Expanding your horizons
Our quarterly Global Employment and Labor Law Update
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This update is intended to give you a general overview of legal developments in certain areas. It is provided for information purposes only and is not intended to be comprehensive or to constitute advice on which you may rely.
Welcome to the fourth edition of our quarterly Global employment and labor law update for 2019. Working with lawyers from our global team, we have identified key trends in employment law to provide you with a country-by-country overview of significant developments across the globe.

Analysing these global insights allows us to identify themes and topics which transcend sectors and jurisdictions. This quarter we have recognised several important themes for global employers, including changing attitudes and approaches towards “time off from work”, new challenges and developments regarding employment status and protection, further support for an improved work-life balance and the need for ever greater clarity of information in the workplace. We have summarised these themes for you on the following page.

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1. Changing approaches to time off from work
Across multiple jurisdictions, employment law is exerting a strong influence on practices, policies and procedures regarding employee time away from work. This is demonstrated by changes in how employees can access “time off”, as evidenced by enhanced compensation introduced in China, as well as changes to social security which can influence how and when time off is taken. In Switzerland, restrictive Sunday-opening laws are now applied to public holidays, whilst a major trade union in the Netherlands has introduced, through collective agreement, a right for care workers to “disconnect” outside of working hours - something which it intends to extend to other sectors and workers. An innovative example can be found in Slovakia, where employers are required to support employees by offering “vacation vouchers” to help fund domestic holiday costs.

2. Further challenges regarding employment status and employee protection
In a continuing trend from our last edition, legislators across different jurisdictions continue to grapple with new forms of working arrangements which do not conform to more traditional models. These issues remain at the forefront of evolving law, with many countries introducing steps to bring casual, temporary or self-employed workers within the scope of employment protection. For example, delivery riders operating via online platforms in Italy are now largely brought within the classification of “subordinate workers”. Previously deemed independent, these workers are now afforded minimum rights and protections including holiday entitlement and sick leave. Less extensive but similar changes are also in evidence in Romania and the Netherlands for “day” or “on-call” workers. In Ireland, many of these issues are being addressed by particular sectors, with revised employment orders specifying minimum pay, working hours and sick pay schemes being introduced in the electrical engineering and construction sectors. In the USA, California is taking a very robust approach to employment status and presuming employment status in many cases, unless the hiring organisation can establish the workers are independent contractors.

3. Greater transparency for working conditions
Governments across the globe are responding to pressure from all quarters to increase transparency and improve workers’ access to clear information concerning their working conditions. This presents challenges for employers and is leading to more transparency in the form of reporting obligations across many different countries. In the UK, the trend has manifested in the specific mandating of basic contractual information, as well as in plans to introduce minimum statements of terms and conditions for all new workers, not just employees, from 2020. Similarly, new and extensive gender pay reporting regulations are due to be finalised and introduced in Ireland by 2020. Elsewhere, broader issues have emerged in the context of employers needing to be open about what they treat as confidential information (Switzerland) or about disciplinary allegations (South Africa). Pressure upon employers in this area will only grow. This is especially true in Europe in the wake of the EU Transparent and Predictable Working Conditions Directive which will require member states to introduce obligatory written statements of terms to a wide group of workers from 2022.

4. Increasing support for work-life balance and family leave
Several countries are extending, or proposing to extend, periods of time off for working parents. Some are being particularly notable, such as Ireland aiming to apply up to 7 weeks paid leave, with many others also looking to enhance current entitlement. Work-life balance, which has proved the watchword of good employment for many years, is set to become even more relevant as the new EU Work-life Balance Directive is implemented and introduced in conjunction with periods of leave. However, as elsewhere, much of this is yet to come. The Directive recognises work-life balance is not just about family life but working time more broadly – a notion illustrated in Finland where a facility to introduce flexitime is to be extended to a wider group of workers. As mentioned earlier in this introduction, a flexible approach to time off from work is important for employees well-being and, together with fresh approaches to working hours more generally, demonstrates an important step in accommodating the needs of working parents globally.

We hope you find the content in this document valuable and that the practical information is useful in managing your global employment challenges. Please do not hesitate to contact us if you wish to find out more.
Africa

South Africa
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<td>Clarification of automatic unfair dismissal rights for individual employees</td>
<td>Section 187(c) of the Labour Relations Act 1995 (&quot;the LRA&quot;) provides a right of automatically unfair dismissal if the reason for dismissal is a &quot;refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer&quot; e.g. if the employer were to seek to impose a unilateral change to the individual’s terms and conditions of employment. The Labour Court has recently determined that s.187(c) is not applicable in a dismissal dispute concerning an individual employee seeking to challenge an employer’s legitimate exercise of collective bargaining under the LRA. This provision and the collective bargaining process relates to, by definition, contemplates combined action and participation by more than one employee.</td>
<td>Immediately</td>
<td>Employers should be aware that individual employees may not rely on s187(c) of the LRA to claim that their dismissal was automatically unfair.</td>
<td>None.</td>
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<td>The Employer obligation to notify employees of disciplinary allegations against them</td>
<td>The Labour Appeal Court (&quot;LAC&quot;) recently emphasised that one of the key elements of fairness in a disciplinary context at work is that an employee must be made aware of the charges against them prior to a disciplinary hearing. This is normally done by presenting the individual with a &quot;charge sheet&quot;. However, courts and arbitrators should not adopt an overly formal or technical approach to what is on a charge sheet, since employer personnel involved in disciplinary proceedings are not usually skilled legal practitioners and will sometimes identify and communicate the alleged misconduct narrowly or classify it incorrectly. In this case, the LAC held that there is no requirement for the employer to include previous disciplinary charges against an employee on the charge sheet subject to the general principle that the employee should not be prejudiced.</td>
<td>Immediate</td>
<td>Whilst the LAC has acknowledged that employers tasked with drafting charge sheets might not be skilled legal practitioners, charge sheets must still be drafted with as much accuracy as possible to reduce any possibility of a claim of substantive unfairness.</td>
<td>Poorly drafted charge sheets for internal disciplinary hearings risk prejudice to the employee and could lead to claims for substantive unfairness which could attract an award of reinstatement, reemployment or 12 months compensation.</td>
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<td>Application of s 200B (liability for employer’s obligations) of the Labour Relations Act (&quot;LRA&quot;)</td>
<td>Section 200B of the LRA defines “employer” for the purposes of the employer obligations it imposes. The LAC recently held that this definition can apply more widely than the traditional understanding of employer and can extend liability under the LRA to others who conduct an associated or related activity or business by or through an employer. However, such liability will only apply to this wider group if they are in an associated or related business with the employer which is intended to defeat, or has the effect of defeating, the purposes of the LRA (or any other employment law), either directly or indirectly as it applies to employers.</td>
<td>Immediate</td>
<td>Organisations with complex contractual and other arrangements with employers which are intended to or could be perceived as being intended to avoid employer obligations under labour legislation are likely to be found subject to those employer obligations in practice.</td>
<td>Employers need to be vigilant over where LRA obligations could apply. For example, whilst s.200B of the LRA contemplates that a single person may be the employer, it does not provide criteria for determining clearly in what circumstances that may arise, other than a simulated arrangement or sham.</td>
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## Subject Matter/Name Of Development

**China Implements the Sino-Japan Social Security Treaty**

The Treaty mainly applies to authorized “secondees” i.e. China or Japan-based employees who are seconded to work in the other’s country and have undergone the necessary formalities with the competent local government authorities in both China and Japan. Chinese secondees to Japan will be exempt from contributing to the Japanese national annuity and welfare pensions, whereas Japanese secondees to China will be exempt from contributing towards the Chinese pension insurance for up to 5 years (or a longer period duly approved by the competent authorities of the two countries).

