SPECIAL REPORT

2019 GLOBAL EMPLOYMENT LAW YEAR IN REVIEW

MARCH 12, 2020

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SPECIAL REPORT

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INTRODUCTION BY THE EDITOR-IN-CHIEF

Welcome to the first annual McDermott Will & Emery Global Employment Law Year in Review: 2019.

The purpose of this publication is to provide you with concise summaries of many of the laws and court decisions from 2019 that significantly impact employers and employees all over the world. No publication has ever captured all new employment law developments from every single country. However, our effort to create the most comprehensive global employment update ever assembled has resulted in more than 125 updates from 48 countries. These updates were prepared by local employment lawyers from each respective country who are either McDermott lawyers or part of McDermott's Global Employment Law Network.*

McDermott's Global Employment Law Network provides multi-national businesses with a seamless global solution for all matters concerning employment and labor law, employee benefits, executive compensation, immigration, and executive mobility.

Many of the updates presented in this publication describe changes in the law that are well known to lawyers and Human Resource professionals from those countries. Others are less well known. Regardless, our aim is to provide you and your colleagues with a useful reference guide to significant changes in employment law all over the world. Furthermore, we hope this guide—and similar specially designed products we create for our clients—will serve as a tool to assist multi-national businesses in their ongoing struggle to maintain a consistent global corporate culture amidst an ever-changing landscape of local employment laws. [1] We hope you find this report informative and useful, and we look forward to the opportunity to work with you in 2020.

[1] Each law firm participating in the Network was specially selected by McDermott based on their outstanding local reputation and, in most cases, our prior experiences in working with them. Unlike most similar networks, there is no fee to participate in the McDermott Network. Participants in the Network work closely with McDermott lawyers on client projects, article writing, seminar and webinar presentations, and signature client events.

Finally, at the time of publication of this Special Report, many of you are dealing with the uncertainty caused by the outbreak and spread of the Coronavirus (COVID-19). We hope that you and your families and friends are able to stay healthy and get through this very confusing and challenging time. In an effort to keep you abreast of all the latest developments with respect to the Coronavirus, we have put together a Coronavirus Resource Center. Please feel free to visit the Resource Center at www.mwe.com/coronavirus.

ALBANIA

PROGRAMS AND PUBLIC SERVICES FOR PROMOTING EMPLOYMENT

In April 2019, Albania implemented law number 15/2019, "On Employment Promotion," which aims to increase workforce employment through the provision of public services, employment and self-employment programs, and vocational training. A state agency will replace the National Employment Service, and it will conduct periodic surveys at businesses to collect data on the number of employees, work conditions, recruitment process, and lack of skills or training needs. The law also provides for the creation of the Social Fund of Employment and establishes new obligations for employers, including: (i) the obligation to notify the labor office no later than 20 calendar days after commencement of bankruptcy proceedings; (ii) the obligation to hire a person with disabilities, as one of the first 25 employees of the enterprise, plus an additional person with disabilities for every additional 50 employees (alternatively, the enterprise can make a monthly contribution to the Social Fund of Employment equivalent to the national minimum wage for each position not fulfilled); and (iii) the obligation for each employer that benefits from public funds to employ unemployed jobseekers, giving priority to the long-term unemployed.

ANGOLA

ANGOLAN MINIMUM WAGE INCREASE (PRESIDENTIAL DECREE 89/19): EFFECTIVE JANUARY 1, 2019

The Angolan monthly minimum wage for agriculture was increased to KZ 21,454, the minimum wage for transport, services and manufacturing was increased to KZ 26,817, and the minimum wage in the extractive industry and trade was increased to KZ 32,181.

CHANGES TO LABOR INCOME TAX CODE (LAW 28/19)

Changes to Angola's tax code will result in, among other things, citizens aged 60 or older now having their income taxed, as well as holiday and Christmas allowances will now be taxed as well.

See: https://angolaforex.com/2019/10/03/diario-da-republica-i-a-serie-n-o-125-de-25-de-setembro-de-2019/

FOREIGN CITIZENS NEW LEGAL FRAMEWORK (LAW 13/19).

A Work Visa is now subject to the prior publication of an advertisement with the job offer to Angolan citizens in the Angolan newspaper with the widest circulation; otherwise, the Visa will not be granted. The Work Visa is valid for 365 days and can be extended for an equal period, until the end of the employment contract that justified it.

AUSTRIA

UPDATES TO PARENTAL LEAVE LAWS:

Parental leave to be fully credited toward employee length of service – Sec. 15f para. 1 Austrian Maternity Protection Act (*Mutterschutzgesetz* – "*MSchG*")

The "Papa Month" – Sec. 1a Austrian Paternity Leave Act (*Väter-Karenzgesetz* – "*VKG*"),

The amendment of the Paternity Leave Act implements a legal entitlement for fathers to a one-month's leave,

within the maternity protection period for mothers. This entitlement requires that the father lives in the same household as the child for which the entitlement is claimed. The "Papa Month" can be taken within the period from the birth date of the child until the end date of the maternity protection period of the mother, and has to be announced three months before the expected birth date of the child. From the date of announcement (but, at the earliest, four months in advance of the expected date of birth) until four weeks after the end of the "Papa Month," the respective father also benefits from a special termination protection. Before this amendment, in principle, fathers were only entitled to take paternity leave after the end of the mother's employment ban (usually eight weeks after the birth) until the second birthday of the respective child (at most).

OTHER IMPORTANT LEGISLATIVE CHANGES:

Good Friday Discrimination against religion? Sec. 7a Resting Period Act (*Arbeitsruhegesetz – "ARG"*)

Under the former version of Sec. 7 ARG, Good Friday was a public holiday only for members of certain Christian denominations. However, this past year, the European Court of Justice (ECJ) held in the "Cresco" decision that this policy was unlawful discrimination on the grounds of religion. The prior version was repealed and a new regulation was created, which provides that all employees have a legal entitlement to one day of holiday per year (the new "personal holiday"), which can be chosen unilaterally on a date of their choice. This new "personal holiday," which can be used for Good Friday or any other day of the year, will be deducted from the respective employee's vacation entitlement. However, the employee must notify the employer of the desired date of his "personal holiday" at least three months in advance, in writing. If an employee still works on the announced personal holiday "at the request of the employer" (Sec. 7a para. 2 ARG), however, the employee is entitled to remuneration for the work performed on that day in addition to the regular holiday remuneration (*i.e.*, the employee receives double the regular remuneration for that day). In this case, the working day is not considered a holiday and is not deducted from the vacation entitlement, but the entitlement to choose a "personal holiday" for that year is considered already used.

BELGIUM

A SINGLE WORK AND RESIDENCE PERMIT BECOMES AVAILABLE FOR NON-EUROPEAN NATIONALS

Belgium typically distinguished the authorization to work ("work permit") and the right of residence ("residence permit") for non-European nationals. A foreign employee, therefore, had to go through two separate procedures in order to obtain both documents. However, as of January 1, 2019, in the case of employment for more than 90 days in Belgium, a single permit for both documents can be obtained at the competent regional immigration service, which contains both an approval to work and an approval to reside in the country. This single permit procedure results in the implementation of the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011. This procedure should simplify and harmonize the international mobility of non-European nationals in Belgium.

BELGIAN TAX REPORTING OBLIGATIONS FOR BENEFITS PAID BY FOREIGN GROUP COMPANIES

As of January 1, 2019, Belgian-based employers with employees who receive bonuses or other benefits from: (a) foreign-based group companies must withhold payroll taxes and report these benefits on a tax form 281.10 or 281.20 "as if they granted these benefits."

Previously, Belgian employers were required to comply with these tax reporting obligations only when they intervened (*e.g.*, administratively and/or cost wise) in such grants and/or payments from this obligation. Belgian employers now must comply with these tax-reporting obligations, even if they do not intervene. However, salary splits are excluded according to the explanatory memorandum of the law, where an employee-employer relationship exists between the employee and the foreign employer.

THE SISLEY CASE: CONCEPT OF REMUNERATION

On May 20, 2019, the Belgian Supreme Court confirmed that variable pay and benefits granted by a third party to employees who are not employed by the company must be considered remuneration, subject to social security contributions. This determination is based on the fact that this premium constitutes payment for the work performed under the employment agreement. This holding confirms that if variable pay and benefits are granted to employees by a third party company for services provided within the framework of the performance of their employment contracts, social security contributions are due from the third party company, even in the absence of employment contracts between the employees and the third party company. Click here for the full case.

BOSNIA

NEW LABOUR LAW IN BRČKO DISTRICT

The 2015–2015 Reform Agenda for Bosnia and Herzegovina (the "Agenda") sets out the government's main plans for socio-economic related reforms. The Agenda is closely aligned with the aims of the European Union's new approach to economic governance in the Western Balkans. Through the Agenda, the Federation of Bosnia and Herzegovina and the Republic of Srpska adopted new labour laws reflecting all required changes. Following additional reforms in December 2019, the government of Brčko District adopted a new labour law (the "Law"). The Law introduced significant changes. Primarily, the Law stipulates that daily work breaks of not less than 30 minutes for six hours of work shall now be included in an employee's working hours. The Law also requires employers to inform employees about the employees' work schedules. Further, the Law increases an employee's annual leave from 18 days to 20 days, and increases paid leave from three days to five days per year. Additionally, force majeure has been added as a reason for paid absence, and, two days are now allowed for voluntary blood donations. The Law also introduces more detailed descriptions of discrimination at work and reasons for the suspension of employment rights.

CHANGES TO THE VOLUNTARY PENSION FUND REGULATION IN THE REPUBLIC OF SRPSKA

Amendments to the Law on Voluntary Pension Funds and Pension Plans ("Pension Fund Amendments"), adopted in December 2019, aim to further develop and encourage the voluntary pension insurance market in the Republic of Srpska. The Pension Fund Amendments provide for the creation of collective membership of employees in a voluntary pension fund

in addition to individual membership. To be eligible for collective membership, the Pension Fund Amendments require employee contributions to be paid by the employer. The employer is encouraged to participate in such voluntary pension membership arrangements through certain tax reliefs and exemptions provided for by the applicable tax regulations. The Pension Fund Amendments also eliminate a previous restriction by which at least 51% of employees were required to be enrolled in the voluntary pension fund for an employer to be eligible for tax relief.

BRAZIL

THE IMPACTS OF THE ECONOMIC FREEDOM ACT (LAW 13.874/2019) IN THE BRAZILIAN LABOR LAW

On September 20, 2019, the Economic Freedom Act (Law 13,874) went into effect in Brazil. The EFA is designed to reduce bureaucracy in Brazilian entrepreneurship, including, without limitation, simplifying the hiring process and mitigating issues with poor and inaccurate records. Another relevant change under the EFA concerns the recording of working hours. The new wording of article 74 of the Consolidation of the Brazilian Labor Code increases the number of employees of the establishment must have – from 10 to 20 0 for the mandatory control and registration of working hours to apply. It also introduces new rules for registering working hours of those employees who work outside the employer's establishment and allows, by written individual agreement, collective agreement or collective bargaining agreement, the computation of the workday by the "exception" regime (*i.e.*, registering the extraordinary working day only). Click here for more information.

PENALTY OF 10% OVER THE AMOUNTS OF THE GUARANTEE FUND FOR LENGTH OF SERVICE (FGTS) WAS ELIMINATED

On December 12, 2019, Law n. 13,932/2019 was enacted with relevant modifications regarding the Guarantee Fund for Period of Service (*Fundo de Garantia por Tempo de Serviço – FGTS*) and other social security taxes. The highlights of the new legislation are: (i) the elimination of the 10% penalty paid by employers in the event of termination without cause after January 1, 2020; and (ii) the new conditions of FGTS funds withdrawal by employees. This law also provides for: (i) measures for the conversion of the payroll-related information and of the amounts collected as FGTS by employers into digital format; and (ii) changes in the statute of limitations for FGTS payments, which will now be tolled in the event of debit notification, or the initiation of administrative proceedings or investigations carried out by labor authorities. Click here for more information.

GROUNDBREAKING DECISION ALLOWS PROFESSIONALS TO BE ENGAGED THROUGH INDIVIDUAL LEGAL ENTITIES

The Superior Labour Court ("TST") recently passed judgment on a public action brought by the Public Attorney's Office, Labour Branch, against a medical exam clinic, which sought to prohibit the hiring of doctors as individual legal entities, instead of through the traditional employment format. In sum, the TST decided that: (i) in principle, it is not illegal to engage an individual legal entity to provide professional services of intellectual nature; even if such services are an essential part of the contracting company's principal business; (ii) such legal regimen shall be illegal if "subordination" is detected, on a case by case review; (iii) and after the

labor reform of 2017, all contracts under such legal format are permitted, without exception.

The TST's decision harmonizes the conflicting legal arguments by holding that the engagement of an individual legal entity is not inherently prohibited and that the court shall review the decision's factual subordination on a case-by-case basis. Also, the decision declared that the new laws eliminated the core element of the criticism of improper use of individual legal entities by mooting the issue whether the contracted services are essential to the contracting company's business.

THE BRAZILIAN FEDERAL REVENUE OFFICE ASSERTS THAT SOCIAL CONTRIBUTIONS SHOULD NOT BE LEVIED ON MEAL ALLOWANCE PAID THROUGH TICKET OR CARD

On January 25, 2019, the Federal Revenue Office released the Consultation nº 35/2019, which deals with the social security contribution levied on meal allowance paid in cash, *in natura* or either through ticket or card.

In short, the General Taxation Secretariat of the Federal Revenue Office (Cosit) declared that: (i) amounts paid to employees in cash should be considered in the tax basis for the calculation of employers' and employees' social security contributions; (ii) amounts paid *in natura* covers both food stamps and meals provided by the employers to its employees in cafeterias, and shall not be considered as basis for the calculation of social security contributions; and (iii) benefits granted through tickets or pre-paid cards shall not be considered in the tax basis for the calculation of employers and employees social security contributions as of November 11, 2017, considering the enactment of the Labor Law Reform.

This new understanding revises the previous opinion issued by *Cosit*, and is a direct result of the changes to article 457 of the Brazilian Labor Code (*CLT*) introduced by the Labor Law Reform, which explicitly determines that the amounts paid in the form of non-cash meal allowance should not be considered as tax basis for any labor benefits or social security contributions. Such a formal opinion may create an opportunity for entrepreneurs to reduce tax costs associated with the meal allowance, and even for the recovery of social security contributions that were unduly paid since the Labor Reform came into force. Click here for more information.

