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LABOR AND EMPLOYMENT LAW UPDATES FROM AROUND THE GLOBE

Littler

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Geida D. Sanlate, Littler Editor

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Australia

Australia Enacted Employee Right to Disconnect Law

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler

On February 12, 2024, the Australian Federal Parliament passed the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023, which introduced, among other changes, a right for all employees to refuse to monitor, read or respond to contact from their employer or third parties outside of their working hours unless the refusal is unreasonable. Various factors are considered in determining whether the contact is reasonable, including any compensation provided to an employee to remain available outside of work hours and the nature of the employee's role and level of responsibility. Employers may also elect to pay employees an availability allowance.

Under the new law, employers are prohibited from taking adverse action against employees who exercise their right to disconnect outside of work hours. The new law will go into effect on August 26, 2024, for employers with 15 or more employees, and on August 26, 2025, for employers with less than 15 employees. We recommend that employers review their employment agreements, employee compensation and policies ahead of this time to determine what changes may be needed to comply with the new law.

Fair Work Commission Defines "Shiftworker"

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler

In its recent decision, *Bega Dairy and Drinks Pty Ltd v. United Workers' Union* (2024), the Fair Work Commission defined the term "seven-day shiftworker," for purposes of determining eligibility for additional annual leave, as an employee whose ordinary hours of work are regularly spread evenly over seven days per week, and who regularly works on Sundays and public holidays. The Commission also held that employees need not work on a continuous 24/7 basis to be considered "seven-day shiftworkers" and need only work at least part-time on each of the seven days of the week to meet the definition.

Austria

Implementation of the Transparency Directive

Legal Compliance

Authors: Jakob Zöchling, Senior Associate, and Markus Loescher, Partner – Littler Austria

As part of the new legislation implementing the EU Directive on Transparent Working Conditions (Directive EU 2019/1152), employees in Austria will now have the right to work for multiple employers. Additionally, employers will only be able to require an employee to refrain from engaging in another employment relationship on a case-by-case basis. Employers will still have to comply with the maximum working hours and minimum rest period regulations.

The new legislation also requires employers to provide additional information, which has not been previously required, in employment contracts or worksheets. The additional required information includes the name of the social insurance provider, any entitlement to training provided by the employer, and employment termination procedures to be followed.

Brazil

Labor Electronic Domicile (DET)

New Order or Decree

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

According to SIT Notice # 1/2024, issued by the Ministry of Labor and Employment on February 9, 2024, as of March 1, 2024, the use of the "DET" platform became mandatory for most companies, except for companies opting for the simplified tax system known as "Simples Nacional," non-profit entities, and public and international organizations.

Employers Required to Use Digital Platform for FGTS Payments

New Order or Decree

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

SIT Notice # 4/2023, published on November 10, 2023, provided that the digital FGTS (Unemployment Guarantee Fund) platform would go into effect on March 1, 2024. The government issued a reminder on February 23, 2024, and on February 29 a new ordinance (Ordinance # 240/2024) was issued by the Ministry of Labor and Employment to regulate the implementation and operationalization of the Digital FGTS.

All employers are now required to use the virtual platform, for FGTS payments. With the implementation of the platform, the SEFIP (FGTS Employer Collection and Social Security Information System) will no longer be operative.

Complying with Mandatory Pay Transparency Reports Requirements

Legal Compliance

Authors: Marília Nascimento Minicucci, Shareholder – Chiode Minicucci Advogados, and Renata Neeser, Shareholder – Littler

March 31, 2024, was the deadline for Brazilian companies with 100 or more employees to post pay transparency reports on their websites or social media accounts or otherwise make them available to their employees and the general public through other means that guarantee their wide dissemination. As we reported last quarter, under Ordinance 3,714, the Ministry of Labor and Employment is responsible for preparing the reports and making them available for employers to disseminate them to the public. Failure to comply may subject an employer to a fine corresponding to 3% of their payroll, capped at 100 minimum salaries.

This requirement has been at the center of debates in the past few months. In the meantime, employers should seek advice from legal counsel for any legal challenges. We will continue to monitor the situation as we expect new developments coming soon.

Canada

Ontario: Bill 149 Receives Royal Assent and Amends Key Laws

New Legislation Enacted

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

On March 21, 2024, Ontario's Bill 149 – Working for Workers Four Act, 2024 – received Royal Assent. The new law amends several key legislation, including the Employment Standards Act, 2000 (ESA), the Workplace Safety and Insurance Act, 1997 (WSIA), and the Digital Platform Workers' Rights Act, 2022 (DPWRA). As an example, the ESA is amended to clarify the definition of "employee" and "deductions" to employee wages. Additional details are available on Littler.com.

Ontario: Government Repeals Bill 124 in its Entirety After Appellate Court Decision

Precedential Decision by Judiciary or Regulatory Agency

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

Bill 124, the Protecting a Sustainable Public Sector for Future Generations Act, 2019, introduced by Ontario in 2019, limited wage increases for 780,000 workers in the broader public sector to 1% per year for a three-year moderation period. In *Ontario English Catholic Teachers Association v. Ontario* (Attorney General), 2024 ONCA 101, the majority of the Ontario Court of Appeal found that Bill 124 substantially interfered with collective bargaining rights in violation of section 2(d) of the Canadian Charter of Rights and Freedoms and declared it invalid. On February 23, 2024, Ontario repealed Bill 124 in its entirety.

British Columbia: Court of Appeal Rejects Employer's Frustration of Contract Defense in Circumstances Connected to COVID-19

Precedential Decision by Judiciary or Regulatory Agency

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

In *Aldergrove Duty Free Shop Ltd. v. MacCallum*, 2024 BCCA 28, the Court of Appeal for British Columbia dismissed an employer's appeal when it agreed with the lower court that the employer could not use the frustration of contract defense against an employee's claim that she was wrongfully dismissed in circumstances connected to COVID-19 when the employer laid her off without notice or severance. Additional details are available on Littler.com.

Ontario: Court Awards Retired VP $1.8 Million in Damages for Unpaid Vacation, Deferred Bonus and Unvested Stock Options

Precedential Decision by Judiciary or Regulatory Agency

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

Although the underlying claim for constructive discharge was dismissed, in *Boyer v. Callidus*, 2024 ONSC 20, the Ontario Superior Court of Justice nevertheless found that an employee was entitled to $1.8 million in damages for unpaid vacation, bonuses, and stock options, because the terms of the relevant policies were not clearly communicated to him in his employment agreement or by any other means. Additional details are available on Littler.com.

Arbitrator Considers Interaction Between Paid Medical Leave Days and Other Employer-Paid Benefits

Precedential Decision by Judiciary or Regulatory Agency

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

In *United Steelworkers Local 14193 v. Cameco Fuel Manufacturing Inc.*, 2023 CanLII 115899 (ON LA), an arbitrator dismissed a union's policy grievance on the grounds that, contrary to the union's assertion, the employer could count approved sick days paid at 100% of weekly earnings under its short-term disability benefits plan as paid medical leave days under the Canada Labor Code. Additional details are available on Littler.com.

China

New Cross-Border Data Transfer Rules Ease Compliance Burdens on Multinational Employers

New Regulation or Official Guidance

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

On March 22, 2024, the Cyberspace Administration of China (the CAC) released the Provisions on Promoting and Regulating Cross-border Data Flows (the Provisions) which went into effect on the same day. The Provisions mostly preserved the key provisions of the draft rules proposed by the CAC in late September 2023. Some key highlights include the following:

- Employers are exempt from entering into the Standard Contract when transferring HR data from China that is necessary to carry out cross-border HR management in accordance with the employer's internal labor rules and regulations and collective bargaining contracts.
- Businesses that are not a critical information infrastructure operator and transfer the personal information, excluding sensitive personal information, of fewer than 100,000 individuals are exempt from the requirement that they enter into the Standard Contract.
- Other requirements in China's Personal Information Protection Law applicable to cross-border data transfers continue to apply, including:
    - Providing notice to employees and business contacts that their personal information will be transferred overseas
    - Obtaining their express consent to the transfer
    - Completing a transfer impact assessment before transferring any personal data out of China

China Released New Guidance for Declaring Data Security Assessment and Filing Standard Contract

New Regulation or Official Guidance

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

On March 22, 2024, the Cyberspace Administration of China (CAC) also released Data Transfer Security Assessment Declaration Guidelines and the Personal Information Export Standard Contract Filing Guidelines (Contract Filing Guidelines). These guidelines are intended to help personal information handlers subject to the data security requirements under the new cross-border data transfer rules discussed above. Among other things, the Contract Filing Guidelines include an amended version of the transfer impact statement (TIA) template, which removed a number of required sections from the previous version of the TIA.

Colombia

Increases in the Minimum Wage and Transportation Allowance for 2024

New Order or Decree

Author: Gabriela Pacheco, Associate – Godoy Córdoba | Littler

Effective January 1, 2024, Colombia's monthly minimum wage increased by 12.07% to COP 1,300,000 and the monthly transportation allowance increased by 15.22% to COP 162,000. These increases will remain in effect throughout 2024.

New Decree Regarding the Recognition and Payment of Maternity, Paternity, and Medical Leaves

New Order or Decree

Author: Gabriela Pacheco, Associate – Godoy Córdoba | Littler

The Ministry of Health and Social Protection issued Decree 2126 of 2023, which regulates Laws 2114 and 2174 of 2021, related to maternity, paternity, and medical leaves. This Decree provides for modifications of the rules for issuance, recognition and payment of these leaves, such as the salary basis for the calculation of leave payment, and requirements for the issuance of the medical leave certificate.

Colpensiones Increased Pension Payments for 2024 and Reduced Health Contribution for Pensioners

New Order or Decree

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

The Colombian Pension Administrator (Colpensiones) announced the increase in pension payments for 2024 as follows:

- Pensions for pensioners who were receiving the legal minimum wage (SMMLV) in 2023, which was $1,160,000, will be adjusted to $1,300,000, an increase of 12.069%.
- Pensions for pensioners who were receiving more than the legal minimum wage in 2023, will be adjusted according to the variation in the Consumer Price Index (IPC) of 2023, which was 9.28%.

Additionally, Colpensiones announced that starting this year, pensioners in Colombia receiving monthly payments between $2,600,001 and $3,900,000 will experience a 10% reduction in their required health contributions.

Vice Minister of Labor Calls for Early Reduction of Maximum Weekly Working Hours

Trend

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

Law 2101/21, which went into effect on July 15, 2023, provides for the gradual reduction of the 48-hour workweek to a 42-hour workweek by July 2026. Employers can choose to make the change gradually or in a single early adjustment. Vice Minister of Labor Relations and Inspection Edwin Palma Egea recently emphasized that approximately 25,000 workers in Colombia already have a 42-hour weekly schedule and urged early implementation of the workweek reduction by other employers.

Costa Rica

Whistleblower Protection Law Enacted

New Legislation Enacted

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

On February 8, 2024, the "Law for the protection of complainants and witnesses of acts of corruption against retaliation in employment" became enforceable, after its publication in the official journal *La Gaceta*. The law, which is the first whistleblower protection law in Costa Rica, protects individuals who file complaints alleging potential "acts of corruption," as defined in the law, and witnesses, from retaliation of any kind and imposes steep penalties on employers who engage in retaliation.

