Independent Data Protection Authorities of Germany (*Datenschutzkonferenz* or DSK) published guidance on the new adequacy decision that the European Commission adopted on July 10, 2023, for the EU-US Data Privacy Framework (DPF). The DSK is a body of independent German data protection authorities (DPAs). The DPAs in Germany rely on the guidance issued by the DSK.

In its guidance, the DSK noted that transfers from controllers or processors in the EU to U.S. recipients who are not certified under the DPF can take place only if standard data protection clauses are used to provide a level of protection that is equivalent in substance to that guaranteed in the EU. In this context, the DSK points out that the assessments made by the EU Commission in the adequacy decision can be considered for the transfer impact assessment (part of the standard contractual clauses).

Managing Directors Not Liable for Non-Payment of Minimum Wage

Precedential Decision by Judiciary or Regulatory Agency

Author: Dr. Stefanie Reiche, Senior Associate – vangard | Littler

On July 22, 2023, the Federal Labor Court published decision Ref. No. 8 AZR 120/22, on the liability of managing directors for claims brought by employees. In that case, an employee filed a lawsuit under tort law, seeking to recover damages from two managing directors of an insolvent company for nonpayment of the minimum wage. The court ruled that the managing directors were not personally liable under tort law.

The court reasoned that while it is true that managing directors can be personally liable under the law for civil penalties for non-payment of the minimum wage, this does not lead to liability under tort law. Moreover, the liability system under corporate law only provides for internal liability for managing directors vis-à-vis the company. In principle, there is no personal liability to third parties and a managing director is personally liable for the company's obligations only in exceptional cases. The provisions of the Minimum Wage Act do not constitute such an exceptional case, even when combined with the civil law. Liability is therefore limited to the company and its assets. However, managing directors can still be personally liable under tort law in cases of breach of trust, withholding of social security contributions and delay in filing for insolvency.

Honduras

Dates and Times for Morazan Holidays

New Order or Decree

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

In 2015, Legislative Decree 78-2015 moved the Morazan holidays of October 3, 12, and 21 of each year to the first Wednesday of October. In August of 2023, the National Council of Private Employers and the National Chamber of Tourism issued reminders to private employers that this year, the Morazan holidays will begin at noon on Wednesday, October 4, and end at noon of Saturday, October 7.



Hungary

Displaying Employer's Name on Facebook and Breach of Employer's Reputation

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Court ruled that if an employee displays the name of their employer on the employee's social media profile, in a way that the employee can be linked directly with the employer, and the employee's posts and comments on social media can harm the employer's reputation, such conduct can serve as a lawful cause for the termination of employment.

India

State of Rajasthan: Law Protecting Platform-Based Gig Workers

New Legislation Enacted

Author: Isha Malhotra, Of Counsel – Littler

Rajasthan became the first state in India to pass a legislation, regulating the engagement of gig workers. The Act aims to provide social security and other benefits to platform-based gig workers. The new legislation prescribes constitution of Rajasthan Platform Based Gig Workers Welfare Board that, amongst others, will be responsible for registering the relevant parties and notifying the social security of registered platform-based gig workers.

Maternity Benefits Must Be Extended to Contractual Female Employees Beyond the Term of Contractual Employment

New Order or Decree

Author: Urvi Morolia, Attorney-at-Law – Littler

The Indian Supreme Court held that maternity benefits are fundamental and that contractual female employees are entitled to benefits under the Maternity Benefit Act, 1961. In the case before the Supreme Court, the petitioner, a female employee, sought to avail benefits under the Maternity Benefit Act. Her employer argued that she was not entitled to claim maternity benefits since she was only a contractual worker, and not an employee to whom such benefits accrue.

Finding that since the Act contemplates entitlement for female employees who are dismissed/discharged during their pregnancy, there is an inbuilt provision in the statute to extend benefits for a period beyond the term of employment. Using that same rationale, the Court ruled that maternity benefits for contractual female employees must be granted even if the period of benefit overshoots the term of contractual employment.

State of Karnataka: Changes Impacting Factories, Effective August 7, 2023

New Legislation Enacted

Authors: Vikram Shroff, Partner and Head of Employment, and Nipasha Mahanta, Associate – Nishith Desai Associates

The State of Karnataka has amended the Factories Act, 1948. The amendments, which entered into force on August 7, 2023, apply to the state factories (through the Factories [Karnataka Amendment] Act, 2023) and include: (1) extension of the working hour limits up to 12 hours per day (including rest intervals), up to 48 hours per week, subject to written consent from workers; (2) extension of the total number of continuous working hours without mandatory intervals of rest up to six hours (against the earlier five hours); and (3) allow daily "spread over" of work up to 12 hours including rest intervals (against the earlier 10.5 hours).



Subject to the written consent of workers for working overtime, Karnataka factory workers shall be entitled to overtime wages (at twice the ordinary rate of wages) for working more than 48 hours in a week or working nine hours on any day in a six-day workweek, 10 hours on any day in a five-day workweek, and 11 hours on any day in a four-day workweek, subject to a maximum limit of 144 overtime hours per quarter. Additionally, Karnataka factory employers may engage female workers in their factories between 7 p.m. and 6 a.m., subject to compliance with several conditions, including (1) obtaining written consent from female workers for working night shifts, (2) prohibiting sexual harassment at the workplace through the adoption of certain measures, (3) providing proper lighting and CCTV coverage (with storage for at least 45 days) inside the factory and surrounding areas, (4) engagement of female workers in batches of at least 10, and (5) providing prescribed health and safety measures and transportation to female workers during night shifts from their home to the factory and back complying with prescribed norms etc.

Introduction of National Apprenticeship Promotion Scheme-2 (NAPS-2)

New Regulation or Official Guidance

Authors: Vikram Shroff, Partner and Head of Employment, and Nipasha Mahanta, Associate – Nishith Desai Associates

The Indian Ministry of Skill Development and Entrepreneurship (MSDE) has launched NAPS-2 as part of the National Policy on Skill Development and Entrepreneurship, which aims to promote apprenticeship training in India as per the Apprentices Act, 1961. The main objectives of NAPS-2 include (1) developing a skilled workforce, (2) encouraging establishments to enroll apprentices, (3) providing up-skilling opportunities, and (4) focusing on small establishments, especially in underserved regions. The date of notification is August 25, 2023.

Notable features of NAPS-2 are coverage of both designated trades notified by the federal government and optional trades as determined by the employer; recognition of 35 years as upper age limit for stipend support during apprenticeship, and limited government support for up to 25% of an apprentice's stipend (up to INR 1,500 per month) for on-the-job training provided through Direct Benefit Transfer. NAPS-2 is set to sunset on March 31, 2026, with periodic evaluations planned to assess its impact.

Haryana Becomes the First State in India to Notify the Haryana State Creche Policy 2022

New Regulation or Official Guidance

Authors: Vikram Shroff, Partner and Head of Employment, and Nipasha Mahanta, Associate – Nishith Desai Associates

In July 2023, the Haryana state government introduced the Haryana State Creche Policy 2022; it was notified on July 25, 2023. The policy inter alia provides certain guidelines for creche (childcare center) service providers in the state, including statutorily mandated creche facilities provided by employers, which include:

- Providing day-care facilities with sleeping arrangements
- Offering three nutritious meals a day at the creche
- Supplying age-appropriate stimulation and learning materials to the children
- Monitoring children's growth
- Conducting medical check-ups and immunizations
- Operating for at least eight hours a day during the parents' work hours
- Ensuring safety and security with entry cards for parents and staff members

The state of Haryana has also published the draft Haryana Amendment to Maternity Benefit Rules of 2019 for regulation of employer-provided creche facilities, which are yet to be notified.