BULGARIA

EMPLOYMENT OF PEOPLE WITH DISABILITIES

The Law on People with Disabilities (followed by detailed Rules for Implementation thereof) (the "Disability Law") went into effect on January 1, 2019. It creates new statutory requirements aimed at integrating people with disabilities, including in the workforce.

A key requirement under the Disability Law is the mandatory quota for certain employers to hire employees with permanent disabilities. The quota depends on the total number of employees hired by the respective employer, namely: (i) employers who have 50 to 99 employees must hire at least one employee with a permanent disability; and (ii) employers who have 100 or more employees must hire employees with a permanent disability in a number equal to at least 2% of the total number of their employees.

This obligation requires the actual employment of disabled workers, and not just designating appropriate positions to be occupied by disabled individuals.

Exemptions from this new statutory requirement do exist. For example, an employer need not hire employees with permanent disabilities if the employer purchased goods/services produced/traded/provided by specialized enterprises or cooperatives of persons with disabilities (listed in a register kept by the Agency for People with Disabilities), as an alternative measure, for each month during which the quota is not fulfilled. The consideration for such purchases from eligible providers should amount to at least twice the monthly minimum wage established for Bulgaria for the respective calendar year—for each vacancy for a person with a permanent disability, until the moment the quota is implemented.

The law also imposes certain special reporting and filing requirements on employers in connection with the employment of people with permanent disabilities.

THE LABOUR INSPECTORATE LAUNCHES A NEW POSSIBILITY FOR OBTAINING VARIOUS CERTIFICATES THROUGH DIGITAL SIGNATURE

In October 2019, the General Labour Inspectorate Executive Agency launched a web portal allowing for generating electronic certificates evidencing the existence of (or lack of) penalty deeds issued to an employer for non-compliance with the labour legislation.

MINIMUM WAGE

The minimum wage continued to rise in 2019 and reached BGN 560 per month. Effective January 1, 2020, the statutory minimum wage shall be further increased to BGN 610 per month, or BGN 3.66 per hour.

CAMBODIA

MINIMUM WAGE

On September 20, 2019, the Ministry of Labour and Vocational Training (MLVT) increased the minimum wage for workers in the textile, garment, and footwear sector to USD $190 per month from USD $187 per month. During an employee's probationary period, however, the minimum wage is USD $185 per month. The new minimum wage went into effect on January 1, 2020.

SENIORITY PAYMENTS

The Instruction on Payment of New Seniority Indemnity Each Year from 2019, enacted on June 10, 2019, provides that seniority be counted once every six months (a "semester"). Employees who have worked for at least one month and who work until the end of a semester are entitled to seniority payments equaling seven and a half days of average wages and other benefits each semester—for a total of 15 days ongoing seniority payments per year. The payments for each semester must be made during the second payment period for June and December, respectively; this occurs between the 1st and 7th of the following month.

The MLVT issued two other instructions regarding the process for paying seniority back payments. The calculation of the back payments only includes actual wages, not bonuses. In the non-textile, garment, and footwear sectors, employers must make back payments (which accrue at 15 days per year) starting in December 2021 at a rate of three days per semester. In the garment, textile, and footwear sector, back payments are due at a rate of 15 days per semester, and the maximum seniority back payment amount cannot exceed 6 months of average net wages. In calculating the daily average basic net wage, employers must treat a month as 26 working days.

FIXED DURATION CONTRACTS AND RENEWALS

On March 17, 2019, the MLVT enacted its Instruction on Determination of Type of Employment Contracts. This instruction sets the maximum duration of an initial Fixed Duration Contract (FDC) for a local or foreign employee at two years. The contract can be renewed one or more times provided that the total duration of the renewals does not exceed an additional two years, after which it will be deemed an undefined duration contract (UDC). If an employee reaches the maximum duration for an FDC, which is potentially up to four years, and the employer wants to continue the employment on an FDC basis, there must be a one-month break between the expiration of the FDC and the start of a new the new FDC.

FOREIGN WORKERS AND EMPLOYMENT CONTRACTS

On March 29, 2019, the MLVT enacted the Notification on the Registration of Foreign Employment Contracts, which allows employers to submit Khmer-language translations of employment contracts with their foreign employees when applying for work permits for their foreign employees. Additionally, both fixed duration contracts (FDCs) and UDCs will be accepted by the MLVT. These regulations replace the previous rules, which required an employer to submit a contract that followed an MLVT template, and deemed an FDC the only contract type valid for a work permit. Finally, the Notification specifies that if the contract expires or is amended, the employer must submit an updated agreement.

CANADA

SIGNIFICANT AMENDMENTS TO THE *CANADA LABOUR CODE*

Federally regulated employers in Canada were impacted by significant reforms to the *Canada Labour Code* that took effect on September 1, 2019. These changes are part of sweeping reforms aimed at modernizing the *Canada Labour Code* through a series of Budget Implementation Bills (notably, Bill C-63 and Bill C-86). The reforms included requirements that employers provide employees with 96 hours' notice of their work schedules, the introduction of 30-minute break periods during every period of five consecutive hours of work, breaks for medical reasons or nursing, and new flexible work arrangement provisions. The reforms also introduced more generous vacation (time and pay) provisions, and several new leaves, including Personal Leave, Leaves for Victims of Family Violence and Leave for Traditional Aboriginal Practices. Click here to read the *Canada Labour Code*.

FRANCHISEE: EMPLOYEE OR INDEPENDENT CONTRACTOR?

In *Modern Cleaning Concept Inc.* v. *Comité paritaire de l'entretien d'édifices publics de la région de Québec* (2019 SCC 28), the Supreme Court of Canada (the highest level of court in Canada) was asked to determine whether a franchisee performed services as an employee or as an independent contractor in accordance with the Quebec *Act Respecting Collective Agreement Decrees* (the "Act"). As required, a parity committee had been established to ensure compliance with the Act. In 2014, the parity committee filed legal proceedings against the franchisor, claiming unpaid salary and other benefits on behalf of the franchisee. The Supreme Court of Canada determined that the relationship between the parties was in fact that of

employer-employee. Judge Abella, speaking for the majority of the Supreme Court, stated that the presence of a franchise contract cannot be used to mask the true nature of the employment relationship. In this case, the Supreme Court ruled that the franchisee did not assume any risks relating to the franchisor's enterprise, that the franchisee was under the de facto control of the franchisor and that the franchisee was not given an opportunity to realize any profits, as his compensation was limited to the value of the assigned service contract. The Supreme Court therefore determined that the franchisee was actually employed by the franchisor and thus subject to the provisions of the Act and the applicable labour standards arising thereunder. In this decision, the Supreme Court of Canada restated the principle that determining whether an employment relationship exists rests heavily on the factual circumstances at play, and not just the characterization as stated in the contract. The Supreme Court further expanded the possibility of employment relationships existing in non-traditional settings, such as, in this specific case, that of a franchisor-franchisee relationship. Click here to read the full decision.

THE LEGALIZATION OF CANNABIS AND THE EVOLUTION OF IMPAIRMENT

In *IBEW v. Lower Churchill*, the Newfoundland and Labrador Supreme Court confirmed an arbitrator's decision, which upheld the employer's termination of an employee who used medical cannabis outside of working hours. Because the employee was in a safety-sensitive position and it was not possible to determine whether the consumption of the cannabis during non-working hours would result in the employee being impaired during working hours, the Court upheld the arbitrator's decision that it would constitute undue hardship to allow the employee to continue working. The decision was influenced heavily by the fact that the medical evidence confirmed there was no scientific/medical consensus on what constituted a safe interval of time between cannabis use and performance of safety sensitive duties. Moreover, the evidence demonstrated that current testing methods were not able to determine whether an employee was impaired at the time of testing, and therefore would not be useful as a monitoring mechanism. In light of this evidence, the Court upheld the arbitrator's decision that the employee's nightly dosage would lead a reasonable employer to conclude that there was an increased risk of harm from residual impairment, and that allowing the employee to work would constitute undue hardship. This decision has to be relied on with caution, and should not be taken as a blanket ability to dismiss employees who consume cannabis. When it comes to impairing substances that are taken for medical purposes, employers must continue to carefully evaluate the duty to accommodate on a case-by-case basis. In such cases, employers must consider the nature of the work, the frequency/level of consumption and the available testing technologies, as well as all reasonable options in accommodating employees. Click here to read the full decision.

CHINA

NEW RULES ON THE PROTECTION OF WOMEN IN THE WORKPLACE AND GENDER EQUALITY

On February 21, 2019, China's nine government departments, including the Ministry of Human Resources and Social Security and the Ministry of Education, issued an official *Notice on Further Regulating Recruitment Activities and Promoting Women's Employment* ("Notice"). The Notice provides specific and detailed rules on the protection of women's employment and workplace gender equality. For instance, the Notice provides that employers shall not ask women about their marriage and childbirth, use pregnancy tests for physical examinations of new

employees, use restrictions on childbirth as a condition of employment, or increase the recruitment standards for women candidates in a differentiated manner. The Notice also prohibits employers from generally restricting women's employment or refusing to employ women candidates on the grounds of gender. Employers that are in violation of the Notice will be ordered to make corrections according to law. If they fail to make corrections, they will be fined, and the administrative penalties will be recorded in the human resources market integrity record. Click here to read the Notice.

NEW LOWER SOCIAL INSURANCE RATES

On April 4, 2019, the General Office of the State Council of China printed and distributed the *Comprehensive Plan for the Reduction of Social Insurance Premium Rates* ("Plan"), which provides lower social insurance rates for many businesses. The purpose of the Plan is to optimize business in China and reduce the burden on enterprises. As a result of the Plan, the burden of social insurance contributions on enterprises, especially on small and micro enterprises, should be substantially reduced. From May 1, 2019, the proportion of contributions made by employers to basic pension insurance for urban employees was reduced. If an employer's current contribution proportion exceeds 16% as provided by a province, it can be lowered to 16%. In addition, the Plan decreases unemployment insurance rates and work-related injury insurance premium rates by phases. From May 1, 2019, in provinces where the aggregate unemployment insurance premium rate is 1%, a phased reduction of unemployment insurance premium rate will be applicable for an extended period until April 30, 2020. From May 1, 2019, the period for a phased reduction of premium rate of work-related injury insurance will also be extended until April 30, 2020. Click here to read the Plan.

INCREASING USE OF NON-COMPETES TO PROTECT TRADE SECRETS

A recent case demonstrates the potential advantage of implementing non-compete agreements to protect trade secrets or other confidential and proprietary information. In this case, Baidu, one of the leading internet companies in China, sued its former project leader for violating a non-compete obligation. The former project leader founded several competing companies just one month after he left employment with Baidu. In September 2019, Shanghai No. 1 Intermediate People's Court ruled that the executive was required to both return the non-compete compensation of over RMB 890,000 that Baidu paid the executive, and pay Baidu RMB 2.6 million as liquidated damages. An increasing number of companies in China are using non-competes in an effort to protect their trade secrets and other confidential and proprietary information. We expect that trend to continue given the decision in the Baidu case and other cases like it.

SOCIAL INSURANCE PREMIUMS FOR HONG KONG, MACAU AND TAIWAN RESIDENTS WORKING IN MAINLAND CHINA

On November 29, 2019, China's Ministry of Human Resources and Social Security and National Healthcare Security Administration released the *Provisional Measures for the Participation by Hong Kong, Macao and Taiwan Residents in Social Insurance in Mainland China* ("Provisional Measures"), implemented from January 1, 2020. Under the Provisional Measures, "Hong Kong, Macau and Taiwan Residents" refers to those Chinese citizens from Hong Kong Special Administrative Region or Macau Special Administrative Region, as well as Taiwan residents, who are working, residing or studying in Mainland China. "Employers" who are required to pay social insurance premiums for their employees refers to

enterprises, public institutions, social organizations, and individually owned economic organizations that are registered or incorporated pursuant to law in Mainland China. Given this development, covered employers should pay close attention to the local implementing rules of the Provisional Measures. Click here to read the Provisional Measures.

CYPRUS

MAJOR CHANGES TO CYPRUS EMPLOYMENT LEGISLATION

As a full-fledged member of the EU, Cyprus must implement EU Directive 2019/1152/EU on transparent and predictable working conditions into its employment law framework. The Directive, which was published on July 11, 2019 and entered into force on July 31, 2019, must be implemented into Cypriot law by August 1, 2022, at the latest.

The new Directive brings with it many changes, such as probation periods, parallel work, minimum predictability of work, complementary measures for on-demand contracts, transition to other forms of employment and mandatory training. Cyprus employers should regularly monitor Cypriot implementation of the Directive through local legislation.

NEW GENERAL HEALTHCARE SYSTEM OBLIGATIONS

Employers in Cyprus now have a statutory obligation to contribute toward the General Healthcare System (GHS) Fund on behalf of their employees. The amount that employers are required to contribute is fixed at 1.85% on the gross earnings of each employee for the period of March 1, 2019, until February 29, 2020, and 2.90% from March 1, 2020, onwards. In addition, employees must contribute 1.70% of their gross earnings for the period of March 1, 2019, until February 29, 2020, and 2.65% from March 1, 2020, onwards. Click here for more information.

"BENEFITS IN KIND" TAXATION GUIDELINES

As of January 1, 2019, the Benefits in Kind (BiK) Guidelines have been introduced as part of the general taxation system in Cyprus. The rules apply with reference to BiK provided to employees, and persons who hold or are deemed to hold an office (*i.e.*, company directors). The BiK Guidelines have been introduced in an effort to create a more uniform and consistent approach to this issue by the tax authority. The affected categories of BiK include the use of a car, accommodations and assets.

CZECH REPUBLIC

ALL EMPLOYERS IN THE EUROPEAN UNION MUST RECORD EMPLOYEES' WORKING HOURS

The Court of Justice of the European Union held that all member states must require employers to set up an objective and reliable system for recording employees' daily working hours. Although the decision provoked a storm of criticism among European states, employers in the Czech Republic are already required to record the beginning and end of each shift, overtime hours, night work, the time an employee spends on call and the time the employee actually works while on call. Click here for more information.

FACE ID HELD PERMISSIBLE UNDER THE EU GENERAL DATA PROTECTION REGULATION

The Czech Office for Personal Data Protection held that the processing of biometric data in employment relationships could be done, at least in some cases, in accordance with the European Union General Data Protection Regulation. The employer in the case under consideration used an attendance system that recorded the arrival and departure time of employees based on their face recognition (Face ID). The Czech Office for Personal Data Protection considered this legal because the employer (a construction company) used Face ID to ensure safety on a large construction site, and it was not possible to achieve the same purpose by less invasive means. Click here for more information.