The law also creates "protective immunity" for these individuals, which they cannot be terminated from employment except for just cause, with prior authorization from the Ministry of Labor. Additional details are available on Littler.com.

Croatia

Constitutional Court Ruling on Amendments to Croatian Commerce Act

Precedential Decision by Judiciary or Regulatory Agency

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

On February 6, 2024, the Croatian Constitutional Court ruled on the constitutionality of amendments to the Croatian Commerce Act, which prohibits retail stores from opening for business on Sundays and public holidays. The Court held that the Act does not overly burden business owners, workers or consumers and that the exception, which gives business owners the right to select 16 Sundays within a calendar year during which their stores may be open, allows businesses and consumers to enjoy features of the Croatian market, such as seasonality, and at the same time is not overburdensome for workers.

Consequently, the Court held, the restriction is proportionate to the goals it aims to achieve, such as a better work-life balance and protection of workers' rights, and is consistent with the Croatian Constitution.

Draft Regulation on the Content and Method of Keeping Employee Records

Proposed Bill or Initiative

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

In early March 2024, Croatian Ministry of Labor submitted for public review a Draft Regulation on the Content and Method of Keeping Employee Records (Draft Regulation). The Draft Regulation introduces several new requirements, with the most notable being the introduction of an array of data retention periods for employee' data stored by the employer. The Draft Regulation also imposes a number of changes to data categories that must be recorded. Finally, the Draft Regulation introduces new recordkeeping requirements for regular working time as well as for remote work/telework.

When the Draft Regulation is enacted and goes into effect, Croatian employers should review and update to their privacy and other policies to ensure compliance with the new regulations. A grace period of six months from the Draft Regulation's effective date is anticipated to allow employers time to comply with the new rules.

Draft Amendments to the Croatian Foreigners Act

Proposed Bill or Initiative

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

In late February 2024, the Croatian Ministry of Interior submitted for public review a comprehensive Draft Amendments to Foreigners Act (Draft Amendments). In addition to implementing the EU Directive 2021/1883 (revised EU Blue Card Directive), the Draft Amendments introduce several new provisions aimed at to creating a more efficient and flexible system for employing foreign workers in Croatia.

The most notable draft amendments include:

- Regulation of the maximum number of foreign workers, as a percentage of total workforce, that a local employer may employ
- An option to obtain a work permit for a longer period (now up to three years)
- Requiring that employers provide of "adequate" accommodation (specific minimum requirements are to be prescribed later)
- Prohibition of discriminatory salary and employment terms for foreign workers

Considering the imminent parliamentary elections in Croatia, it is difficult to estimate when the Draft Amendments will be enacted and become effective.

Denmark

Amendment to Act on Working Hours Introduces New Elements

New Legislation Enacted

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

On January 23, 2024, a bill amending the Danish Act on Working Hours was adopted by the Danish Parliament. It will go into effect on July 1, 2024.

The Amendment contains two elements. First, the Act introduces a right to deviate from the rules on maximum weekly working hours in selected areas of the labor market. Consequently, it will be possible for an employee and an employer to agree, subject to certain conditions, on a weekly working time that exceeds 48 hours on average per week (the so-called opt out). Second, the Act introduces a requirement that employers register employees' daily working hours. The Act states that the time recording system must be objective, reliable, and accessible but does not specify how employers must register the employees' daily working hours, and thus, employers are free to choose a time-recording method that meets these criteria.

Greater Maternity/Paternity Benefits for Parents of Twins, Effective May 1, 2024

New Legislation Enacted

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

On March 19, 2024, a law was enacted providing each parent an additional 13 weeks of maternity/paternity benefits after the birth or adoption of twins. The new law, which goes into effect on May 1, 2024, defines parent to include legal parents, social parents, and close family members. The leave must be taken within the first year of the children's birth or adoption. The law also modifies the system to regulate the allocation of extra weeks of maternity/paternity benefits when only one parent is socially secured in Denmark.

Law Abolishing Great Prayer Day as a Public Holiday

New Legislation Enacted

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

An Act abolishing the Great Prayer Day (the fourth Friday after Easter) as a public holiday went into effect on January 1, 2024. Employees receiving a fixed monthly salary will be compensated for this additional working day at the rate of 0.45 % of the employee's annual salary as of January 1, 2024, including the employee's base salary, any employer contribution to the employee's pension plan, and any fixed supplements or allowances. The additional compensation may be paid twice a year with the May and August salaries, or monthly with the employee's regular monthly salary.

Supreme Court Rules Equal Treatment Act Applies to Material Changes in Employment

Precedential Decision by Judiciary or Regulatory Agency

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

On January 18, 2024, the Danish Supreme Court ruled that the Danish Equal Treatment Act not only relates to dismissals, but also covers material changes in employment.

The case involved an employer's change in maternity rights after an employee informed the employer of her pregnancy. The employee continued in her position at the company and filed a claim for compensation under the Danish Equal Treatment Act. The Supreme Court ruled that the company's maternity policy change was a material change in employment and the company failed to prove that the change had not been motivated by the employee's pregnancy. Accordingly, the Supreme Court awarded the employee DKK 50,000.00 in compensation.

Egypt

Increase of the Minimum Wage for Private Sector Employees

New Order or Decree

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

Effective January 1, 2024, the Ministry of Planning and Economic Development raised the minimum wage of private sector employees from EGP 3,000 to EGP 3,500.

Statutory Annual Raise

New Order or Decree

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

Based on the Ministry of Planning and Economic Development Decree No. 90 of 2023, dated December 11, 2023, effective January 1, 2024, the minimum periodic statutory annual raise for fiscal year 2024 must be at least 3% of the social insurance salary, as defined under the social insurance law, with a minimum of EGP 200.

Proposed Draft Labor Law

Proposed Bill or Initiative

Author: Alia Monieb, Partner and Head of Employment – ADSERO - Ragy Soliman and Partners

A new draft labor law (the Draft Law) has been approved by the Senate and is expected to be issued soon, entirely replacing current labor Law No. 12 of 2003. Following are some of the principles and provisions of the Draft Law, which may be revised when the final draft is published.

New Principles:

- The employment contract is for an unlimited time period but may be made for a limited time period of not less than one year. The employment contract will be deemed unlimited if it is renewed for more than four years.
- Confirms the legal obligation to hire persons with disabilities in line with law no. 10 of 2018 on the Rights of Persons with Disabilities.
- In line with the Personal Data Protection Law No. 151 of 2020, obligates employers to maintain the confidentiality of employees' medical check-ups and their medical status.
- Penalties on employers have been increased for failure to comply with forced labor and discrimination restrictions.

New Amendments:

- Female employees will now be entitled to maternity leave after six months with their current employer, instead of 10 months at any employer. Maternity leave will increase to four months, with a maximum of three leaves during the employee's service.
- Female employees are entitled to childcare leave up to three times during their employment, under certain conditions. This amendment complies with Child Law No. 12 of 1996 and resolves the conflict between this law and the current labor law.
- Paid sick leave would increase from six months to a total of 12 months annually.

Ethiopia

Parliament Sets Minimum Wage for Ethiopian Domestic Workers in Jordan

New Legislation Enacted

Author: Abdi Temam Abamilki, Associate – Mehrteab and Getu Advocates LLP (MLA)

Parliament voted earlier this month to set the minimum wage for Ethiopian domestic workers in Jordan at USD 275 after taxes. In that same session, Parliament also approved a Memorandum of Understanding signed with Jordan setting a maximum of 48 working hours per week for Ethiopians employed in Jordan.

Bill Providing for Awards to Government Employees for Excellent Performance Presented to Parliament for Enactment

Proposed Bill or Initiative

Author: Abdi Temam Abamilki, Associate – Mehrteab and Getu Advocates LLP (MLA)

The awards would be given for outstanding performance in three categories to motivate government employees to be disciplined and committed in their work. Members of the Army and the Police would not be eligible for the awards. The awards would range from medals, wage increases, and pensions to having a road, hospital, school, or similar institution named after an award recipient. Employees who are recipients of an award multiple times would have a statue in their honor.

Immigration and Citizenship Service Says Numerous Foreign Employees Undocumented

Trend

Author: Abdi Temam Abamilki, Associate – Mehrteab and Getu Advocates LLP (MLA)

The Immigration and Citizenship Service reported that there are a significant number of foreign companies that have brought employees from abroad without obtaining the required documentation from the Service for these employees. The Service's Director General said further investigation will be conducted and legal measures will be taken against undocumented foreign citizens found working locally.

Confederation of Ethiopian Labor Unions to Write Letter to PM Again on Basic Employment Issues

Trend

Author: Abdi Temam Abamilki, Associate – Mehrteab and Getu Advocates LLP (MLA)

Representatives of the Confederation of Ethiopian Labor Unions say they're going to write a letter to the Prime Minister asking for another meeting to discuss the minimum wage and lowering tax rates for workers as these issues, discussed in their previous meeting, have not been resolved. Although the Prime Minister instructed the Ministries of Justice, Labor and Finance to come up with solutions to the issues, no significant progress has been made.

Various Institutions Call on the Government to Ratify ILO Conventions

Trend

Author: Abdi Temam Abamilki, Associate – Mehrteab and Getu Advocates LLP (MLA)

The Confederation of Ethiopian Labor Unions, as well as the Ethiopian Human Rights Council, have called on the government to ratify conventions of the International Labor Organization. Both organizations placed particular emphasis on Conventions No. 97 and 143, which aim to protect migrant workers.

Finland

Administrative Court Rules that Couriers are Not Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Noora Ollitervo, Associate – Dottir Attorneys Ltd

The Regional State Administrative Court for Southern Finland ruled that couriers did not meet the criteria for employees under the Employment Contracts Act. In particular, the court found, the company did not have the right to direct and supervise their work. Accordingly, the Working Time Act did not apply to the couriers' work and the company was not required to keep records of their working hours.

This decision sets a precedent regarding the classification of gig economy workers and their legal status in the employment context.

Supreme Court Considers the Timeframe for Equalizing Salaries After Business Transfer

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Noora Ollitervo, Associate – Dottir Attorneys Ltd

In *KKO 2024:9*, the Supreme Court considered whether a hospital district violated the equal treatment requirement of Chapter 2 Section 2(1) of the Employment Contracts Act when it paid different salaries to paramedics doing the same work between January 1, 2014, and August 16, 2019. The salary differential stemmed from a business transfer on January 1, 2014. The district began measures to eliminate the salary differentials between 2016 and 2019, aiming to equalize salaries by January 1, 2019. The Supreme Court concluded that this was an acceptable timeframe for standardizing the paramedics salaries and that the hospital district had not violated the equal treatment requirements of the Employment Contracts Act.

Supreme Administrative Court Protects Worker Rights in Residence Permit Revocation Case

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Noora Ollitervo, Associate – Dottir Attorneys Ltd

In *KHO: 2024:35* the Supreme Administrative Court overturned the decisions of the Finnish Immigration Service and the Administrative Court revoking a worker's residence permit. Emphasizing that revocation should consider the employer's conduct, the court held that the permit holder's claims of employer negligence or exploitation warranted further investigation before revocation.

