ALLEN & OVERY

# Employment issues for multinationals:

## *what to expect in 2015*

# Contents

# Employment issues for multinationals: *what to expect in 2015*

For most HR practitioners and in-house counsel, keeping abreast of domestic legal developments can be challenging. For those with a multinational remit, the task is huge, particularly given the drive for consistency of employment terms, policies and practices globally.

We asked 15 members of our Global Employment practice (our network of lawyers with employment expertise) to comment on one or two key issues or trends which employers need to know about.

Here are the highlights which reflect the reform landscape as it is known or anticipated at 31 January 2015.

Do get in touch with the relevant contacts (listed at the back) if you would like to know more.

# China

## Stricter visa controls for short-term workers

The PRC has tightened its immigration controls on expatriates coming to work in China for short-term work under new guidelines which took effect on 1 January 2015. The Ministry of Human Resources and Social Security (**"MOHRSS"**) and two other Government departments have issued a circular which requires those coming to China to work for less than 90 days, depending on their activity, to apply for appropriate visas. The approval process and requirements for visas are more complicated and time-consuming for stays of more than 30 days. Employers sending staff to China on business visits or short-term assignments must plan ahead to ensure that the appropriate clearances are obtained in good time.

## Tougher health and safety penalties put compliance in the spotlight

Health and safety compliance will be high on the corporate agenda following the toughening of PRC legislation on workplace safety (under an updated "Safe Production Law") at the end of 2014. The changes were introduced in response to widespread public concern over the frequency and scale of workplace accidents.

Employers now have wider responsibilities to prevent and mitigate the risk of work-related accidents, which include assigning responsibility for workplace safety to delegated members of staff, drafting rules and procedures for workplace safety including emergency response plans, and providing training to staff.

The most headline-grabbing aspect of the new framework is the increased risk exposure for employers and senior management members where workplace accidents occur, in particular:

– Potential fines on employers are much higher: they are fixed according to the severity of the accident and rise to a maximum of RMB 20,000,000 (approx. EUR 2.74 million) in the most serious of circumstances.

– Higher fines will be imposed on "persons in charge" if an accident occurs due to their failure to comply with the law. Fines will range, according to the severity of the accident, from 30% to 80% of the previous year's annual income of the "persons in charge" or from 60% to 100% of their previous year's annual income where they fail to make immediate arrangements for rescue operations. Other penalties include dismissal and demotion and, in some cases, criminal liability with the potential for imprisonment for up to three years (or for up to seven years in particularly serious cases).

– The enforcement powers of the inspection authorities have been extended and now include powers to suspend operations and close down the workplace where certain breaches occur.

Employers with PRC operations who have not already done so should review their health and safety procedures and implementation systems in light of the new framework, as well as their liability insurance to ensure that risks are covered. Senior management should be made aware of their responsibilities and potential risk exposure.

## Tightening of redundancy rules

A review of redundancy rules is a core agenda item for the PRC government authorities in 2015 given the trend in redundancies resulting from business closures and downsizings in the current economic downturn.

The MOHRSS has been consulting on a proposed draft Regulation on Mass Redundancy by Enterprises. The Regulation would introduce more prescriptive procedural rules on mass layoffs (which entail the dismissal of 20 or more employees or of more than 10% of the workforce on "redundancy" grounds). It would effectively require employers to take certain steps to avoid the dismissals (for example, retraining employees to facilitate their redeployment and reducing their pay and/or working hours) prior to dismissing them. While it may take some time for these changes to become law, the likely outcome for employers is that the redundancy process in China will become even more difficult.

## Contact

Susana Ng
Consultant and co-Head of China/ Hong Kong Employment Practice
Tel +852 2974 7015
susana.ng@allenovery.com

# Hong Kong

## A diverse reform agenda

Key developments in the pipeline for 2015 include changes affecting third party contract rights, family-friendly policies and employment litigation procedure. Employment policies and documentation will need to be reviewed and revised in some areas.