HIDDEN RECORDING ADMISSIBLE IN COURT PROCEEDINGS

The Czech Supreme Court—and later the Constitutional Court—held that an audio or visual recording made without the knowledge of the recorded person can be used as evidence in civil proceedings under certain circumstances. This type of recording can be used only if: (i) it is intended to prove a fact that cannot be proved otherwise; and (ii) other circumstances lead to the conclusion that the recorded person's right to protection should not be given priority over the right to a fair trial of the person attempting to use the recording in the proceedings. Click here for more information.

NON-COMPETE BREACH IS NOT EXCUSED, EVEN IF "NEGLIGIBLE"

In a case before the Supreme Court, an employee breached a non-compete clause when he started to work for the employer's competitor. However, he subsequently terminated the new employment after just four days. The Supreme Court held that the employer was not entitled to a contractual penalty for the breach of the non-compete clause, as the breach was only "negligible." But the Constitutional Court overturned the decision of the Supreme Court, stating that such an interpretation would create too much uncertainty for employers and, thus, undermine the entire purpose of, non-compete clauses. According to the Constitutional Court, it is not the length of the breach of the non-compete that is important, but rather the fact that the breach actually happened. Click here and here for more information.

BANKING INDUSTRY WORK BREACHES MORE SERIOUS

The Supreme Court held that the breach of work discipline in the banking industry is generally considered to be more serious and significant than in other businesses, as the activities of banks are connected with significant risks that place high demands on their employees in terms of conscientious performance of their duties. The court thus held that the immediate termination of such an employee was legal. Click here for more information.

TRADE UNIONS MUST PROVE THEY CAN ACT ON BEHALF OF EMPLOYEES

According to Czech law, a trade union can act on behalf of employees only if: (i) it is authorized to do so under the relevant statutes, and (ii) at least three of its members are employed by the employer. However, the authority to act is established on the day after the trade union informs the employer that it meets both conditions set forth above. The Supreme Court held (contrary to the Labor Code's explicit wording) that the trade union must not only inform the employer but also prove that it satisfies both conditions. This decision is especially

important for employers with "online" trade unions. Since they never actually show up at the workplace, online trade unions usually inform employers of their existence and demand payments for their activities based on the provision of the Czech Labor Code that states that the employer is—at its own expense—obligated to create conditions for the proper performance of the activities of the employees' representatives. Click here for more information.

DENMARK

NEW HOLIDAY ACT

A new Danish Holiday Act has been adopted, which fundamentally alters the Danish holiday system from "staggered holiday" to "concurrent holiday." When the new Act becomes effective on September 1, 2020, employees will be able to take paid holiday in the same year as the holiday is accrued. Under the current Act, new employees in some cases have to wait up to 16 months before being able to take paid holiday. On January 1, 2019, a transitional arrangement went into effect requiring that any holiday accrued in the transitional period will be "frozen" and either transferred to a special holiday fund or saved by the company until the accrued holiday entitlements are paid to the employees upon retirement. In 2019, Danish employers made considerable efforts to react to the new regulation, adjust company policies, inform their employees of the changes, and prepare for a lack of liquidity in the case of companies choosing to pay the entitlements accrued in the transitional period into a special holiday fund (corresponding to approximately 12.5% of total salaries in the transitional period).

SIGNIFICANT AMENDMENTS TO THE STOCK OPTION ACT

On January 1, 2019, a number of amendments to the Danish Stock Option Act went onto effect, providing a higher degree of freedom of contract and thus more flexibility when setting up incentive schemes/programs. As an example, under the previous regulation, "good leavers" were always entitled to keep all options/warrants and to receive further awards on a pro rata basis. Under the new regime, the parties may agree on such treatment (*e.g.*, agree that any unvested shares are to lapse regardless of good leaver/bad leaver status). The amendments will make it easier for international companies with group-wide incentive programs to onboard Danish participants in such programs without having to make myriad adjustments to Danish law. While the new regulation provides more flexibility, it is unclear on certain points, making it more important than ever to pay special attention to the provisions governing leaver situations. Existing Danish incentive programs will not be affected by the amended Danish Stock Option Act. It should also be noted that an employer statement in Danish is still required.

AMENDMENT TO THE ACT ON EQUAL RIGHTS FOR MEN AND WOMEN

Inspired by the global #MeToo campaign, the Danish Act on Equal Rights for Men and Women has been amended with effect from January 1, 2019. The amendment specifies that the requirement for equal treatment of men and women in the workplace includes a prohibition against sexual harassment and that, when assessing whether sexual harassment has taken place, the tone of the workplace should not be taken into account. The amendment also introduces higher average compensation levels for victims of sexual harassment.

SUPREME COURT RULING ON EMPLOYEE'S POSSIBLE VIOLATION OF GDPR

The Danish Supreme Court has addressed the question of whether an employee's secret recording of a conversation with the employer was in accordance with the General Data Protection Regulation (GDPR), and whether the recording justified a dismissal or a summary dismissal of the employee. Based on an assessment of the specific circumstances at hand, the Supreme Court found that the recording and the employee's use of the recording did not constitute a violation of the GDPR, and that the employee did not breach the employment relationship. The Supreme Court also held that a violation of the GDPR will not in all cases imply a breach of the employment relationship.

EGYPT

NEW SOCIAL INSURANCE LAW

As part of the strategy adopted by the government to secure more protection for Egyptian employees, the new Social Insurance Law # 148/2019 (SI Law) took effect on January 1, 2020. The Prime Minister's executive regulations are expected to be issued in February 2020.

The new SI Law contains several important changes, including: (i) the extension of social insurance protection to new groups of workers, including non-regular/seasonal employees; (ii) new contribution rates and percentages (to be determined by the executive regulations); (iii) establishing a unified retirement fund for all categories and types of insurance; (iv) setting standard retirement ages; and (v) integrating the previously dispersed social insurance laws and subjecting all categories of insured persons to the same legislation. The SI law also increases the financial penalties for noncompliance from the old capped amount of EGP 500 to a range of EGP 20,000 to EGP 100,000. There are also imprisonment penalties for special cases, such as where employees are injured or violations are committed by social insurance officers.

ESTONIA

CHANGES TO HEALTH AND SAFETY OBLIGATIONS

There were a number of amendments to the Occupational Health and Safety Act that took effect on January 1, 2019. For example, the law no longer lists the types of employee workplace instruction that should be provided, and, instead, gives employers greater freedom to establish workplace training and instruction. In addition, employers now have more time to arrange an employee's initial medical examination. There are exceptions for employees whose health may be affected by certain hazards, and these employees must undergo a prior medical examination. Employers also no longer have to report minor accidents at work. However, if an accident at work results in temporary incapacity, severe personal injury, or death, the employer's obligation to report remains in force. The employee and employer do have the option to agree to pay a contractual penalty for violating occupational health and safety requirements. The amendments also increased fines for health and safety breaches at work.

FRANCE

THE MACRON SCALE: FINE-TUNING UNFAIR DISMISSAL DAMAGES

In 2017, French President Emmanuel Macron put his stamp on French labor law, with reform aimed at providing flexibility and predictability to employers. This reform introduced a scale of damages payable in the event of unfair dismissal—the "Macron Scale." Previously, damages amounted to a minimum of six months' salary, with no maximum provided by law. Damages so calculated could thus result in significant exposure for the employer. The Macron Scale establishes both minimum and maximum damage amounts based upon an employee's length of service, and the scale applies to dismissals occurring after September 22, 2017. The scale has been found valid and enforceable by two of France's high courts—the Constitutional Council ("*Conseil Constitutionnel*") and the French State Council ("*Conseil d'Etat*"). However, some trade unions and employment tribunals were unreceptive to the scale, and found it violated a European Union and an international convention. Seeking clarification, the employment tribunals of Toulouse and Louviers filed a referral with the French Supreme Court ("*Cour de cassation*") for its consideration.

The Supreme Court recently ruled favorably for application of the Macron Scale, finding that the EU and international conventions were inapplicable to disputes between employers and employees and that the Macron Scale provides the terminated employee with adequate compensation. Although the Paris Court of Appeal has followed the ruling of the Supreme Court, the Reims Court of Appeal has disagreed in part, holding that an employee could claim that the scale, as to such employee, did not provide adequate compensation. Waiver of application of the scale by some courts may therefore be anticipated. In such cases, employers should consider continuing through to the French Supreme Court to obtain the effect of this Court's considered, and binding, decision. Click here for more information.

GERMANY

EUROPEAN COURT OF JUSTICE REQUIRES WORKING TIME DIRECTIVE

On May 14, 2019, the European Court of Justice (ECJ) held that, according to the European Working Time Directive, employers are required to record their employees' working times. Employers will need to implement time-keeping systems to ensure that they fulfill the Working Time Directive's purposes. Although the ECJ based its decision on Spanish working time rules, the decision will also have an impact on the German Working Time Act (which currently does not require employers to systematically record working time). The German government is expected to amend the German Working Time Act in 2020.

IMPLEMENTATION OF SECRECY PROTECTION ACT

The German Secrecy Protection Act (GSPA) took effect on April 18, 2019. The GSPA is aimed at improving the protection of trade secrets. The definition of a trade secret now requires companies to take "appropriate confidentiality measures." These may be technical, organizational or legal measures. Legal measures include appropriate contractual arrangements with employees—such as non-disclosure and non-competition clauses. From an organizational perspective, employers will now have to pay closer attention to internal access restrictions. The GSPA should cause employers in Germany to take a fresh look at their current policies and procedures with respect to the use and protection of confidential and proprietary information.

FIXED-TERM EMPLOYMENT CONTRACTS

According to the German Part-Time and Limited Term Employment Act, an employer may not terminate a fixed-term employment contract without special justification (*e.g.*, an interim employee replacing an employee on parental leave) if a prior employment relationship existed between the parties. In a recent decision, the German Federal Labor Court held that no general period between a prior and current employment relationship can exclude application of these rules and that even an eight-year gap might not be sufficient. Thus, employers should proceed with caution with respect to fixed-term employment contracts where prior employment relationships exist.

FORFEITURE OF VACATION ENTITLEMENTS

According to a February 19, 2019, decision of the German Federal Labor Court (based again on a ruling by the EJC), employers must request that employees take their vacation entitlements during a calendar year, and must inform them of the forfeiture of such entitlements that may happen in the event that they do not take all of their vacation entitlements during that calendar year. If employers fail to meet these requirements, employees will not forfeit any such unused vacation entitlements and the vacation will carry over to the following calendar year.

GHANA

EMPLOYEE REDUNDANCY PAY AFTER PRIVATIZATION OF A COMPANY

On February 6, 2019, the Supreme Court in *Atuahene v. Ghana Cocoa Marketing Board* addressed whether employees retained after the privatization of a company were entitled to redundancy pay. The Court held that an employee is only entitled to redundancy pay when: (i) the legal relationship between the employer and employee as existed before a close-down, arrangements or amalgamation of the entity is severed as a result of the close-down arrangements or amalgamation of the entity; **and** (ii) the employee becomes unemployed or suffers a diminution in his terms and conditions of service because of the severance. The Court held that the employees remained employees of the company after the privatization even though they suffered a diminution in their terms and conditions of employment and, therefore, were not entitled to redundancy pay. Click here to read the full case.

UNFAIR VS. WRONGFUL TERMINATION

On March 21, 2019, the Supreme Court in *Afran v. SG-SSB Limited* clarified the distinction between "unfair termination" and "wrongful termination" under Ghanaian law. The Court noted that the trial judge had erred in entering a judgment for unfair termination when the employee claimed damages for wrongful termination because the two concepts are inherently different. The Court noted that unfair termination is a creature of statute, as section 63 of the Labour Act defines unfair termination and provides remedies for an aggrieved employee. Unfair termination includes terminating a worker because of the worker's gender, race, color, ethnicity, origin, religion, creed, social, political or economic status, disability, pregnancy, or absence from work during maternity leave. On the other hand, wrongful dismissal is a common-law concept. The Supreme Court held that the trial judge erred when he applied the Labour Act in determining whether the employee was wrongfully terminated. The Court clarified that an employee is unfairly terminated if the termination fails to comply with the provisions of section 63 of the Labour Act. However, an employee is wrongfully terminated if the terms of the employment contract are not adhered to in terminating the employment

relationship (*e.g.*, not following the requisite notice provisions before ending the employment relationship). Click here to read the full case.

MANAGING DIRECTOR DECISION BINDS COMPANY WITHOUT BOARD APPROVAL

In *Degbor v. Atlantic Port Services*, handed down on June 12, 2019, the Supreme Court decided a case in which the respondent-company had suspended the appellant-employee for four years. The employee subsequently received a letter from the managing director of the company reinstating him. The letter stated that the company would pay the employee all outstanding salary and benefits for the period of time he was suspended. However, the company defaulted on the payment, and the employee sued. The company argued that it was not liable because the managing director reinstated the employee without approval from the company's board of directors.

The High Court held that the employee failed to prove he was lawfully reinstated after his interdiction. However, the Court of Appeal reversed. The court indicated that the company could not separate itself from the acts of its managing director. Therefore, where the managing director unilaterally reinstated the employee after an interdiction or suspension, such reinstatement would bind the company—even without the approval of the board of directors of the company. Further, the Supreme Court held that the employee would be entitled to recover all amounts the managing director approved as compensation in lieu of an interdiction or suspension from the company. Click here to read the full case.

COURT OF APPEAL JURISDICTION OVER LABOUR ACT DECISIONS

In *Brown v. National Labour Commission & Ahantaman Rural Bank Ltd.*, the appellant-employee filed a petition at the National Labour Commission (NLC) against his employer, a bank, under section 64 of the Labour Act. The Labour Act provides that a worker who claims his employment has been unfairly terminated under section 63 may present a complaint to the NLC. Dissatisfied with the compensation awarded by the NLC, the employee appealed. The Court of Appeal held that it had no jurisdiction because section 64 does not provide a right of appeal concerning an NLC determination.

The Supreme Court held on June 19, 2019 that the Court of Appeal should have exercised jurisdiction. It explained that the Parliament of Ghana could not have intended that the NLC should have the final determination over its decisions, since the NLC primarily performs administrative and executive functions and is neither chaired by nor composed of judges. The Court further noted that the Labour Act provides a right of appeal to the Court of Appeal as to other decisions, and common sense warranted assigning appellate jurisdiction to the Court of Appeal for all determinations by the NLC. Click here to read the full case.