SAK-Led Strikes Opposing Proposed Labor Reforms Impact Finland's Economy

Trend

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Noora Ollitervo, Associate – Dottir Attorneys Ltd

Strikes led by The Central Organization of Finnish Trade Unions (SAK) opposing the government's labor law reforms and social security cuts, including reductions in unemployment benefits and housing allowances, continued through the end of March due to unresolved negotiations, and are disrupting Finland's exports, especially goods transported through ports and railways. Simultaneously, the government's proposal to amend the law to facilitate local collective bargaining for all companies, not just union shops, has advanced to the consultation phase. These changes are planned to take effect on January 1, 2025.

France

The Unapproved Recording of a Conversation Can Be Excluded from Evidence

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

Although the French Supreme Court has held that unlawfully or unfairly obtained evidence may not necessarily be excluded from evidence, in a recent action before the employment tribunal seeking termination of an employment contract on the grounds of harassment, the tribunal excluded a transcript of an interview between the employee and staff representatives appointed to carry out an investigation.

The Court noted that the employee had provided other evidence suggesting the existence of harassment and therefore ruled that the production of the secret and unapproved recording of the conversation was not essential to support the employee's claims.

Employees Can Be Compensated If Their Image Is Used Without Consent

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

In a case involving an employee whose image was used in a brochure to customers, the French Supreme Court ruled that the employee was entitled to compensation for the use of his image without his consent.

A Member of Executive Committee Can Be Appointed as a Union Representative

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

In a case involving a senior executive employee appointed as a union section representative, the French Supreme Court rejected the employer's claim that the employee's appointment was unlawful because of his participation in the management committee.

The French Supreme Court rejected the employer's claim finding that the employee had no decision-making power over the hiring, promotions or terminations, and did not have the authority to independently decide on changes in his department, and therefore could be appointed as a union representative.

Change to the Acquisition of Paid Leave During Sick Leave

Proposed Bill or Initiative

Author: Guillaume Desmoulin, Partner – Littler France

In its September 13, 2023, ruling the French Supreme Court held that employees were entitled to accrue paid leave during sick leave in accordance with EU legislation on paid leave. Accordingly, on March 15, 2024, the French government proposed legislation to the French Parliament on the acquisition of paid leave. The amendment provides for:

- The acquisition of two working days of paid leave per month, up to a maximum of 24 days (*i.e.*, a total of four weeks of leave per year), for employees on sick leave due to a non-occupational accident or illness.
- An employer's obligation to inform employees of the number of paid sick leave days acquired and the time remaining to take them, within 10 days of returning to work following a sick leave.
- A right to defer leave for 15 months from the time the employee is informed of the paid sick leave days acquired after returning to work following a sick leave. This deferral period is retroactive to December 1, 2009.

Germany

Federal Labor Court Rejects Motions for Recusal

Precedential Decision by Judiciary or Regulatory Agency

Author: Kim Kleinert, Associate – vangard | Littler

The Federal Labor Court (*Bundesarbeitsgericht*, resolution of January 24, 2024, Ref. 8 AS 17/23) rejected motions for recusal by a commercial lawyer against presiding judges at the Berlin-Brandenburg Higher Labor Court (*Landesarbeitsgericht*) who had not yet dealt with any of the plaintiff's cases. The Berlin-Brandenburg Higher Labor Court may decide on further applications relating to judges.

Federal Labor Court Decision on Reimbursement Claims Against Works Council Members

Precedential Decision by Judiciary or Regulatory Agency

Author: Philipp Schulte, Associate – vangard | Littler

On March 2, 2024, the German Federal Labor Court (*Bundesarbeitsgericht*) published decision Ref. No. 7 AZR 338/22, ruling that employers may not seek reimbursement from council members for payment of invoices that were improperly addressed to the employer by third parties. The case involved a works council member who engaged external counsel for a matter unrelated to their works council duties. The external counsel invoiced the employer, who paid the invoice and deducted the cost from the works council member's salary and the council member successfully sued their employer for reimbursement of the deduction for the invoice paid by the employer.

The Court did not deny that the employer had a claim for reimbursement by the employee for the paid invoice, but denied the claim on procedural grounds and held that matters concerning works councils' duties and responsibilities have to be exclusively ruled on during proceedings specifically designed for works council matters, which the lawsuit for full pay was not.

This case establishes that legal recourse against works council members faces high challenges, and employers should be careful about paying third-party invoices unrelated to necessary works council work.

Sanctions for Formal Errors in Mass Dismissal Notifications May Be Lifted/Limited – Part II

Precedential Decision by Judiciary or Regulatory Agency

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

In December 2023, the Sixth Senate of the Federal Labor Court published a decision stating that it intended to deviate from case law of the Second Senate on the consequences of errors in mass dismissal notices. (Review our previous Littler GGQ update.) In contrast to the Second Senate, the Sixth Senate's opinion is that errors in mass dismissal notices should lead to the invalidity of all the dismissals.

In response, on February 1, 2024, the Second Senate submitted several questions to the Court of Justice of the European Union (CJEU) on the interpretation of the relevant EU Mass Dismissal Directive. According to the Second Senate, the CJEU's decision is relevant in deciding whether a new sanction other than the invalidity of dismissals is possible if errors are made in mass dismissal notifications. We will continue monitoring this case as it develops.

Draft Legislation Amending the Evidence Act

Proposed Bill or Initiative

Author: Franka Helena Schlemm, Associate – vangard | Littler

After tightening the Evidence Act in 2022, which now requires employers to provide employees with the essential terms and conditions of employment in written form, in January 2024, the German Federal Ministry of Justice published a draft amendment to the legislation. The amendment provides that an electronic employment contract with all the essential terms and conditions of employment satisfies the requirements of the Act if it has been sent to the employee in printable form and contains a qualified electronic signature.

The amendment does not apply to employees who work in certain economic sectors or industries listed in the Control of Unreported Employment Act.

Train Drivers' and the German Right to Strike

Trend

Author: Lucas Corleis, Senior Associate – vangard | Littler

Strikes regularly occur in Germany to increase negotiating leverage in collective bargaining. Most recently the German Train Drivers' Union (GDL) has been on strike since January in connection with its collective bargaining dispute with the German rail company, Deutsche Bahn. The union is seeking reduced working hours with full compensation. The GDL has been conducting repeated so-called Wave Strikes, where strike for a short period of time with a short notice period of just 22 hours in some cases.

On March 12, 2024, the Higher Labor Court for Hesse rejected Deutsch Bahn's most recent motion to prohibit another strike. The court did not consider itself authorized to enact new rules restricting the right to strike under applicable law, which only limits the right to strike when conflicting rights of third parties, such as a risk to life, outweigh the right to strike.

Hong Kong

Proposed Change to the "418 Requirement" of the Employment Ordinance

Proposed Bill or Initiative

Author: Shiau Sang Tee, Of Counsel | Registered Foreign Lawyer – Littler

Hong Kong's Employment Ordinance provides a range of employment benefits, including paid annual leave, sickness allowance, severance payment, long service payment, maternity leave, and paternity leave, to employees who have been employed under a "continuous contract" by the same employer for four weeks or more, working at least 18 hours per week. This is commonly known as the "418 requirement."

On February 1, 2024, the Labor Advisory Board proposed relaxation of the 418 requirement so that employees will be considered employed under a "continuous contract" if they have worked at least 68 hours in four consecutive weeks for the same employer. In response, a bill will be introduced in the Legislative Council to amend the Employment Ordinance. In the meantime, employers should start considering the legal and financial implications that this proposed change may have on their workforce, particularly those who typically work shorter hours, such as part-time or casual employees.

Hungary

The Hungarian Supreme Court Expands the Scope of Non-compete Agreements

Precedential Decision by Judiciary or Regulatory Agency

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

Hungarian labor law allows employers to enter into non-compete agreements barring employees from working for a competitor after their employment ends. Employer may sue employees for damages and penalties provided for in the non-compete agreement if it is breached. The Hungarian Supreme Court has ruled that if the new employer was not a competitor when it became the new employer but later starts a new business activity that competes with the previous employer, the employee is liable for breach of the non-compete agreement if they continue employment with the new employer.

India

Social Security Agreement Between India and Brazil

New Regulation or Official Guidance

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

Effective January 1, 2024, India and Brazil have entered into a Social Security Agreement (SSA). The Agreement provides that employees in India or Brazil sent to work in the other country for short-term assignments, up to 36 months, are exempt from social security contributions in the country where they are sent to work if they obtain a Certificate of Coverage (COC) issued from their home country stating that the employee is subject to the legislation of the issuing country and providing the duration of the certificate.

Karnataka Compulsory Gratuity Insurance Rules, 2024

New Regulation or Official Guidance

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

The Karnataka state government has issued the Karnataka Compulsory Gratuity Insurance Rules, 2024 (Rules), which requires private employers in Karnataka to obtain compulsory insurance for gratuity payments to employees. New employers must obtain gratuity insurance within 30 days of the rules becoming applicable to their business, and existing employers have 60 days to obtain the insurance. Within 30 days of the insurance acquisition, employers must register with the relevant authority, identified in the Gratuity Act, and provide a list of employees insured, which must be regularly updated.

Employers that already have an approved gratuity trust fund and employers with at least 500 employees who establish an approved gratuity trust fund may seek exemption from the Rules by registering their establishments with the controlling authority and complying with certain obligations.

Violation of the Rules is punishable with a fine of up to INR 10,000 (approx. USD 120) and a further fine of up to INR 1000 (approx. USD 12) for each day of continuing violation.

Gujarat Exempts IT, ITES and Financial Services from the Application of Gujarat Shops and Establishments Act, 2019

New Regulation or Official Guidance

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

The Government of Gujarat has exempted IT, IT enabled services, Financial Services establishments, and establishments in the GIFT city (Gujarat International Finance Tec-City)

from provisions relating to fixed work hours (section 12) and spread-over hours (section 14), of the Gujarat Shops and Establishments Act, 2019 (GSEA), for two years from February 5, 2024. The exempted establishments no longer need to comply with requirements that workers cannot work for more than nine hours per day and 48 hours per week and must be given a half hour rest period after five hours of work.

To be eligible for the exemption, employers must comply with all other requirements under the GSEA including registration of the establishment, compliance with health and safety requirements, overtime payments at double the wage rate, overtime cap of 125 hours every three months, and at least 24 hours of consecutive rest per week.

Conditions for Exempting Women from the Prohibition of Factory Night Shift Work in Haryana

New Regulation or Official Guidance

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

The Haryana state government has issued requirements for factories seeking exemption from the prohibition of employing women in factories during the night shift (7:00 p.m. to 6:00 a.m.).

The conditions include:

- Obtaining consent from each woman prior working night shifts
- Compliance with the Prevention of Sexual Harassment in the Workplace (PoSH Act), publication of an updated sexual harassment policy, conducting regular workshops on awareness and prevention of sexual harassment, and filing annual reports with the labor commissioner regarding sexual harassment in the workplace
- Providing safety measures such as adequate lighting, and CCTV coverage to ensure female employees' security
- Employing women workers in batches of at least 10
- Providing women with transportation to and from their residence in vehicles having well trained pre-screened drivers with bio-data records, proper communication channels, CCTV, and GPS security guards, including female security guards

Additional conditions apply to factories employing 100 or more women.