Indonesia

Golden Visa and Other Amendments to Indonesian Immigration System

New Legislation Enacted

Authors: Stephen Igor Warokka, Partner, and Richard D. Emmerson, Of Counsel – SSEK Law Firm

Government Regulation Number 40 of 2023 (GR 40/2023), which was enacted as the fourth revision to Government Regulation Number 31 of 2013, introduces changes to the country's immigration system aimed at supporting post-COVID-19 economic development, attracting greater flows of investment and helping to create an investment climate that attracts highly skilled talent. GR 40/2023 impacts various permit categories and application requirements. One of the notable highlights is the introduction of the so-called golden visa targeted at high-quality foreign nationals while maintaining a selective immigration policy.

New Guidelines on Sexual Violence in the Workplace

New Regulation or Official Guidance

Authors: Stephen Igor Warokka, Partner, and Richard D. Emmerson, Of Counsel – SSEK Law Firm

The Indonesian Ministry of Manpower has issued Decree No. 88 of 2023 regarding Guidelines for the Prevention and Handling of Sexual Violence in the Workplace (MOM Decree No. 88). Among other obligations, MOM Decree No. 88 requires companies establish a task force for the prevention and handling of sexual violence in the workplace, with members appointed from among company representatives and employee representatives. The main duties of the task force include developing and implementing programs and policies to prevent sexual violence in the workplace, receive and record complaints of such nature and try to resolve them, collect information of indications or alleged instances of sexual violence in the workplace, and provide guidance and assistance to victims of it.

Additionally, MOM Decree No. 88 stipulates that companies are liable to compensate victims of sexual violence in the workplace as part of the recovery actions companies must take. Further, companies must return any leave taken by the victim during the handling of the sexual violence incident, remedy any adverse employment action stemming from the sexual violence, among other measures. Further, companies can sanction perpetrators of sexual violence in the workplace and are advised to regulate the prevention of sexual violence in the workplace in their employment agreements, company policies and/or collective labor agreements.

Ireland

Medical Care Leave and Maternity Protection Under the Work Life Balance Act

New Legislation Enacted

Authors: Niall Pelly, Partner, and Philip Gray, Associate – GQ | Littler

Under the Work Life Balance and Miscellaneous Provisions Act 2023, which came into effect from July 3, 2023, an affected employee is statutorily entitled to up to five days of unpaid leave in any period of 12 consecutive months to provide medical care or support to certain specified persons. The person requiring care from the employee must “be in need of significant care or support for a serious medical reason.” An employer can request that an employee provide evidence relating to the need of the person for the care or support.

Additionally, the law amends the Maternity Protection Act 1994 by extending the length of time in which mothers can take paid time off work and work reduced hours for the purposes of breastfeeding or expressing breast milk from 26 weeks to 104 weeks. Further, the law extends access to maternity leave rights to transgender men who have given birth.



The EU Pay Transparency Directive

Legal Compliance

Authors: Niall Pelly, Partner, and Philip Gray, Associate – GQ | Littler

On June 7, 2023, the European Union Pay Transparency Directive came into effect with Member States having until June 7, 2026, to transpose the Directive into national law.

Implementing the Directive in Ireland will introduce many new obligations for employers, such as carrying out equal pay assessments, joint pay assessments and other transparency measures, including dealing with employee requests for pay information and making available the initial pay range / level range for all advertised job vacancies. The Directive will also result in some amendments to current gender pay gap reporting requirements in Ireland, which have since last year become a feature for large Irish employers.

Italy

New Changes to Fixed-Term Contracts and Staff Leasing Frameworks

New Legislation Enacted

Authors: Carlo Majer, Partner, and Caterina Colombano, Associate – Littler Italy

As we reported in the last quarter, Law Decree no. 48\2023 (known as *Decreto Lavoro*), was enacted in May 2023 to regulate various employment-related frameworks. In codifying this labor decree, Law No. 85/2023 of July 3, 2023, introduced new changes. Under this new law, fixed-term contracts can be extended and renewed without providing cause (known as *causali*) if the total duration of the relationship does not exceed 12 months. For purposes of calculating the 12-month “without cause” term, only contracts entered into on or after May 5, 2023, will be considered. After the first 12 months, a cause must be provided.

Concerning indefinite-term staff leasing contracts, the previous rules had established a quantitative limit of 20% of the staff hired on an open-ended basis. Law No. 85/2023 provides that the following are not relevant for purposes of calculating this percentage: (1) employees hired by the staff leasing agency with apprenticeship contracts; (2) employees in mobility; (3) employees who have been unemployed or in the redundancy fund for at least six months; (iv) so-called disadvantaged workers (as defined by Reg. (EU) no. 651/2014).

New Changes to Smart Working and Informational Requirements

New Legislation Enacted

Authors: Carlo Majer, Partner, and Caterina Colombano, Associate – Littler Italy

Law No. 85/2023 of July 3, 2023, extends the right to arrange smart-working for the following categories of employees: (1) fragile workers suffering from pathologies identified by the Ministry of Health; (2) parents with children up to 14 years of age, provided that the remote work is compatible with the modalities of the service and the other parent is not unemployed or on layoff; and (3) workers exposed to COVID-19 and immunocompromised due to age or oncological diseases or life-saving therapies. This option is available to the last two categories until December 31, 2023.

Concerning the informational requirements, Law No. 85/2023 requires the following be specified in the individual employment contract: (1) the variability of the work schedule, the guaranteed minimum hours, and the remuneration of excess hours; (2) the hours and days on which the worker must work; and (3) the notice periods for the commencement or termination of assignments. Further, this new law increased the annual non-taxable limit for goods and services for qualified employees to EUR 3,000, provided a special allowance for employees in the tourism industry, and mandates obligations concerning safety at work and employees' health record.



Entry into Italy and Residence of Highly Skilled Foreign Nationals

New Legislation Enacted

Authors: Carlo Majer, Partner, and Elena Guerrera, Associate – Littler Italy

On July 17, 2023, the Council of Ministers approved a legislative decree implementing Directive (EU) 2021/1883 on the conditions of entry and residence of third-country nationals for highly qualified employment. The Directive promotes a more attractive and effective regime for highly qualified workers from third countries by broadening the subjective scope and providing for faster procedures, and flexible and inclusive admission criteria in order to facilitate easier mobility within the Union.

In particular, the main changes introduced include (1) the possibility of issuing the “EU Blue Card” to seasonal workers who meet the requirements for highly skilled jobs, (2) the facilitation of the entry of executives and specialists working in information and communication technology services; (3) the promotion of innovative entrepreneurship, allowing foreign nationals with “EU blue cards” the possibility of self-employment in parallel with employment; (4) more favorable conditions for family reunification and access to the labor market for the spouse and family members of “EU Blue Card” holders.

Italian Anti-bribery Authority Issued Whistleblowing Guidelines

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Caterina Colombano, Associate – Littler Italy

On July 15, 2023, the National Anti-bribery Authority (*Autorità Nazionale Anticorruzione* or ANAC) issued new guidelines to implement Legislative Decree No. 24 of March 10, 2023, on the protection of whistleblowers. The new guidelines outline principles that public and private entities can consider when implementing their internal channels and organizational models. The aim of the whistleblowing regulation is to protect the freedom of expression and prevent corruption in the public and private sectors. The new rules are intended to ensure the protection – both in terms of confidentiality and protection from retaliation – of whistleblowers.