HUNGARY

CHANGES TO THE LABOUR CODE

For the purpose of adapting employment laws to the current needs of the labour market, Parliament adopted a few modifications to the Hungarian Labour Code by Act CXVI of 2018. In light of the labour shortage in Hungary, the recent modifications of the Labour Code were designed to make the laws more flexible.

In particular, as of January 1, 2019, amendments took effect with respect to the regulation on overtime work, in line with the trend of increasing the cap on overtime work in the CEE region. The rule that employers can demand employees to perform overtime work up to 250 hours per year remained unchanged. However, according

to the new provisions, the employee and the employer can enter into an agreement under which the employee may undertake to perform additional overtime work up to 150 hours per year, for a total of 400 hours of overtime work per year. The Labour Code calls this option "voluntarily undertaken overtime." Critics of the law suggest that, taking into account the inequality of bargaining power between the employer and employee, it is highly questionable whether employees can give their free consent to such an agreement on overtime.

Upon the introduction of the amendments to the Labor Code, a few companies declared that they were not willing to apply the new provisions on the extended overtime work; however but up to now, no statistical data has been published about the use of such overtime agreements.

INDIA

LABOR REFORMS DESIGNED TO FACILITATE BUSINESS IN INDIA

Employers in India need to comply with a large number of labor and employment laws. Obligations under these laws can often be confusing and overlapping, requiring organizations to invest significant time and effort to ensure compliance. In 2019, there were a number of efforts taken by the government to simplify and consolidate certain labor laws to promote ease of doing business. As part of the labor reform initiatives, further progress was made towards the amalgamation of 44 labor laws into four codes (*i.e.*, the Code on Wages, the Code on Industrial Relations, the Code on Social Security, and the Code on Safety, Health and Working Conditions). The proposed new codes are in various stages of legislation, with the Wage Code being the most imminent.

THE NEW WAGE CODE

The Code on Wages, 2019 ("Wage Code"), seeks to consolidate and replace four central labour laws relating to wages: the Equal Remuneration Act, 1976; the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; and the Payment of Bonus Act, 1965. Some key highlights include a uniform definition of "wages," a new concept of "floor wages" that is similar to the minimum wage concept in the United States, and decriminalization of most offenses. The Wage Code received the President's assent on August 8, 2019. It will be effective from the date notified by the government. Click here to read the new Wage Code.

SUPREME COURT OF INDIA RULES THAT UNIVERSAL ALLOWANCES ARE PART OF BASIC WAGES

On February 28, 2019, the Supreme Court of India delivered the judgment in the long-awaited case *Surya Roshni Ltd. v. Employees' Provident Fund and Anr* (Surya Roshni Case), which was on appeal since 2013. Along with the Surya Roshni Case, certain other cases were combined, raising the common question of law on whether the special allowances paid by an establishment to its employees would form part of basic wages and accordingly attract Provident Fund (PF) contributions.

The Supreme Court of India held that all universal allowances should be treated as part of "basic wages," and hence should be subject to PF contributions. This ruling will have a significant financial impact on organizations, because it resolves a long-standing controversy as to which components of pay are amenable to PF contributions. Organizations are required to deposit 12% of an employee's basic wages, dearness allowance and retaining allowance towards PF, and employees make an equal contribution through a payroll deduction. Organizations can potentially face liability for prior years too, and must take stock of their PF contribution practices.

Though a review petition was filed against this judgment, the Supreme Court dismissed it on August 28, 2019, on the grounds that there were no justifiable reasons to entertain it. Click here to read the judgement.

NEW STATE RULES ON BENEFITS FOR SICKNESS, MATERNITY, DISABILITY AND WORK INJURY

The Employees' State Insurances (Central) Amendment Rules, 2019, came into effect on July 1, 2019. Among other provisions, the Employees' State Insurance Act, 1947 (ESI Act), provides for benefits to an employee in case of sickness, maternity, temporary or permanent physical disablement, and employment injury.

Only employees earning up to INR 21,000 a month are covered under the statute. The threshold for applicability of this statute varies depending upon the state in question and this can determine whether or not contributions under the ESI Act are required to be made. With this amendment, the contributions rates have now been reduced from 6.5% to 4% of the employee's wage amount (employers' contribution being reduced from 4.75% to 3.25% and employees' contribution being reduced from 1.75% to 0.75%). This development is welcomed by different stakeholders because it reduces the financial burden upon the employers as well as the employees. Click here for more information.

INDONESIA

NEW RULES ON POSITIONS FOR EXPATRIATE WORKERS

On August 27, 2019, the Indonesian Minister of Manpower (MOM) issued a new regulation regarding positions expatriates can hold (MOM Reg 228). Highlights of MOM Reg 228 include the possibility of having an expatriate commissioner or director (non-HR) in all 18 listed business sectors and the possibility that the MOM will approve positions that are not listed in the regulation. Another important consideration is that the MOM will evaluate the list of positions open to expatriates at least every two years, or whenever necessary. Work Permits (*Izin Mempekerjakan Tenaga Kerja Asing*) issued before the issuance of MOM Reg 228 will remain valid until their expiration. MOM Reg 228 revokes 19 MOM regulations on positions open to expatriates in 19 different business sectors and any prior MOM regulation that provided any definitive list for expatriate manpower positions.

IRELAND

THE TEST FOR "REASONABLE ACCOMMODATION" CONFIRMED

In the case of Marie Daly v Nano Nagle School [2019] IESC 63, the Irish Supreme Court recently clarified the extent of an employer's duty to reasonably accommodate a disabled employee. Previously, an employer's duty to reasonably accommodate was limited to removing or redistributing an employee's "tasks" as opposed to an employee's core "duties." However, the Supreme Court took the view that there is no distinction to be made between core "duties" and non-core "tasks" attached to a particular role. Rather, a reasonable employer will be required to demonstrate that all "appropriate measures" to facilitate a disabled employee were taken, limited only by the extent to which such a measure would constitute a "disproportionate burden." The decision reset the mark at a higher burden on employers in clearly accepting that "reasonable accommodation" could involve removing core "duties," so long as the end result was not to create an entirely new role. The case has been remitted to the Labour Court for a final decision. Click here to read the full case.

LEGAL REPRESENTATION LIMITED TO EXCEPTIONAL CIRCUMSTANCES IN WORKPLACE DISPUTES

The Irish Supreme Court recently provided clarity as to when an employee should be afforded legal representation at a disciplinary hearing, and a very welcome outcome for employers (*McKelvey v Iarnrod Eireann* [2019] IESC 79 – Supreme Court). The case involved a disciplinary process against an employee, where the employee alleged he was entitled to legal representation. The company refused the employee's request and the employee pursued his claim in the courts. Ultimately, the Supreme Court found that, save in exceptional circumstances, there was no automatic right to legal representation at the disciplinary stage. The Court noted, however, that the employee had access to a trade union representative. One consequence of this judgment for employers is that if they do not recognize trade unions (and the vast majority of Irish employers do not) they may now need to consider whether to allow employees to have trade union representation at internal hearings. Click here to read the full case.

ISRAEL

SUPREME COURT: SEXUAL HARASSMENT RESULTS IN "CONSTRUCTIVE DISMISSAL"

In a rare decision, *Diamaano Maria Luisa v. National Labor Court in Jerusalem* (9239/17), the Supreme Court sitting as a high court of justice canceled a national labor court ruling and decided that if an employee experienced sexual harassment in the workplace, the law should permit the employee to resign and claim "constructive dismissal" under Section 11(a) of the Severance Pay Law. This provision provides that an employee is entitled to severance pay under "circumstances under which the employee cannot be requested to continue working." The Supreme Court ruled that this decision reflected the severity of sexual harassment and the reality of an employee who experiences sexual harassment. It explained that the ruling was consistent with legislative amendments of recent years as well as the need to combat the phenomenon of sexual harassment generally, and in the workplace in particular, by recognizing the serious harm it causes. Click here to read the Court's decision.

ITALY

KEY 2019 LEGISLATION

New VAT Measures, Extending Reverse Charges

Two new laws published in the *Official Gazette* (124/2019 and 160/2019) provide for new value-added tax (VAT) measures. One of the key measures extends the "reverse charge" mechanism to certain service contracts or sub-contracts (for an amount exceeding Euro 200,000), characterized by predominant use of manpower at the client's workplaces and with the latter's capital equipment. The client must require that the contractor or subcontractor obtain a copy of documentation testifying to the payment of withholding tax for the contractor/subcontractor's employees working directly in the execution of the contract. If the contractor/subcontractor does not give a copy of this documentation to the client or omits the payment of withholding tax, the client must interrupt payments to the contractor and notify the competent Tax Authority. Otherwise, the client is subject to the same economic sanction imposed on the contractor/sub-contractor for the withholding tax's omitted payment. Click here for more information.

Additional Protections for Delivery Workers

Law 128/2019 provides minimal protection for independent workers who deliver goods on behalf of others and use certain vehicles within urban areas, including bikes or scooters, and carry out these activities through a digital platform. Collective bargaining can be used to establish criteria for determining these workers' pay. Moreover, their pay cannot be based solely on the number of deliveries, because they must be guaranteed a minimum hourly wage. These workers additionally have the right to receive supplementary indemnity if they work at night, during holidays or in unfavourable weather conditions.

EU Provides Protection for Whistleblowers

Directive (EU) 2019/1937 seeks to harmonize whistleblower regulation in the various Member States. The directive extends the scope of protection applied to reporting persons working in either the private or public sector, and additionally includes self-employed workers, shareholders, board members, volunteers, trainees and even those related to the whistleblower (as relatives or facilitators). Furthermore, the directive states that legal entities with at least 50 employees must establish external reporting channels sufficient to guarantee the whistleblower's anonymity.

KEY 2019 CASES

Court Decides Joint-Liability Case

On September 4, 2019, in sentence no. 22110, the Supreme Cassation Court handed down a decision regarding the regime on the joint liability of contractor and client involving pay to employees. Joint liability will stand if a worker brings an action for pay that is in the nature of remuneration and related to the working period during execution of the contract. Consequently, joint liability cannot involve, for example, the amounts received as compensation for damages suffered because of unlawful dismissal. Click here to read the decision.

Court Dismisses Employer's Appeal of Order Requiring Reinstatement of Employee with Disability

On October 15, 2019, in sentence no. 26029, the Court of Cassation dismissed an employer's appeal following the termination of an employee with a disability. An employer hired an employee with a disability pursuant to Law no. 68/1999 and later terminated that employee, leaving the number of remaining employees mandatorily hired pursuant to 68/1999 below the minimum threshold under the law. The lower court ordered the employee reinstated and ordered an indemnity equal to the employee's annual salary. The Court of Cassation dismissed the appeal, noting that the legislature favors the employee's right in the position over the company's interest in downsizing during times of economic difficulty. Click here to read the decision.

JAPAN

LABOR STANDARDS CHANGING

The Labor Standards Act was amended for the first time in many years. Among the changes, the amendments require employers to ensure that a certain amount of paid leave is used each year. Also, a new (but very limited) "white collar" professional exception has been created such that certain highly compensated professionals can be excluded from receiving overtime.

Additionally, the principle of "equal pay for equal work" is front and center, as much of what were previously only government guidelines will soon go into effect as compulsory legislation (the Part-Time and Fixed-Term Labor Act: April 1, 2020 for large-scale businesses, and April 1, 2021 for small and medium

enterprises). As a result, many employers have taken great interest in the body of jurisprudence that has already accumulated regarding allowable distinctions between permanent and fixed-term employees in Japan.

KEY CASES DECIDED IN 2019

Working Terms of Fixed-Term Employees Versus Permanent Employees

- **The "Japan Post" case.** On January 24, 2019, the Osaka High Court determined that certain variances (*e.g.*, housing allowances, year-end overtime and holiday work allowances, summer and winter holidays, and sick leave) between fixed-term and permanent employees were unreasonable and ordered the payment of damages. The case re-emphasized the importance of the five-year limit on employment of fixed-term employees (after which employers must offer permanent employment).
- **The "Osaka Medical and Pharmaceutical University" case.** On February 15, 2019, the Osaka High Court decided a case in which permanent employees received payment of regular bonuses while fixed-term employees did not, despite the fact that the calculation method for such bonuses was based solely on their base salary amount. The court ruled that, in the absence of any other distinguishing factors, it was unreasonable for fixed-term employees not to receive the relevant bonus.
- **The "Metro Commerce" case.** On February 20, 2019, the Tokyo High Court held that a certain degree of disparate treatment of fixed-term employees may be reasonable depending upon the circumstances. Although the salary scale for permanent employees was more generous than for fixed-term employees, the court determined this to be reasonable under the circumstances, as the salary was intended to reward long service and the difference was not significant (fixed-term employees were earning around 70% of the compensation of permanent employees). The court also found it significant that there was a system in place for fixed-term employees to convert to permanent-employee status. A range of terms, however, such as differences in living allowances, retirement allowances, commendation payments and early shift overtime pay, were found in breach of the "equal work for equal pay" principle embodied in Article 20 of the Labor Contracts Act.

Overtime

- **The "Chief of Chuo Labor Standards Inspection Office" case.** On February 21, 2019, the bereaved family of a worker who took his own life after working over 100 hours of overtime in the month prior sought to overturn the determination that the suicide was not work related and therefore not subject to compensation under the Workmen's Accident Compensation Insurance Act. The Fukuoka High Court upheld the lower court ruling, as there were no other circumstances, such as "being transferred to a new position" or "consistently being placed under high stress," to support an alternative conclusion.
- **The "Rakuyo Transport" case.** On April 11, 2019, the Osaka High Court found a company's Rules of Employment insufficiently clear as to distinctions between categories of compensation. Although there were two established categories of increased compensation outside of base salary, it was unclear whether these categories corresponded to "overtime" and "late-night work compensation" as required by statute. As a result, the court ordered that overtime should be calculated separate to and in addition to these categories.

LAOS

DECREE ON OCCUPATIONAL SAFETY AND HEALTH

The government of Laos issued a Decree on Occupational Safety and Health No. 22/GVT, dated February 5, 2019 (the "Decree"). The Decree reiterates a number of mandatory rules which were already set out in the Law on Labor No. 43/NA, dated December 24, 2013 (the "Law on Labor"), including but not limited to the following: First, employers must conduct a safety and health inspection and a risk assessment once a year. Second, training on health and safety measures must be performed once a year. Third, employers with more than 50 employees must have a doctor on site. Fourth, for employers with less than 50 employees, a first aid kit remains mandatory. Fifth, employers must have at least one first aid worker who has received proper training from a certified organization and a Safety and Health Unit comprising a representative of the employer, a representative of the employee, and a designated person who is in charge of safety and health issues.