- **Third party contract rights**: There will be significant changes to Hong Kong contract law and to the general principle that only parties to a contract can enforce rights under it ("privity of contract"); the Contract (Rights of Third Parties) Bill will mean that, in certain cases, third parties who benefit under the contract may enforce their rights directly. While employment contracts are excluded from the Bill's scope, it may have an impact for employers as third parties could potentially enforce their rights under separate employment-related agreements (such as standalone confidentiality or non-competition agreements or settlement agreements). The impact on new agreements should therefore be considered (though the Bill will not apply to contracts entered into prior to the Bill coming into effect). Unless third party enforcement rights would operate to the benefit of employers, they may wish to structure new agreements so as to opt out of the legislation.
- **Discrimination**: The Sex Discrimination (Amendment) Ordinance will make it unlawful for a customer, in seeking to be provided with goods or services, to commit sexual harassment against another individual. This will improve protection for employees in customer-facing roles. While employers are not liable for the sexual harassment of employees by customers, they may be liable for discriminating against employees by way of victimisation by preventing them from lodging a complaint of sexual harassment (made in good faith) against a customer, subjecting them to detriment for doing so or terminating their employment. Aside from this change, there has been a review of discrimination laws with a view to consolidating the four separate discrimination Ordinances (and potentially enhancing some aspects of them), but it looks unlikely that any resulting changes will be made in 2015.
- **Paternity leave**: New rights to statutory paternity leave and paternity leave pay will come to into effect from 27 February 2015. Male employees who are a father-to-be or the father of a new-born child (and who fulfil the specified conditions) will be entitled to paternity leave of up to three days and to paternity leave pay at a daily rate of 80% of their average daily wages. Employers should ensure that they have appropriate policies and procedures in place which offer at least the statutory minimum entitlements.

In the employment litigation context, separate changes will broaden Tribunals' powers to order a party to give security (ie. to pay a sum of money or other form of security to the Tribunal) in order to minimise undue delays and abuses of the adjudication process. If that party fails to give security when ordered to do so, the Tribunal may dismiss the claim, stay the proceedings or enter judgment on the claim. These broader powers may prove useful for employers when dealing with vexatious litigants.

### Contact

Susana Ng
Consultant and co-Head of China/
Hong Kong Employment Practice
Tel +852 2974 7015
susana.ng@allenovery.com

# Japan

## New rules for dispatch workers

Japan's Worker Dispatch Act of 1985 regulates employee "dispatching" arrangements, whereby temporary staffing agencies provide temporary workers (known as "dispatched workers"), to client companies, which supervise and direct the duties of such workers, but are not considered their employers.

Companies using dispatched workers ("host companies") should review their arrangements carefully in the light of the following changes to the Act coming into effect in October 2015:

### *Deemed employment*

– A host company which uses a dispatched worker illegally will be deemed to have offered that worker a direct employment contract. This could arise, for example, if the company uses a worker for longer than the permitted dispatch period.

– It would be a defence if the host company is unaware of the illegality and is not negligent, but this exception is likely to be interpreted narrowly.

– If the worker indicates his/her intention to accept the offer, an employment contract will be formed.

Employers should review their dispatch arrangements to ensure they are compliant with the Act, for example in relation to time limits, or any arrangements with contractors which may be deemed to be illegal forms of circumvention of the dispatch rules (so-called "disguised outsourcing").

The Government is also expected to update and re-submit to the current Diet (Parliament) session a bill that was abolished in November 2014. The main changes that were proposed in the previous bill, which are for the most part expected to be replicated in the new bill (to come into effect possibly in October 2015), are as follows:

### *Time limits for using dispatched workers*

A host company may not currently retain a dispatched worker on a specific assignment for more than three years, other than by offering them direct employment to continue working. An exception to the rules provides that this three-year time limit does not apply to 26 specialist job categories that require expert knowledge, technical skills or experience; dispatched workers who qualify in one of these roles may be engaged on an indefinite basis. However, in practice, it can be unclear whether workers' duties fall within these categories and host employers have been at risk of misclassifying them. The proposals were that:

– The 26 specialist job categories would be abolished.

– The period for which a host company can use the same dispatched worker at the same business unit would be a maximum of three years.

– The period for which a host company can use any dispatched workers at the same workplace would be a maximum of three years. However, this three year period can be extended by further three-year periods provided that the host company obtains the opinion of its trade union (or a representative of more than half of its workforce, if there is no union) regarding the proposed extension (although the union or the representative would not have any power to veto the host company's decision).

If these changes are legislated, host companies should review arrangements relating to dispatched workers in the 26 currently exempted job categories as they will be unable to retain such workers indefinitely. They should also check dispatched workers' assignment dates to ensure that the time limits are met. Under the new deemed employment rules coming into effect in October 2015, non-compliant dispatch arrangements will expose them to the risk that they are deemed to have made an offer of employment to the workers in question.

## Contact

Osamu Ito
Partner, Japan
Tel +813 6438 5090
osamu.ito@allenovery.com

# Belgium

## Cost savings and flexibility measures in Coalition reform programme

The new Belgian Government announced sweeping changes to employment law, social security and pensions (click **here** to see separate Pensions Publication), some of which have already been implemented and others which are on the agenda for 2015. As the reforms are aimed at stimulating business growth and competitiveness, many can be considered to be employer-friendly. Key themes on the employment and social security side are as follows:

### *Lowering employment costs*

In order to eliminate the higher wage costs which Belgium has compared to neighbouring countries, notably France, the Netherlands and Germany:

- there will be a lowering of employer social security contributions from (approximately) 33% to 25% (negotiations with social partners on this issue are expected to begin shortly);
- automatic indexation of wages will be skipped in 2015 (although this may not have applied in any event in 2015 due to current low inflation) and will be further suspended until inflation jumps by a cumulative total of 2% (which may take several years as the year-on-year increase is expected to be low).