Kingdom of Saudi Arabia

No Saudization Requirements Within the Kingdom’s Special Economic Zones

Important Action by Regulatory Agency

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

The Minister of Human Resources and Social Development Ahmed Al-Rajhi has announced that Special Economic Zones in the Kingdom will be exempt from having to implement the Saudization requirements.

Saudization of Professions in Madinah and Jazan Regions

New Regulation or Official Guidance

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

Certain roles within the Madinah and Jazan regions are subject to Saudization. These include:

- 40% Saudization for restaurant activities, including full-service restaurant, banquet kitchens, fast food shops and juice shops
- 50% Saudization for cafes and ice cream shops
- 50% Saudization for wholesale food and beverage outlets

Certain exemptions to the above apply.



Saudization of Women's Centers and Sewing Activities

Important Action by Regulatory Agency

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

The Ministry of Human Resources and Social Development has Saudized roles in women's centers and sewing activities in cooperation with the Ministry of Municipal and Rural Affairs and Housing with the aim of increasing jobs within technical administrative professions.

Malaysia

Employee Who Commenced Employment with Another Employer Before Dismissal Not Entitled to Compensation

Precedential Decision by Judiciary or Regulatory Agency

Authors: Selvamalar Alagaratnam, Partner and Head of Employment, and Teng Wei Hun, Senior Associate – Skrine

In a recent case, the Court of Appeal ruled that an employee who, while under investigation and suspension, had commenced employment with a new employer without the knowledge of his current employer was not entitled to any compensation. The Court of Appeal held that the claimant was no longer an employee of the company when he was notified of his dismissal as he had already commenced employment with another company. Therefore, the claimant did not fall within the definition of "workman" under Industrial Relations Act 1963 and as such, was not entitled to bring a claim of unjust dismissal under it.

Employer's Failure to Manage Employee's Pleas for Intervention Following Transfer Amounted to Constructive Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Authors: Selvamalar Alagaratnam, Partner and Head of Employment, and Teng Wei Hun, Senior Associate – Skrine

In a recent case, the Court of Appeal held that, while the transfer and re-designation of the employee's position itself did not offend any express terms of the contract of employment, by issuing the transfer and in failing to manage the claimant's various pleas for intervention by the employer, there was a fundamental breach of the implied term that the employer would not do anything to destroy the mutual trust and confidence that is the bedrock of any employer and employee relationship.

Mexico

New Standard for Telework Safety and Health Conditions

Legal Compliance

Authors: Erick Fernández Mata, Associate, and Monica Schiaffino, Shareholder – Littler

On June 08, 2023, the Ministry of Labor and Social Welfare published the Official Mexican Standard NOM-037-STPS-2023 Telework-Safety and Health Conditions at Work in the Official Gazette of the Federation. This new standard, which enters into force on December 5, 2023, establishes the obligations and requirements for health and safety conditions for those employees working under a teleworking scheme.

The standard creates various important obligations for employers including, but not limited to, establishing a written telework policy, providing training to teleworkers on occupational risks, as well as carrying out a verification of the remote workplace to ensure it meets the necessary safety and health conditions and implementing accommodations when required. The new standard also establishes certain obligations applicable to employees, including complying with the teleworking policy, keeping their work tools in good condition, observing occupational health and safety provisions, complying with policies and mechanisms for the protection of data and information, as well as informing employers about changes of address, among others.



Netherlands

Future Pensions Law Enters into Force

New Legislation Enacted

Authors: Dennis Veldhuizen, Partner and Head of Employment, and Nienke Heijne Makkreel, – Clint I Littler

The Act on Future Pensions (*Wet toekomst pensioenen in werking*), which entered into force on July 1, 2023, introduced various changes, as follows:

- The proceeds of investments can be used more quickly by pension providers to increase pensions.
- Transparency of a participant's pension consisting of all the contributions made on behalf of that participant, plus the return that this money has earned.
- The premium paid by workers at any age will benefit their own retirement. This system will be better suited because most people no longer work for one employer for decades.

End of the “Unrestricted Substitution” Model Agreement

Precedential Decision by Judiciary or Regulatory Agency

Authors: Dennis Veldhuizen, Partner and Head of Employment, and Nienke Heijne Makkreel, – Clint I Littler

On August 14, 2023, the Dutch Tax and Customs Administration announced that the model agreement “unrestricted substitution” would be repealed on January 1, 2024. Both the approval of general model agreements, as well as industry agreements and individual agreements based on unrestricted substitution will be withdrawn.

Senate Rejects New Proposal Concerning Remote Work Arrangements

Proposed Bill or Initiative

Authors: Dennis Veldhuizen, Partner and Head of Employment, and Nienke Heijne Makkreel, – Clint I Littler

The Senate rejected proposed bill “Act on working where you want” (*Wet werken waar je wilt*) on September 26, 2023. This bill would have ensured that requests for work from home or remote work arrangements would be treated similar to other requests concerning a change in working hours.

Increase of Statutory Minimum Wage

Important Action by Regulatory Agency

Authors: Dennis Veldhuizen, Partner and Head of Employment, and Nienke Heijne Makkreel, – Clint I Littler

The statutory minimum wage was increased by 3.13% on July 1, 2023. The minimum wage for employees who are 21 years old or older and work full-time is now EUR 1,995 per month, which is EUR 12.12 per hour.

Proposed Bill “Verzamelwet SZW 2024”

Proposed Bill or Initiative

Authors: Dennis Veldhuizen, Partner and Head of Employment, and Nienke Heijne Makkreel, – Clint I Littler

The Bill on Social Affairs and Employment 2024 (*Verzamelwet SZW 2024*), which was introduced on September 15, 2023, proposes to amend the labor and social security laws, as follows:

- To report posted workers in the Netherlands: Eliminate the requirement to indicate the person who will be responsible for paying the employee's salary.
- To incorporate the commonly used “plus-minus-hour system” (*plus-min-urensysteem*) in the law, which is currently missing.



Norway

Claims of Late Enrollment in Pension Schemes Can Be Time-Barred

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ole Kristian Olsby, Partner, and Veslemøy Lode, Associate – Littler Norway

On September 7, 2023, the Supreme Court ruled on an employer's duty to pay contributions to an occupational pension scheme. An independent contractor had previously been reclassified as an employee by the court. The question before the Supreme Court was whether the claim was within the scope of Section 2 of the Limitation Act, which provides that monetary claims are time-barred after three years. The Supreme Court found that the claim was subject to the Section 2 limitation, which implied that late enrollment could only take place from a point in time three years before the limitation period was interrupted by a writ of summons, and not from the time this person was (wrongfully) hired as a contractor.

This means that, under Section 2 of the Limitation Act, claims for failed enrollment in pension schemes are limited to a period of three years before the legal action is initiated.

Peru

Law to Incentivize Businesses Owned by Young Adults

New Legislation Enacted

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

Law 31828, published on July 12, 2023, establishes tax benefits to formal businesses owned by young adults between the ages of 18 and 29, when they hire employees in the same age range. The benefits contemplated include: (1) access to a simplified company constitution and registration process, (2) option to apply for an additional tax deduction equivalent to 50% of the basic remuneration paid to the newly hired employees, complying with a series of requirements, (3) access to the IGV refund for export operations of goods and services, and (4) bonus of additional points in the technical proposal of goods and services for contracting processes of the public sector.