While the Treaty is restricted to pensions only, it will still eliminate considerable costs for both employers and secondees, especially in China where the pension insurance accounts for a significant proportion of statutory social insurance.

### Impact Date

1 September 2019

Given that the documentary and procedural requirements for implementing the exemption under the Treaty may vary by localities in China, employers should consider consulting with the local social insurance centre on the specific requirements for its employees/staff who are Chinese and/or Japanese secondees.

### Employer Implications/Action Needed

A Japanese secondee who cannot provide the certificate issued by the competent authority in Japan certifying that he/she had been subject to the relevant Japanese social insurance, will need to make contributions towards the Chinese pension insurance in China.

### Employer Risk

- N/A.

## Summary

**Guiding Opinion on Annual Leave Disputes Released in Jiangsu Province**

A recent decision has provided further guidance on the resolution of disputes between the employer and the employee regarding compensation for unused annual leave. The recent guidance has overruled the original local practice in Jiangsu which had prevailed for almost 10 years and determined that such disputes could not be pursued through the courts and could only be resolved by the relevant labor administration authorities.

Where the employer fails to arrange for the employee to take annual leave, the employee’s claim for compensation for unused annual leave (at the rate of 300% of the employee’s daily salary) shall be upheld. Whereas if the employer has arranged for the employee to take annual leave and is able to prove that the employee failed to take annual leave for personal reasons, the employee will not be eligible for compensation over and above normal salary for days worked. A claim for compensation for unused annual leave (not for normal salary for the days he/she worked) must be brought within one year, starting from (i) January 1st of the second year of accrual of the annual leave, or (ii) if the employment contract is terminated, the next calendar day immediately after the termination.

### Impact Date

9 August 2019

Employers based within the Jiangsu Province should be aware of and strictly follow this Guiding Opinion. All references to annual leave in the Guiding Opinion refer to the statutory minimum annual leave under PRC law. Employers’ internal policy should also specify applicable compensation for any unused additional annual leave on top of the statutory minimum annual leave to avoid dispute.

### Employer Implications/Action Needed

- N/A.
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<td>Notice periods do not apply in the period between signing a contract and commencing work</td>
<td>In a recent case, the Court of First Instance found that the contractual notice period does not apply in the period before the employee starts work. As a result, when an employee backed out of the employment agreement before the commencement date, they were not liable to make a payment in lieu of notice to the employer.</td>
<td>12 September 2019</td>
<td>Employers should review their employment contracts and ensure that all documents are aligned and cross-referenced accurately. Employers should also consider including a liquidated damages clause for the employee’s failure to show up for work on the commencement date to mitigate such risk. Liquidated damages must be a genuine pre-estimate of the employer’s loss.</td>
<td>Employers may incur extra costs in the recruitment of an alternative candidate if it does not insert appropriate clauses in the employment agreement to prevent the employee from backing out of the employment agreement before his commencement date.</td>
<td><a href="https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/Hong-Kong/Preventing-an-employee-from-backing-out">https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/Hong-Kong/Preventing-an-employee-from-backing-out</a></td>
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<td>Introduction of paternity leave (“Papa-Monat”)</td>
<td>Employers must now grant fathers one month’s paternity leave to be taken in the period between the birth of the child and the end of the mother’s protection period (which is from eight weeks before the expected date of birth to eight weeks after the birth). At least three months before the expected date of birth, an eligible employee must notify his employer of the expected date for commencing the leave, together with the baby’s due date. The employee must inform their employer immediately of the birth of his child, or at the latest within one week.</td>
<td>1 September 2019</td>
<td>Ensure parental leave policies reflect a father’s right to take one month of paternity leave. The employer is not obliged to pay the father’s salary during this period of leave.</td>
<td>Employees now have special protection against detriment and dismissal during the paternity leave and until four weeks after the end of the leave. In summary, this means that even an ordinary dismissal must be based on just cause, the labour court must usually approve the dismissal before it is implemented and summary or immediate dismissal will only be sanctioned in very limited circumstances. This protection commences with the advance notice (or a later agreement) and at the earliest four months before the expected date of birth. In the absence of advance notice due to a premature birth, it begins with notification of the date of commencement of the paternity leave.</td>
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<td>Amendments to the Maternity Act – maternity leave and length of service entitlements</td>
<td>Due to recent changes in the Maternity Leave Act, the whole period of maternity leave (24 months) must now be included when calculating any employment entitlements dependent on length of service (e.g. notice periods, sick pay and holiday entitlements). A full credit of 24 months applies to each period of leave taken.</td>
<td>1 August 2019</td>
<td>Ensure correct maternity leave credit is applied. For example, an employee is entitled to 25 days’ holiday entitlement per year (five weeks) increasing to 30 days after 25 years’ service. If two years of maternity leave are credited, the sixth holiday week, for which an employee must have worked in a company for 25 years, will be easier to reach.</td>
<td>Employers must ensure that the correct maternity leave times are being credited to the employee. Failure to do so may result in high penalties.</td>
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<td><strong>Introduction of electronic sick notes</strong></td>
<td>Doctors will no longer provide sick notes in a paper form; for employees to submit to their employer in support of sickness absence. Instead doctors will load details of the employee’s medical conditions onto a new electronic system that employers will have direct access to.</td>
<td>January 2020</td>
<td>Employers should ensure that they communicate this change internally and have relevant online access to receive electronic sick notes.</td>
<td>No direct client risk.</td>
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| **Changes to the conditions of residency for foreign nationals in the Czech Republic** | There have been several changes to the rules relating to foreign nationals residing in the Czech Republic, these include the following:  
- a new work visa has been introduced that will be valid for a period of one year for those who will be returning to their home country  
- the Government will now have the power to set quotas for the number of employee cards issued to foreign employees  
- every foreign national will be required to attend an adaptation-integration course from 1 January 2021. However, this obligation does not apply to citizens of EU Member States or to employees transferred within the same enterprise  
- only foreign employers posting employees into the Czech Republic are now obliged to inform the relevant Labour Authority  
- new strict rules have been introduced to deal with employee cards and a change of employer | July 2019 | Employers must comply with the requirements for posting employees to the Czech Republic. Employers must also ensure that any contracts have been translated into the Czech language as evidence of the employment relationship. | A fine may be imposed. |
| **Increased quotas for workers from Ukraine** | Since September 2019, the quota for qualified workers entering the Czech Republic from the Ukraine has been increasing, from 20,000 workers per year to an eventual quota of 40,000 workers per year by 2020. | Implementation from Sep – Nov 2019, fully applicable in 2020 | Employers may have the opportunity to apply for more workers from the Ukraine in some areas. | Employers wishing to hire qualified Ukrainian workers must pay at least 1.2 times the minimum wage to these workers. |
## The EU