The Decree also provides a number of rights to employees which were not previously provided under law, including: (i) the right to ask their employers to establish good working conditions in terms of health and safety measures; (ii) the right to ask their employers to provide them with a suitable position when an employee returns from treatment after an occupational accident; (iii) receiving information to prevent practices that may be wrong, and which can lead to dangerous situations; (iv) the right to refuse to undertake work that may be too dangerous to the health and life of the employee; and (v) the right to report to the labor authorities if the employer does not follow labor laws and regulations on safety and occupational health issues.

LATVIA

WHISTLEBLOWER PROTECTION

The Whistleblowing Law was adopted and came into effect as of May 1, 2019. The new law was created in order to promote whistleblowing and provide for the protection of whistleblowers in Latvia. The new law enables whistleblowers to expose an employer's offenses that concern the public interest or interests of certain social groups. At the same time, the law imposes a duty on all employers with more than 50 employees to establish an internal whistleblowing system to provide employees with an opportunity to report violations (*e.g.*, internal email address) safely and to guarantee protection for them. The State Chancellery also encourages whistleblowers to report wrongful actions and has even created a website allowing whistleblowers to submit such reports online. Administrative liability for failure to comply with whistleblowing regulations is not yet in place; however, following the anticipated amendments to the law, fines will vary from EUR 70 up to EUR 14,000 and are expected to come into force on July 1, 2020.

INDUSTRY COLLECTIVE AGREEMENTS ALLOWS LOWER SUPPLEMENTS FOR OVERTIME WORK

Amendments to the Latvian Labor Law intended to prevent unfair competition and wage dumping came into force as of May 1, 2019. General Agreements, also known as Industry Collective Agreements, provide for a substantial increase in the minimum salary or hourly salary rate of employees under such agreements. However, under the amendments to the Labor Law, the amount of any supplemental wages to be paid for overtime work can be determined at less than 100% of an employee's hourly or daily wages, which, according to the prior law, was the minimal

amount of a supplement. In order to protect the interests of employees, however, the new law still provides that the minimum supplement for overtime work in industries with a General Agreement shall be not less than 50% of the hourly salary rate specified for the employee. The first General Agreement, concluded by the Building Industry, came into force on November 3, 2019.

THE SUPREME COURT: PAYMENTS MADE BY THE EMPLOYER TO THE EMPLOYEE ON A HOLIDAY OR ANNIVERSARY ARE OF A GIFT NATURE

According to the Latvian Labor Law, remuneration is the regular pay for work, which includes, *inter alia*, other kinds of remuneration related to work. The law also states, that in all cases where an employee shall be paid average earnings, such earnings shall be calculated based on: (i) the salary calculated for the work of the employee during the previous six calendar months, (ii) supplements specified in laws and regulations, collective agreements, or employment contracts, and (iii) bonuses. In practice, it was unclear what kind of payments were considered bonuses and should have been included in average earning calculations. On October 1, 2019, the Latvian Supreme Court clarified that payments made by the employer to the employee on a holiday or anniversary are to be treated as gifts**.** The Supreme Court explained that payments on a holiday or anniversary are considered to be "other kinds of remuneration related to work" and are not considered bonuses, because such payments are not based on an employee's work performance. Rather, such payments are, by their nature, gifts, and, therefore, shall not be included in average earning calculations.

ADMINISTRATIVE FINES TO BE LISTED IN THE LATVIAN LABOR LAW AND LABOR PROTECTION LAW

Since October 2019, due to the de-codification process in Latvia, the Latvian Labor Law has been supplemented by Part E on "Administrative liability," which will come in force at the same time as the new Administrative Liability Law (*i.e.*, on July 1, 2020). Henceforth, administrative penalties for violations of employment regulations are going to be indicated in the Latvian Labor Law. Similar, relevant changes have also been made to the Labor Protection Law. The de-codification changes will affect the penalty application system and penalties in general. Penalties will be determined in "units"—one penalty "unit" is equal to five Euros. Despite the changes in the penalty system, administrative fine amounts will not be changed.

LITHUANIA

NEW LAW ON PROTECTION OF WHISTLEBLOWERS

The Law on Protection of Whistleblowers and related Government Regulation No. 1133 on Implementation of the Law went into effect as of January 1, 2019 (together, the "Whistleblower Law"). Under the Whistleblower Law, both public and private employers with 50 or more employees must implement internal reporting mechanisms for whistleblowers (*i.e.*, hotline, submission to a general email address, application). The Whistleblower Law also requires employers to appoint a competent person to be in charge of investigating whistleblower complaints. The complaint should be assigned to an employee or other person related to the employer through a contractual relationship, who submits a report regarding a breach that endangers or violates public interest. The employer must ensure the confidentiality of the complaint process

and protect the whistleblower from retaliation. The government encourages whistleblowers to report wrongful actions, as such, and it offers rewards for valuable information. Fines for noncompliance with the requirements of the Whistleblower Law range from EUR 140 to EUR 4,000, and can be imposed personally on managers and other individuals who are found to have violated the Whistleblower Law.

SALARY SHOULD BE INDICATED IN JOB ADVERTISEMENTS

As of July 27, 2019, an amendment to the Labour Code requires employers to identify the basic (rate) remuneration (hourly wage or monthly salary or the fixed part of basic salary) and/or the range of salary in job advertisements. It is up to an employer to decide which option (the basic minimum salary or the range of salary) to specify in its job advertisements. Fines for noncompliance with the requirements of the Labour Code range from EUR 80 to EUR 880, and can be imposed personally on managers and other individuals who are deemed to have violated provisions of the Code.

THE SUPREME COURT: BREACH OF THE SAME LABOUR DUTIES MEANS "THE SAME TYPE OF BREACH"

According to the Labour Code, where an employee breaches a "labour duty," the employer has the right to terminate an employment contract without notice. Further, if the employee commits a second breach of his labour duties within 12 months, then the employer need not pay any severance. A recent Supreme Court decision clarified that, in order to relieve an employer of an obligation to pay severance, this second breach must have occurred within the same field of activity and must have been of the same nature as the first breach (*i.e.*, the first and second breaches must have both been in same fields, such as the field of financial discipline, violations of the Law on Public Procurement, breaches of safe and health work environments, unpermitted absences from work). The Supreme Court further stated that the field of activity should not be based on general rules applicable to the performance of all employees' duties (*i.e.*, the general requirement to comply with relevant law).

THE SUPREME COURT: AN EMPLOYMENT CONTRACT COULD BE TERMINATED THROUGH ONE DAY

The Labour Code provides that parties may terminate an employment contract by mutual agreement. The party who receives a proposal of termination shall have five working days to accept it. On October 29, 2019, the Supreme Court issued a decision clarifying that a party receiving a termination proposal can accept the proposal at any point within the five working day period (*i.e.*, the day it receives the proposal). The Supreme Court also explained that acceptance of the proposal should be in keeping with the party's true will. Moreover, the Supreme Court stated that the procedures of termination must be carried out in a consistent manner according to the law: an employer shall provide an employee with a written proposal to terminate an employment contract by mutual agreement; an employee shall confirm in writing that he/she has received the proposal and has accepted it; and both parties shall agree, in writing, to terminate the employment contract.

LUXEMBOURG

THE TIME SAVINGS ACCOUNT (CET)

On April 12, 2019, Luxembourg introduced "time savings accounts" (CET) into the private sector. A CET allows an employee to accumulate paid leave on an ongoing basis, and can be used, for example, to organize longer periods of leave (on a full-time or part-time basis) to carry out a personal project or to follow vocational training. An employer has discretion to establish a CET, but it can only employ it within the framework of a collective agreement. Employees with at least two years' seniority can contribute to their CET. The CET is supplied in hours and is limited to 1,800 hours (45 weeks at 40 hours). On written request from the employee, the CET can be supplied with several categories of hours (overtime hours, up to five untaken days of recreational leave, a compensatory day granted following work on a Sunday or a public holiday falling on a Sunday, etc.). Each employee can freely use their CET by making a prior written request at least one month in advance. The use of acquired rights in the CET is considered working time.

ONE ADDITIONAL DAY OF ANNUAL PAID LEAVE AND ONE ADDITIONAL PUBLIC HOLIDAY

On April 25, 2019, a law amended Articles L. 232-2 and L. 233-4 of the Labour Code (as well as Article 28-1 of the April 16, 1979 amended law establishing the general status of public servants). The new law: (i) increased the minimum paid annual leave from 25 to 26 days; and (ii) declared May 9 to be a new public holiday in Luxembourg, thus increasing the total of public holidays to eleven days per year. The law took effect retroactively on January 1, 2019.

NEW EU DIRECTIVE ON WORK-LIFE BALANCE FOR PARENTS AND CAREGIVERS

Directive (EU) 2019/1158 on work-life balance for parents and caregivers, repealing Council Directive 2010/18/EU, was published in the Official Journal of the European Union on July 12, 2019, and took effect on August 2, 2019. The EU Member States have until August 2, 2022, to implement this Directive into their national legislations. Although Luxembourg has already undertaken substantial measures on work-life balance, certain specific provisions arising from the Directive—including the right to more flexible working arrangements such as the use of remote working, flexible working hours, or a reduction in working time for workers who are parents or caregivers—will need to be implemented into national legislation.

NEW EU DIRECTIVE PROTECTS WHISTLEBLOWERS

Directive (EU) 2019/1937 on the protection of persons reporting on breaches of union law was published in the Official Journal of the EU on November 26, 2019. The EU Member States have until December 17, 2021, to implement this Directive into their national legislations. The Directive provides for minimum standards for protecting whistleblowers, intermediaries, and relatives of those who report EU law breaches. Enhanced whistleblower protection will thus increase the overall protection of workers, which is consistent with the aims of the European Pillar of Social Rights and in particular principles 5 (fair working conditions) and 7b (protection in case of dismissals). Providing a uniformly high level of protection to people who acquire the information they report through work-related activities (irrespective of the nature of the activities) and who run the risk of work-related retaliation, will safeguard the rights of workers in the broadest sense. The Directive also aims to obligate

mid-size companies to create an internal process for internal breach-reporting. This Directive is particularly noteworthy for Luxembourg, because it has no specific legislation (other than for Commission de Surveillance du Secteur Financier regulated entities) in place regarding whistleblowing procedures or protection.

MALAYSIA

THE IMPORTANCE OF MUTUALITY IN A MUTUAL SEPARATION AGREEMENT

In the recent case of Nair v. HLMG Management Co., Award No. 276 of 2020, the Industrial Court underscored certain requirements for mutual separation agreements to be effective. These include: (i) a genuine consensus or consensus *ad idem* (a meeting of the minds) between the parties when entering into the mutual separation agreement; and (ii) no harassment, compulsion, undue advantage, oppression, unfair labour practice, misrepresentation, duress, coercion or any other matter the court may consider to be vitiating factors in the agreement process. The decision is a clear reminder to employers that mutual separation agreements must actually be based in mutuality—in Malaysia, in particular, an employee's signing on the dotted line does not guaranty that the employer can avoid a claim of unjust dismissal.

MAURITIUS

THE ENACTMENT OF THE WORKERS' RIGHTS ACT 2019

The Employment Rights Act of 2008 (ERA) has been repealed and replaced by the Workers' Rights Act of 2019 (WRA), which took effect on October 24, 2019. The WRA applies to a larger pool of employees than the ERA since the latter was applicable as a whole to employees earning a basic salary not exceeding MUR 360,000 while the salary threshold under the WRA has been increased significantly to MUR 600,000. It is to be noted that certain provisions of the WRA such as the protections against discrimination, violence at work, and termination of employment apply to all categories of employees irrespective of the salary earned. The WRA also provides for the establishment of a Portable Gratuity Retirement Fund, which was initially scheduled to be operational by January 1, 2020, but which has subsequently been postponed to April 1, 2020. Among other significant and notable developments brought by the WRA are provisions relating to the calculation of end of year bonus, the computation of overtime pay, atypical working arrangements, night shift allowance, the validity of compromise agreements, the setting up of a redundancy board and special leave entitlements. Click here for more information.

AMENDMENTS BROUGHT TO THE EMPLOYMENT RELATIONS ACT 2008

In 2019, the Employment Relations Act (the "Act") of 2008 was significantly amended. The object of the amendments is mainly to strengthen and bolster industrial relations between workers, trade unions and employers. Notable developments resulting from the amendments include a reduction in the threshold for eligibility for recognition of a trade union from 30% to 20%, the standardization of procedural agreements, the widening of the powers of the Employment Relations Tribunal with regards to reinstatement orders, and the establishment of the National Tripartite Council with the aim of promoting social dialogue in relation to labour, industrial relations, and socio-economic issues of national importance, and other related labour and industrial relations issues. Click here for more information.

MEXICO

LABOR ADJUDICATION: FROM THE EXECUTIVE BRANCH TO THE JUDICIAL SYSTEM

As part of constitutional reform in 2017 and a compromise made with the United States so that the United States-Mexico-Canada Agreement could be ratified, Mexico published a major reform on May 1, 2019. One of the primary commitments was to create new labor courts, replacing the Conciliation and Arbitration Boards, and thus streamlining procedural rules. By May 2023, federal and local courts should handle all labor claims.

FEDERAL LAW OVERHAULS COLLECTIVE BARGAINING PROVISIONS

As of May 1, 2019, to sign a collective bargaining agreement, unions must show that they represent at least 30% of employees. The Conciliation and Labor Registry Federal Center, a new institution, will begin managing union registration in 2021.

OFFICIAL STANDARD OBLIGATES EMPLOYERS TO MEASURE POSSIBLE PSYCHOSOCIAL RISKS

Introduced in October 2019, the new standard (NOM-035-STPS-2018) aims to establish means to identify, analyze, and prevent psychosocial risks at work sites and to foster a favorable organizational environment. This standard intends to prevent psychosocial risks by identifying employment conditions that could affect individuals' cognitive, physical, emotional, or behavioral functions and, in turn, increase organizations' effectiveness by limiting absenteeism, occupational risks, low performance, and conflictive labor environments. Click here for more information.