### *Extending working careers and activating older workers*

- The age limits for accessing bridging pensions will increase (as a general rule, from 60 to 62 years of age);
- The current "end-of-career time credit" system (a partial suspension of the employment contract with a Government subsidy), currently available to workers aged 55 or older, will now only be open to those aged 60 and older. The current exceptions will gradually disappear.

### *Modernising the labour market*

- There will be continued progress towards harmonising the employment status of blue- and white-collar workers. To date only a few of the key distinctions between these groups of workers have been harmonised. Major steps need to be taken in the area of vacation rights (and vacation pay), guaranteed salary in the case of sickness, regulations on temporary (and economic) unemployment, the remit of joint committees, and collective labour law.
- Current collective dismissal procedures will be reviewed with a view to identifying how these could be expedited, and there are proposals to innovate wage scale and wage policies by moving away from length of service and age as determining factors.

This promises to be another busy year for employers, and action lists should be kept under review as details of these changes unfold.

## Contact

Christian Bayart
Partner, Belgium
Tel + 32 3 287 7452
christian.bayart@allenovery.com

# Czech Republic

## Whistleblowing, homeworking rules and monitoring on the reform agenda

The impact of the new Civil Code on employment law was the main talking point in 2014, and while there is not yet any "stand-out" reform to flag for 2015, employers might be interested in the following trends and issues:

– **Whistleblowers**: The Czech Government is seeking to launch a public debate on the adoption of rules to protect whistleblowers. The concept of whistleblower protection is not currently recognised under Czech law.

– **Homeworking**: Legislative changes look likely to be adopted relating to homeworking in response to employer concerns that current rules are unclear and inadequate.

– **Privacy**: Workplace privacy has become a hot topic and employers can expect their practices to be scrutinised even more closely by the data protection authorities. Ensuring that CCTV systems and software monitoring employees' e-mail and internet traffic are legally compliant will be key. Employers should refer to position papers issued by the Czech Data Protection Office for further guidance in this area.

## Contact

Jan Myska
Partner, Czech Republic
Tel + 420 222 107 151
jan.myska@allenovery.com

# France

## Flexibility measures under the Macron Bill

France's so-called "Economic Growth and Activity Bill" (commonly known as the "Macron Bill") promises employers more flexibility in a number of areas. Measures on the agenda for 2015 include:

- **Sunday work and night work**: Rules on Sunday trading will be relaxed by giving local council mayors the ability to grant shops 12 rather than five Sunday openings throughout the year and by extending rights to shops in tourist and commercial areas. There will also be a relaxation of night work rules allowing some shops to remain open until midnight without meeting any particular requirements, subject to putting a company agreement in place. Only employees who volunteer can work from 9pm to midnight and those who do so would be entitled to higher pay and compensatory time off.
- **Profit-sharing and employee share-ownership incentives**: There will be changes aligning certain aspects of profit-sharing schemes and measures to make the collective pension savings plan ("PERCO") more accessible. Employers and employees will get new tax and social security breaks for free share awards, and the so-called "BSPCE" – a type of share option plan designed for growth companies – will be made more flexible.
- **Sanctions**: The one-year prison sentence which can currently be imposed on management or company representatives for committing the French criminal offence "*Délit d'entrave*" (ie. obstructing the proper functioning of the staff representative body) looks likely to be abolished. Although prison sentences have rarely been imposed, this change will alleviate concerns for companies about the potential risk of imprisonment for failing to comply with their duties to inform and consult the French works council and other representatives. Nevertheless, full compliance with information and consultation requirements will continue to be important as the draft law intends to replace the imprisonment sanction with heavier financial penalties (fines are currently a maximum of EUR3,750 for a company manager and EUR18,750 for the company for an initial offence).
- **Redundancy procedure**: There will be some minor changes to procedural requirements on collective redundancies. For example, employers will be able to fix the scope of selection criteria to be applied to determine employees to be made redundant at establishment level in a unilateral document as an alternative to doing so in a collective agreement. In addition, the obligation to look for alternative job positions abroad for employees at risk of redundancy will be simplified; employees who are interested in working abroad will be required to take an active part in the search process.
- **Other measures**: Other proposed measures include a reform of the employment tribunal system to improve the efficiency of proceedings.