New National Holiday

New Legislation Enacted

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

On July 8, 2023, Law 31822 was published. This law declares a new national holiday on July 23, in commemoration of the national hero Captain of the FAP, Jose Abelardo Quiñones Gonzales and day of the Peruvian Air Force. For practical purposes, this new holiday means that:

- When this falls on a working day (Monday through Friday), it will not be considered as a working day for purposes of the accounting of judicial and administrative deadlines;
- Employees have the right to paid rest on such occasion, and must receive their ordinary remuneration corresponding to one day of work; and,
- The work performed on such date shall be paid with the surcharge corresponding to the work performed on a holiday, i.e., a surcharge of 100%.



Prohibition of Outsourcing Declared to Be an Illegal Bureaucratic Barrier

Precedential Decision by Judiciary or Regulatory Agency

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

A government authority responsible for, inter alia, analyzing the public impact of laws and regulations has declared that the prohibition against outsourcing is an illegal bureaucratic barrier that can no longer be enforced. Specifically, through Resolution 270-2023, the Commission for the Elimination of Bureaucratic Barriers (CEBB), a branch of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), declared that the Ministry of Labor and Employment Promotion imposed illegal bureaucratic barriers when it introduced a prohibition against outsourcing of services through the Ministry's Supreme Decree N°001-2022-TR.

Therefore, the CEBB's Resolution 270-2023 means that the regulations prohibiting the outsourcing of activities that are part of the core business of a company are no longer in effect as of July 23, 2023.

Philippines

Minimum Wage Increases in Various Regions

New Order or Decree

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

The Regional Tripartite Wage and Productivity Board of three regions issued wage orders increasing the minimum wage in their respective jurisdictions, summarized as follows:

- For the National Capital Region: An increase of PHP 40.00, with the new minimum wage rates now ranging from PHP 573.00 to PHP 610.00, effective as of July 16, 2023.
- For Region IV-A: An increase of PHP 35.00 to PHP 89.00, depending on the locality, with the new wage rates ranging from PHP 385.00 to PHP 520.00, effective as of September 18, 2023; and
- For Region VII: An increase of PHP 33.00, leading to a minimum wage rate ranging from PHP 415.00 to PHP 468.00, effective as of October 1, 2023.

Supplemental Guidelines on Mental Health and Prevention and Control of Diseases

New Order or Decree

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

On September 15, 2023, the Department of Labor and Employment (DOLE) issued four different Labor Advisories on implementation of mental health programs and prevention and control of cancer, tuberculosis, and HIV in the workplace. The Labor Advisories guide employers on access to health services, encourage various work accommodations and arrangements for affected employees (e.g., paid leave benefits, flexible work arrangements), and emphasize the confidentiality requirements.

Additionally, the Labor Advisories mandate inclusion of reporting requirements for cancer, tuberculosis, and HIV in the Annual Medical Report Form for submission to the DOLE office with jurisdiction over the employer's place of business.



Poland

Mandatory Reinstatement for the Duration of the Trial

New Legislation Enacted

Authors: Miłosław Awedyk, Partner, and Michał Olejniczak, Associate – PCS | Littler

Two major amendments to the Code of Civil Procedure were adopted that address labor disputes. Specifically, where a court of first instance issues a judgment to reinstate an employee, the court is obliged to impose on the employer the obligation to continue to employ the employee until the final conclusion of the proceedings. The temporary reinstatement on employee's request is mandatory. Moreover, the employee subject to special protection pursuing a claim for reinstatement is entitled to file a request for security in the form of temporary reinstatement. The request can be filed at the beginning (along with the lawsuit) or any time before the conclusion of the proceedings. With the granting of security, the employee remains employed by the employer until the proceedings are legally concluded.

Further, the court's approval of the request is mandatory unless the employee's claim is "obviously unfounded." The employer may file a complaint against an order of temporary reinstatement, however, in practice, it can be difficult to demonstrate the employee's request is obviously unfounded.

Employees Exempt from Court Fees

New Legislation Enacted

Authors: Miłosław Awedyk, Partner, and Michał Olejniczak, Associate – PCS | Littler

According to the amendment to the Act on Civil Court Costs, employees are, with minor exceptions, exempt from court fees in disputes against their employer. Employees are, as a rule, exempt from the fee for filing a lawsuit, and the appeal fee has been reduced to PLN 30.00.

The employees are required to pay a relative fee of 5% only if the value of the subject of the dispute is greater than PLN 50,000. The relative fee is calculated only on the amount above PLN 50,000.

The changes that have been made make it very accessible for employees to litigate with their employers. A significant reduction of the obligation to pay fees is likely to increase the number of lawsuits brought by employees.

Supreme Court Cases on the Sunday Trading Ban

Precedential Decision by Judiciary or Regulatory Agency

Authors: Miłosław Awedyk, Partner, and Michał Olejniczak, Associate – PCS | Littler

The first cases regarding exceptions to the Sunday trading ban, which has been in effect since 2018, have come before the Supreme Court. Under the law, it is a criminal violation to direct employees to work on Sundays and holidays. The law provides for a number of exceptions to this rule, however, due to their ambiguity, numerous court cases have been initiated.

The Supreme Court has opted for a narrow interpretation of the law, so it can be expected that entrepreneurs will back off from conducting business in this way.



Portugal

Ordinance on Teleworking Expenses

New Legislation Enacted

Author: David Carvalho Martins, Partner and Head of Employment – DCM | Littler

The payment of additional teleworking costs, to be reimbursed by the employer, has been a widely discussed topic in the media. On September 29, 2023, a new ordinance was published and entered into effect on October 1, 2023. This ordinance sets the limits on compensation for the additional costs of teleworking, which is tax-exempt income and excluded from the social security contributions.

The compensation value is set as follows for: (1) Residential electricity consumption, EUR 0.10 per day; (2) Personal Internet consumption, EUR 0.40 per day; and (3) Personal computer or equivalent IT equipment, EUR 0.50 per day. These limits are increased by 50% when the amount of compensation results from a collective bargaining agreement concluded by the employer.

Appeal Court of Lisbon: New Restriction to Non-competes?

Precedential Decision by Judiciary or Regulatory Agency

Author: Tiago Sequeira Mousinho, Associate – DCM | Littler

Joining the trend across multiple countries, the courts in Portugal are signaling a desire to restrict the use of non-competes. On September 13, 2023, the Appeal Court of Lisbon (ACL) issued a decision to restrict non-compete agreements with employees. The ACL determined that since a non-compete is, by nature, onerous, the employee must be economically compensated for such employment limitation. Further, such non-compete agreements cannot be conditioned on the employer's sole appreciation.

This is an important decision as the law on non-competes is being debated, especially as it relates to the rules on waiver of rights.

Regulation for Decent Work Agenda

New Order or Decree

Author: David Carvalho Martins, Partner and Head of Employment, and Rui Rego Soares, Associate – DCM | Littler

Decree-law no. 53/2023, which became effective as of August 1, 2023, provides further insights on the first implementation of the Decent Work Agenda of 2023 (which entered into force on May 1, 2023). Companies and organizations should review these new rules, some of which are discussed here, which may impact payroll practices.

The new Decree-Law reinforces social protection for students who work during school vacation periods, making it possible to accumulate annual remuneration of up to EUR 10,640.00 (14 times the guaranteed minimum monthly wage) with the family allowance, study grants, and survivors' pensions. Within the scope of parental protection, the initial parental allowance and the extended parental allowance are increased to 90% and 40% of the remuneration, respectively, when there is effective sharing of parental responsibilities. Parental leave has also been made more flexible, allowing employees with children to take part-time leave after the first 120 days, promoting a return to work while extending childcare during the first year of life. Finally, social protection is strengthened in the event of illness, maternity, paternity, adoption, and death under the general social security system, as well as for the convergent social protection scheme.