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<td>Whistleblowing directive</td>
<td>A new directive provides EU-wide standards to protect workplace whistleblowers who reveal breaches of EU law in a wide range of areas. Whistleblowers are defined widely, including the self-employed, shareholders and those working for contractors and suppliers. Certain organisations, including private companies with 50 or more employees, will need to provide an internal confidential reporting channel and respond to reports within a defined time frame. The directive encourages internal reporting by whistleblowers while also permitting external reporting to competent authorities where, for example, the person considers there is a risk of retaliation. Reporting publicly is more limited. Qualifying whistleblowers, together with some third parties such as colleagues, are protected against work-related retaliation and dismissal. Whistleblowers are also immune from liability in certain circumstances.</td>
<td>Member states have until 2021 (exact date to be confirmed) to transpose the directive into national law (4-year phased implementation for private sector employers with 50-249 workers to establish internal channels).</td>
<td>Currently, less than half of EU countries (such as France, Hungary, Ireland, Italy, Netherlands, Sweden and UK) provide comprehensive legal protection for whistleblowers. In other EU countries, protection is limited or applies to specific sectors or categories of employee. In addition, some EU legislation already regulates whistleblowing, such as in the financial services sector, and those rules will continue to apply. As a result, employers should anticipate significant change in some member states and should review their whistleblowing policies and procedures.</td>
<td>Once the directive is implemented, it will be more important than ever for employers to have confidential, responsive and trusted internal whistleblowing procedures which are managed by a named individual or department. If not, employers risk penalties and reputational damage, for example, where whistleblowers bypass internal channels to report their concerns externally. It will be for each individual member state to decide how the directive should be enforced and what the legal sanctions should be for non-compliance.</td>
<td><a href="https://data.consilium.europa.eu/doc/document/PE-78-2019-INIT/en/pdf">https://data.consilium.europa.eu/doc/document/PE-78-2019-INIT/en/pdf</a></td>
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The directive updates and extends existing EU legislation on written statements for employees. It requires employers to expand the categories of workers who must be provided with a written statement, provide it earlier on in the employment relationship (key content must be provided within 7 days of commencing work) and increase the information contained in the statement. It also establishes new minimum rights for workers in an employment relationship (including zero hour contracts and contracts to work more than 3 hours on average per week), including: a right to reasonable advance notice of work for those working unpredictable patterns as well as compensation for any work cancelled with late notice; a right to request ‘more predictable and secure working conditions’; a 6 month limit on probationary periods (unless otherwise justified); limits on employers unjustifiably restricting employees from working for another employer; a right for compulsory training to be provided free of cost and to count as working time; and, protection from dismissal and retaliation for exercising these new rights.

Member states have until 1 August 2022 to transpose the directive into national law.

Employers should review any gaps between their existing work life balance policies and the new rights offered by the directive and consider how they will address any differences. Given the need to overlay the directive on top of existing provision in some member states, it will also be necessary for employers to understand how the directive will be implemented locally before finalising their response.

Many EU states already offer family leave rights and the directive sets a new floor of minimum rights which can be enhanced and also allows for some flexibility on implementation (including certain details over the scope and conditions of the new leave rights). It will be for each individual member state to decide how it should be enforced and what the legal sanctions should be for non-compliance. The new rights are expected to increase employer administration, costs and reduce flexibility. Whatever the legal consequences, there will also be reputational risks for defaulters.

A new directive has been agreed which covers paternity, parental and carers’ leave as well as flexible working including: 10 working days’ paternity leave (paid at least at the level of state sick pay), 4 months’ parental leave (2 months are non-transferable and paid at a rate set by member states), 5 days’ unpaid carers’ leave per year and a right to request flexible working.

Member states have until 2 August 2022 to transpose the directive into national law.
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<td>New Working Hours Act</td>
<td>The Finnish Working Hours Act has been reformed to meet the needs of modern working life. The scope of the Act will be expanded to more workers from next year and now lists those positions which fall outside its scope. The reforms will also add flexibility in working hours arrangements, facilitating the extension of regular daily working hours and average regular working hours through collective agreement and introducing greater “flexitime” options.</td>
<td>1st January 2020</td>
<td>Employers should take into account the wider scope of the Working Hours Act to ensure compliance with its provisions but should also assess whether they want to adopt some of the new flexible alternatives in order to remain competitive with other employers and improve staff retention.</td>
<td>The changes pose a risk of possible claims if the employer does not apply the Act to workers who are newly within scope e.g. if the employer failed to pay overtime compensation.</td>
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<td>British citizens posted to France after Brexit and social security</td>
<td>Contingency arrangements for URSSAF (National Social Security Body in charge of the payment of the social contributions) were there to be a no-deal Brexit, the double-contribution system will be applied for British citizens posted to France post-Brexit.</td>
<td>The date of a no-deal Brexit, were that to arise</td>
<td>Employers who have employees subject to the UK social security system and who have posted employees to France, will have to also pay social contributions in France.</td>
<td><a href="https://www.urssaf.fr/portail/home/actualites/autres-actualites/brexit.html">https://www.urssaf.fr/portail/home/actualites/autres-actualites/brexit.html</a></td>
</tr>
<tr>
<td>Unemployment insurance contributions and short-term employment contracts</td>
<td>A recent Decree has amended the employer unemployment contribution rate, calculated based on a comparison between the employer’s separation rate and the median separation rate calculated in the company’s business segment. As a rule, the standard employer unemployment contribution rate remains at 4.05%.</td>
<td>Effective as of 1st January 2021</td>
<td>Increase to the amount of unemployment insurance contributions.</td>
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<td>New regulation of profit sharing, saving plans and pensions</td>
<td>On 22 May 2019, the law called “Pacte” (“loi Pacte”) was enacted. It changes many technical provisions of the current regulations concerning the operation of profit sharing and saving plans. It also reorganises current pensions scheme provision, creating a new (replacement) defined contribution scheme vehicle (“Plan d’épargne retraite”) and new defined benefit schemes regulation. Further regulations are to follow in the next few months (the Government has published some drafts of these bills). They will provide for the enforcement of these reforms.</td>
<td>First quarter 2020</td>
<td>Employers must update their profit sharing and saving plans and follow the new pensions scheme regulations as they will have a strong impact on defined benefit schemes.</td>
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### Exception to the limits in using certain fixed-term employment contracts

A fixed-term contract without an objective justification (i.e. a material reason) is not permitted if an employment relationship previously existed with the same employer according to German law. In that case, the contract will be deemed an indefinite contract.

In April of this year, the Federal Labour Court determined that this rule applies even where any employment relationship has existed with the same employer within the last 8 years. The Federal Labour Court has recently confirmed that decision but has further ruled that an exception to the rule may be permitted where there is a time gap of 22 years or more between the employment relationships. In such cases a prior employment may be disregarded for the purpose of the rule and it may therefore be possible to validly offer a new fixed-term employment contract to the former employee without an objective justification.

#### Employer Implications/Action Needed

Employers should review their current fixed-term contracts and how they engage new fixed-term contracts where there is no objective justification. Where there has been a previous employment relationship within the past 8 years, such contracts are invalid and they will not end at the agreed date but will continue indefinitely. Where there has been a time gap of 22 years or more between employment relationships, the prior employment can be disregarded. In cases where there was an employment relationship at any point during the last 8 to 22 years, the fixed term may be valid, depending on the individual circumstances and pending any further case law providing any additional guidance on the issue. In the future, the issue of time limits should continue to be closely monitored. The coalition agreement promises some changes on this subject, which may provide some further clarification. At present, however, there is no draft law available.