The French Parliament has begun debating the Bill. Once the detail of the final legislation becomes clearer, employers will need to adapt their policies accordingly. However, its overall impact for employers should be beneficial in terms of lowering employment costs and promoting employment opportunities.

### Contact

**Claire Toumieux**
Partner, France

Tel + 331 400 653 37
claire.toumieux@allenovery.com

# Germany

## Whistleblowing, homeworking rules and monitoring on the reform agenda

The grand coalition's reform programme will continue to play a prominent role in shaping German employment legislation in 2015. Some measures in the coalition agreement have not yet been implemented; others have been implemented and will come into force in 2015.

– **New national minimum wage**: From 1 January 2015, a national minimum wage amounting to EUR 8.50 gross per hour will apply for the first time. Some groups are exempted including trainees, young people without any vocational qualifications and the long-term unemployed. Employers, particularly those in low-wage sectors, should review pay terms to ensure that they observe the minimum wage; transitional provisions apply for employees covered by collective bargaining agreements.

– **Single union/collective bargaining agreement**: Legislation will be introduced to allow/require employers to recognise only one trade union for collective bargaining purposes. The fragmentation of recognition units and consequent multitude of disputes has been a long-running economic concern, culminating in a string of disruptive strikes brought by the train drivers' unions last year. The legislation is aimed at reducing the number of strikes and other collective disputes.

– **Measures to prevent avoidance of labour leasing requirements**: There will be new measures to prevent employers from evading The German Act on Labour Leasing ("*Arbeitnehmerüberlassungsgesetz*") by concluding a contract for services ("*Werkvertrag*"). The Act regulates the temporary lease of employees to a third party and requires companies using such employees to employ them on the same conditions (ensuring equal pay and equal treatment) as their own employees. To circumvent these requirements and reduce wage costs, companies have devised strategies such as outsourcing functions by means of contracts for services. New measures will require companies who intend to use contracts for services to conduct a prior information and consultation process with their works council and to obtain its approval (co-determination).

– **Return to work rights for part-time employees**: Part-time employees who have reduced their working time because of parenting or caring for family members will have improved rights allowing them to return to their full-time jobs (rather than being restricted to part-time employment only).

– **Gender quota for large listed companies**: Companies listed on the German Stock Exchange who are subject to the Co-determination Act (which, for those with more than 2000 employees, requires 50% of the members of the supervisory board to be elected by the employees) will be required to have at least 30% women on their supervisory boards. Around 100 companies are affected. If the gender quota is not met, the places for shareholder representatives on the supervisory board may remain unoccupied. Companies will be required to report on their attainment of the gender quota or on their reasons for failing to achieve it.

– **Gender targets**: Companies which are either listed or which are subject to the Co-determination Act will be required to set target figures and timelines to increase the proportion of women on their supervisory board, the board of directors and in senior management. This will affect approximately 3,500 companies (including stock companies, partnerships limited by shares, private limited companies, registered cooperatives and mutual insurance companies). These companies must also report on the target figures, and on the progress that they have made towards the targets, in their annual accounts.

### Contact

Hans-Peter Löew
Partner, Germany
Tel + 49 69 2648 5440
hans-peter.loew@allenovery.com

# Italy

## The "Jobs Act"– a radical reform of Italian employment law

Hailed as one of the most significant reforms of Italian employment law in the last ten years, the so-called "Jobs Act" passed into law in December 2014. The Government has six months to issue a series of employment law decrees fleshing out changes in the following areas, among others:

– **Reinstatement**: Employees who are unfairly dismissed for economic reasons will be entitled to compensation calculated in proportion to their length of service, but no longer to reinstatement (ie. to have their jobs back). Reinstatement will be available only to employees who have been dismissed for (ungrounded) disciplinary or discriminatory reasons. This aspect of the reform has attracted the most media attention and political conflict but has been welcomed by employers.

– **Fewer contract types**: The different types of employment contracts will be re-arranged, reduced and simplified. There will be a new single indefinite-term contract providing increasing protections based on length of service, while many of the types of temporary contracts which have been used so frequently for new hires (and which it is argued have deprived them of job security and employment rights) will be abolished.

– **Employee monitoring**: Rules on permissible monitoring and monitoring technologies will be clarified and updated to reflect case law.

– **Social security**: A new unemployment allowance system will extend (state-funded) unemployment allowance to more employee groups and to some categories of self-employed workers.

## Contact

Livio Bossotto
Employment Counsel, Italy

Tel + 39 02 2904 9678
livio.bossotto@allenovery.com

# Netherlands

## The Work and Security Act – a radical revamp of Dutch employment law

The Work and Security Act ("*Wet Werk en Zekerheid*") will – in several phases – drastically change Dutch employment law, introducing changes relating to flexible workers (which broadly take effect from 1 January 2015) and to dismissal law (which will take effect from 1 July 2015). The following is a snapshot of the key changes:

### *Flexible workers*

– A probationary period can no longer be agreed with an employee who is employed for a term of six months or less.