Puerto Rico

[Puerto Rico Governor Amends Workers' Compensation Act to Provide Reduction of Employee Premiums for Safe Workplaces](#)

New Legislation Enacted

Author: Daniel Limés Rodríguez, Associate – Schuster LLC | Littler

On August 8, 2023, the Governor of Puerto Rico signed into law Act No. 85-2023, effective immediately. The statute amends Puerto Rico's Workers' Compensation Act by further incentivizing safe workplaces. Specifically, the statute provides a special 5% reduction in employee premiums for employers that, during the preceding two years, have not been subject to claims for workplace accidents or illnesses. Pursuant to the amendment, the additional reduction of employee premiums will be granted only once to the employer. Thus, employers should be aware of the possibility for obtaining an additional reduction in premium payments based on their ability to maintain accident/illness-free workplaces.

[Informal Caregivers in Puerto Rico Do Not Need to Satisfy Threshold Requirements for Requesting Work Schedule Changes](#)

New Legislation Enacted

Authors: Erika Berríos-Berríos, Capital Member, and Daniel Limés Rodríguez, Associate – Schuster LLC | Littler

Pursuant to the recently enacted Act No. 82 of August 8, 2023, employers in Puerto Rico must consider an informal caregiver's request for a work-schedule change without meeting some of the threshold requirements required by law. Act No. 82, Puerto Rico's Informal Caregiver Public Policy Act (ICPPA), purports to address the growing number of adults in need of care. To achieve this aim, the ICPPA establishes a public policy favoring informal caregivers and sets forth a bill of rights for the group.

[Amendments to Act 54 on Domestic Violence Will Impact Employer Policies](#)

New Legislation Enacted

Author: Daniel Limés Rodríguez, Associate – Schuster LLC | Littler

The governor of Puerto Rico recently signed into law amendments to Act No. 54 of August 15, 1989, "Act for the Prevention and Intervention with Domestic Violence." The amendments include "economic violence" as a form of domestic violence and provide additional remedies for addressing this specific type of domestic violence. Economic violence, as defined by the statute, is conduct aimed at undermining the victim's present or future financial capacity, economic stability or secure housing. Economic violence may be perpetrated through various means, and it may also include interference with a victim's employment or business.

Under Puerto Rico law (Act No. 217-2006), employers must create and enforce a policy for addressing domestic violence in the workplace. To the extent that these amendments redefine the scope of domestic violence and its possible impact in the workplace, employers should start considering amending these policies in accordance with the amendments, while staying vigilant for any guidance issued by the Women's Solicitor's Office on this matter.



Supreme Court of Puerto Rico Rules PR-DOL Christmas Bonus Exemption Decree Was Inapplicable to Unionized Employees

Precedential Decision by Judiciary or Regulatory Agency

Author: Anabel Rodriguez-Alonso, Capital Member – Schuster LLC | Littler

On June 30, 2023, the Supreme Court of Puerto Rico issued an Opinion and Order interpreting an employer's obligation to pay the Christmas Bonus to employees covered by a Collective Bargaining Agreement. Writing for the Court, Judge Rafael Martínez Torres reasoned that because the Puerto Rico Department of Labor and Human Resources exempted unionized employees from its decision to relieve an employer of its obligation to pay a Christmas Bonus for financial reasons, the employer could not escape its obligation to pay the negotiated bonus under the CBA to its unionized employees.

Will the FLSA Regulations for Exempt Employees Apply to Puerto Rico Operations?

Proposed Bill or Initiative

Author: Daniel Quiles Pumajero, Senior Attorney-at-Law – Schuster LLC | Littler

On August 30, 2023, the United States Department of Labor, Wage and Hour Division, released a Notice of Proposed Rulemaking (NPRM) to update and revise the regulations under the federal Fair Labor Standards Act regarding exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. The proposed revisions include a significant increase in the standard salary level triggering exemption for these categories of employees to \$1,059 per week (\$55,068 annually for a full-year worker) and also increases the highly compensated employee total annual compensation threshold to \$143,988.

The agency is proposing that said increases also apply in the U.S territories, including Puerto Rico. In the particular case of Puerto Rico, it is important to note that the standard salary threshold has not changed since 2004 and currently stands at \$455 per week. The last time the salary rule was revised in 2019, the agency elected to preserve the \$455 per week amount for employees in Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands instead of applying the then-new and current standard salary level of \$684 per week that applies to employees in the 50 states and the District of Columbia. Given the current state of affairs in Puerto Rico, employers with operations on the Island should continue to monitor developments since there is a possibility that the Financial Oversight and Management Board for Puerto Rico will recommend the exclusion of Puerto Rico from the Final Rule consistent with the objectives of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), as has occurred in the past.

Russia

Remote Workers from Abroad Will Pay Russian Income Tax

New Legislation Enacted

Author: Marcin Snarski, Senior Associate – PCS | Littler

From January 1, 2024, Russian employers will levy an income tax of 13% from remote employees. The tax will apply also to employees who permanently live outside Russia and are not Russian tax residents. For income exceeding five million rubles per year, the tax rate will be higher and will amount to 15%. For civil law contracts, remote contractors of Russian organizations will be subject to the same tax regulation as of January 1, 2025.



Shorter Deadline to Inform Military Enlistment Office of Employees' Personal Data

New Legislation Enacted

Author: Marcin Snarski, Senior Associate – PCS | Littler

From August 5, 2023, military enlistment offices must be informed about changes of information, such as hiring or dismissal of citizens subject to military registration, within five days. Previously, Russian employers were required to inform the military authorities within two weeks. The deadline of five days applies also to changes of marital status, job position or the worker's residence.

Minimum Wage to Increase from 2024

Proposed Bill or Initiative

Author: Marcin Snarski, Senior Associate – PCS | Littler

The Russian Government has submitted to the Parliament a bill to increase the minimum wage in 2024. As of January 1, 2024, the minimum wage will increase from RUB 16,242 to RUB 19,242.

South Korea

Increase to Minimum Wage for 2024

New Regulation or Official Guidance

Authors: Yongjae Jung, Partner, and Johnny Ji Yong Hong, Associate – Kim & Chang

On July 19, 2023, the Minimum Wage Commission held a plenary session and decided that the minimum wage for 2024 would increase from KRW 9,620 per hour to KRW 9,860 per hour, and from KRW 2,010,580 to KRW 2,060,740 per month (based on 209 hours of work per month). Although the rate of increase is relatively low at 2.5%, it is estimated that approximately 3,347,000 workers will be directly affected by the minimum wage increase according to Statistics Korea's survey.

Failure to pay the minimum wage carries a criminal penalty of imprisonment of up to three years for the representative director and/or a fine of up to KRW 20 million for the representative director and the company. It therefore would be prudent to check whether there are employees affected by the minimum wage increase.

New Guideline for Disposal of Local Employee's Overseas-listed Shares Acquired through Stock Compensation Program

New Regulation or Official Guidance

Authors: Yongjae Jung, Partner, and Johnny Ji Yong Hong, Associate – Kim & Chang

On June 19, 2023, the Financial Supervisory Service (FSS) issued a press release announcing that a Korea-resident officer or employee who sells overseas-listed shares acquired through stock based compensation program of a global company may be subject to an administrative fine if they (1) fail to place an order for such share sale through a local licensed broker in Korea or (2) deposits proceeds from such share sale with a foreign financial institution without having filed a prior report with a relevant foreign exchange bank or regulator in Korea.