Bills to Amend the Sexual Harassment of Women at Workplace Act, 2013

Proposed Bill or Initiative

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

Two bills have been introduced to amend the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act).
The key topics covered are:

- Replacing the current Local Complaints Committee with an Employment Tribunal comprised of a chairperson who shall be a retired female judge of the District Court and at least six members of which at least three must be women working within the district

- Extending the time for filing complaints from the current six-month time limit to a time determined by the Internal Committee (IC) or the Employment Tribunal based on the circumstances of the case, with a possible additional extension of time
- Replacing "recommend to" with "direct" in section 13(3) of the PoSH Act to make IC recommendations binding and require employers to act on the directions of the Employment Tribunal within 60 days

Indonesia

Constitutional Court Affirms Statute of Limitations for Filing Employment Termination Lawsuits

Precedential Decision by Judiciary or Regulatory Agency

Author: Indrawan Dwi Yuriutomo, Senior Associate – SSEK Law Firm

On February 29, 2024, Indonesia's Constitutional Court, in Decision No. 94/PUU-XXI/2023, affirmed that an employment termination lawsuit can only be filed within one year of the date of notification of employment termination. There had previously been confusion on this point, particularly after the Constitutional Court declared Article 96 of the Employment Law unconstitutional, which meant that there was no statute of limitation for filing an employment termination lawsuit except for termination for serious violations.

Ireland

New "On the Spot" Fines for Employment Law Offenses

New Legislation Enacted

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

The Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2023 (the Regulations) consolidate new and existing fixed payment fines for employment law violations. The Regulations also set out the form for a fixed payment notice to be issued by a Workplace Relations Commission (WRC) inspector and revoke existing regulations.

The fines range from EUR 500 to EUR 2,000 and apply for breaches of employment law including failure to consult with employee collective bargaining representatives, and failure to provide an employee with their terms of employment within one month of their commencement date. The fines are civil in nature, however a failure to pay may result in criminal prosecution.

Supreme Court Overturns Industrial Action Injunction

Precedential Decision by Judiciary or Regulatory Agency

Author: Lisa Collins, Associate – GQ | Littler

The Supreme Court has unanimously ruled that the High Court should not have granted an injunction restraining members of a union from taking industrial action. The judgment found the key legislation that governs industrial relations provides an "absolute bar" to courts granting injunctions restraining industrial action when the correct legal procedures have been followed. The court noted that the freedom to form associations and unions is guaranteed by Article 40.6.1 of the Constitution and the entitlement to take part in industrial action must be seen in that context.

Code of Practice on the Right to Request Flexible Working and Remote Work

New Regulation or Official Guidance

Author: Lisa Collins, Associate – GQ | Littler

The Workplace Relations Commission (WRC) has published a Code of Practice for Employers and Employees on the Right to Request Flexible Working and the Right to Request Remote Work (the Code). The Code provides guidance on requests for flexible working (FW) arrangements, which can include part-time work, term-time work, job-sharing, flextime, and compressed working hours, and remote work (RW) under the Work Life Balance and Miscellaneous Provisions Act 2023.

The Code provides that any employee may make a request a RW arrangement. An employee may apply for an FW arrangement if they are or will be: (1) a parent, or acting in loco parentis to a child under 12 years old, or under 16 years old if the child has a disability or illness; or (2) providing personal care or support to their child, spouse, civil partner, cohabitant, parent, grandparent, sibling, or a person living in the same household, who is in need of significant care or support for a serious medical reason. FW and RW arrangements cannot begin until the employee has completed six months of continuous service.

Israel

Minimum Wage Increase

New Legislation Enacted

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

On March 11, 2024, the Minister of Labor announced that commencing April 1, 2024, the minimum wage for a full-time position will be NIS 5,880 (instead of NIS 5,571.75). The update is in accordance with the automatic update mechanism stipulated in the Minimum Wage Law, according to which the minimum wage will be at least 47.5% of the average wage in the economy. The minimum wage for hourly employees will be NIS 32.3 per hour (instead of NIS 30.61).

The Protection of Employees in Times of Emergency Law (a Temporary Order)

New Legislation Enacted

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

A temporary order that applies retroactively from October 7, 2023, until July 1, 2024, prohibits the dismissal of employees who are evacuees, abductees, missing persons and their family members, who were absent from their work or did not perform work due to the current security situation. The dismissal prohibition also applies to employees who were absent from their work due to the need to watch over their children who are with them due to their spouse's reserve service.

National Labor Court Ruling Regarding Discrimination Based on Overweight

Precedential Decision by Judiciary or Regulatory Agency

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

In *Lipels vs. the Israel Football Association*, the National Labor Court issued a ruling prohibiting employment discrimination based on weight. The employee in the case, who was an assistant referee in the Israel Football Association, claimed that the association's decision to remove him from refereeing the top league games was discrimination based on his weight. The National Labor Court reversed the regional court's ruling and determined that the association's decision was, to a significant extent, because the employee was overweight. The court held that although the Employment Equal Opportunities Law does not include discrimination based on weight, weight cannot be a factor in an employer's considerations and therefore the employee was entitled to compensation.

Policy on the Collection and Use of Biometric Information in the Workplace to Monitor Working Hours

New Regulation or Official Guidance

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

On February 15, 2024, the Privacy Protection Authority (PPA) published a policy on the collection and use of biometric information in the workplace for the purpose of monitoring employees' working hours. Even though the policy does not prohibit the use of technology for such monitoring, the position of the PPA is that collecting biometric information may be considered a disproportionate measure unless there is a justification for doing so and there is no other alternative. Employers who wish to use biometric information have the burden of justifying the collection and use of this information despite the violation of privacy.

Increased Enforcement for Companies Using Outsourced Employees in the Cleaning, Security and Catering Sectors

New Regulation or Official Guidance

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

New regulations impose obligations on companies using outsourcing services in the cleaning, guarding and security and catering sectors, requiring compliance with the provisions of existing labor laws for workers assigned to their premises.

The regulations apply from January 1, 2024, for new service contracts and no later than January 1, 2025, for service contracts renewed or extended during 2024.

Italy

Compensation Increased for Parental Leave

New Legislation Enacted

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

Compensation during parental leave has been increased, pursuant to Article 1, paragraph no. 179 of Law no. 213/2023. In addition to the current compensation rate of 80% of salary for the first month of leave, a compensation rate of 60%, instead of the current 30%, will be applicable for an additional month of leave. In addition, for 2024 only, the second month of parental leave will be compensated at the rate of 80% of salary instead of 60%.

The Renewal of the Collective Bargaining Agreement for Trade Sector Companies

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Elisabetta Rebagliati, Senior Associate – Littler Italy

The renewal of the collective bargaining agreement for companies in the trade sector (*Confcommercio*), which expired in 2019, was finally signed on March 22, 2024. The economic part of the agreement is retroactive to April 1, 2023, and will expire on March 31, 2027. All other provisions of the agreement went into effect on April 1, 2024.

The agreement provides for increases in the minimum wages and on a lump sum payment to cover the contractual gap period. The renewal also provides for amendments to:

- The personnel classification system to update it in areas such as IT
- The regulation of fixed-term contracts to adapt them to legislative changes that have occurred
- The flexible clauses in contracts for part-time female workers, increasing their compensation
- The leaves for female victims of violence, increasing the leave for an additional 90 days in certain cases

Smart-working: No New Extensions

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Alessandra Pisati, Associate – Littler Italy

After April 1, 2024, the right to so-called private sector smart-working, which provided for remote work for workers with children under 14 years old and so-called "fragile workers" will no longer be in effect.

Employment Agencies: A New Code of Conduct for the Application of the GDPR

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Francesca Rocco, Senior Associate – Littler Italy

On February 14, 2024, the Italian Data Protection Authority announced the approval of the Code of Conduct adopted by Assolavoro (the Italian Association of Employment Agencies). The Code of Conduct will be applicable to Italian Employment Agencies on a voluntary basis, upon completion of a specific procedure, and aims to regulate data controllers and processors to protect the rights and freedoms of natural persons, including job applicants.

Aligned with Article 40 of the GDPR (EU Regulation 2016/679), the Code regulates the information to be submitted to job applicants, how personal data must be communicated, the length of time for storage of data, the cautions that must be exercised in the automated processing of data, among other related issues.

Kenya

Social Health Act Goes into Effect July 2024

New Legislation Enacted

Authors: Sonal Tejpar, Partner, and Edwina Warambo, Senior Associate – Anjarwalla & Khanna LLP

For many years, employers have been required to be registered contributors to the National Hospital Insurance Fund (NHIF) pursuant to the National Health Insurance Fund Act (Cap 255) (the NHIF Act) and have been required to deduct contributions from their employees' salaries. The law has been overhauled with the introduction of the Social Health Insurance Act, No. 16 of 2023 (Social Health Act), which went into effect on November 22, 2023, and is set to replace the NHIF Act in July 2024.

A summary of the key highlights of the Social Health Act are:

- Creation of the Social Insurance Authority, which will take over all the functions of the NHIF
- Establishment of three new funds:
  - the Social Health Insurance Fund (SHIF)
  - the Primary Health Fund (PHF)
  - the Emergency, Chronic, and Critical Illness Fund

Social Health Insurance (General) Regulations, 2024 (the Regulations) applicable to the SHIF have been published but are still undergoing public comment. Under the regulations, individuals whose income is from salaried employment will have a 2.75% monthly deduction from their salary. This rate is, however, subject to approval.

Changes to the Contributions Required to Be Made to the National Social Security Fund (NSSF)

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonal Tejpar, Partner, and Edwina Warambo, Senior Associate – Anjarwalla & Khanna LLP

The NSSF Act, 2013 (the NSSF Act) makes it mandatory for an employer to make a direct contribution of 6% of the employee's monthly pensionable earnings and to deduct and contribute 6% of the employee's pensionable earnings. However, until very recently implementation of these rates has stalled due to several challenges which have been the subject of protracted litigation. The matter was recently heard by the Supreme Court which has directed the Court of Appeal to expedite a ruling. In the meantime, the current monthly contributions of KES 200 by the employer and employee will increase to KES 420 . These are known as Tier 1 contributions which are mandatory. In addition, both employers and employees will have to contribute Tier II contributions. The amount of these contributions will be KES 1740 for each.

It will be possible for employers to opt out of Tier II contributions if they have a private pension scheme for their employees with similar or better benefits.

Affordable Housing Levy Law Now in Effect

New Legislation Enacted

Authors: Sonal Tejpar, Partner, and Edwina Warambo, Senior Associate – Anjarwalla & Khanna LLP

On March 19, 2024, the Affordable Housing Levy Act, 2024 went into effect requiring mandatory contributions by employers and employees at the rate of 1.5% of the employee's monthly gross salary or gross income, each. There are ambiguities in the Act, such as the lack of definition for "gross income" and how to determine monthly income for those without a salary, and legal challenges seeking to halt the Act's implementation have been unsuccessful.

The Housing Levy will be deducted from employees' salaries starting in March 2024. The levy has implications for both employers and employees, including:

- Increased contributions will reduce take-home pay for employees and increase labor costs for employers
- Employers face compliance challenges, such as adjusting payroll systems
- Increased costs may affect hiring, wages, and budgeting decisions
- Reduced take-home pay may affect employee morale and retention

Kingdom of Saudi Arabia

Saudization of Engineering Professions

New Regulation or Official Guidance

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

The Ministry of Human Resources and Social Development (MHRSD), in partnership with the Ministry of Municipal & Rural Affairs and Housing, announced the decision of Saudization of engineering professions in the private sector by 25%, effective July 21, 2024. The requirement will apply to private sector establishments that employ five employees in engineering professions.