#### Employer Risk

Non-compliant fixed-term contracts will become indefinite employment contracts and will therefore incur risk of challenge and increased employer costs.
### Subject matter/name of development

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<td><strong>Disability/reasonable accommodation - Supreme Court decision</strong></td>
<td>The Irish Supreme Court has held that reasonable accommodation of persons with disabilities must involve consideration of all appropriate measures, to include the redistribution of any task or duty, where relevant, subject to the principles of reasonableness and proportionality.</td>
<td>31 July 2019</td>
<td>Failure to give meaningful consideration to the provision of reasonable accommodation could result in a claim to the Workplace Relations Commission (WRC) for failure to provide reasonable accommodation. The potential liability for such a claim is up to two years’ remuneration (salary + benefits).</td>
<td><a href="http://www.irishstatutebook.ie/eli/2019/si/333/made/en/print">Link</a></td>
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| Employment Permits (Amendment) Regulations 2019 | Employment permit applicants must now hold a passport valid for 6 months from the date of filing an employment permit application (previously 12 months). From 1 January 2020, the salary threshold for eligibility for a Critical Skills Employment Permit will increase from €30,000 to €32,000 where an occupation is on the highly skilled occupations list (which has been updated) and from €60,000 to €64,000 where the individual has relevant experience and a degree qualification is not essential. | 1 January 2020 | Employers should take note of the changes to the monetary thresholds as this may impact future permit applications. | [Link](http://www.irishstatutebook.ie/eli/2019/si/333/made/en/print) |

| New Sectoral Employment Order in the electrical contracting sector | A new Sectoral Employment Order has been introduced for the electrical contracting industry. It outlines: minimum rates of pay for relevant employees; normal working hours of 39 hours per week; overtime payable in respect of unsocial hours; and provisions with regard to pension, sick pay and dispute resolution. | 1 September 2019 | Employers in the construction industry will need to ensure that relevant employees receive the Order’s minimum requirements. Standard terms and conditions of employment should be updated to reflect its terms. | [Link](http://www.irishstatutebook.ie/eli/2019/si/234/made/en/pdf) |

| New construction industry Sectoral Employment Order | A new Sectoral Employment Order has been introduced for the construction industry. It introduces a 2.7% pay increase (from 1 October 2019 and from 1 October 2020) and provides for: an overtime payment for unsocial hours; terms for pension, sick pay schemes and dispute resolution procedures; and 39 hours per week as normal working hours. The previous Order will be revoked and the new Order will apply with effect from 1 October 2019. | 1 September 2019 | Employers working in the electrical contracting industry will need to ensure that employees receive the Order’s minimum requirements. Standard terms and conditions of employment should be updated to reflect its terms. | [Link](http://www.irishstatutebook.ie/eli/2019/si/234/made/en/pdf) |
### Stricter rules on staff tipping proposed

**Summary**
A Bill, which aims to ensure that workers in the service industry are legally entitled to retain any tips, gratuities or service charges received from customers, has cleared the early stages of the legislative process.

**Employer Implications/Action Needed**
Employers in the service industry may need to adapt their policies and procedures on tipping, should the Bill be passed.

**Employer Risk**
If enacted, employers could be required to pay compensation to employees in the event of breach of the requirements. In addition, they may be fined up to €2,500 and/or risk imprisonment of a term not exceeding six months.

**Web Link**

### Parental leave changes finalised

**Summary**
Legislation has extended parental leave entitlements from 18 weeks to 22 weeks, with effect from 1 September 2019, and to 26 weeks, with effect from 1 September 2020. It also increases the age of the child up to which parental leave can be taken from 8 years to 12 years.

**Employer Implications/Action Needed**
Employers will need to manage parental leave requests to ensure its business needs are met. Parental leave policies may need to be revised to reflect the new entitlements.

**Employer Risk**
Employers must ensure that parental leave requests are managed correctly to mitigate the risk of a complaint under parental leave legislation and any employment equality complaints.

**Web Link**

### New gender pay gap reporting duty expected to apply from 2020

**Summary**
The Gender Pay Gap Information Bill 2019 is making its way through the legislative stages. The most salient elements of the Bill include: regulations requiring publication of gender pay gaps in firms, initially applying to companies with 250+ employees (subject to change); and data published must include differences in hourly pay, bonus pay and part-time pay. The Government has indicated that the legislation will come into effect later in 2019 and will apply to employers from 2020.

**Employer Implications/Action Needed**
Employers should use this time to prepare by assessing if there are disparities in the salaries of male and female employees. If disparities do exist, employers should assess why and consider ways in which to address this before the legislation comes into effect.

**Employer Risk**
There are no financial penalties for non-compliance but the Workplace Relations Commission and Circuit Court can order employers to comply. Designated Officers can also investigate whether the information published is correct. The most significant risk for many companies may be the reputational damage if they have a wide and unexplained pay gap.

**Web Link**

### Paid parental leave

**Summary**
As of November 2019, subject to social insurance contributions, each parent may receive up to 2 weeks of paid parental leave within the first 12 months of the birth of the child. The Government has indicated its intention to incrementally increase the period of paid parental leave to up to 7 weeks over the next 3 years.

**Employer Implications/Action Needed**
An increased number of employees may take parental leave and employers should consult with employees to put arrangements in place to cover business needs, as necessary. The new state benefit does not preclude employers from enhancing the statutory pay or voluntarily paying employees during other family leave.

**Employer Risk**
Employers must ensure that employees are treated equally with regard to the provision of parental leave, and in particular with regard to any payment in respect of such leave, to mitigate the risk of an employment equality complaint to the Workplace Relations Commission.