MONTENEGRO

TERMINATING EMPLOYMENT AGREEMENTS BASED ON UNJUSTIFIED ABSENCE FROM WORK

In February 2019, the Supreme Court of Montenegro issued a judgment regarding the termination of an employment agreement (EA) due to unjustified absence from work. The court ruled that termination of an EA due to unjustified absence from work can be lawful only if the employee knows that absence from work leads to the termination of employment and objectively expresses their will to no longer work.

DECEASED EMPLOYEE'S EARNINGS PASS TO HEIRS

A June 2019 Supreme Court judgment provided that a decedent's heir was entitled to compensation for pecuniary damages in the case of unpaid earnings to the decedent. The Court determined that, in the case of the decedent's death, the right to earnings (as a right from employment) passes to the decedent's heirs. The heir is entitled to compensation for damages based on the difference in earnings the decedent already received and those he should have received.

NO TWO BITES AT THE TERMINATION APPLE

According to a May 2019 Supreme Court judgment, an employer may not, on the same factual basis, and after a legally finalized procedure finding no justified reason for termination, re-adopt a decision on termination of employment for the same reasons. In a case involving an employment agreement, an employer may not do so even under a different legal basis, if the alleged different legal basis arises from the same set of underlying facts.

EMPLOYERS MUST PROVIDE PROPER TERMINATION NOTICE

In January 2019, another Supreme Court decision provided that it was not legal for an employer to terminate an employment agreement (EA) without proper notice in accordance with the Labour Law. To properly cancel an Employment Agreement due to the termination of the need for employee's work, the employer needs to notify the employee at least five days prior to the adoption of the decision on termination of the Employment Agreement. Additionally, the court held that it is illegal for an employer to terminate a woman's EA during the period from when she notifies the employer that she is pregnant through the end of her maternity leave.

EMPLOYEE DENIED SEVERANCE FOR FAILURE TO AGREE TO JOB TRANSFER

According to the Supreme Court in a June 2019 decision, an employer did not have an obligation to pay severance to an employee who was terminated for refusal to sign an annex to an employment agreement, which allowed for the employee to be transferred to another adequate job due to operational requirements.

MOZAMBIQUE:

REGULATION ON SOCIAL WELFARE SYSTEMS COORDINATION (DECREE 13/2019)

The purpose of this regulation is to articulate the different Social Welfare Systems and mandate certain coordination between them. When employees, self-employed workers, and employees of the Mozambican State transfer from one Social Welfare System to another, the original system must calculate and recognize the worker's rights and communicate information to the receptor welfare system. The receptor system is then obliged to pay a pension that corresponds to the sum of the pensions of all the Social Welfare Systems to which the worker contributed.

MODIFICATION OF THE MINIMUM WAGE IN SOME SECTORS (MINISTERIAL DECREES 48/2019, 45/2019, 47/2019 AND 44/2019)

In the Non-Financial Services Sector, the minimum monthly wage increased to MT 6,850 (USD $110.27), except in the Hotel Business Sector. In the Industry Sector, it increased to MT 7,000 (USD $112.69); in the Construction Sector, MT 6,136.70 (USD $98.79); and in the Mineral Extraction Industry Sector, MT 9,254.60 (USD $148.98), which applies to big companies' workers.

MYANMAR

NEW OCCUPATIONAL HEALTH AND SAFETY LAW OF 2019

An Occupational Health and Safety Law was enacted on March 15, 2019. The law is aimed at the development and implementation of workplace health and safety measures, as well as the reduction or elimination of workplace accidents, diseases and other occupational hazards. Previously, Myanmar had no specific legislation governing occupational health and safety, although relevant provisions exist in the Factories Act of 1951 and the Shops and Establishments Law of 2016. Some of the provisions under the new law mirror the requirements under those existing laws. The National Occupational Health and Safety Council of Myanmar will also be established to facilitate administration of the law. Furthermore, the new law introduces a requirement for certain enterprises to register with the Factory and

General Labor Laws Inspection Department, and for such enterprises to appoint an Occupational Health and Safety Manager or Committee. The law also specifies various other obligations of employers and employees. Employers and their employees must take note of the law's requirements, as non-compliance can lead to imprisonment, a fine, or both.

NETHERLANDS

BALANCED LABOUR MARKET ACT (IN DUTCH: WAB)

2019 was the year of preparing for the new Balanced Labour Market Act, which went into effect on January 1, 2020. This act aims to narrow the gap between permanent and temporary employment contracts by introducing several measures that should make offering permanent contracts more attractive and less risky for employers. For example, the premiums that employers will pay for unemployment insurance benefits are lower for permanent contracts than for flexible contracts. Also, a new ground for dismissal has been introduced which makes it possible for an employer to combine aspects of other grounds for dismissal in order to demonstrate that there was a reasonable ground for dismissal. Furthermore, under the Balanced Labour Market Act, payroll-employees are now entitled to the same employment conditions as other employees of the company for which they perform work, and there are new rules that are designed to give on-call workers more clarity with regard to their shifts and salary. Click here to read the new Balanced Labour Market Act, and here for the employers' checklist for the new act.

DORMANT EMPLOYMENT RELATIONSHIP

On November 8, 2019, the Dutch Supreme Court ruled that, based on the obligation to act as a good employer, employers are obligated to end employment contracts with employees who have been sick and unable to work for more than two years (dormant employment). In the past, some employers have tended to maintain these employment contracts to avoid paying the transition payment that employees are generally entitled to when their contracts get terminated. The government will, under certain conditions, compensate employers for the amount of the transition payment when employment contracts are terminated due to dormant employment. Click her for more information.

HARMONIZED COLLECTIVE LABOUR AGREEMENT FOR TEMPORARY AGENCY WORKERS

The two biggest Dutch employer organizations for temporary work agencies (ABU & NBBU) have agreed to a new and completely harmonized Collective Labour Agreement (CLA). Previously, the two employer organizations handled their own CLAs, which could lead to inequality between temporary agency workers. The question of which CLA applied to the contract of a temporary agency worker then depended on which employer's organization the temporary work agency was a member of. The harmonization is designed to provide more clarity and equality. Click here for more information.

CHANGES TO THE ACT ON NORMALIZING THE LEGAL POSITION OF CIVIL SERVANTS (IN DUTCH: WNRA)

In 2019, the Dutch parliament and senate adopted legislative proposals for needed changes to the Act on Normalizing the Legal Position of Civil Servants. These changes will result in a large number of civil servants being covered under the labour law instead of under the public service law as of January 1, 2020. There are some important differences in these laws,

including different dismissal procedures that must be followed. Click here for more information.

THE DELIVEROO / HELPLING CASES

In 2019, several court decisions were made with regard to the status of platform workers. Although the Amsterdam district court ruled in July 2018 that there was no employment contract between a courier and the company Deliveroo, the same court ruled in January 2019 that couriers of Deliveroo were entitled to employment contracts. In July 2019, the Amsterdam District Court also ruled that although there is not an employment contract between the company Helpling and their workers, Helpling acts as job mediator and should therefore comply with the rules that apply to job mediation. Click here to read the Deliveroo case, and here to read the Helpling case.

PENSION AGREEMENT (DUTCH: PENSIOENAKKOORD)

In 2019, the Dutch parliament, trade unions and employer organizations reached a pension agreement that should keep the Dutch pension system sustainable so it can accommodate the increasing average age and the changing labour market. The pension agreement will be converted to a legislative proposal, and the expectation is that this legislation will become effective by the beginning of 2022. Click here for more information.

NORTH MACEDONIA

INTERNSHIP LAW

In May 2019, the Parliament of North Macedonia adopted a new Internship Law that allows companies to hire interns outside of the educational process. Under the new Internship Law, any unemployed citizen of North Macedonia under the age of 34 who has completed primary education qualifies for an internship position. The internship can last a minimum of one month and a maximum six months, and is limited to only one internship with the same employer. Intern remuneration is dependent on the length of the internship. The number of interns that the employer can hire depends on the number of full-time employees that the employer employs.

GOVERNMENT SUBSIDIZES WAGE INCREASE

The Government of North Macedonia will subsidize the contributions for mandatory social insurance for increased wages on the basis of the newly adopted Law for Subsidizing Contributions for Mandatory Social Insurance Due to Wage Increase. This law will be applicable from November 1, 2019 through October 31, 2022. Under the new law, contribution subsidizing may be used by employers and self-employed persons who have the status of active taxpayer for calculation and payment of contributions, and who do not have outstanding liabilities on the basis of gross wages. The law excludes some employers from this measure, including: (i) employers that already use other wage subsidy measures; and (ii) employers that have been granted financial support for new employments.

The highest subsidized amount is for a net wage increase of up to MKD 6,000 (about EUR 100) monthly per insured person, and the lowest amount is for a net wage increase of MKD 600 (about EUR 10) monthly per insured person.

INCREASED MINIMUM WAGE

A new minimum wage has been passed into law in North Macedonia, continuing the growth trend from previous years. Applicable from December 2019, the minimum monthly net wage cannot be below MKD

14,500 (about EUR 235), which followed the 2012 minimum net wage increase to MKD 8,050 (about EUR 130).

NORWAY

WHISTLEBLOWING

In 2019, changes to the whistleblowing regulation were enacted by the Norwegian parliament, and became effective as of January 1, 2020. Among other things, the changes include definitions of the central terms "censurable conditions" and "retribution" in the Norwegian Working Environment Act, Chapter 2 A. The changes also include guidelines for proper whistle-blowing procedures, in contrast to the former regulation, which was based on the courts' discretionary assessment of what was deemed proper procedure. In addition, the new regulation also provides a clearer regulation of the employer's obligations in whistleblowing cases, as well as rules regarding strict liability for employees' financial losses as a result of retribution for whistleblowing. Click here for more information.

SKANSKA – CORRECT APPLICATION OF SENIORITY

The so-called *Skanska* case, decided on February 28, 2019, involved a dismissed employee who sued the former employer for unlawful dismissal. The background for the dismissal was downsizing, and the main question before the Supreme Court was whether the principle of seniority in the collective bargaining agreement between LO and NHO (the main trade union and the employer's organization) had been correctly applied in the process of selecting the redundant employees to be terminated. In the judgment, the Supreme Court pronounced that although the collective bargaining agreement requires that seniority be the starting point for the selection process, the principle of seniority could not be considered as the main rule. Seniority should be a factor in an overall selection assessment, and the appropriate weight given to that factor is relative and may differ from case to case.

TELENOR - THE SENIORITY PRINCIPLE AND SELECTION AREA

In the *Telenor* case, the Supreme Court assessed the principles of seniority's application when defining the selection pool from which the employees at risk of dismissal are selected. In this case as well, the principle of seniority was founded in the collective bargaining agreement between LO and NHO. The Supreme Court concluded that the selection pool cannot be so narrow that the principle of seniority loses most of its impact.

A case with similar facts, where two employees who were downsized from Telenor allege that the selection pool was too narrow and indicates that the principle of seniority lost its impact, has also been submitted to the Supreme Court. This case will likely be tried in the spring of 2020, and will no doubt provide more insight with respect to this issue.

PHILIPPINES

REPUBLIC ACT NO. (RA) 11166

Philippine HIV and AIDS Policy Act (effective January 25, 2019)

The Congress of the Philippines enacted this law to ensure the delivery of non-discriminatory Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) services by government and private HIV and AIDS service providers, and to develop redress mechanisms for persons living with HIV to ensure that their civil, political, economic, and

social rights are protected. The new law reconstitutes and streamlines the Philippine National AIDS Council (PNAC), an agency attached to the Department of Health, and ensures the implementation of the country's response to the HIV and AIDS issues. The Act further mandates the creation of an HIV and AIDS prevention program that will educate the public regarding HIV, AIDS, and other Sexually Transmitted Infections (STIs). The Act also includes provisions that provide for fines or imprisonment for various discriminatory acts. The Act also provides that, among others, a Person Living with HIV (a PLHIV) shall not be deprived of any employment, livelihood, micro-finance, self-help, or cooperative programs by reason of their HIV status.

RA 11210

105-Day Expanded Maternity Leave Law (effective March 11, 2019)

In recognition of a woman's maternal function, the Congress passed this law expanding the maternity leave period of women workers to provide them with ample transition time to regain health and overall wellness, as well as to assume maternal roles before resuming paid work. This law provides that all covered female workers in government and the private sector, including those in the informal economy, regardless of civil status or the legitimacy of her child, shall be granted 105 days maternity leave with full pay and an option to extend the period for an additional 30 days without pay. In case the worker qualifies as a solo parent under Republic Act No. 8972, or the "Solo Parents' Welfare Act," the worker shall be granted an additional 15 days maternity leave with full pay. Maternity leave shall be granted to female workers in every instance of pregnancy, miscarriage or emergency termination of pregnancy, regardless of frequency. A female worker entitled to maternity leave benefits may, at her option, allocate up to seven days of said benefits to the child's father, whether or not he is married to the female worker. Non-compliance with this law is punishable with fine or imprisonment.

RA 11223

Universal Health Care Act (effective March 8, 2019)

This law ensures that all Filipinos are guaranteed equitable access to quality and affordable health care goods and services, and are protected against financial risk. The Act provides that every Filipino citizen shall be automatically included into the National Health Insurance Program (NHIP) and shall be granted immediate eligibility and access to preventive, promotive, curative, rehabilitative, and palliative care for medical, dental, mental, and emergency health services, delivered either as population-based or individual-based health services. Within two years from the effective date of this law, the Philippine Health Insurance Corporation (PhilHealth) shall implement a comprehensive outpatient benefit, including outpatient drug benefit and emergency medical services in accordance with the recommendations of the Health Technology Assessment Council (HTAC) created under Section 34 of this law. The Act further requires the Department of Health and the local government units (LGUs) to provide a healthcare delivery system that will afford every Filipino a primary care provider that would act as the navigator, coordinator and initial and continuing point of contact in the healthcare delivery system.

RA 11199

Social Security Act of 2018 (effective March 5, 2019)

This law repeals the Social Security Act of 1997 and aims to extend social security protection to Filipino workers, local or overseas, and their beneficiaries. The Act provides that coverage in the Social Security System (SSS) shall be compulsory for all employees, including household or domestic workers not over 60 years of age and their employers. Coverage in the SSS shall also be compulsory upon self-employed persons. This law also applies to all sea-based and land-based Overseas Filipino workers (OFWs) as defined under the Migrant Workers and Overseas Filipinos Act of 1995, as amended, as long as they are not over 60 years of age. Among the SSS benefits that can be enjoyed by members are maternity benefits, disability benefits, retirement benefits, death benefits, funeral benefits and salary loans.