Further, the MHRSD is mandating private sector establishments with 50 or more employees to provide cooperative training for students.

Malaysia

Anti-Sexual Harassment Act 2022, Effective as of March 8, 2024

Legal Compliance

Author: Teng Wei Hun, Senior Associate – Skrine

The Anti-Sexual Harassment Act 2022 (the Act) came into force on March 8, 2024. The coming into force of the Act coincides with the setting up of the Anti-Sexual Harassment Tribunal (the Tribunal), the appointment of panel members of the Tribunal, and the publication of the Anti-Sexual Harassment Regulations 2024 (the Regulation"), which provides for the rules of the Tribunal. This means that complainants are now able to lodge complaints of sexual harassment with the Tribunal and have their cases heard.

Employees' Social Security (Amendment) Bill 2024

Proposed Bill or Initiative

Author: Teng Wei Hun, Senior Associate – Skrine

On March 26, 2024, the Malaysian Parliament introduced the Employees' Social Security (Amendment) Bill 2024 (the Bill) for its first reading which, if passed, will modify the Employees' Social Security Act 1969. The bill aims to provide social security for all employees and make it mandatory for employers and employees to contribute to the fund at the prescribed rate.

The amendments proposed include (a) increasing the maximum limit of insurability of an employee's wages from RM5,000 per month to RM6,000 per month; and (b) new contribution rates when an employee's wages exceed RM5,000 and RM6,000.

Employment Insurance System (Amendment) Bill 2024

Proposed Bill or Initiative

Author: Teng Wei Hun, Senior Associate – Skrine

On March 26, 2024, the Malaysian Parliament introduced the Employment Insurance System (Amendment) Bill 2024 (the Bill) for its first reading which, if passed, will modify the Employment Insurance System Act 2017. The bill aims to make it mandatory for employers and employees to contribute to the fund at the prescribed rate and provide certain benefits and a re-employment placement program for insured persons in the event of the loss of employment.

The amendments proposed include (a) increasing the maximum limit of insurability of an employee's wages from RM5,000 to RM6,000 per month; and (b) new contribution rates when an employee's wages exceed RM5,000 and RM6,000.

Mexico

Increase to the UMA Value Announced for 2024

New Order or Decree

Authors: David E. Leal Gonzalez, Shareholder, and Alondra Valdez Padilla, Associate – Littler

The Unit of Measurement (UMA, which stands for *Unidad de Medida y Actualización*) increased by 4.66%, effective February 1, 2024. The UMA serves as the basis to calculate the payments, obligations, or penalties that are owed to the government, whether under federal or state law. The UMA values for 2024 are as follows:

- Daily – MXN $108.57
- Monthly – MXN $3,300.53
- Annual – MXN $39,606.36

Accordingly, it is important for employers to review the individual employment agreements and collective bargaining agreements to ascertain how the UMA will impact the social security benefits agreed upon by the parties. Likewise, employers should review and adjust their payroll practices as appropriate to comply with UMA-related requirements.

Netherlands

New Remuneration Standard for Senior Officials

New Legislation Enacted

Authors: Eva Schneiders, Associate, and Michelle Engberts, Associate – Clint | Littler

As of January 1, 2024, employers are no longer allowed to provide unlimited tax-free reimbursement of additional costs incurred by employees due to a move to the Netherlands. The so-called "Balkenende standard" (in Dutch: *Balkenendenorm*) will start to apply.

The Balkenende standard refers to the remuneration standard for senior officials stipulated in the Senior Executives in the Public and Semi-Public Sector (Standards for Remuneration) Act (in Dutch: *Wet normering topinkomens*).

Proposed Reform of Non-competition Clauses

Proposed Bill or Initiative

Authors: Eva Schneiders, Associate, and Michelle Engberts, Associate – Clint | Littler

The non-competition clause prohibits an employee from performing similar work with another company or as an entrepreneur after the end of their employment contract. With the "Modernize Non-Competition Clause" Bill (in Dutch: *Wetsvoorstel Modernisering Concurrentiebeding*), the government proposes a number of restrictions for the use of non-competition clauses, including the following:

- The non-competition clause can be effective for up to one year after the end of the employment contract
- The employer must justify the duration and geographical scope in writing in the employment contract
- The employer must (also) justify the weighty business interest of a non-competition clause in writing in employment contracts for an indefinite period (this already applies to fixed-term employment contracts)
- If an employer holds a leaving employee to the non-competition clause, the employer must pay compensation to the employee. This compensation amounts to 50% of the last-earned monthly salary, for each month the non-competition clause is invoked

These new rules will also apply to the business relationship clause. The Bill was submitted for consultation on March 4, 2024 (until April 15, 2024).

Bill Extension of the Older Unemployed Persons Income Scheme Act

Proposed Bill or Initiative

Authors: Eva Schneiders, Associate, and Michelle Engberts, Associate – Clint | Littler

A bill to extend the Older Unemployed Persons Income Scheme Act ("IOW") (in Dutch: *Wet inkomensvoorziening oudere werklozen*) was introduced on February 19, 2024, for debate by the House of Representatives and the Senate. If approved, the bill will extend the IOW by four years to January 1, 2028. Job seekers aged over 60 years and four months will be able to apply for IOW benefits once their unemployment benefit or WGA benefit have expired. The IOW benefit prevents older unemployed people from having to fall back on welfare and draw on their savings in the years before they are entitled to an old-age pension benefit (in Dutch: *Algemene Ouderdomswet uitkering*).

If the House of Representatives and the Senate agree to the Bill, it will take effect retroactively from January 1, 2024.

Bill to Increase Minimum Wage

Proposed Bill or Initiative

Authors: Eva Schneiders, Associate, and Michelle Engberts, Associate – Clint | Littler

A bill was introduced by the House of Representatives to increase the legal minimum wage by 1.2% as of July 1, 2024, in addition to the regular half-yearly increase. Exactly how high the minimum wage will become is not yet known and will depend on the six-monthly indexation of the minimum wage rises along with the collective bargaining wages. The higher minimum wage will affect benefits such as welfare, social security, among others.

The bill will need to be debated and approved by the Senate by April 16, 2024, at the latest. The amounts will be announced in the spring of 2024.

Nigeria

New Minimum Wage on the Horizon

New Order or Decree

Authors: Ugonna Ogbuagu, Partner, and Emmanuel Abraye, Senior Associate – AELEX

Recent developments in the first quarter of 2024 indicate an impending change in Nigeria's minimum wage. As per the National Minimum Wage Act 2019, employers with 25 or more full-time workers were mandated to pay a monthly minimum wage of 30,000 Naira for a five-year period, set to expire on April 17, 2024. Given the approaching end date of the current minimum wage and the prevailing economic challenges such as the devaluation of the naira and escalating inflation, an adjustment to the minimum wage has become crucial.

On January 28, 2024, the Federal Government of Nigeria established a 37-member committee tasked with proposing a new minimum wage for both the private and public sectors. It is hoped that the committee will provide its recommendations before the expiration of the current minimum wage and that the new minimum wage will be announced on or before the Workers' Day celebrations on May 1, 2024.

Navigating the Interstices of Triangular Employment Relationships

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ugonna Ogbuagu, Partner, and Emmanuel Abraye, Senior Associate – AELEX

The National Industrial Court of Nigeria (NICN), which has exclusive jurisdiction over labor matters, continues to recognize triangular employment relationships in outsourcing and contract staffing cases (common with multi-national companies operating in Nigeria). In a recent decision involving a staffing arrangement, the NICN held the end-user liable for obligations arising from employment contracts, even though it did not directly sign them. The court based its decision on factors such as the claimants' work as security guards for the end-user and the absence of a clear triangular employment relationship.

This decision underscores the NICN's tendency to classify end-users as co-employers in such scenarios and departed from two previous Court of Appeal judgments. In those cases, the Court of Appeal emphasized the necessity for employment relationships to be established through formal employment contracts and other contractual documents. Consequently, end-users must carefully assess staffing arrangements with labor brokers to determine their potential liability to seconded employees.

The NICN's decision was in *Odah Ezekiel & 3 Ors. v. Total E&P Nigeria Ltd & 5 Ors.*, Suit No. NICN/LA/663/2016, unreported judgment delivered on January 30, 2024.

The Introduction of an Expatriate Employment Levy

New Regulation or Official Guidance

Authors: Ugonna Ogbuagu, Partner, and Emmanuel Abraye, Senior Associate – AELEX

On February 27, 2024, the Federal Government of Nigeria (FGN) launched the Expatriate Employment Levy (EEL), a mandatory contribution imposed on employers hiring foreign workers in Nigeria. The EEL aims to, among other things, promote skill transfer, prioritize local talent development and acquisition and ultimately safeguard Nigeria's long-term economic prosperity. It is an annual payment, with rates of USD $15,000 for directors and USD $10,000 for other employee categories. The levy applies to expatriates on temporary work permits or staying/working in Nigeria for 183 days or more within a year.

Concerns were raised that the EEL could negatively affect foreign direct investment and might breach Nigeria's non-discrimination commitments under the International Labor Organization's Migration for Employment Convention (Revised), 1949 (No. 97). For these and more, on March 8, 2024, the FGN suspended the implementation of the EEL to allow for further dialogue among stakeholders.

Norway

New Clarification on Employers' Right to Dismiss Requests on Exemptions from Night Shift

Precedential Decision by Judiciary or Regulatory Agency

Authors: Maria Skuggevik Slotnes, Associate, and Veslemøy Lode, Associate – Littler Norway

The Norwegian Working Environment Act, cf. Section 10-2, gives employees who regularly work at night the right to ask for an exemption if they need it for health, social, or other important welfare reasons. On February 28, 2024, the Supreme Court ruled in favor of an employer and clarified the standard to dismiss requests for exemptions from night shifts.

In this case, the employee worked offshore and had recently had a heart attack. The dispute was whether the exemption for this employee working offshore constituted a "significant disadvantage for the organization." The Supreme Court clarified that the disadvantages to be considered should include the employer's flexibility to take

assignments for clients and the possibility that other workers would ask for a similar exemption. It was also of importance in the overall assessment that the employer had already offered the employee to work on land. The Supreme Court decided that an exemption from the night shift in this case would be a "significant disadvantage" for the employer.

Peru

Compensable Non-working Days for Public Sector Employees

New Order or Decree

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

The Supreme Decree 011-2024-PCM, published on February 1, 2024, establishes several days as compensable non-working days for the public sector in 2024. These days are July 26, October 7, December 6, December 23-24, and December 30-31.

New Directive to Monitor Employees' Health when Exposed to COVID-19

New Regulation or Official Guidance

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

New Administrative Directive 349-MINSA/DIGIESP-2024 was approved on January 15, 2024. The directive modifies the rules to monitor employees' health when they are exposed to COVID-19 and to prevent and control its transmission in the workplace.

Philippines

Revised Rules Regulating the Service Charge Law

New Regulation or Official Guidance

Authors: Emerico O. de Guzman, Of Counsel – Angara Abello Concepcion Regala and Cruz Law Office

On February 1, 2024, the Department of Labor and Employment revised the rules regulating the Service Charge Law. Among the significant revisions are the addition of a clause on non-diminution of benefits and the removal of the phrase "under the direct employ of the covered establishment" in the definition of covered employees. With the removal of the said phrase from the definition of covered employees, it appears that the intention is to include in the distribution of service charges, personnel from contractors/manpower agencies engaged by the covered establishments, and not just their direct employees.