**Web Link**
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<tr>
<td>When company directors may also be employees</td>
<td>The Italian National Social Security Institution &quot;INPS&quot; recently clarified that the role of company director is not necessarily incompatible with an employment relationship. An employment relationship may arise where: (i) the tasks connected to the employment contract are distinct and different from the ones connected to the directorship; and (ii) the employee is subject to the authority of the Board of Directors or another duly appointed power in the performance of his/her duties.</td>
<td>17 September 2019</td>
<td>Where the requirements of distinct role and control (above) are not present, the existence of an employment relationship is likely to conflict with the status of director. It is important that employers assess this question appropriately as it will have tax consequences and they could be subject to an inspection by the Italian public authorities, such as the tax authority (&quot;Agenzia delle Entrate&quot;) and INPS.</td>
<td>Incorrect understanding of the employment status of the individual may result in sanctions by INPS as well as by tax authority.</td>
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<tr>
<td>Bonus payment to redundant employees who secure a job</td>
<td>INPS recently gave operative instructions in relation to the payment of a bonus to redundant employees who secure a new job. The bonus will be paid when: (i) the new contract is a subordinate employment contract, on full-time or part-time basis; and (ii) the new employer has no connection with the previous one. Moreover, employers who hire such employees will receive a 50% reduction in their social security contributions.</td>
<td>26 July 2019</td>
<td>Employers may benefit from the 50% reduction in social security contributions when hiring new employees who have experienced redundancy.</td>
<td>N/A.</td>
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<tr>
<td>Fixed-term contracts</td>
<td>The National Labour Office recently clarified that it is mandatory to specify to the competent Labour Office (so called &quot;contratto in deroga assistita&quot;) the reasons for seeking an extension of a fixed-term contract over and above the current 24 month limit upon such contracts. Furthermore, it is mandatory to respect the minimum break period of 10 days, or of 20 days, when the same employer and the same employee enter into a new fixed-term contract.</td>
<td>17 September 2019</td>
<td>Employers must ensure that they comply with the notification requirements if they want to extend a fixed term contract beyond the maximum period of 24 months. Employers that do not follow the aforementioned requirements are unlikely to receive an extension to the fixed-term contract from the Labour Office.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Employment regulation for digital delivery drivers</td>
<td>For the first time, a recent Decree has provided regulation of employees (so called &quot;riders&quot;), who receive instructions/tasks through digital platforms, bringing such workers within the rules governing subordinate employment relationships. Furthermore, specific provisions have been introduced with reference to the method of calculation of their salary.</td>
<td>4 September 2019</td>
<td>Employers engaging these types of workers must comply with the new protections and requirements. Employers may be at risk of possible claims for non-compliance with the rules regarding subordinate employment contracts.</td>
<td>N/A.</td>
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<tr>
<td>Renewal of the National Collective Bargaining Agreement applicable to Executives of the Industrial Sector (NCBA)</td>
<td>The renewal of the NCBA, signed on 30 July 2019, provides the following innovations: - increase of the minimum economic treatment, which means the annual gross base salary, plus a new variable remuneration system for the so called &quot;management by objective&quot; (MBO) - salary increases due to Executive's seniority - new rules for paid holiday - increase of the supplementary indemnity due in case of unfair dismissal - social security contribution as well as insurance and supplementary form of pensions and health-care - new strict limitations in case of transfer of the Executive</td>
<td>from 1 January 2020 to 31 December 2023</td>
<td>The employers who apply the NCBA for Executives of the Industrial Sector have to be compliant with the new provisions starting from 1 January 2020. Possible claims by the Executive in case of non-compliance with the aforementioned new provisions.</td>
<td>N/A.</td>
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<td>New ruling on covering staff shortages due to a strike (case law)</td>
<td>On 19 July 2019, in a case regarding an airline, the Supreme Court ruled that where there is a staff shortage due to a strike, the employer can temporarily replace these employees with employees from another entity of the same employer within the same group. The law stipulates that (in general), where there is a strike, the employer cannot temporarily hire external agency workers to replace the striking employees. This ruling is therefore significant in allowing the deployment of staff from other entities within the same group to replace striking employees.</td>
<td>19 July 2019</td>
<td>This ruling will be welcomed by employers as giving an option to utilise staff within the same group in a strike situation. In order to improve the likelihood of successfully using this option, employers should ensure that the possibility to post to employees to another place of work is included in employment agreements.</td>
<td>N/A.</td>
</tr>
<tr>
<td>New legislation - Balanced Labour Market Act</td>
<td>The new Balanced Labour Market Act (“BLM Act”) will introduce a number of new rules relating to the engagement of staff. The BLM Act transitional provisions state that employers will be statutorily obliged to offer on-call employees (i.e. employees without a fixed number of weekly working hours or employees whose employment agreements exclude the obligation to continue salary payments during the employee’s absence) work for a fixed number of hours based on the average hours worked in 2019, ultimately on 31 January 2020. In addition, the current statutory obligation on employers to inform employees of certain terms of employment will be extended to include whether the employer has a payroll agreement, whether the employment agreement is for an indefinite term and whether the arrangement is an on-call employment agreement. In addition, an employer will be obliged to inform any agency that supplies it with its agency workers (also known as “payroll employees”) of the employment conditions applicable to the employer’s own employees who have the same or similar positions. From 1 January 2021, payroll employees will also be entitled to participate in an adequate pension scheme. From 1 January 2021, payroll employees will also be entitled to participate in an adequate pension scheme. The unemployment benefits premium payable by employers will also change, divided into either the high premium rate or the low premium rate. The low premium rate will be applicable where (subject to exceptions) there is (i) a written employment agreement, being (ii) an indefinite term employment agreement which is (iii) not an on-call agreement. Employers will be statutorily obliged to include items (i) – (iii) on the employee’s pay slip.</td>
<td>1 January 2020 (almost all changes) and 1 January 2021 (adequate pension scheme)</td>
<td>Employers should review on-call and payroll arrangements to ensure compliance ahead of the commencement of the new laws. Further, employers should review which premium rate will be applicable to their individual employees and ensure the required information is included on payslips.</td>
<td>Failing to comply with the new law will incur liability and employees’ entitlement to damages. Failing to apply the correct unemployment benefit premium rate will also risk retrospective costs.</td>
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<td>Statutory Severance Payments</td>
<td>Statutory severance payments will apply from the first day of employment (currently they apply only after 2 years of employment). A different formula will apply for calculating severance payments depending on whether the employment contract has lasted for more or less than 1 month. In addition, where the employee remains with the same company in a new position, a proposed regulation could introduce a right for employers to deduct from the statutory severance payment training costs associated with that new position.</td>
<td>1 January 2020</td>
<td>Arrangements for the payment of statutory severance payments should be reviewed to ensure that they are calculated from the first day of employment, that they include payment of the holidays paid in the final settlement if the employment agreement has lasted less than one month and that appropriate deductions are made from the statutory severance payment for applicable training costs.</td>
<td>Increased liability for statutory severance payments will be incurred due to the extension of eligibility to those with less than 2 years of employment and the holidays paid being included in calculations for employment agreements which have lasted less than one month.</td>
</tr>
<tr>
<td>Meaning of retirement age (case law)</td>
<td>In a recent case it was held that the term ‘pensionable age’ in a retirement age termination clause referred to the pensionable age as included in the pension scheme (which stated the “target/standard retirement date” of 68 years old), rather than the state pensionable age of 65 years (the AOW-age). According to the court, the fact that the employment contract did not mention the AOW-age but referred only to ‘pensionable age’, left open the possibility that the parties intended the employment contract would end by operation of law at a different age than the AOW-age.</td>
<td>Immediate</td>
<td>Employers should review whether a retirement clause is included in their employment contracts. If there is no retirement age termination clause, the AOW-age will be the default retirement age and it will be possible to end employment on or after the AOW-age. If there is a retirement clause, it should clearly state that the employment contract ends by operation of law at the applicable AOW-age if this is the intention, otherwise a later date may be deemed to apply.</td>
<td>Failing to be clear about retirement age termination in contracts can result in additional costs and risk of litigation, including potentially requiring the prior approval of the Court/Employee Benefits Agency, to dismiss an employee.</td>
</tr>
<tr>
<td>Right to disconnect now included in Collective Labour Agreement</td>
<td>The right for employees to be unavailable in their free time (outside working hours) has been included in a collective labour agreement (“CLA”) for the first time in a CLA for disability care workers. The FNV, one of the largest labor unions in the Netherlands, has announced that it aims to include the right to be unavailable in other CLAs.</td>
<td>Immediate</td>
<td>Employers should be aware that the right to be unavailable outside of working hours could be included in future CLAs and should review current arrangements to assess the impact of any such future change.</td>
<td>Failing to comply with a CLA provision risks claims from the labour union to pay damages to that union and the employees concerned, in addition to any sanctions included within the CLA itself.</td>
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<tr>
<td>Clarification on the legal position of transgender and intersex persons</td>
<td>New legislation has been adopted that will extend protection to those discriminated against because of gender characteristics, gender identity and gender expression.</td>
<td>Unknown at this time, awaiting announcement</td>
<td>Employers can face liability for unlawful discrimination based on gender expression or gender identity. Employers should therefore review policies and procedures to ensure that this wider definition of unlawful discrimination is covered.</td>
<td>Serious implications for a company can result from a finding of unlawful discrimination. Depending on the circumstances, this can range from a discriminatory clause being rendered void, to liability for damages resulting from the unlawful discrimination and damage to reputation.</td>
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<td>Repeal of the Restructuring Act</td>
<td>The Restructuring Act currently requires companies that are closing down their business to notify the county authority before the closure process can begin. From January 2020 this Act (and consequently the notification requirement) is due to be repealed and the applicable redundancy provisions for business closures will be as set out in the Employment Act.</td>
<td>1 January 2020</td>
<td>Employers who plan to close down their business will no longer have to notify the county authority.</td>
<td>None.</td>
</tr>
<tr>
<td>Changes to whistleblower legislation</td>
<td>From 1 January 2020 new whistle-blower regulations will come into force. The new regulations require employers to follow up reports from whistleblowers within a reasonable timeframe. Employers will also be obliged to ensure a safe and proper working environment for the whistleblower and will be liable for the financial loss of a whistleblower in the event of a breach of these requirements. The scope of the existing rules will also be extended to pupils, students, patients and the military.</td>
<td>1 January 2020</td>
<td>Employers should update their company whistleblower policy in readiness for these changes to ensure compliance with the revised legislation.</td>
<td>Failing to comply with the new requirements may result in liability for financial loss and non-economic loss of the employee.</td>
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<td>New employee temporary reinstatement procedure during court proceedings</td>
<td>In employment claims involving reinstatement at work, the court will now have the power to oblige the employer to re-employ the terminated employee, if requested, until there is a final decision in the proceedings. This means that the employee may be temporarily reinstated at work by the first instance court until the second instance proceedings.</td>
<td>7 November 2019</td>
<td>No action required.</td>
<td>Where an employee initiates litigation against their employer, there will be a risk of temporary reinstatement for at least the period of the court proceedings.</td>
</tr>
<tr>
<td>Minimum wage increase for 2020</td>
<td>From 1 January 2020, there will be an increase in the minimum wage from PLN 2,250 to PLN 2,600 gross per month. The new minimum hourly rate for civil law contracts will increase from PLN 14.70 to PLN 17 gross.</td>
<td>1 January 2020</td>
<td>Employers must ensure that all employees and civil law contractors receive at least the new minimum wage rates and, if necessary, adjust employment agreements and civil contracts to reflect the new requirements.</td>
<td>Paying below minimum wage levels is an offence sanctioned with a fine ranging from PLN 1,000 to PLN 30,000 (approx. EUR 230 to EUR 7,000).</td>
</tr>
<tr>
<td>New employee retirement savings plans - Employee Capital Plans</td>
<td>Legislation for a new voluntary retirement savings plan known as Employee Capital Plans (PPK), is being rolled out with effect from 1 January 2019. Employers are expected to contribute 1.5% (and may contribute up to 4%) of salary to the PPK and participants contribute 2% (and may contribute up to 4%). The employees may decide to opt out of the plan, but they will be re-enrolled in the plan every 4 years.</td>
<td>Phased introduction from 1 July 2019 - 1 January 2021</td>
<td>The new regulations will be phased in gradually, depending on the size of the employer: employers with at least 250 employees – from 1 July 2019; employers with 50–249 employees – from 1 January 2020; employers with 20–49 employees – from 1 July 2020 and all other employers – from 1 January 2021.</td>
<td>Non-compliance may result in a fine, for example, up to 1.5% of the remuneration fund for a failure to sign a PPK management contract with a financial institution. Additionally, a failure to make payments on time can result in fines from PLN 1,000 to 1,000,000.</td>
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<td>Meal tickets</td>
<td>Going forwards, the value of one meal ticket should not exceed RON 15.18 (approx. EUR 3.00).</td>
<td>3 September 2019</td>
<td>Employers should comply with this change in the maximum meal ticket sum.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Court ruling prohibits the use of penalty clauses</td>
<td>The Court has ruled that including a penalty clause within an individual employment contract, to calculate damage to the employer caused by the employee’s actions, is prohibited and the clause is void.</td>
<td>12 July 2019</td>
<td>Employers should avoid the use of penalty clauses in employment contracts.</td>
<td>If a penalty clause is included in employee agreements, it will be considered null and void.</td>
</tr>
<tr>
<td>New rules on using day workers</td>
<td>Changes in force include: (i) day workers may be used to benefit third parties only when there is a services agreement in place with the third parties; and (ii) a monthly register must be kept for all day workers used in the agricultural industry.</td>
<td>18 July 2019</td>
<td>Employers should ensure that service agreements and a monthly register are put in place, as appropriate.</td>
<td>Non-compliance with this obligation may trigger administrative fines from the labor authorities.</td>
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<td>Amendments to legislation regulating the use of digital documents in employment contracts</td>
<td>A bill to regulate legal correspondence between the parties to an employment agreement has been introduced. It will be possible to send correspondence online in all cases where labor legislation requires that the document be sent in written form (e.g. notifications, applications, requests, etc.). If the bill is adopted, the parties will also be able to conclude employment agreements by exchanging the agreed terms in electronic form.</td>
<td>It was planned that the amendments would take effect from 1 October 2019. However, the bill has not yet been considered by Russian State Duma.</td>
<td>No actions are required at this stage. None anticipated. This procedure is intended to simplify the document flow for employers.</td>
<td>None anticipated. This procedure is intended to simplify the document flow for employers.</td>
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<tr>
<td>Obligation to collect employee work history in electronic form</td>
<td>The Russian Government has approved a set of draft laws requiring employers to collect an employee’s work history in electronic format, removing the various access and other problems related to paper records. From January 1, 2021, an employer will not be required to complete the standard paper employment record book unless an employee requests this in writing. However, the employer will be required to provide information about the employees’ work experience to the Russian Pension Fund in electronic form. This will involve completion of a new section, “Information about labor activity”, by the employer’s HR department with information about an individual’s employment, dismissals, specialisations, profession, qualifications, etc.</td>
<td>1 January 2021</td>
<td>Whilst both paper and electronic record-keeping remain permissible, employers will need to be prepared to send the required “Information about labor activity” to the Russian Pension Fund in electronic format.</td>
<td>Administrative responsibility will be introduced for employers and may lead to enforcement action where employers have repeatedly failed to provide information, or provide inaccurate, incomplete information about the work activities of their employees to the Russian Pension Fund.</td>
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Proposed amendments to the calculation of workers’ accident compensation