According to the press release, if said officer or employee of the Korean affiliate intends to sell such overseas-listed shares, they are required to deposit such shares with a securities account established in their own name with a local licensed broker (e.g., Korean securities company) and then place a sale order through such local licensed broker pursuant to Article 184 (1) of the Enforcement Decree of the Financial Investment Services and Capital Markets Act. The FSS' position in this press release has substantially overturned the previous market practice regarding sale of offshore listed shares acquired through stock-based compensation program, and is likely to cause confusion in the market.



Sweden

Inspection Campaign Targeting Smaller Businesses

Important Action by Regulatory Agency

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

The Swedish Work Environment Authority has announced that it will launch an inspection campaign targeting smaller companies with 1–49 employees. The inspections will start in October 2023 and run until March 2024. The reason for inspecting smaller companies is that surveys have shown that these companies generally do not work systematically with the work environment.

How can companies prepare? Start with the basics, which is to conduct a risk assessment by:

- Investigating the risks that may exist in the work environment of the business (physical, organizational and social)
- Assessing the seriousness of the identified risks
- Implementing measures to remove or reduce the identified risks
- Ensuring that the measures taken have reduced or removed the risks or otherwise accomplished the desired effect
- Document the risk assessment

Switzerland

Employee's Duty of "Double Loyalty" to Employer

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ueli Sommer, Partner, and Regula Rhiner, Senior Associate – Littler | LEL

On August 21, 2023, the Federal Administrative Court ruled that a (former) employee of the Swiss Federal Administration who represented Switzerland internationally, among other things, had a duty of so-called "double loyalty" towards his employer, meaning that he not only was obligated to loyalty towards the Swiss Federal Administration in his work-related (internal) conduct, but also – albeit to a lesser extent – outside of his work (off-duty). The employee – who was dismissed without notice had, inter alia, criticized the Federal Administration in an aggressive tone on social media with regard to the Swiss COVID app during the pandemic, the granting of an emergency loan to an energy group, as well as his employer's (inclusive) gender language in an email to the entire staff.

The employee's statements might, in principle, be protected by the employee's constitutional right to freedom of expression and therefore have to be weighed against the Federal Administration's right to loyalty. The Federal Court concluded that the latter prevail as the employee's statements were likely to cause lasting damage to the reputation of the Federal Administration. It thus confirmed the legality of the employee's dismissal.



Thailand

Clarification and Guidelines for Remote Working

New Regulation or Official Guidance

Authors: Kraisorin Rueangkul, Partner, and Trin Ratanachand, Associate – DFDL (Thailand) Limited

On March 19, 2023, the Thai Labor Protection Act B.E 2541 of 1998 (LPA) was amended by adding Section 23/1 to provide the requirements for work-from-home or remote working arrangement, as well as recognizing the employees' right to disconnect from work after working hours. Following the amendment, the Department of Labor Welfare and Protection prepared and published the clarification and guidelines on Section 23/1 as reference for the employers, employees and labor inspection officers, and has reported such progress to the Senate and the Cabinet in August 2023.

In addition, since the agreement on the work-from-home or remote working must be entered into between the employers and employees under the requirement of the amended LPA, the guideline template for this agreement was also provided (in any case, it is not mandatory for employers to use this type of template).

United Kingdom

Three Employment Law Bills Become Law

New Legislation Enacted

Author: Jenny Allan, Associate – GQ | Littler

Three key employment law bills have recently become law, resulting in three new Acts. These are: 1) Employment Relations (Flexible Working) Act 2023; 2) Workers (Predictable Terms and Conditions) Act 2023; and 3) Strikes (Minimum Service Levels) Act 2023.

The Employment Relations (Flexible Working) Act 2023 makes largely procedural amendments to the existing flexible working request regime. The Workers (Predictable Terms and Conditions) Act 2023 introduces a new statutory right for workers and agency workers to request a predictable working pattern subject to meeting qualifying criteria. Regulations are required to provide further details and to bring operative provisions into force for both Acts. It is anticipated that they will come into force in Summer 2024 and Autumn 2024 respectively to give employers time to prepare.

The Strikes (Minimum Service Levels) Act 2023 has become law, but the Government's power to set industry-specific minimum service levels (MSLs) during periods of strike action will not come into force until secondary legislation is passed following consultation. An accompanying draft code of practice for unions has also recently been subject to consultation. Any further steps are likely to be challenged by unions who have opposed the new law. For additional discussion on the new laws, please read: "Changes to Flexible Working Regime in the UK – What Employers Need to Know" and "UK: Trade Union Round-up – the Government Strikes Back (or does it?)" both published on Littler.com.



New UK-U.S. Data Bridge

New Order or Decree

Authors: Emily Partridge, Associate, and Deborah Margolis, Senior Associate – GQ | Littler

On July 10, 2023, following the invalidation of the Privacy Shield mechanism, the EU adopted the new Data Privacy Framework (the DPF) to facilitate the transfer of personal data from the EU to a U.S. organization in a way that meets the standards and protections required under EU data protection regulations. If a U.S. organization opts into the certification scheme under the DPF and complies with its requirements, then personal data may be transferred from the EU (but not the UK) to such U.S. organization without the need for detailed individual transfer documentation.

The UK has since followed suit and has published regulations due to come into force on October 12, 2023, essentially extending the EU-U.S. framework to the UK (referred to as the UK-U.S. Data Bridge). From this date, UK businesses will also be able to transfer personal data to organizations in the U.S. that are certified under, and which comply with, the UK-U.S. Data Bridge. Like Safe Harbor and Privacy Shield mechanisms (both of which were invalidated following a challenge) the DPF and UK-U.S. Data Bridge may also be challenged. We recommend that businesses that transfer data from the EU or UK to the U.S. in reliance on these mechanisms are mindful of any new developments in this area.

Illegal Working Fines for Employers Set to Triple

Proposed Bill or Initiative

Authors: Ben Rouse, Associate, and Vanessa Ganguin, Partner – GQ | Littler

From January 2024, fines are set to more than triple for employers who employ individuals who do not have permission to work in the UK. Employers in the United Kingdom will face penalties jumping from up to GBP 15,000 to up to GBP 45,000 per illegal worker for a first breach. Repeated breaches will result in fines of up to GBP 60,000 (up from GBP 20,000 currently). According to Home Office statistics, almost 5,000 civil penalties have been issued to employers since the start of 2018, with a total value of GBP 88.4m. How employers should check the right to work eligibility of anyone they are going to employ is not, however, changing with the new penalties.

For further information on how to avoid illegal working penalties, please see “UK Illegal Working Fines Triple,” published on Littler.com.

United States

California Reaches Across State Lines to Invalidate Employee Non-Compete Agreements

Precedential Decision by Judiciary or Regulatory Agency

Authors: Joy C. Rosenquist, Of Counsel, and Bruce J. Sarchet, Shareholder – Littler

A new state law (SB 699) extends the reach of California’s restriction on non-competes to contracts signed out of state. SB 699 creates a private right of action for employees whose agreements include restrictive covenants and provides for attorney fees for any current, former, or even prospective employee who successfully brings suit against an employer’s use of those restrictive covenants. SB 699 also states that an employer whose contracts include restrictive covenants has committed a “civil violation.”