– Non-compete provisions cannot be agreed with employees who work on a fixed-term basis unless the provisions include wording which illustrates the employer's substantial business interests; the employer must be able to prove on termination of employment that these substantial interests still exist. Non-compete clauses in temporary contracts that are already in force on 1 January 2015 will continue to apply.

– In the case of fixed-term contracts for six months or more, the employer must notify the employee in writing, at least one month before the contract ends, of: (i) whether or not the contract will be continued and, if so; (ii) on what conditions. Failing this, the employee has a right to compensation.

– The possibility of entering into successive fixed-term contracts is more restricted. From 1 July 2015, a successive contract which is entered into after 24 months of employment is deemed to be an employment agreement for an indefinite term (at present such is the case after 36 months). Furthermore, employment contracts will be deemed to be successive if they are interrupted by a period of less than six months (at present this term is three months).

Employers (who have not already done so) should consider the impact on new and existing contractual arrangements with staff, particularly with temporary employees.

### *Dismissals*

– Employers will no longer have the option of choosing the route of dismissal. Depending on the ground for the dismissal the employer must turn to the cantonal court or the UWV.

– Appeal will be possible in dismissal procedures, enabling parties to appeal against a court ruling to restore or rescind an employment contract.

– Employees who have been employed for longer than two years will receive statutory severance (a so-called "transition fee") from their employer in the case of dismissal. The amount will depend on their years of service and is capped at a maximum of EUR75,000. The rules provide for payment of substantially lower amounts than current severance levels.

– Trade unions will have stronger rights to agree, through a social plan, deviations from statutory severance and also from the statutory requirements for selecting redundant employees.

Employers who intend to implement dismissals after 1 July 2015 must adapt their strategy and procedures. While the legislation should in principle reduce severance costs, the stricter dismissal grounds, the appeal possibilities and the role of the trade unions will most likely result in more pre-agreed exits and settlement agreements which may well remove these cost savings.

Changes to the Unemployment Insurance Act ("*Werkloosheidswet*") will follow in 2016.

## *20% bonus cap for financial sector firms*

The Act on Remuneration Policies in Financial Enterprises ("*Wet beloningsbeleid financiële ondernemingen*") is expected to come into effect in 2015 and introduces strict remuneration rules for financial enterprises, in particular:

– A bonus cap of 20% for fixed remuneration applicable to all staff of financial enterprises and a higher cap in some scenarios. Some firms are exempt from these rules.

– The obligation to implement a remuneration policy that does not induce more risk than is acceptable for the undertaking and does not lead to disadvantages for clients.

– The obligation to disclose certain aspects of the remuneration policy publicly and in the annual report.

– Conditions on the award of severance including a new maximum on severance payable to day-to-day policy makers ("*dagelijks beleidsbepalers*") of 100% of their fixed annual salary.

Financial enterprises caught by the rules include, among others, credit institutions and investment firms, insurance companies and premium pension institutions, and the Dutch subsidiaries of foreign companies that qualify as a financial enterprise.

## *Measures to encourage working until an older age*

A Bill is in the pipeline for 2015 to encourage those who have become entitled to a basic state pension ("AOW pension") to continue working by removing some of the current employment law restrictions which apply to them. There are already tax and social security incentives for employers who employ older workers.

New rules would mean that employers are only required to pay wages to those who are entitled to an AOW pension for a six-week period (rather than a two-year period) in the event of ill-health, thereby reducing sick pay costs considerably, and rehabilitation requirements will also be relaxed. In addition, there will be broader opportunities to enter into fixed-term contracts with these individuals, and they will be entitled to earn at least the minimum wage.

## Contact

Suzanne Sikkink
Partner, Netherlands
Tel + 31 20 674 1373
suzanne.sikkink@allenovery.com

# Poland

## Fixed-term contracts and garden leave on the reform agenda

Fixed-term contracts and garden leave are potential areas of change in 2015 among proposals to amend the Polish Labour Code. Key changes under consideration are:

- **Probationary period contracts**: A new possibility of signing consecutive employment contracts for a probationary period, provided that the second contract relates to a different type of work from the first contract.
- **Fixed-term contracts**: A new maximum duration of 33 months for fixed-term contracts, with three fixed-term contracts permitted in this time. The absence of a maximum duration under current rules is often problematic and employees commonly seek to reclassify fixed-term contracts as indefinite term contracts before the labour courts. Notice periods for terminating fixed-term contracts will be aligned to those for indefinite term contracts (ie. two weeks' to three months' notice depending on the employee's length of service).
- **Garden leave**: A new right to release employees unilaterally from performing work during their notice period provided that their remuneration rights are unaffected. If adopted, employers could find this a useful mechanism for departing employees; according to the current opinion of the Polish courts, garden leave is permitted only with prior employee consent.