The current method for calculating lost earnings as a result of a workplace accident has been deemed unconstitutional by the Slovak Constitutional Court. As a result, it is proposed that the method for calculating compensation will be the difference between average earnings before the accident and income after the accident.

If the amendment is passed, it could be effective as soon as 1 December 2019.

No action is needed. There are no immediate risks for the employer. However, the amount payable for future workers’ compensation claims may increase using the new calculation method.

Proposed amendment to annual leave entitlement for employees with children

Currently, employees are entitled to 4 weeks of annual leave a year that increases to 5 weeks once the employee reaches the age of 33. A recent proposal would give employees with childcare responsibilities 5 weeks of annual leave regardless of their age.

If the amendment is passed, it is likely to be effective from 1 January 2020.

If the proposal comes into effect, the holiday entitlement of all employees will need to be reviewed. It is recommended that employers prepare by amending their budgets to take into account the vacation vouchers, should the amendment be passed.

Proposed amendment to oblige all employers to provide vacation vouchers to eligible employees

As of 1 January 2019, the Slovak Parliament introduced ‘vacation vouchers’ to the Labour Code in a bid to encourage domestic tourism. Currently, employers with more than 49 employees are obliged to provide vacation vouchers to their employees but it is optional for employers with fewer employees. However, under the proposed amendment, all employees will be obliged to provide vacation vouchers regardless of their size. The value of the vacation vouchers is limited to the amount of 55% of eligible expenses (e.g. accommodation), with a maximum amount of EUR 275 to be claimed per calendar year. To be eligible to receive ‘vacation vouchers’ employers need a minimum of 2 years’ service with their employer.