Poland

New Rules for Platform Workers Closer to Reality

Proposed Bill or Initiative

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

On March 11, 2024, the European Council announced that the Council's presidency and the European Parliament had reached a provisional agreement on the platform work directive. The purpose of the new EU directive on platform labor will be to regulate the ever-growing sector of ordering services through the use of apps.

The draft proposal aims to revolutionize employment models applicable on digital platforms and introduce the presumption of a regular employment relationship for those providing services through such platforms. In addition, it seeks to require employers to explain to the employee the principles of the algorithms used in the application, particularly with regard to monitoring the employee's work. We will continue monitoring for any developments.

Increase to the Minimum Wage

New Regulation or Official Guidance

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

There has been an increase to the minimum hourly and monthly remuneration for work. Effective January 1, 2024, the minimum remuneration is PLN 4,242 gross per month and PLN 27.70 gross per hour.

The new regulation also provides for another increase in the minimum wage, scheduled for July 1, 2024. The remuneration will be increased to PLN 4,300 gross per month and PLN 28.10 gross per hour.

Law on Assistance to Ukrainians Extended

New Legislation Enacted

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

All existing provisions on assistance to Ukrainian citizens in connection with the ongoing war on the territory of Ukraine are extended until June 30, 2024. Specifically, the Law on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine, the Law on Personal Income Tax and the Law on Corporate Income Tax, originally issued on March 12, 2022, is extended systematically every few months.

Such an unstable solution continues to raise concerns among both Ukrainian citizens themselves and the employers who employ them. Unfortunately, at this point it is difficult to say whether the legislature will decide on a more permanent solution on this issue.

Portugal

Revocation of Exemption of Working Hours and Compensation

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Court of Justice issued a decision that is important for employers that implement flextime arrangements. The Supreme Court held that an employer may unilaterally revoke an exemption from working hours and stop paying the special remuneration for the exemption as soon as the situation that led to the work being carried out under the exemption ceases. The employer has a right to take this action regardless of any agreement between the parties.

Employees' Right to Flexed Time is Limited

Precedential Decision by Judiciary or Regulatory Agency

Authors: David Carvalho Martins, Partner and Head of Employment, and António Monteiro Fernandes, Of Counsel – DCM | Littler

The Appeal Court of Guimarães ruled that employees' right to a flexed time regime (due to family responsibilities) is limited by the organization's needs, and that employees cannot impose a fixed schedule on the employer. This ruling encourages negotiation between employers and employees and is a departure from previous court rulings, which had held that workers had an unfettered right to a flexed time arrangement.

International Employment Contracts in Portugal: Mandatory Local Law?

Precedential Decision by Judiciary or Regulatory Agency

Authors: David Carvalho Martins, Partner and Head of Employment, and Tiago Sequeira Mousinho, Associate – DCM | Littler

The Appeal Court of Lisbon issued a ruling with implications for multinational companies. Specifically, the court ruled that Portuguese law applies to employment contracts executed in Portugal, even if the parties choose a different applicable law. This ruling specifically applies to rules on Christmas and vacation allowance, minimum wage, and fair cause for termination, as well as compensation for intermittent employment contracts. The only exception is if a foreign law is more favorable to the employee.

This decision reinforces the importance of reviewing the terms of any contract to be executed in Portugal, especially the choice of law clause.

Puerto Rico

New Law Facilitating Remote Work and Providing Exemption to Airlines with Operation Hubs on the Island

New Legislation Enacted

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

The Puerto Rico Government enacted Act No. 27-2024, known as the "Act to Facilitate the Implementation of Remote Work in Private Enterprise and to Encourage the Establishment of Air Bases in Puerto Rico." Recognizing how COVID-19 paved the way to working from home, Act No. 27-2024 seeks to encourage employees and employers without local presence or businesses to consider Puerto Rico the ideal place to work remotely, either temporarily or permanently.

The new measure recognizes it is the government's public policy to support remote working alternatives as it helps attract more people to Puerto Rico and expands the opportunities for Puerto Ricans to secure jobs in industries that do not necessarily have a presence on the Island.

New 2024 Limits on Qualified Retirement Plans

New Regulation or Official Guidance

Authors: Lourdes C. Hernández-Venegas, Capital Member, and Alberto Tabales Maldonado, Senior Associate – Schuster LLC | Littler

The Puerto Rico Department of the Treasury issued Internal Revenue Circular Letter No. 24-01 (CL IR 24-01) announcing the applicable 2024 limits for Puerto Rico qualified retirement plans. Pursuant to Section 1081.01(h) of the Puerto Rico Internal Revenue Code of 2011, as amended (PR Code), the Secretary of the Treasury is required to publish the applicable limits under Section 401(a) of the Internal Revenue Code of 1986, as amended (US Code), which are incorporated by reference into the PR Code limits (*e.g.*, annual compensation, annual benefit/contribution limits), once the IRS publishes its retirement plan limits under the US Code.

Additional information on applicable 2024 limits on qualified retirement plans can be found on littler.com. Employers in Puerto Rico should be aware of these developments and should contact knowledgeable counsel with any questions.

Russia

Bill to Grant Employees of Pre-retirement Age Preferential Right to Remain at Work

Proposed Bill or Initiative

Authors: Mateusz Krajewski, Associate, and Marcin Snarski, Senior Associate – PCS | Littler

A proposal was introduced to expand the list of employees with a preferential right to remain at work during staff reductions. Specifically, the proposal would amend Article 179 of the Labor Code, to add "employees who have not reached the age giving the right to an old-age pension for five years before such an age." This means that with equal productivity and qualifications, employees of pre-retirement age will have a preferential right to remain at work.

Proposal to Amend Rules for Overtime Payment

Proposed Bill or Initiative

Authors: Mateusz Krajewski, Associate, and Marcin Snarski, Senior Associate – PCS | Littler

The State Duma introduced a bill that would modify the procedure for overtime work. If approved, the law would guarantee employees a salary not lower than the minimum wage, regardless of additional payments for work in abnormal conditions. Such a provision may result in increased labor costs for employers.

Proposal to Impose Fines for Leaks of Personal Data

Proposed Bill or Initiative

Authors: Mateusz Krajewski, Associate, and Marcin Snarski, Senior Associate – PCS | Littler

The State Duma introduced a bill that would impose fines on companies for leaks of personal data. The amount of the fine would depend on the number of people affected and the company's revenue in the previous calendar year.

Bill to Impose Criminal Liability for Unlawful Handling of Personal Data

Proposed Bill or Initiative

Authors: Mateusz Krajewski, Associate, and Marcin Snarski, Senior Associate – PCS | Littler

The State Duma passed a bill in the first reading that introduces criminal liability for unlawful use, transfer, collection, or storage of computer information containing personal data. The bill also criminalizes the creation and maintenance of information resources intended for illegal storage or dissemination of personal data. The bill applies to employment-related processing, as well.

Bill to Compensate for Work on Weekends and Public Holidays when Leaving Company

Proposed Bill or Initiative

Authors: Mateusz Krajewski, Associate, and Marcin Snarski, Senior Associate – PCS | Littler

The Ministry of Labor proposed a bill that allows employees to choose between two options for compensation for work on weekends and public holidays, upon being dismissed from the company. The options are an additional day of rest or increased payment. The employee would have the right to choose one of these options if they were not used during the employment.

South Africa

Increase to BCEA Earnings Threshold

New Regulation or Official Guidance

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

On March 5, 2024, the Minister of Employment and Labor published a determination increasing the earnings threshold in terms of the Basic Conditions of Employment Act 75 of 1997 (BCEA). The earnings threshold increased from ZAR 241 110.59 to ZAR 254 371.67 per year, with effect from April 1, 2024.

"Earnings" means the regular annual remuneration paid to employees before deductions. When employees earn below the threshold amount, certain important provisions of the BCEA and the Labor Relations Act 66 of 1995 are triggered which afford additional rights and protections to those employees.

Increase to National Minimum Wage

New Regulation or Official Guidance

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

With effect from March 1, 2024, the national minimum wage increased to ZAR 27.58 per hour, including for farm workers and domestic workers.

Proposal to Introduce "Digital Nomad" Visa

Proposed Bill or Initiative

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

On February 8, 2024, the Department of Home Affairs published a draft amendment to the 2014 Immigration Act Regulations. One of the notable proposed amendments include the introduction of a "digital nomad" visa in respect of remote workers who are employed by foreign companies.

The visa would allow remote employees who are based in South Africa to work for a foreign company provided that:

- Such foreigner earns ZAR 1,000,000.00 or more per year
- If the visa is issued for a period not exceeding six months within a 12-month period, the foreigner will not be required to register with the South African Revenue Service
- If the visa is issued for a period longer than six months within a 12-month period, the foreigner must register with the South African Revenue Service

The proposed draft was open for public comment until March 29, 2024. We will provide an update on the outcome of this proposal.

Proposal for Sector-Specific Employment Equity Targets

Proposed Bill or Initiative

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

The Employment Equity Act 55 of 1998 (EEA) applies to all employers and employees in South Africa. The EEA contains provisions to eliminate unfair discrimination and to promote affirmative action. Affirmative action measures are designed to ensure equal employment opportunities for black people, women, and people with disabilities.

"Designated employers" are required to implement an employment equity plan and report annually to the Department of Labour. The Employment Equity Amendment Act 4 of 2022 (EEAA) amends the definition of "designated employer" and empowers the Minister of Employment and Labour to set numerical employment equity targets. Failure to comply with the EEA can result in fines.

On February 1, 2024, the Minister of Employment and Labour published proposed sectoral numerical targets for public comment. The period for comment on the proposed targets will run for 90 days from the date of publication of the notice. We will provide an update on the outcome of this proposal.

South Korea

Serious Accident Punishment Act Now Applies to Small Businesses

New Legislation Enacted

Author: Soowon Hong, Of Counsel | Registered Foreign Lawyer – Littler

Starting from January 27, 2024, the Serious Accident Punishment Act (the SAPA) will expand its scope to apply to businesses with fewer than 50 employees. The SAPA will apply to all businesses with five or more employees, regardless of business type or industry.

The SAPA imposes the duty on business owners and the representative of the business (generally the Representative Director of a company) to take safety and health measures, imposing heavy criminal liabilities for serious industrial accidents and serious public accidents arising from failure to perform such duties.

Interpretation of Overtime Limits

New Regulation or Official Guidance

Author: Soowon Hong, Of Counsel | Registered Foreign Lawyer – Littler

On January 22, 2024, the Ministry of Employment and Labor (MOEL) modified their official interpretation on the weekly 12-hour overtime limit rule stipulated in the Labor Standards Act, clarifying that (a) any overtime hours worked in excess of the daily eight hours' limit will no longer be counted towards the 12-hour overtime limit and therefore (b) only the overtime hours exceeding the weekly 40 hours should be included. A breach of this rule will result in employer's criminal liability.

The MOEL change is made in direct response to the recent Supreme Court decision, which made the above rule clear. The modified MOEL interpretation will be implemented immediately to all cases undergoing investigation or supervision of MOEL.