## Changes in the Polish social security system

Social security rules are becoming stricter in Poland, as illustrated by the following recent and expected changes:

- **Supervisory board remuneration**: From 1 January 2015, social security contributions must be withheld from the remuneration of supervisory board members of Polish companies. Previously, their remuneration was subject only to withholdings for health insurance contributions. A supervisory board must be established in a Polish joint-stock company, but is only mandatory in limited liability companies (or alternatively an audit committee may be set up) where the share capital exceeds PLN 500,000 zlotys and there are more than 25 shareholders.
- **Multiple civil law agreements**: Companies executing more than one civil law agreement (eg. a service contract, mandate contract or agency contract) with a given individual will face higher social security costs as, under changes expected to come into effect from 1 January 2016, they will be subject to a minimum social security contribution base which will be the statutory minimum pay (currently PLN 1,680 per month). The rules will not apply to contracts for the performance of a specific task ("*umowa o dzieło*") which are currently excluded from the payment of social security contributions. There will also be stricter social security rules for mandate contracts.
- **Maternity benefits**: Changes are also expected to tighten the rules on maternity benefit for those who become self-employed. It is currently possible to start up a business and to obtain a high maternity benefit quite quickly. The calculation rules are likely to change so that the maximum amount of maternity benefits will be obtained only if someone has paid the maximum amount of social security contributions in the 12-month period prior to applying.
- **Sickness benefits**: Legislation may also be adopted regarding the issue of electronic medical certificates to support employee absences. The aim is to improve the monitoring of such medical certificates and the accuracy of employees' sick leave absences. Currently, such certificates are issued in paper form. Employees who are unable to work due to sickness for up to 33 days in a calendar year have the right to be paid 80 per cent of their remuneration by their employer; for periods of absence exceeding 33 days, employees are entitled to sickness benefit paid by the Social Security Office (for a period of up to 182 days).

## Contact

**Pawel Krzykowski**
Senior Associate, Poland

Tel + 48 22 820 6169
pawel.krzykowski@allenovery.com

# Slovak Republic

## New whistleblowing legislation

New whistleblowing legislation has been introduced from 1 January 2015 which protects individuals who report criminal offences and other types of "anti-social behaviour" which they learn about in connection with their employment, position or office, and introduces financial incentives for them to make reports. Employers with 50 or more employees have new duties, which require them to do the following:

– to introduce and implement whistleblowing lines (reporting channels) and ensure that at least one of them is available to employees "24/7";

– to appoint a responsible person – an employee or other person with a direct reporting line to the employer's statutory body – who is responsible for receipt and investigation of the reports;

– to keep a register of reports and of investigation results for a three-year period;

– to issue a whistleblowing policy which deals with the reporting process, investigation of reports and the record-keeping of reports; and

– to investigate reports within 90 days, or in serious circumstances, within 120 days of receipt, and to report the result of the investigation to the whistleblower within 10 days from completion of the investigation of the report.

Failure to comply with these obligations can lead to a fine of up to EUR20,000.

The type of protection given to whistleblowers depends on whether they have "blown the whistle" in criminal or administrative proceedings or used the employer's whistleblowing line. In some circumstances, an employer can only take action affecting the whistleblower (such as terminating their employment) with their agreement or with the prior consent of the competent labour inspectorate. In some cases, whistleblowers can apply to the competent labour inspectorate to have employer actions against them suspended if they consider that these are linked to the report that they have made, and they may commence anti-discrimination proceedings. Successful whistleblowers may also be rewarded a "bounty" by the Slovak Ministry of Justice up to 50 times the minimum wage in Slovakia (up to approximately EUR 19,000).

Employers have until 30 June 2015 to implement whistleblowing procedures and put compliance systems in place.

## Tightening of rules on temporary assignments

Following a recent amendment to the Slovak Labour Code, major changes to the rules on temporary assignments are expected to take effect in March/April 2015. Temporary assignments are arrangements under which employees are assigned by an employer or temporary employment agency to perform work temporarily for a third party ("host employer"). Key changes include the following:

- There will be a broader definition of temporary assignment. Irrespective of the contractual arrangement between the employer and the host employer, an arrangement will be presumed to be a temporary assignment if:
  - the work is performed mostly in the premises of the host employer and using its tools, equipment or machinery;
  - the host employer manages, controls and instructs the employee(s); and
  - the work is performed as part of the employer's business activity.
- There will be a maximum time limit for temporary assignments of 24 months. Within the 24-month period the temporary assignment of a particular employee to the same host employer can be extended or renewed a maximum of four times. If a temporary assignment exceeds the maximum period, the employment relationship between the employee and the employer/temporary agency is terminated and an indefinite-term employment relationship is established between the host employer and the employee by virtue of law.
- The host employer will be liable for the employer's/temporary agency's failure to pay any salary (or part thereof) to the employees and must pay any outstanding salary to the employees within 15 calendar days following the payment date.