RA 11313

Safe Spaces Act (effective August 3, 2019)

This law recognizes that both men and women must have equality, security, and safety, not only in private, but also on the streets, public spaces, online, in workplaces, and in educational and training institutions. The law defines and penalizes various gender-based sexual harassment acts. The law also identifies the institutions that will be responsible for enforcing the provisions of this law. For example, it obligates employers to prevent, deter, or punish acts of gender-based sexual harassment in the workplace. Penalties for violation of this law may be either a fine, imprisonment, or both.

RA 11360

Requiring Hotels, Restaurants, and Other Similar Establishments to Distribute Service Charges Collected to All Covered Employees, Amending for the Purpose of P.D. No. 442 (effective October 1, 2019)

This law amends Article 96 of the Labor Code of the Philippines. As amended, the present law provides that all service charges collected by hotels, restaurants, and similar establishments shall be distributed completely and equally among the covered workers except managerial employees. If the minimum wage is increased by law or wage order, service charges paid to the covered employees shall not be considered in determining the employer's compliance with the increased minimum wage. To facilitate resolution of any dispute between the management and the employees on the distribution of service charges, a grievance mechanism shall be established. If no grievance mechanism is established or if it is inadequate, the grievance shall be referred to the regional office of the Department of Labor and Employment, which has jurisdiction over the workplace for this process.

POLAND

MINIMUM WAGE INCREASING

As of January 1, 2020, the hourly minimum wage for persons rendering work or services to entrepreneurs under mandate or service agreements has been increased from 14.7 PLN to 17 PLN. The minimum monthly wage for persons rendering work under employment contracts has been increased from PLN 2,250 to PLN 2,600. According to the government's announcements, the minimum monthly remuneration is to increase rapidly in the following years—in 2021, it will increase to PLN 3,000 and, in 2023, it will increase to PLN 4,000 gross.

EMPLOYEE CAPITAL PLANS

The Act on Employee Capital Plans (PPK) was introduced in 2018 and came into effect on January 1, 2019. Its aim is to introduce an additional pension-saving vehicle. Under the PPK, savings are to be systematically accumulated and paid to participants after they reach the age of 60. The PPK system is intended to be universal—all entities hiring workers (including employees as defined in the Labor Code, specific types of civil law contractors and supervisory board members who are remunerated for their duties) are required to establish an employee capital plan. Employers with at least 250 workers were required to comply with the PPK beginning July 1, 2019. Employers with fewer than 250 workers were divided into three groups, with the first group required to comply with the PPK beginning on January 1, 2020, the second group by July 1, 2020, and the third and final group by January 1, 2021.

NEW RULES OF MAINTAINING PERSONNEL RECORDS

Effective January 1, 2019, personnel files have been divided into four sections. Following an amendment to the law, personnel files must now also contain a section for any documents related to employee liability for breach of order and discipline or liability specified in separate provisions. In addition, personnel records can now be kept electronically and the employer's obligation to keep personnel files after an employee is terminated has been reduced from 50 to 10 years.

MOBBING AND DISCRIMINATION

Effective September 2019, employees' rights to claim damages on account of "mobbing" have been modified. According to Article 94, Section 2 of the Polish Labor Code, "mobbing" shall be understood as any act or conduct relating to an employee or directed against him, consisting of systematic and prolonged harassment or intimidation that humiliates, ridicules, isolates, or excludes an employee from his colleagues. It is a law intended to protect against group bullying in the workplace. Following this amendment to the law, termination of the employment contract is no longer a prerequisite for seeking damages, and employees continuing to work are also entitled to claim damages. Employers should review their employment policies to ensure that they include an anti-mobbing policy.

In addition, the Labor Code's provisions on discrimination and unequal treatment were also amended. Under the amended employment laws, any unequal treatment of employees without objective reasons may be considered discrimination. Employers should review their employment policies to ensure that they include an anti-mobbing policy.

AMENDMENTS ENTAILED BY THE GDPR

In 2019, the scope of information that an employer may request at the recruitment stage and during the employment relationship was changed. An amendment to the employment law prevents an employer from requesting a job candidate to provide data such as the parents' first names and residential address. The new restrictions also include provisions regulating video surveillance of sanitary rooms. Following the changes, introducing video surveillance requires prior consent of the company trade union organization or, if there is no such organization, prior consent of the representatives. A provision explicitly excluding the possibility of video surveillance of a premises made available to the company trade union organization was also added to the Labor Code.

EXPANSION OF THE RIGHT TO UNIONIZE

As of January 1, 2019, the right to join and establish trade unions was granted to persons employed under a mandate contract, managerial contracts, and even where self-employed. As a consequence of the amendments, persons who are not employees enjoy additional employment protection and can serve in the role of the so-called particularly protected trade union activists.

PORTUGAL

AMENDMENTS TO LABOR CODE

Law 90/2019 (Workers Parental Regime)

In September 2019, a new law amending the Labor Code was published which provides that a worker (male) who has a child is granted a parental leave of up to 20 work days, as well as the right to join the mother in three prenatal clinic sessions without loss of compensation. In addition, pregnant workers that are from an island and need to give birth in a continental hospital are provided with a leave for the time period necessary to travel. Finally, workers whose child has any chronic disease or disability are provided with a leave of six months that can be extended until the child is six years old. Click here for more information.

Law 93/2019

Also in September 2019, another new law amending a different section of the Labor Law was published. According to this law, fixed-term contracts can remain effective for two years and be renewed for the same period; and unspecified duration contracts can remain effective for four years. In addition, the experimental period has a duration of 180 days, and individual bank of hours were eliminated. Furthermore, temporary contracts have a limit of six renewals and do not have a grace period. If a temporary work company transfers a worker to a user company without a temporary work contract, the work will be viewed as being provided to the user company, according to the open-ended contract regime. Click here for more information.

Modification of the General Minimum Wage (Decree-Law 167/2019)

The minimum monthly wage was increased to € 635 (approximately USD 706.21).

ROMANIA

LEGISLATION REQUIRES NEW EMPLOYER POLICIES

2019 legislation required employers to have a clear internal policy prohibiting harassment in the workplace. The policy should provide definitions of harassment, specifically sexual harassment, as well as detail types of unwanted behaviors, proactive measures to be taken, the role and responsibilities of employer and employee, confidentiality rules, or procedures for addressing complaints. Additionally, employers must keep employees informed about their rights, either through programs, specific actions, or other means of communication. Employers must inform employees of internal procedures for submitting a complaint of sexual harassment or other impermissible conduct.

HIGH COURT STRIKES EMPLOYEE PENALTY CLAUSE

The High Court of Justice, in Decision No. 19/20.05.2019, addressed whether an employment agreement can include a penalty clause for damage caused to the employer by a work-related action taken by the employee. The Court ruled that such a clause contradicts a series of basic principles of Romanian labor law (*e.g.*, the burden of proof belonging to the employer, the inability to waive the employee's rights, and the specific procedure for establishment and assessment of patrimonial liability). Additionally, the Court explained that the employer could abuse such a clause to put additional pressure on employees, who might feel compelled to waive essential rights and consent to restrictive measures under the threat of a substantial penalty. Therefore, such penalty clauses are disallowed and deemed a nullity.

JOB DESCRIPTION CHANGES DO NOT AFFECT EMPLOYMENT AGREEMENT

In Decision No. 5047/8.11.2019, the Bucharest Court of Appeal ruled that an amendment to a job description is generally not interpreted as an amendment to an employment agreement. The court stated that the employer can amend, to some extent, the content of the job description without needing the employee's agreement, when such a modification does not have major implications on the nature of the work.

SLOVENIA

LEGISLATION

Act Amending the Labour Market Regulation Act

At the end of December 2019, a new amendment to the Labour Market Regulation Act went into effect. The amendment requires aliens (persons with citizenship of a state that is not a member of the EU, EEA or Swiss Confederation) to provide a certificate proving that they passed a Slovenian language exam no more than 12 months following their registration with the Employment Service as an unemployed person. Such registration is a prerequisite for claiming the unemployment cash benefit. The minimum amount of the unemployment cash benefit was raised from EUR 350 to EUR 530.19 per month. Click here for more information.

Act Amending the Employment Relationships Act

Under an amendment to the Employment Relationships Act, the core Slovenian employment act, workers now have the right to paid leave for escorting their children, first-grade students, to school on the first day of school. Click here for more information.

COURT DECISIONS

Employers Cannot Terminate The Employment Contract of a Protected Employee (Supreme Court of the Republic of Slovenia, VIII Ips 48/2019, dated 10 September 2019)

Pursuant to the first paragraph of Article 115 of the Employment Relationships Act, according to the Supreme Court, an employer is not permitted to terminate the employment contract of an employee who enjoys special protection (*i.e.*, pregnant or breastfeeding female employee, parents on parental leave) during the period in which the employee enjoys protection under the Act. This restriction even applies to the termination of an employment contract for business reasons, even if the reasons for such termination are objective or unrelated to the status of the employee. The law simply allows no exceptions in such cases. Click here for more information.

Judgment on the obligation to seek determination of unlawful termination (Supreme Court of the Republic of Slovenia, VIII Ips 163/2018, dated 10 September 2019)

If an employee claims the existence of an employment relationship and seeks reinstatement or adequate compensation for an alleged unlawful termination, the determination of the legality of the termination is a matter for legal conclusion for the court which is not contained in the operative part of the judgment. It is therefore unnecessary for an employee to explicitly seek a determination of unlawful termination. This ruling represents a significant shift in the established case law because, until this change, all courts consistently included the decision on unlawful termination in the operative part of the judgment. Click here for more information.

SOUTH AFRICA

THE SOUTH AFRICAN LABOUR LAWS AMENDMENT ACT, 2018/THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

The new parental leave provisions provided for in the South African Labour Laws Amendment Act, 2018, and incorporated into the Basic Conditions of Employment Act, 1997 (BCEA), became effective as of January 1, 2020. Under section 25A of the BCEA, an employee who is a parent of a child is entitled to at least 10 consecutive days of parental leave, which may commence on the day that the employee's child is born, the date that the adoption order is granted, or the date that the child is placed in the care of a prospective adoptive parent by a competent court, whichever date occurs first. Section 25B gives an employee who is an adoptive parent of a child below the age of two the right to adoption leave of at least 10 consecutive weeks or parental leave pursuant to section 25A. Under section 25C of the BCEA, employees who are commissioning parents in a surrogate motherhood agreement are entitled to either commissioning parental leave of at least 10 consecutive weeks or parental leave of at least 10 consecutive days. The commissioning parents can elect which of the parents will take which leave. Parental, adoptive, and commissioning parental leave will be unpaid, but employees can submit claims to the Unemployment Insurance Fund to qualify for payment of these benefits. It is important to note that the family responsibility leave provisions (except for leave when a child is born) remain intact and employees may take family responsibility leave in instances where the employee's child is sick or in the event of a death in the family. Click here for more information.

LEGAL AID SOUTH AFRICA V MAYISELA AND OTHERS (CA9/17) [2019] ZALAC 1

The Labour Appeal Court, in considering a judgment granted in favour of an employee in a review application by the Labour Court, held that the employee was properly dismissed for gross insubordination because he failed to obey lawful and reasonable instructions, and made false accusations of tacit racism and harassment by the employer. In its decision, the Labour Appeal Court took a dim view of the employee's allegations of racism and vilification, mainly because of the manner in which he chose to raise the issues. The Court stated:

[A]lthough one naturally may be sympathetic to a colleague who has subjectively experienced a negative performance assessment as racial discrimination, unjustified allegations of racism against a superior in the workplace can have very serious and deleterious consequences. Employees who allege tacit racism should do so only on the basis of persuasive objective information leading to a compelling and legitimate inference, and in accordance with grievance procedures established for that purpose. Unfounded allegations of racism against a superior by a subordinate subjected to disciplinary action or performance assessment, referred to colloquially as "playing the race card", can illegitimately undermine the authority of the superior and damage harmonious relations in the workplace.
Click here for more information.

STOKWE V MEMBER OF THE EXECUTIVE COUNCIL: DEPARTMENT OF EDUCATION, EASTERN CAPE AND OTHERS (CCT33/18) [2019] ZACC 3; (2019) 40 ILJ 773 (CC)

The Constitutional Court addressed alleged procedural unfairness caused by delays in an employer's disciplinary process. The Court held that the requirement of speediness is applicable both to completion of the matter, as well as to the institution of disciplinary action. The Court noted that if an employee is employed for a long period after the institution of disciplinary action, this may indicate that the employment relationship has not broken down. The Court further held that an appeal is a separate part of the disciplinary procedure and must be conducted with the same readiness as other disciplinary procedures for the standard of procedural fairness to be met. In particular, the Court reiterated the principle that any delay in the resolution of labour disputes undermines the primary object of the Labour Relations Act. Ultimately, the Court held that whether a delay would impact negatively on the fairness of disciplinary proceedings would depend on the facts of each case.
Click here to read the full case.

RAMAILA V MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS (C479/2017) [2019] ZALCCT 4

In this matter, the Court provided a test that employers can use in cases where discrimination—in terms of pay—is alleged. In dealing with an unfair discrimination claim, the Court applied section 11(2) of the Employment Equity Act (EEA) requiring a finding on irrationality, discrimination and the unfairness or otherwise of the discrimination. The Court relied on *Harksen v Lane N.O. 1997 (11) BCLR 1489 (CC) (Harksen)* and viewed rationality as requiring an

"appropriate and effective" measure. More important was the Court's approach to the existence of discrimination, which in this case required the Court to recognize that "being a new employee in the Public Service" was an unlisted/arbitrary ground for discrimination. The Court accepted that "being a new employee" is an "attribute or characteristic" for purposes of determining the existence of discrimination. The Court further accepted that this characteristic had the potential to, and, in fact, did prejudice the employee "in a comparably serious manner,…" The Court in effect determined that because the employer's conduct was irrational, there must have been discrimination. Click here to read the full case.