Spain

Obligation to Implement LGTBI Equality and Non-Discrimination Protocol

New Legislation Enacted

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

As of March 2, 2024, employers with more than 50 employees have an obligation to implement a specific plan to prevent discrimination against LGTBI employees and their families. The plan should provide measures to guarantee equality and non-discrimination and should be negotiated with workers' representatives. Further, employers must provide resources to identify, prevent, detect, and act in the event of harassment or violence against LGTBI employees.

These obligations are prescribed under the Act 4/2023, of 28 February, for the real and effective equality of trans persons and for the guarantee of the rights of LGBTI persons (the LGBTI Equality Act), which was enacted last year. Although regulations have not been issued yet, employers nonetheless are subject to these obligations.

Mandatory Registration of Trainees with Social Security Regime

New Order or Decree

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

Under the General Law of Social Security, all trainees must register and pay social security contributions starting in 2024. This rule applies to students who are completing training and academic internships as part of a training program, whether the internship is paid or unpaid. This also covers university students pursuing bachelor's, master's, and doctorate degrees, as well as those pursuing a university degree, permanent training master's degree, specialization diploma, or expert diploma.

Accordingly, these students will be treated as employees under the Social Security regime for contribution purposes. However, this does not mean that the relationship between the student and the company becomes an employment relationship.

A Bonus that Penalizes Absences is Discriminatory

Precedential Decision by Judiciary or Regulatory Agency

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

The National Court declared a bonus established by a collective bargaining agreement (CBA) null and void. The company's CBA required employees to meet production and quality objectives, as well as not be absent for more than eight hours per month, in order to receive the bonus. The National Court found that this requirement discriminated against employees who had to be absent due to illness or family reconciliation leave. The Court specifically noted that the requirement disproportionately impacted women, who are more likely to take family reconciliation leave.

New Pension Plan for the Construction Sector

Precedential Decision by Judiciary or Regulatory Agency

Authors: Victoria Villanueva, Partner, and Raquel Romero, Associate – Abdón Pedrajas | Littler

The VII General Agreement of the Construction Sector is applicable to all companies and self-employed workers with dependents. These entities are required to join the Pension Plan of the Construction Sector (PPCS) as sponsoring entities unless a Provincial Collective Bargaining Agreement allows for the use of social welfare instruments from the corresponding Autonomous Community.

Companies must contribute to the PPCS on behalf of their participants according to the terms established by the PPCS. Monthly contributions must begin on February 1, 2024, and arrears from January 1, 2022, to January 31, 2024, must be paid by April 30, 2024.

Reasonable Accommodation Required Prior to Termination Due to Permanent Disability

Important Action by Regulatory Agency

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

The Court of Justice of the European Union issued a judgment on January 18, 2024, declaring that companies must make reasonable adjustments to allow workers with a declaration of Permanent Incapacity (PI) to continue working. The automatic termination of employment contracts under art.49.1.e ET is now considered contrary to European Law.

Companies must make reasonable adjustments to avoid termination or prove that such adjustments are impossible. If companies do not comply, they may face legal action for null dismissal due to discrimination based on disability.

Sweden

Abolished Reduction of Employer Contributions for 15 to 18 Year Olds

New Legislation Enacted

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

As of January 1, 2024, the reduction of employer's contributions and the general payroll contribution for individuals who are between 15 and 18 years old are abolished. The reduction had existed since 2019 to facilitate young individuals' entry into the labor market. This means that the employer's contribution for young people is now at 31.42%.

Updated Base Amounts for 2024

New Regulation or Official Guidance

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

The Swedish Government has set new base amounts for 2024, as follows:

- the price base amount is SEK 57,300
- the increased price base amount is SEK 58,500
- the income base amount is SEK 76,200

Price base amounts (Sw. *prisbasbelopp*) are the reference for various financial limits and caps. It is used in the tax and social security systems, among others, and is often the basis for calculating benefits and allowances. It is also often used to calculate income, benefits, and contributions.

The increased price base amount is used to calculate pensionable income and pension credits. It is calculated in the same way as the price base amount, but with a higher base figure.

The income base amount (Sw. *inkomstbasbelopp*), which is set annually by the Swedish Pension Authority, is used to calculate the maximum pensionable income and reflect the income trend in Sweden.

Switzerland

Procedural Rules for Internal Investigations

Precedential Decision by Judiciary or Regulatory Agency

Author: Ueli Sommer, Partner – Littler | LEL

The Swiss Federal Supreme Court ruled that rights in criminal proceedings do not extend to internal investigations. However, the court emphasized that a fair process must be followed. The court outlined specific guidelines for internal investigations:

- No full investigation is required
- Employees do not need to be informed of the content of the interview beforehand or have an opportunity to prepare
- The company does not need to specify date, time, or involved persons, but must adequately describe the allegations under investigation in general terms
- Employees cannot refuse to participate or testify
- The company is not required to follow requests for evidence
- Employees do not have the right to have a lawyer present, but can read through minutes and make a written statement if they consider important points to be missing

A company may have internal rules that provide more rights to employees within the context of an internal investigation. Hence, it is important to review such policies given that they can limit a company's rights more than is legally required or cause unnecessary delays.

United Kingdom

New Entitlement to Carer's Leave

New Legislation Enacted

Author: Kate Richards, Associate – GQ | Littler

Starting on April 6, 2024, employees (irrespective of their length of service) will be able to take up to one week of unpaid leave in a rolling 12-month period to care for a dependant with a long-term care need. The leave can be taken in full or half days, up to a total of one week.

A "dependant" is defined broadly and includes spouses, children, parents, household members, and anyone who reasonably relies on the employee to for care. A "long-term care need" includes illnesses or injuries requiring care for more than three months, disabilities and care for a reason connected to old age.

Employers are not allowed to punish employees for taking or requesting carer's leave, and any dismissal on these grounds is automatically unfair.

Review the regulations, which apply to England, Wales and Scotland, at legislation.gov.uk.

New Regulations Extend Redundancy Protections

New Legislation Enacted

Author: Ben Rouse, Associate – GQ | Littler

Currently, employees on statutory maternity, adoption or shared parental leave who are at risk of redundancy have priority rights to be offered a suitable alternative vacancy if one exists. New regulations extend this protection to pregnant employees from the point they inform their employer of the pregnancy until maternity leave starts, or two weeks after the end of the pregnancy if they are not entitled to statutory maternity leave.

The new regulations also extend protection to employees returning from leave for a period of 18 months, depending on the type of leave taken. In maternity leave cases, for the period of 18 months from the date of childbirth. In adoption leave cases, for the period of 18 months after the child is placed with the employee (or enters Great Britain if an overseas adoption). In shared parental leave cases, for the period of 18 months after the child is born or placed with the employee for adoption, provided the employee has taken more than six consecutive weeks of shared parental leave.

Employers should be mindful of these changes when implementing redundancies on or after April 6, 2024.

Review the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 at legislation.gov.uk.

Waiver of Unknown Future Claims in Settlement Agreements

Precedential Decision by Judiciary or Regulatory Agency

Author: Laura Lobb, Partner – GQ | Littler

When seeking to resolve claims between an employee and employer in Great Britain, it is possible for the parties to enter into an effective waiver of claims, provided it meets the statutory requirements of a "settlement agreement". The law is clear on the types of claims that can be settled using such agreements, but there is some uncertainty about whether future claims can be waived. In a welcome decision for employers, the Scottish Court of Session ruled that it is possible to waive unknown future claims, as long as certain requirements are met, including:

- Meeting the statutory requirements for settlement agreements (*e.g.*, the employee obtaining independent legal advice)
- The agreement relates to a "particular complaint" or "particular proceedings" so that the waiver specifically identifies the relevant claims by description or by including a reference to the section in the statute (so that the agreement is not a general waiver of all / any claims)
- The waiver as to unknown future claims is "absolutely plain and unequivocal" (*i.e.*, the language of the agreement is clear that such claims are covered).

The decision is not binding in England and Wales (although it is in Scotland) but is persuasive and clarifies a long-standing uncertainty. On that basis, we anticipate that English and Welsh courts will follow this judgment in future.

Review the decision at bailii.org.

Changes to Paternity Leave

New Legislation Enacted

Author: Kate Davies, Paralegal – GQ | Littler

On March 8, 2024, regulations came into force in England, Wales and Scotland amending the statutory paternity leave scheme. The amendments do not change the duration of the leave or the level of pay but provide more flexibility for fathers and partners. Key changes include:

- Employees now have the option to split their leave into two separate one-week periods (rather having to take this as one single period of continuous leave of either one week or two weeks).
- The leave can now be taken at any time in the first year after birth or placement for adoption (rather than the first eight weeks).
- In birth cases, employees must still give notice of entitlement 15 weeks before the expected week of childbirth, but only need to give 28 days' notice of the intended leave dates. However, in adoption cases, the notifications must be made no more than seven days after the date on which the adopter is notified of their match with the child.
- The rules setting out the declarations to be given by the employee have also been amended.

The changes will apply to children whose expected week of childbirth begins after April 6, 2024, whose expected date of placement is on or after April 6, 2024.

Review the regulations at legislation.gov.uk.

United States

New Data Protection Laws: What Employers Should Know

New Legislation Enacted

Authors: Zoe M. Argento, Shareholder, and Philip L. Gordon, Shareholder – Littler

With the governor's signing of New Jersey's privacy law on January 16, 2024, New Jersey became the 14th U.S. state to pass a comprehensive data protection law. This accelerating legislative trend may have employment counsel and HR professionals worried about how to prepare for the burdensome privacy obligations these laws impose. The good news for employers is that the majority of these laws exempt data collected about employees, job applicants, and other "HR data." Nevertheless, employers do not escape the compliance burdens entirely. The most demanding of these new laws - the California Privacy Rights Act (CPRA) - applies to HR data in full, and some proposed state legislation also would cover this data. In addition, even though the state data protection laws outside of California do not apply to HR data, HR departments will have a role in the compliance process for these laws.

Critically, comprehensive data protection laws are just one category of pending privacy legislation. States continue to propose and pass smaller privacy laws applicable to HR data, such as laws on electronic monitoring and recording, data security, location tracking, biometric data protections, and related topics. Although such laws do not qualify individually as comprehensive data protection laws, together, they add up to a legal framework similar to comprehensive data protection laws. As a result, data protection concerns almost certainly will take up a larger share of time and attention for HR professionals and employment counsel as this legislative trend continues.

Read full article here.

Summary of Changes to USCIS Filing Requirements to Be Implemented in April 2024

New Regulation or Official Guidance

Author: Deepti Orekondy, Associate – Littler

April 1, 2024, will mark the beginning of new changes to U.S. Citizenship and Immigration Services (USCIS) form editions, filing fees, and direct filing addresses for many common immigration applications and petitions.

- Filing Fees: On January 31, 2024, USCIS published a notice of the new filing fees set to be implemented on April 1, 2024. Applications and petitions postmarked on or after April 1, 2024, must include the new fees or USCIS will not accept them. There will be no grace period.
- New Form Editions: As of April 1, 2024, USCIS will implement new form editions for the Form I-129 and Form I-140, among others. There will be no grace period for filing the new versions of Form I-129 and Form I-140 as they must be revised with a new fee calculation.
- Direct Filing Address: On April 1, 2024, USCIS service centers will no longer accept Form I-129 petitions requesting H-1B or H-1B1 classification, and all Form I-129 petitions for H-1B or H-1B1 petitions must be filed with a USCIS lockbox. USCIS will reject H-1B or H-1B1 petitions received at a USCIS service center on or after April 1, 2024. It is imperative to double check the filing address prior to filing as there will be no grace period.