Employers using temporary workers should look at arrangements in order to identify whether these are likely to be categorised as "temporary assignments" under the new criteria, to verify that assignments will not exceed the permitted period, and to seek indemnity protection (eg in respect of non-payment of wages) from service providers.

### Contact

**Katarina Matulnikova**
Senior Associate, Slovak Republic
Tel +421 2 5920 2407
katarina.matulnikova@allenovery.com

# Spain

## Reduced severance tax exemption

Employers who implement dismissals or negotiate employee exits in 2015 should note that the tax exemption for severance payments is limited to a maximum of EUR180,000. Any excess will be subject to tax. This limit came into effect on 29 November 2014 and applies to severance payments for dismissals or terminations that have taken place since 1 August 2014 (but it does not apply where the opening of the consultation process for a collective dismissal programme was notified to the Labour Authority before 1 August 2014).

Employers should assess the impact of this change on their tax withholding and reporting obligations and on severance negotiations.

## Contact

Moira Guitart
Counsel, Spain
Tel + 34 91 782 98 00
moira.guitart@allenovery.com

# UK

## Stricter accountability framework in financial sector firms

A new financial regulatory regime is being introduced following high profile scandals, and the subsequent loss of confidence by the public and Parliament in professional standards and culture within the UK banking sector. According to the official bodies tasked with finding a solution, the problems were that senior bankers were allowed to operate with little personal accountability and to hide behind collective decision-making. This was compounded by the absence of a link between individual incentives and high conduct standards and risk.

The new scheme will result in significant changes to the way in which individuals working in financial institutions are regulated. It will be implemented at some point in 2015 (likely to be the last quarter), and introduces a Senior Managers and Certification regime together with a new code of conduct. The UK regulators will be focusing on a few senior individuals in the highest echelons of the institution, who will be personally responsible and accountable for compliance, behaviour and culture. Firms too will have increased responsibilities for individuals who fall within the Senior Managers and Certification regime and a much wider group of individuals will be subject to the code of conduct and exposed to the risk of potential enforcement action by the regulators.

The preparatory work for the new regime is extensive and not without its challenges. Bringing together both the governance and operational elements in large organisations takes time, so firms have been gearing up for it over the last 12 months, and with increased focus in the second half of 2014 as the finer detail was announced by the regulators. Transitional arrangements will apply to assist with the changeover. Rules requiring firms to claw back bonuses within a seven-year period in the event of misconduct, material error or risk management failings were introduced for bonuses awarded from 1 January 2015.

## Shared Parental Leave to reshape the family-friendly rights landscape

A new "Shared Parental Leave" ("SPL") regime will give parents of babies due, or children matched or placed for adoption, after 5 April 2015 more flexibility and choices over when they take leave during the first year of their child's life or adoption, who takes that leave or whether both parents take it at the same time. While SPL will not replace current maternity, adoption and statutory paternity leave, it marks a radical change in the UK's family leave landscape and affects all employers.

Eligible parents, who must have at least 26 weeks' service, can choose to share up to 50 weeks of leave and up to 37 weeks of pay (at a statutory minimum rate) between them. The parents can take it together or separately – and they can take it in any pattern they want, provided it is taken in blocks of at least a week and the employer agrees to the pattern. The mother/adopter must opt to curtail their maternity/adoption leave period in order to take SPL.

The SPL regime throws up operational and implementation challenges for employers and adds an overlay to the already complicated regime of family leave rights. Employers could start to receive requests for SPL as early as February 2015 (for those with babies or adoption placements due from 5 April), so those who have not already done so should review and update their policies, and prepare an SPL Policy and template forms as soon as possible. Providing training to HR and managers highlighting the changes coming into force, and issues to think about when considering/agreeing SPL will also be key.

Take-up of SPL is predicted to be low – the Government estimates it as being somewhere between 2% and 6% of eligible couples – based on the experience of additional paternity leave take-up and the low level of statutory SPL pay. However, money is likely to be an influential factor so take-up could be higher if enhanced SPL pay and benefits are offered by the employer.