While California employers have known for some time that they cannot enforce restrictive covenants against California employees, SB 699 expands the scope of this prohibition and creates serious liability to employers whose contracts have not been recently updated to account for the shifting legal landscape. Employers are advised to consult with counsel when considering seeking to enforce or oppose a non-compete agreement in California and when asking an employee to enter into any agreement with restrictive covenants.



Whether Remote Work is a Reasonable Accommodation under the ADA

Precedential Decision by Judiciary or Regulatory Agency

Author: Mark Flores, Shareholder – Littler

The plaintiff in *Kinney v. St. Mary's Health Inc.*, --- F.4th ----, No. 22740 (7th Cir. 2023) was a hospital director of imaging services, supervising approximately 120 employees in the hospital's radiology department. The position required evaluating department staff as well as overseeing proper functioning of the medical imaging equipment. The job description for the position also required "using personal protective equipment as required." Beginning in August 2020, the hospital required all employees to wear a face mask. Plaintiff, who had been diagnosed with an anxiety disorder, claimed she was unable to wear a mask or other face covering because they exacerbated her condition. She submitted notes from her physician recommending that she work entirely from home, "if possible," which was subsequently modified to allow her to work in person two days per week for six hours per day. For three months, the plaintiff worked in person two days per week, spending most of her time in her office, without a mask, with the door closed, using intermittent FMLA leave and accrued paid time off to cover the remaining three workdays each week. When her FMLA leave expired, the plaintiff resigned and filed suit under the ADA for failure to accommodate her disability and constructive discharge, among other things.

In determining whether working in person was an essential function of the plaintiff's job and whether working from home was a reasonable accommodation, the court assessed the job description, the consequences of not performing the required job duties, and the work experience of employees in similar jobs, and determined plaintiff could not effectively perform the required on-site monitoring and evaluation of department activities from home. The court noted that numerous employees she supervised complained that her absence affected their performance and the department more broadly. As to the work experience of other employees, the court stated that although many employees were able to work remotely temporarily when forced to do so by a global health crisis, those jobs, in contrast to plaintiff's position, did not have essential functions that required in-person work over the medium to long term. For all these reasons the court found plaintiff's accommodation request was not reasonable, concluding that "it would have allowed [the plaintiff] to avoid performing tasks essential to her job rather than help[ing] her to accomplish them."

Employer's Obligations Under the Labor Condition Application

Precedential Decision by Judiciary or Regulatory Agency

Author: Tasneem Zaman, Special Counsel – Littler

The U.S. Court of Appeals for the Ninth Circuit recently affirmed an employer's duty to comply with the attestations made under the Labor Condition Application (LCA) to pay its foreign national employee during the period of authorized employment. In *Persian Broadcast Service Global, Inc. v. Walsh*, the complainant, an Australian citizen, was employed by the petitioner television station on E-3 work visa status from November 2011 until July 2014 and filed an administrative complaint with the Department of Labor in February 2015 alleging unpaid wages for the period covered under the two certified LCAs during his employment with the company. After an appeals process, the Ninth Circuit ruled in the employee's favor and ordered the employer to pay the back wages.



An employer seeking to employ a foreign worker in certain non-immigrant temporary work status (H1b, E-3 or H1b1) must, as first step in the petition process, file an LCA with the DOL and receive certification. In addition to containing information about the specific position, such as the gross wage rate, work site, occupational title, and dates of employment, the LCA binds the employer to pay the wage rate to the foreign employee for the period of the authorized employment. Even though the employee was advised by his employer during the employment period that it was not able to pay the wages and the employee worked partially from overseas for some time, the ARB, U.S. District Court, and finally, the Ninth Circuit all held that this did not effectuate a bona fide termination of the employment, thus keeping the employer obligated to pay the certified wages under the LCA. This Ninth Circuit's opinion provides an important review of the LCA obligations of the employer as well as the timeliness of filing an administrative complaint. It is thus prudent for any employer hiring foreign employees based on an LCA certification to consult with an experienced immigration attorneys to fully comprehend its obligations and duties under the document.

Proposal to Significantly Increase the Minimum Salary Level to Qualify for Overtime Exemptions

Proposed Bill or Initiative

Authors: Robert W. Pritchard, Shareholder, and James A. Paretti, Jr., Shareholder – Littler

On August 30, 2023, the Wage and Hour Division of the U.S. Department of Labor (DOL) released a Notice of Proposed Rulemaking (NPRM) to revise the “white collar” overtime exemption regulations applicable to executive, administrative, and professional employees. The DOL proposes to substantially increase the minimum salary level needed to qualify as exempt. While the exact salary level that would be included in a final rule is not yet known, it is expected that the salary level will increase from \$684 per week (\$35,568 annualized) to at least \$1,059 per week (\$55,068 annualized).

The proposed rule would apply the increased salary level to employees in all territories that are subject to the federal minimum wage (including Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, where the salary level is currently just \$455 per week). The rule would set a special salary level for American Samoa, equal to 84% of the general salary level, up from the current \$380 per week threshold. The DOL estimates that more than 3.4 million currently exempt employees who earn at least the current salary level of \$684 per week would be impacted by the rule in its first year. Comments on the proposal are due by November 7, 2023. Littler Workplace Policy Institute (WPI) will keep readers apprised of relevant developments.

Littler AI in the Workplace Survey Report 2023

Trend

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

Employers are increasingly looking to reap benefits from both generative and predictive artificial intelligence (AI) technologies, including in human resources (HR) functions. Yet an evolving patchwork of AI regulation and the rampant pace of technological change place many at a crossroads. How will the growing use of AI impact workforce decisions and expose new vulnerabilities?

Littler's AI in the Workplace survey – which gathers insights from nearly 400 in-house lawyers, HR professionals and other business leaders across the U.S. – provides a window into how employers are adopting AI tools and managing risk amid regulatory uncertainty. With workplace AI use on the rise, the survey finds employers facing challenges in keeping up with related policies, procedures and trainings. At the same time, a high degree of collaboration seen among departments in managing AI-driven HR tools suggests that strong guidelines will eventually emerge. When it comes to impending regulations, most employers are taking a cautious approach as various jurisdictions propose or enact legislation governing the use of AI in HR – though many expressed concerns about developments in California and New York. Download the survey report, here (<https://www.littler.com/publication-press/publication/littler-ai-employer-survey-report-2023>).



Venezuela

Provision of Work Uniforms Cannot be Replaced by Money

Precedential Decision by Judiciary or Regulatory Agency

Author: Daniela Arevalo, Associate – Littler

On August 2, 2023, the Social Cassation Chamber of the Supreme Court of Justice established in Sentence No. 328 the inadmissibility of the monetary substitution of the benefits related to the provision of uniforms, safety boots, washing, towels, soaps, toothpaste and raincoats, stipulated in the Collective Contract.

In this regard, the Court stated that the replacement of workers' rights with money should be understood as an exception and not the norm. The objective of the benefits agreed in the Collective Agreement correspond to the improvement of the working conditions of the workers, the protection of their health and integrity and the savings on their clothing during the provision of their service. The benefits in question must not be used for commercial purposes. The benefits agreed in the Collective Agreement must be fulfilled as agreed, unless there is a provision to the contrary that allows more favorable conditions for workers and their families.

Bonuses Granted to Executives Who Are Shareholders

Precedential Decision by Judiciary or Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

The Social Chamber of the Supreme Court issued decision N° 397, dated August 11, 2023, holding that it is possible for a labor and corporate relationship to coexist for shareholders who perform directive or managerial functions. Likewise, the Court considered that the bonuses granted to managers and the board of directors were derived from the status of shareholder, but not from the character of being a worker, and, therefore, such payments cannot be considered part of the salary.