If the amendment is passed, it is likely to be effective from 1 January 2021.

If adopted, it would increase costs for smaller employers. It is recommended that employers prepare by amending their budgets to take into account the vacation vouchers, should the amendment be passed.

Amendment to the legislation on posting workers to another EU Member State

Slovakian law on posting workers was recently amended to correctly implement the EU Posted Workers Directive. The amended sections include: the statutory wage and equal treatment provisions; the distinction between short-term posting (up to 12 or 18 months) and long-term posting (more than 12 or 18 months); provisions to address attempts to circumvent the maximum posting duration by rotating posted workers; and the information obligations.

30 July 2020

It is recommended that employers review the working conditions of posted employees. If conditions do not comply with the new legislation, changes should be made by 30 July 2020 at the latest.

The Labour Inspectorate can impose a fine of up to EUR 100,000 for non-compliance.

Optional employer contribution to assist employees paying for their children’s sport memberships

A new employee benefit has been added to the Labour Code. An employer may provide employees with a contribution to assist with the costs associated with paying for their children’s sport membership. This benefit is optional and may be provided to employees with over 2 years’ service. The maximum amount of this benefit is capped at EUR 275, regardless of how many children the employee has. The child’s sports activity must take place at a registered sport organisation.

1 January 2020

No immediate action is needed, as the benefit is optional. Employers may wish to include this new benefit in their benefits and rewards package.

As the benefit is optional, there is no immediate risk for the employer.
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<td>Increase to the retirement age</td>
<td>The general retirement age will be increased from 67 to 68 years old and at a later stage to 69 years old. Under Swedish law, an employee is entitled to remain in their employment up until retirement age. Also, employers will no longer be obliged to base a termination of employment on objective grounds for employees who have reached retirement age.</td>
<td>1 January 2020 and 1 January 2023</td>
<td>Employees will be entitled to remain in their employment for a longer period.</td>
<td>A court can declare a termination of employment before the retirement age invalid and hold the employer liable for damages.</td>
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<td>Trading permit requirements for public holidays (case law)</td>
<td>As a basic principle, trading on Sunday is prohibited unless retailers obtain a permit (however, the Swiss Labour Law Act allows the Cantons to determine up to four Sundays per year on which shops may open without requiring a Sunday work permit). In a recent decision, the Federal Court has clarified that retailers are also required to apply for a trading permit for public holidays. The court held that the same rules apply as for Sundays, even if the public holiday falls on a weekday.</td>
<td>Immediate</td>
<td>Retailers must follow the same rules that are in place for Sunday trading when they are seeking to trade on a public holiday.</td>
<td>Employers may be subject to sanctions from the Labour inspectorate and legal claims from employees or work councils related to unlawful Sunday trading.</td>
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<tr>
<td>Breach of confidentiality by a medical doctor (case law)</td>
<td>A recent court decision has held that a doctor, to whom an employee was referred by the employer for medical examination for health insurance purposes, breached their duty of confidence to the employee by disclosing their diagnosis to the employer. The doctor had obtained the employee’s consent to the production of a medical certificate and to the disclosure of their medical condition to relevant insurers, but this consent did not extend to a disclosure to the employer.</td>
<td>Immediate</td>
<td>Employers should ensure that medical advisors, employees and those handling employee health data are aware of the strict legal and data protection limitations upon disclosing such data.</td>
<td>Possible claims from employees due to a breach of data protection, compensation for unlawful termination and potential criminal charges against the medical doctor.</td>
</tr>
<tr>
<td>Unlawful review of private WhatsApp messages on business mobile phone (case law)</td>
<td>A recent court decision has held that employers do not have the right to review information that an employee reasonably expects to be private, even if it is stored on a business mobile device. In general, data processing by the employer, such as verifying WhatsApp messages by the employee, is only permitted to the extent strictly necessary to ensure compliance with the internal use of a mobile device policy. The decision clarifies that employers must clearly regulate the private use of work communication devices, as well as any related control mechanisms if they want to monitor the use of mobile phones.</td>
<td>Immediate</td>
<td>Establish and communicate clear rules on the personal use of work communication devices.</td>
<td>Possible claims from employees due to breach of data protection and compensation for unlawful termination.</td>
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<td>Brexit/general election</td>
<td>Uncertainty continues over Brexit.</td>
<td>Huge uncertainty remains regarding when Brexit will be concluded in principle and the workplace implications. The outcome of the pending UK General Election may lead to a majority government, which will steer future Brexit policy and timing, although a hung Parliament could lead to further delays. From an immigration perspective, employers should ensure that their worker EEA citizens in the UK apply for settled UK status via the EU Settlement Scheme before 31 December 2020.</td>
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### New contract terms for employees and workers

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<td>6 April 2020</td>
<td>These changes are not retrospective, so only apply to new engagements on or after 6 April 2020. However, current workers will also be entitled to request a section 1 statement (including the new, additional information) and such requests must be complied with within one month. To ensure compliance, employers should review their current section 1 statements (or employment contracts to the extent that section 1 statement information is incorporated) prior to 6 April 2020.</td>
<td>A failure to provide a section 1 statement, or one that meets the requirements, may give rise to an employment tribunal claim from affected workers or employees. Aside from the resulting litigation time and costs, the risk of a successful claim is a tribunal determination of the relevant terms of engagement. In certain cases, an award of compensation of between 2 and 4 weeks' pay may also be made.</td>
</tr>
</tbody>
</table>

### New tax rules to apply to engagements via personal service companies

<table>
<thead>
<tr>
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<tr>
<td>6 April 2020</td>
<td>Employers engaging workers through a PSC will need to plan ahead and communicate with affected parties to manage expectations. Increased tax liabilities could result, raising overall costs. Employers must be in a position to collate sufficient information about workers to assess IR35 status.</td>
<td>Non-compliance will be costly, for example, potentially involving HMRC seeking to recover unpaid taxes from the service-user.</td>
</tr>
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### Summary

<table>
<thead>
<tr>
<th>Subject Matter/Name Of Development</th>
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<tbody>
<tr>
<td>Brexit/general election</td>
<td>Uncertainty continues over Brexit.</td>
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<tr>
<td>New contract terms for employees and workers</td>
<td>All new employees and workers engaged on or after 6 April 2020 will be entitled to receive a statement of terms and conditions of engagement (“section 1 statement”). Previously, this requirement applied to employees only. Further, the information to be provided in the section 1 statement is extended.</td>
</tr>
<tr>
<td>New tax rules to apply to engagements via personal service companies</td>
<td>A scheme already applicable to many public sector employers (known as “IR35”) will be extended to the private sector. Where it applies, organisations engaging the services of ostensibly self-employed contractors through a personal services company (a PSC) will become responsible for determining a worker’s employment status, sharing that determination with reasons and, in some cases, for deducting employment taxes and paying them to HMRC on behalf of the worker.</td>
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<td>Non-disclosure and confidentiality agreements</td>
<td>The government’s response to the consultation on the inappropriate use of non-disclosure agreements was published in July 2019. New legislation is anticipated.</td>
</tr>
<tr>
<td>Pay gap transparency: ethnicity pay</td>
<td>The government’s consultation on how to introduce mandatory ethnicity pay gap reporting closed in January 2019 and the outcome is awaited.</td>
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</table>
The Middle East

UAE
Proposal to replace the End of Service Gratuity (‘ESG’) in the Dubai International Financial Centre (‘DIFC’) with a new Workplace Savings Scheme

On termination of employment in the UAE, employees will usually be entitled to, what is referred to, as an End of Service Gratuity (‘ESG’). ESG has commonly been accepted as being payable in the absence of, and to make up for the lack of, any mandatory pension (for non Gulf Cooperation Council nationals).