### Contact

David Cummings
Senior Associate, UK

Tel +44 20 3088 4427
david.cummings@allenovery.com

### Contact

Felicity Gemson
Senior Professional Support Lawyer, UK

Tel +44 20 3088 3628
felicity.gemson@allenovery.com

# Qatar

## Improved employment and mobility rights for foreign workers

Changes to Qatar's labour law, announced by the Government last year, are expected to be progressed or implemented in 2015. The changes will improve workers' employment and mobility rights in a number of areas. Proposed changes include the following:

- **Replacement of exit permit system**: The current exit permit system which requires foreign workers to get their employer's consent to leave the country will be replaced with an automated system through the Ministry of Interior. The system will automatically grant an exit permit to an employee. Workers must apply for a permit at least 72 hours prior to departure, and it will then be for their employer to argue why they should not be allowed to leave the country, on grounds such as criminal or financial wrongdoing. Any objections will be reviewed by a special committee.
- **Replacement of "no-objection certificate" ("NOC") system**: This system, requiring foreign workers to obtain a NOC from their employers before they can change sponsors and take up a new job in Qatar, will be replaced with an employment contract system. If the employment contract is for a fixed term, the employee may transfer the job at the end of that term. If the contract is of an indefinite duration, the employee may transfer after five years from the date of the contract. If foreign workers want to change jobs earlier, they would still need the permission of their employer.
- **New model employment contract**: There will be a "model contract" that employers must use as a basis for new employment agreements.
- **New Wage Protection System**: Wages will need to be paid by electronic bank transfer within certain timescales (every month for salaried employees and at least every two weeks for other workers); this is intended to address the fact that missed and late wage payments are among the top complaints expressed by Qatar's blue collar workforce.
- **Accommodation standards**: There will be new minimum standards for workers' housing.
- **Sanctions**: There will be tighter sanctions for labour law breaches, such as late payment of wages.

Entities operating in the Qatar Financial Centre ("QFC") will be affected by the changes relating to the exit permit and NOC systems, but are unlikely to be affected by the other changes as they remain subject to QFC Employment Regulations.

## Contact

Anthony Traboulsi
Senior Associate, Qatar

Tel +974 4 419 4314
anthony.traboulsi@allenovery.com

# U.S.

## Responding to whistleblower trends

### *2014: A steady rise in Dodd-Frank whistleblower complaints*

The statistics in the Securities and Exchange Commision's 2014 "Annual Report on the Dodd-Frank Whistleblower Program" (published in November 2014) show that 2014 was a record year for the Program, both in terms of the number of whistleblower tips received by the SEC and the amounts awarded to so-called "tipsters".

The Program was introduced in 2011 pursuant to the US Dodd-Frank Act of 2010 and is a reward scheme offering significant incentives for individuals to report suspected breaches of federal securities laws. Whistleblowers who voluntarily provide the SEC with original information that leads to a successful enforcement action (ie. one in which it recovers monetary sanctions totalling at least US$1 million) can be awarded an amount ranging from 10% to 30% of the money collected. Whistleblowers are also protected against retaliation if they make their report in good faith.

The SEC reports that in its 2014 fiscal year, it received 3,620 tips from whistleblowers (compared with 3,238 in the 2013 year) and authorised awards for nine whistleblowers, including a record payout of more than US$30 million to a whistleblower overseas who had helped alert the SEC to what it described as an ongoing fraud.

Of the 3,620 tips received, 448 came from outside the US (approximately 11.5% of all tips received), with the largest number coming from the UK, India, Canada, China and Australia. This is because the Dodd-Frank provisions are not confined to US-based firms and whistleblowers; non-US firms with SEC reporting obligations (for example, those with shares traded in the US) are caught and individuals based outside the US can also make complaints provided these relate to securities laws breaches.

### *Risk management steps*

As borne out by these statistics, companies with US-reporting obligations should be prepared for a steady rise in whistleblower complaints and be aware of the risk of opportunistic complaints under Dodd-Frank in 2015. The SEC is likely to scrutinise complaints and investigate them exhaustively. As well as the costs of responding to investigations, this could mean costly enforcement actions and inevitable publicity causing reputational harm.

Having clear and robust whistleblower and investigation procedures across global operations is essential to manage the growing risk. These procedures should encourage employees to report complaints internally as, while Dodd-Frank does not require whistleblowers to use internal procedures, the SEC will take this into account in assessing any award that they ultimately receive. Employees and managers should receive regular training on these procedures. Having robust policies and procedures to review, evaluate and investigate whistleblower complaints will also assist to forestall external reports to the SEC or other regulators and to strengthen a company's position in any subsequent regulatory investigation.

## Contact

**Brian Jebb**
Senior Counsel, U.S.
Tel +1 212 610 6354
brian.jebb@allenovery.com

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FOR MORE INFORMATION, PLEASE CONTACT:


**London**

Allen & Overy LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088


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