It is imperative for visa petitioners to be mindful of these changes to avoid any unnecessary rejections of their potentially time-sensitive filings.

Ones to Watch: Legislation Landscape for 2024

Proposed Bill or Initiative

Authors: Maureen H. Lavery, Knowledge Management Counsel, and Hannah T. Stilley, Legal Research Attorney – Littler

Three months into the new legislative year, with all but a handful of state legislatures currently in session, several employment law trends for 2024 have emerged. Some of the more significant trends reflect the country's social and political atmosphere and some of the legislative hot topics from 2023 are still trending or increasing this year.

While it is too early to tell which of the thousands of bills at the federal, state and local levels will ultimately be enacted, currently, there are some notable trends, including regulation of child labor, restrictions on non-compete agreements, creation of bereavement leave, bans on mandatory employer-sponsored meetings, and regulation of AI in the workplace, among others.

Read full article here.

Robust Action Helps Recidivist Employer Reduce Penalty for Alleged Bribery in South Africa and Indonesia

Important Action by Regulatory Agency

Author: D. Porpoise Evans, Shareholder – Littler

In the first major action of 2024, the Department of Justice (DOJ) announced it had entered into a three-year deferred prosecution agreement (DPA) with a publicly traded global software company for alleged violations of the Foreign Corrupt Practices Act (FCPA). The January 10, 2024, announcement described the company's agreement to pay more than $220 million in connection with the investigation, consisting of just under $120 million in criminal penalties.

The company in question had prior alleged violations. The current indictment involved two counts: conspiracy to violate the anti-bribery and books and records provisions of the FCPA relating to its scheme to pay bribes to South African officials, and conspiracy to violate the anti-bribery provision of the FCPA for its scheme to pay bribes to Indonesian officials.

Multinationals are strongly advised to review whether their compensation policies are in line with the DOJ guidance, including claw-back provisions in their employment agreements. In doing so, they need to undertake a review of local laws in any jurisdiction where their employees reside, including privacy protections, blocking statutes, wage and hour law, and dismissal protections. Whether a possible violation is revealed by a whistleblower, internal financial controls, or otherwise, with proactive planning, companies can be prepared to take swift investigative and remedial actions, thus laying the groundwork for a favorable resolution in the unfortunate event a violation is discovered.

How a Multinational Based Outside the United States Can Avoid Big Mistakes Managing a U.S. Workforce

Trend

Author: Donald C. Dowling, Shareholder – Littler

Multinationals based outside the United States that enter the U.S. market and employ U.S. staff tend to encounter hurdles, and to make mistakes, because the U.S system of labor/employment regulation is of a fundamentally different character from those of every other country in the world. Multinationals entering the U.S. market can avoid five common mistakes if they focus on certain fundamental differences between U.S. workplace regulation and that of other countries.
The five main problem areas are: the unique "employment-at-will" system; uniquely U.S. "offer letter" employment contracts; a unique regime regulating unions and organized labor; the unique procedural hurdles of U.S. lawsuits and litigation; and the lack, under the U.S. system, of a comprehensive data protection law.

Read full article here.

Venezuela

Deadline to Declare Income Tax Extended until May 15, 2024

Legal Compliance

Author: Daniela Arevalo, Associate – Littler

An administrative ruling by the National Integrated Customs and Tax Administration Service (SENIAT) on February 26, 2024, extends the deadline for natural and legal persons not qualified as special taxpayers to make the final declaration and payment of Income Tax for the fiscal year 2023. The original deadline was March 31, 2024, but the ruling extends it to May 15, 2024.

Administrative Ruling SNAT/2024/000018 was published in Official Gazette 42-826 on February 26, 2024.

Presidential Elections Set in Venezuela

Precedential Decision by Judiciary or Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

The National Electoral Council announced on March 4, 2024, that presidential elections in Venezuela will be held on July 28, 2024. National and international electoral registrations will take place from March 18 to April 16; the presentation of applications will occur from March 21 to March 25. The electoral campaign will be held between July 4 and 25.

Ruling Requiring Company to Adjust Cestaticket Amount

Precedential Decision by Judiciary or Regulatory Agency

Author: Gabriela Arevalo, Associate – Littler

On March 15, 2024, the National Labor Inspectorate issued an administrative decision, requiring a private company to adjust the amount of the Cestaticket paid in Bolivars to the exchange rate published by the Central Bank of Venezuela. According to the Inspectorate, the adjustment is meant to protect the purchasing power of workers.

Although the Cestaticket was originally fixed at VES 1,000 by Presidential Decree N° 4.805 on May 1, 2023, the Inspectorate now requires the employer to pay the equivalent of $40 monthly at the official exchange rate.

This decision could potentially apply to all private organizations.

IVSS Verifying Compliance with Social Security Laws

Legal Compliance

Author: Daniela Arevalo, Associate – Littler

During the first quarter of 2024, the Venezuelan Institute of Social Security (IVSS) conducted inspections to ensure employers were providing documents as required by Providence No. 003. The Providence requires both public and private companies to display and present documents to the IVSS. Employers must display, in a visible location, form 14-01 (employer identification), form 14-02 (insured registration), form 14-03 (worker Withdrawal Participation), form 14-133 (payment agreements), among others.

Non-compliance can result in fines ranging from 25 to 100 Tax Units. Additionally, non-compliance can also lead to the revocation of the employer's labor solvency.

Providence No. 003 was published in the Official Gazette of the Bolivarian Republic of Venezuela No. 39,788, dated October 28, 2011.

Vietnam

Implementation of State Management in Industrial Parks

New Regulation or Official Guidance

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

On December 29, 2023, the Ministry of Labor, War Invalids and Social Affairs (MOLISA) issued Circular 17/2023/TT-BLDTBXH guiding the authorization for implementation of State management in respect of labor in industrial parks and economic parks (Circular 17). Circular 17 provides that management boards of industrial parks are authorized by provincial People's Committees to carry out certain responsibilities for State management of employment within industrial parks.

In practical terms, this means that if a company located within an industrial park decides to dismiss an employee, the company will now be required to send a notice of dismissal to the management board of the industrial park, instead of to the relevant provincial People's Committee.

Circular 17 takes effect as of March 1, 2024.

Amendment to List of Laborious, Toxic and Dangerous Occupations

New Regulation or Official Guidance

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

On December 29, 2023, MOLISA issued Circular 19/2023/TT-BLDTBXH (Circular 19) supplementing a number of occupations to the list of laborious, toxic and dangerous occupations and the list of highly laborious, toxic and dangerous occupations. Accordingly, there are additional occupations in three fields supplemented to the list, including the various occupations in the fields of construction, carriage, war-invalids and social affairs (such as clearance of bombs, mines, explosives; consulting at the national children protection hotline 111, etc.).

The details covering these occupations and their characteristics of working conditions are incorporated in the table in the annexes attached to Circular 19.

Circular 19 takes effect as of February 15, 2024.

Indexation Rate of Employees' Income and Monthly Salary after Social Insurance Contributions

New Regulation or Official Guidance

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On December 29, 2023, MOLISA issued Circular 20/2023/TT-BLDTBXH (Circular 20) prescribing the indexation rate of the monthly salary and income of employees after payment of social insurance contributions. Circular 20 provides a detailed prescribed form incorporating the corresponding applicable indexation rate.

Circular 20 takes effect as of January 1, 2024, and replaces MOLISA's Circular 01/2023/TT-BLDTBXH dated January 3, 2023.

Amended Circular on the Law on Vietnamese Guest Workers

New Regulation or Official Guidance

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

MOLISA issued Circular No. 02/2024/TT-BLDTBXH on February 23, 2023. Circular 02 amends articles of Circular No. 21/2021/TT-BLDTBXH, which provides details on the implementation of the law on Vietnamese guest workers.

Circular 02 details the documents to be included in the application to supply Vietnamese employees for jobs overseas; evidence that the legal requirements for sending Vietnamese guest workers overseas have been met; and amendments to the mandatory contents of the labor supply contracts. The appendices issued in conjunction with Circular 02 replace the templates provided in Circular 21.

Circular 02 takes effect on May 15, 2024.

Salary for Employees and Company Managers Working in 100% State-owned Single Member LLC

New Order or Decree

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

On February 23, 2024, the Government issued Decree No. 21/2024/ND-CP, which amends and supplements various decrees that regulate salaries, remuneration, and bonuses for employees and managers of single-member limited liability companies owned by the State. According to Decree 21, companies are responsible for establishing their own salary scale, payroll, and allowances, which will be used to calculate and pay salaries and other allowances to employees. The Members Councils or the Chairman of the company will determine the pay bands for managers.

The company is allowed to decide salary levels in its salary scale, payroll and allowances provided the salary fund does not exceed the payroll budget. Companies must consult with trade unions and organize dialogue when establishing or amending salary scales, payroll, and allowances. Companies must also report to the owner's representative agencies (*i.e.*, the State Capital Management Committee, Ministries, Ministry-level agencies, and government agencies as the case may be) for comments or approval and be publicized at the company before implementation.

Decree 21 takes effect on April 10, 2024.

Zambia

Minimum Wage Raised as of January 1, 2024

New Order or Decree

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

With effect from January 1, 2024, the minimum wages payable to protected employees falling under the category of general workers (such as drivers, cleaners, receptionists, guards, sales assistants, qualified clerks, and pump attendants), shop workers (such as assistant clerks, assistant dispatch clerks, dispatch clerks, check-out operators, machine operators, typists, and salespersons) and domestic workers have been increased.

With respect to general workers and shop workers, the Orders clarify that employees whose conditions are better than the minimum gross pay provided in the Orders are expressly precluded from relying on the Orders. Accordingly, employers with employees falling under the category of protected workers must review and adjust their payroll practices to comply with the new minimum wage increases.

Constitutional Requirement to Keep Employees on Payroll for Unpaid Gratuities

Precedential Decision by Judiciary or Regulatory Agency

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

On February 7, 2024, the Court of Appeal clarified that in order for an employee to be entitled to be retained on the payroll for unpaid gratuity or other pension benefit, the cessation of employment must be triggered by retirement or akin circumstances and not by resignation of an employee. The Court further clarified that the unpaid gratuity that entitles an employee to be retained on the payroll is gratuity that is provided for under some pension or other law, and that contractual gratuity (even where such contractual gratuity is provided to comply with the Employment Code Act 2019) will not qualify.

Clarification on Payment of Pension Benefits Payable under Pension Fund/Scheme

Precedential Decision by Judiciary or Regulatory Agency

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

On February 9, 2024, the Constitutional Court held that an employer is only required to keep an employee on the payroll until the employee has been paid the pension benefits accrued to the employee under the employment contract. An employer is not required to maintain an employee on the payroll where the pension benefits to be paid are payable by a separate pension scheme or fund that is outside the control and mandate of the employer. Where the pension benefits are to be paid by a pension fund or scheme that is separate from the employer, the pension benefits are to be paid in accordance with the rules of such pension fund/scheme.