It is important to note that within the UAE, there exists the Dubai International Financial Centre (‘DIFC’) which, although located in Dubai and therefore the UAE, is considered to be a separate independent jurisdiction with its own laws and legal system.

We are aware that the DIFC has for some time been considering the ESG regime and whether it is fit for purpose given that employees face the risk of non-payment on termination and the monies paid out (i.e. a cash lump sum) do not in any way encourage employees to save and plan for future retirement.

Earlier this year, the DIFC announced it is planning to replace the current ESG scheme for expatriates working in the DIFC with a new mandatory DIFC Employer Workplace Savings scheme (‘DEWS’) and amendments to the current law have been published and are expected to come into force later this year. This change is anticipated to take effect from 1 January 2020 and will apply to all DIFC employers and employees.

It is not currently mandatory for employers in the UAE to set aside monies on a regular basis (either in respect of ESG accrual or payment into a pension or similar scheme). The mandatory nature of DEWS will change that in respect of employers operating in the DIFC and may pave the way for change across the rest of the UAE.

DEWS aims to offer a cost-effective alternative for employers to make pensions contributions to the scheme. It also gives employees the right to make voluntary contributions of up to 100% of their salary into the scheme. Employers will contribute at a mandatory minimum rate (expected to be around 5.83% of basic salary for employees with less than 5 years’ service and 8.33% of basic salary for employees with more than 5 years’ service), with the option of making additional contributions.

Changes to the current DIFC Employment Law (No. 2 of 2019) have been proposed and following a period of consultation (i.e. after 18 November 2019), the new law is expected to be adopted. DEWS will be implemented with effect from 1 January 2020.

It is expected that employers in the DIFC will need to put in place DEWS in advance of 1 January 2020 and to make mandatory pensions contributions from that date onwards.

In anticipation of the impact date, employers in the DIFC should therefore:
- start discussing the changes with employees
- consider making changes to employment handbooks and contracts of employment
- consider payroll/accounting changes

Any accrued ESG will still be required to be paid upon an employee leaving their employment but contributions will be frozen from 31 December 2019. Alternatively, employees can agree with their employer to transfer their accrued benefits to the DEWS from 1 January 2020.

Employers in the DIFC who fail to make mandatory pensions contributions could face sanctions.

https://www.difc.ae/business/laws-regulations/consultation-papers/
North America
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<td>Mandatory arbitration agreements and the National Labour Relations Act (&quot;NLRA&quot;)</td>
<td>In a recent decision, the National Labour Relations Board (&quot;NLRB&quot;) held that employers do not violate the NLRA when they inform employees that failing or refusing to sign a mandatory arbitration agreement will result in the employees' discharge. Further, under the NLRA, employers are not prohibited from implementing mandatory arbitration agreements after employees opt-in to a collective action under the Fair Labor Standards Act or state wage and hour laws. Employees, by signing a mandatory arbitration agreement, are not restricted in their protected rights but are still able to resolve their employment-related claims through arbitration.</td>
<td>N/A</td>
<td>Employers who are sued by employees in a class or collective action can respond by implementing a mandatory arbitration agreement with their employees without being in conflict with the NLRA because implementing the policy does not restrict employees' rights under Section 7. Moreover, where signing the mandatory arbitration agreement is a condition of employment, the employer may lawfully require that employees sign the agreement or be discharged.</td>
<td>Employers may not take adverse employment actions in retaliation for employees exercising their protected rights under the NLRA.</td>
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<tr>
<td>Worker misclassification does not violate the NLRA</td>
<td>In a recent decision the NLRB held that employers do not violate the NLRA by misclassifying employees as independent contractors. Independent contractors, unlike employees, are not covered by the NLRA. The Board held that merely misclassifying employees as independent contractors does not &quot;restrain or coerce&quot; employees in the exercise of their rights under the NLRA.</td>
<td>N/A</td>
<td>Employers will not face liability under the NLRA for misclassifying an employee as an independent contractor.</td>
<td>Employers may still be liable for NLRA violations that stem from misclassification. Certain actions can be viewed as threats or intimidation in retaliation for protected activity, for example, re-classifying employees as independent contractors to interfere with union activities, or making threats not to hire an independent contractor as an employee to avoid union activity.</td>
</tr>
<tr>
<td>California law - testing for independent contractor status</td>
<td>A new Californian law passed in September creates a presumption that a person is an employee and not an independent contractor. The law provides that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from control and direction of the hiring entity, performs work outside the usual course of the hiring entity's business, and is customarily engaged in an independently established trade, occupation, or business (also known as the &quot;ABC&quot; test). The law will be used to examine claims for wages and benefits, including unemployment and workers' compensation.</td>
<td>January 1, 2020</td>
<td>Employers doing business in California should examine their work force carefully to ensure that they have not misclassified employees as independent contractors. Where employers have service agreements with independent contractors, they should ensure that the agreements do not improperly limit the independent contractors, and ensure that employees overseeing the work of independent contractors do not overstep those limits.</td>
<td>Failure to comply with the state's law can result in liability for unpaid wages, overtime, and benefits for employees otherwise thought to have been independent contractors.</td>
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<td>Equal Employment Opportunity Commission (&quot;EEOC&quot;) Employers' pay data summary</td>
<td>The revised EEO-1 Report (Component 2) requires that the EEOC collect two years of hours and pay data from employers. After a halt in the data collection process, a U.S. District Court for the District of Columbia ordered that the collection of data move forward and that employers gather data from 2017 and 2018 and report by September 30, 2019. The EEOC said it did not receive enough data to comply with the court’s order and will continue to accept data from employers past this deadline.</td>
<td>N/A</td>
<td>Component 2 of the EEO-1 Report requires collection of additional data, specifically, pay data broken down by job category, race, sex, and ethnicity. Employers who have not yet submitted their EEO-1 Reports must do so, despite the deadline passing.</td>
<td>Employers who fail to file their EEO-1 Report data at all run the risk of being ordered to do so by a court. For those who must comply with the Office of Federal Contract Compliance Programs (&quot;OFCCP&quot;), failure to file the EEO-1 Report could lead to cancellation, termination, or suspension of all or part of a federal contract.</td>
</tr>
<tr>
<td>Changes to federal overtime regulations</td>
<td>On September 25, 2019, the Department of Labor (&quot;DOL&quot;) published the final rule changing certain overtime provisions of the Fair Labor Standards Act (&quot;FLSA&quot;). The current salary threshold for an employee to be exempt from FLSA regulations is $455 per week. This has been increased to $684 per week—$35,568 per year for a full-time worker, a figure slightly higher than the one included in the proposed rule. The final rule also increased the total annual compensation requirement for the “highly compensated” exemption from $100,000 to $107,432 per year, a figure much lower than originally anticipated. As expected, the final rule allows employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level.</td>
<td>January 1, 2020</td>
<td>The change makes over a million more Americans eligible for overtime compensation, which can increase employer costs. Further, exempt employees who were paid a salary close to the threshold may not need to be paid more to remain exempt or have their status change to non-exempt to be compliant with the law.</td>
<td>Employers that misclassify employees or fail to make proper payments under the FLSA can be liable to employees for back pay, liquidated damages, and attorney’s fees.</td>
</tr>
</tbody>
</table>
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- **North America**

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Quarterly global update

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