New Technical Standards for the Occupational Health and Safety Program

New Regulation or Official Guidance

Author: Daniel Jaime, Associate – Littler

The new technical standard NT-04-2023 was published on September 12, 2023, and establishes the way all employers must implement the Health and Safety program.

The new regulation establishes the following conditions: (1) employees must participate in the program through a general payroll call and approval by a simple majority; (2) the INPSASEL guidelines and forms to collect information on accidents at work must be complied with when providing personal protective equipment and investigating illnesses; (3) fees for the registration of the program must be paid; and (4) companies should develop or adapt their programs to this new standard within 30 continuous days as of the date of publication of this new standard.

Requirements to Register the Occupational Health and Safety Program and Service

New Regulation or Official Guidance

Author: Daniel Jaime, Associate – Littler

On September 12, 2023, the Occupational and Health Safety Agency published two rulings (N° 244 and 245), setting forth new obligations and fees to register for the Occupational Health and Safety Program and the Occupational Health and Safety Service. The rulings also set the fees to be paid for these registrations, fixed in the Venezuelan cryptocurrency (PETRO), to be paid in local currency (bolivars) and based on the number of employees in the company.



INCES Issued New Obligation to Update Employers Data

Important Action by Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

On September 1, 2023, the National Socialist Training Institute (INCES) issued a notification through its website to update the process that employing entities must carry out. According to the notification, work entities have a period of 45 business days from September 11, 2023, to update their data in the INCES electronic registry through the online system. This period ends on November 14, 2023. Information that must be updated includes: (1) company's articles of incorporation and its modifications, (2) the identification of the partners and the legal representative, (3) Tax Identification Record (RIF) and Labor Identification Number (NIL), (4) Certificate of the National Registry of Parafiscal Contributions (RNCP), and (5) number of active workers.

Taxpayers have the formal duty to update their data within the established period as provided for under the Law of INCES and the Organic Tax Code. Failure to comply with these formal duties may result in a sanction of closure for five continuous days and a fine of 100 times the highest value currency published by the Central Bank of Venezuela.

Vietnam

Additional Regulations on Pilot Management of Labor, Salary and Bonus for Some State-owned Economic Groups and Corporations

New Order or Decree

Authors: Tran Trong Binh, Of Counsel, and Bernadette Fahy, Partner – APFL & Partners Legal Vietnam LLC

On August 23, 2023, the Vietnamese Government issued Decree No. 64/2023/ND-CP to add a provision on management of salary of Vietnam Airline Corporation (VNA) when paying salaries to Vietnamese pilots working for VNA under a labor contract. Accordingly, if after paying salary to Vietnamese pilots working for VNA under a labor contract from the realized salary fund, the salary of such Vietnamese pilots is still lower than the salary paid to their peer foreign pilots also working for VNA, then VNA shall be allowed to determine supplementary salary sources to make additional payments to Vietnamese pilots in accordance with the regime specified in this decree.

The Decree entered into force on August 23, 2023.

Amendments to Regulations on Management of Foreign Employees Working in Vietnam

New Order or Decree

Authors: Tran Trong Binh, Of Counsel, and Bernadette Fahy, Partner – APFL & Partners Legal Vietnam LLC

The Vietnamese Government issued Decree No. 70/2023/ND-CP, which is effective on September 18, 2023, to amend the rules on work permits for foreigners working in Vietnam, as follows:

- The time period for the employer's registration with MOLISA/DOLISA to hire a foreign employee is shortened from 30 days to 15 days.
- To be considered as an expert, foreign employees must hold a university degree and have three years' experience suitable for the job.
- The head of a branch, representative office or a business location of the enterprise is considered as an "executive."
- Technical workers must have been trained for at least one year and have at least three years' experience suitable for the job to which they are appointed.



- Since January 1, 2024, the employer's notice of recruitment of Vietnamese employees for jobs intended for the recruitment of foreign employees shall be published on the website of the Ministry of Labor, War - Invalids and Social Affairs (MOLISA) or provincial job service centers for at least 15 days from the date of registration of the foreign employee demand.
- The application file for re-issuance of a work permit does not need a written acceptance of requirement to hire foreign employees.
- MOLISA will be in charge of granting work permits if the foreign employee works for the same employer in multiple provinces in Vietnam.

New Regulations on Labor Regime and Specific Labor Disciplines for Airline Staff

New Regulation or Official Guidance

Authors: Tran Trong Binh, Of Counsel, and Bernadette Fahy, Partner – APFL & Partners Legal Vietnam LLC

On July 17, 2023, the Ministry of Transportation issued Circular No. 23/2023/TT-BGTVT providing for the labor regime and specific labor disciplinary measures for employees working in the airline industry.

Accordingly, in addition to various labor disciplinary measures provided by the Labor Code, airline staff may be subject to industry specific labor disciplinary measures including immediate suspension from work if they commit specific violations such as those causing incidents, accidents, threatening aviation safety, being investigated and prosecuted in criminal cases, drinking alcohol during working hours, using drugs or having positive drug test results, taking advantage of working position for smuggling and illegal transportation of people, property, goods, etc. This Circular entered into on September 1, 2023.

Amendments to the Law on Social Insurance

Proposed Bills or Initiatives

Authors: Tran Trong Binh, Of Counsel, and Bernadette Fahy, Partner – APFL & Partners Legal Vietnam LLC

The Vietnamese Ministry of Labor – War Invalids and Social Affairs has presented to the 25th session of the Standing Committee of the National Assembly on the draft amended Law on social insurance. It is proposed in the draft amended law to add, amongst others, five groups of subjects participating in compulsory social insurance including, inter alia: Business household owners (with business registration); employees doing part-time jobs (employees working on a flexible basis); cases where a labor contract is not concluded or an agreement is signed with another name rather than being called a labor contract but its contents indicate an employment relationship, salary, management and supervision of one party in accordance with the Labor Code 2019.

Amendments to the Regulations on Management of Labor, Salary, Bonus for Employees and Managers of 100% State-owned Limited Liability Companies

Proposed Bills or Initiatives

Authors: Tran Trong Binh, Of Counsel, and Bernadette Fahy, Partner – APFL & Partners Legal Vietnam LLC

The Vietnamese Ministry of Labor – War Invalids and Social Affairs is canvassing opinions of various ministries, State cooperations and groups, banks and local labor authorities on a new draft decree amending a number of rules on the management of labor, salary, and bonuses with respect to employees and managers of 100% State-owned limited liability companies.





At Littler, we understand that workplace issues can't wait. With access to more than 1,800 employment attorneys in more than 100 offices around the world, our clients don't have to. We aim to go beyond best practices, creating solutions that help clients navigate a complex business world. What's distinct about our approach? With deep experience and resources that are local, everywhere, we are fully focused on your business. With a diverse team of the brightest minds, we foster a culture that celebrates original thinking. And with powerful proprietary technology, we disrupt the status quo – delivering groundbreaking innovation that prepares employers not just for what's happening today, but for what's likely to happen tomorrow. Since 1942, our firm has harnessed these strengths to offer fresh perspectives on each matter we advise, litigate, mediate, and negotiate. Because at Littler, we're fueled by ingenuity and inspired by you.

To receive the Global Guide Quarterly by email, subscribe at littler.com/subscribe-GGQ.