LONG V SOUTH AFRICAN BREWERIES (PTY) LTD AND OTHERS (CCT61/18) [2019] ZACC 7

The Constitutional Court considered an appeal from a judgment of the Labour Court relating to two review applications. One application concerned the Applicant's employment dismissal and the other concerned his suspension prior to dismissal. The Constitutional Court aligned itself with the Labour Court's findings. Specifically, the Labour Court set out the important differences between the two possible types of suspension—the first being a suspension as a disciplinary sanction, and the second being a suspension as a "holding operation" (or a precautionary suspension). A suspension as a disciplinary sanction can only follow a disciplinary proceeding conducted in a fair manner, and is usually used as an alternative to dismissal. The Labour Court held that the reason for the distinction between the two types of suspensions is that the standards of fairness differ between the two. The Labour Court further held that in the case of a precautionary suspension, there is no requirement for an employee to be given an opportunity to make representations before the employer decides to place that employee on suspension. However, a precautionary suspension could still constitute an unfair labour practice if the employer does not have a fair reason for it, if it causes undue prejudice to the employee or if the suspension is unduly long without a valid reason. The Labour Court also held that it is not necessary for the employer, at the stage of implementing a precautionary suspension, to substantiate the allegations of misconduct. Rather, in implementing a precautionary supension, it is sufficient for the employer to hold a reasonable belief that the misconduct took place. The Constitutional Court confirmed that a suspension pending an investigation and possible disciplinary action is a precautionary measure and does not constitute disciplinary action, and as such, the requirements in terms of the Labour Relations Act, 1995, relating to fair disciplinary action do not apply. Click here to read the full case.

OLD MUTUAL LIMITED & OTHERS/PETER MOYO & ONE OTHER

This matter was an appeal from the interim interdict issued by the High Court, in which the High Court ordered Old Mutual to reinstate its former CEO. On appeal, the court held that in circumstances where the former CEO's contract of employment allowed him to be dismissed upon six months' notice, and gave Old Mutual an option as to whether or not to initiate disciplinary proceedings against him, Old Mutual's conduct was consistent with its contractual rights and obligations. Click here to read the full case.

SPAIN

LAW 1/2019, OF FEBRUARY 20, ON TRADE SECRETS

This new law defines what information is considered a trade secret, regulates when obtaining, using, or disclosing trade secrets is illegal, and identifies potential defenses for the receipt, use or disclosure of trade secrets. Click here for more information.

ROYAL DECREE-LAW 6/2019, OF MARCH 1, ON URGENT MEASURES TO GUARANTEE EQUAL TREATMENT AND OPPORTUNITIES FOR WOMEN AND MEN IN EMPLOYMENT

Paternity leave (defined as leave for the parent other than the biological mother) was extended from five to eight weeks, effective as of April 1, 2019. Furthermore, as of January 1, 2020, such paternity leave was extended to 12 weeks. The law also recognizes the right of employees to request the adaption of the duration and distribution of the working day due to reasons of work-life balance without requesting any reduction in their working hours. Employees will have the right to request adjustments of the working day as long as the requested adjustment is both reasonable and adequate for their needs and reasonable to the organization and production of the company. Click here for more information.

ROYAL DECREE-LAW 8/2019, OF MARCH 8, ON URGENT MEASURES FOR SOCIAL PROTECTION AND THE ELIMINATION OF PRECARIOUSNESS OF EMPLOYMENT IN CONNECTION WITH WORKING HOURS

This law amends Article 34 of the Workers' Statute and requires companies to log employee hours each day and adopt measures to track when employees clock in and out of the workplace. Relevant case law: Judgment of the High Court of Justice of Castilla y Leon of May 24, 2019. Click here for more information.

RELEVANT DOCTRINE AND CASE LAW OF 2019

Judgment of the High Court of Justice of Castilla y León of May 24, 2019

The Court established that, in the absence of a working hours registration system, the employer will have the burden of proof as to whether a particular employee is a part-time or full-time employee. There is a presumption that the employee is rendering services under a full-time employment contract unless otherwise proven by the employer.

Judgment of the High Court of Justice of Balearic Islands of June 27, 2019

The Court denied an employee's request for paid leave for his wedding, where the employee had initiated a request for temporary disability due to a traffic accident that occurred roughly three weeks before he got married.

Judgment of the High Court of Justice of the Basque Country of July 16, 2019

The Court ruled in favor of a company that had denied an employee the second of two paternity leaves because Royal Decree-Law 6/2019 implicitly excludes the

additional paternity leave recognised in the employee's collective bargaining agreement (CBA). The CBA provided for a more favorable paternity leave scheme (it added three calendar days from the date of birth), which had been rendered illegal by the new decree.

Judgment of the Labour Court No. 19 of Madrid of July 22, 2019

The Court found that 537 delivery workers working for the food delivery service Deliveroo were subject to an employment relationship with ROOFOODS Spain S.L., a company that worked with restaurants to provide product marketing and delivery services on its website and used Deliveroo employees to fulfil orders.

Judgment of the National High Court of July 22, 2019

The Court found that the employer's decision to replace paper delivery of employee magazine subscriptions that were accompanied by magazine gifts and other perks with digital subscriptions constituted a substantial modification of the employees' working conditions and ordered the employer to return to providing paper subscriptions to employees.

Judgment of the Labour Court No. 10 of las Palmas de Gran Canaria of September 23, 2019

The dismissal of a worker who was replaced by a computer program or "management bot" was considered an unfair dismissal. The Court rejected the objective reasons argued by the company to terminate the employee's relationship.

Judgment of the Constitutional Court of October 16, 2019

The Court upheld the dismissal of an employee based on objective grounds due to absences from work, even if those absences were deemed justified. The Court examined from a constitutional perspective Article 52(d) of the Workers' Statute. This judgment was based on Article 38 of the Spanish Constitution – relating to business freedom– and states that dismissals based on objective grounds in these cases have the purpose of "avoiding the improper increase of costs that absences from work imply for companies." Click here for more information.

Judgment of the Supreme Court of October 24, 2019

Union representatives have the right to participate in strikes without having that time deducted from their time off to carry out trade union or employee representation activities.

Judgment of the European Court of Human Rights of October 17, 2019

An employer, a supermarket chain, had used video obtained from hidden cameras it installed throughout the supermarket to dismiss employees for theft. The employees argued that surveillance of their activities through the use of hidden cameras without notice was a violation of Article 8 of the European Convention on Human Rights (relating to the right to respect for private and family life). The Court of Human Rights disagreed, however, finding no such violation even though the employer had not informed its employees of the hidden cameras. Click here for more information.

Judgment of the Supreme Court of November 5, 2019

The Court declared minimum severance compensation (seven days' salary per year of work) exempt from an employee's personal income tax, capping the exemption at EUR 180,000.

Judgment of the High Court of Justice of Madrid of November 27, 2019

The High Court of Justice overruled the Labour Court No. 17 of Madrid, which had found the employee to be a freelance worker of Glovo. The High Court ruled that the employee had entered into an employment relationship with Glovo. Therefore, the employee's dismissal, which was premised on Glovo's claim that there was no employment relationship, was unfair.

SWEDEN

RETIREMENT AGE CHANGE

One of the most important changes to Swedish labour law during 2019 was the decision to raise the retirement age. Sweden does not have a fixed retirement age. Instead, Sweden has a flexible retirement age for earnings-related pensions. The scheme also provides an upper age limit designed to limit the employee's right to remain employed. As of January 1, 2020, Sweden raised the minimum age threshold required to obtain an earnings-related pension from 61 to 62. Furthermore, as of January 1, 2020, the upper age limit restricting an employee's right to remain employed was raised from 67 to 68 years of age, and will be further raised to 69 years of age as of January 1, 2023. Lastly, as of January 1, 2023, the lower age limit at which earnings-related pensions can be drawn will be linked to the increase in life expectancy. Thus, as life expectancy rises in the future, so will the retirement age. Click here and here for more information.

SWITZERLAND

SWISS COURT DECISIONS

Supreme Court Decision 145 III 14 (4A_527/2018 of 14 January, 2019)

According to Article 34 Paragraph 1 of the Swiss Civil Procedure Code, every employee is granted jurisdiction based on where the employee ordinarily carries out his or her work. The Supreme Court had to decide what that means for external work such as sales force or field service. An employee who is working externally may litigate against the employer at the place, where he or she plans or organizes his or her business trips or carries out the administrative tasks, which may coincide with his or her domicile. Critical aspects in this regard are temporal elements, such as the duration of work at a certain place as well as the importance of specific parts of the work.

Supreme Court Decision 4A_430/2018 (of 4 February, 2019)

The Swiss Supreme Court has confirmed its practice toward variable remunerations. It reminded that there are three differing categories, namely variable salary, mandatory bonus and optional bonus. With regard to mandatory bonus, it held that an employee may only receive a mandatory bonus in the year the employee leaves the company, if this has expressly been agreed by the parties (as stated in article 322d of the Swiss Code of Obligations). The employee carries the burden of proof for such an agreement.

Supreme Court Decision 145 IV 42 (6B_181/2018 of 20 December 2018)

In this matter, a company allowed the Police to install video cameras after it had experienced thefts on several occasions. However, video surveillance by the police at

the premises of an employer due to investigation of a criminal offence is considered an infringement of fundamental rights. As such, it must be granted by the competent court as a compulsory measure. If the formal procedure has not been followed, the surveillance material cannot be used against the employee as evidence in a criminal procedure. That the management has consented to a video surveillance by the police is irrelevant. However, the ruling contains an interesting *obiter dictum*, suggesting that if the employer had organized the video surveillance on its own, and in accordance with applicable data privacy laws, such different circumstances may have led to a different outcome. Click here to read the full decision.

Supreme Court Decision 4A_533/2018 (of 23 April, 2019)

In a dispute regarding the termination of an employment agreement with home office, the Supreme Court had to deal with the compensation of the employee for a private apartment as workroom and archive. It held that Article 327a of the Swiss Code of Obligations constitutes a legal basis for the employer's participation in the employee's rental expenses, if the employer does not permanently offer a suitable workplace to the employee, even if the agreement does not stipulate such a participation. The employer therefore must reimburse the employee for all expenses necessarily incurred (*i.e.*, for a working infrastructure at home to fulfill their duties). Any agreement in which the employee must bear all or part of such necessary expenses is void. The Supreme Court stated further that it does not matter, whether the expenses were incurred directly or indirectly (*i.e.*, whether the employee has actually rented an additional room or the expenses were incurred anyhow), because the expenses were incurred and the employer at least indirectly benefits from them. Click here to read the full decision.

Supreme Court Decision 4A_68/2018 (of 13 November 2019)

In collective employment agreements, employers or employers' associations and employees' associations jointly lay down clauses governing the conclusion, nature and termination of employment relationships between the employers and individual employees. As such, collective employment agreements may define its monitoring and enforcement through contractual penalties, and disputes often arise concerning the question of applicability of collective employment agreements due to its operational scope.

In 4A_68/2018, the parties had a dispute over the applicability of the collective employment agreement of the Swiss Construction Industry to the operations of an employer, which would have led to minimum wage and overtime surcharges. The employer argued that its operations, namely flooring and sealing of industrial floors, may fall under the scope of the Building Envelopes Industry, if at all, but not under the construction industry. The court emphasized that the activity actually carried out is key, because it characterizes the operations of the company, which is a question of law. With proper reasoning, the employer successfully argued that its operations did not fall under the scope of the collective employment agreement and therefore its minimum wage and overtime surcharge provisions were not applicable to his employees. Click here to read the full decision.

SWISS LEGISLATION

Amendment of the Federal Statute on Gender Equality

The Swiss Federal Council will put the amendments of the Federal Statute on Gender Equality into effect by July 1, 2020. The amendments aim at an augmented enforcement of equal pay. Companies with a staff of

100 or more employees must carry out internal analysis on equal pay no later than the end of June 2021. However, due to a sunset-clause which limits the validity period of the obligation to analyze wage equality to twelve years, these particular new provisions will automatically expire on July 1, 2032.

THAILAND

UPDATES TO THE LABOR PROTECTION ACT

Amendments to the Labor Protection Act (LPA) took effect in May 2019, introducing or expanding a number of employee benefits and protections. The amendments include the following: (i) increasing the amount of severance to 400 days for employees with at least 20 years of service; (ii) increasing maternity leave from 90 days to 98 days (with 45 days of wages paid), inclusive of holidays; and (iii) introducing three days of paid "necessary business leave" for employees. The amendments also cover workplace relocation, detailing notification, timing and complaint procedures. Additional provisions stipulate that employees who are transferred from one employer to another employer must consent to the transfer, and that compensation entitlements for terminated employees are clearly enumerated. Finally, compensation equality is mandated for male and female employees undertaking the same work, and penalties for employers who fail to comply with any provisions of the LPA have been amended.

NEW MINIMUM WAGE

In December 2019, the National Wage Committee of Thailand's Ministry of Labor announced a new minimum daily wage to take effect on January 1, 2020. The new minimum wage varies by province on a sliding scale ranging from THB 313 to THB 336 (about USD 10.35–11.10) per day. This amounts to an increase of THB 6 for nine provinces and THB 5 for the remaining provinces.

TURKEY

EMPLOYERS CANNOT TERMINATE BASED ON WHATSAPP MESSAGES

On January 10, 2019, the 9th Civil Chamber of the Supreme Court ("Chamber") held that employees are allowed to create and communicate with other employees through message groups, as long as the communications do not affect employees' work or disrupt workflow. The Chamber ruled that WhatsApp communications between employees should be protected as personal data. The plaintiff-employee brought suit after his employer terminated his employment based on Article 25/2 of the Turkish Labor Code numbered 4857. The employer terminated him based on WhatsApp group messages, citing the following provisions: (i) using expressions and performing deeds/acts violating honor and dignity of the employer, (Art.25/2.b), and (ii) performing acts/deeds contrary to the principle of truthfulness and loyalty (Art. 25/2.e). The Chamber stated that WhatsApp group messages were closed to third parties, should be treated as confidential, and constitute personal data. Because the employer accessed the messages in an unlawful manner, it could not rely upon them as a reason to terminate.

SUBCONTRACTOR REIMBURSEMENT: HURDLE REMOVED FOR PUBLIC INSTITUTIONS

On February 21, 2019, the Turkish Constitutional Court revised Article 112 and Provisional Article 9 of the Turkish Labor Code numbered 4857. Previously, public institutions, as the primary employer, could reimburse subcontractors for severance payments made to employees only when there existed a specific provision under the subcontracting

agreement permitting it. Private companies did not require an agreement for this type of reimbursement. The Court stated that there were no objective or reasonable grounds for such a differentiation between subcontractors serving public institutions and those serving private entities. As a result, public institutions can reimburse subcontractors even if there is no specific provision regulating that right. Click here to read the full decision.

DAILY PENALTY TOO STEEP FOR PRESS EMPLOYERS

On September 19, 2019, the Turkish Constitutional Court annulled the second sentence of the Additional Article 1(8) of Law No. 5953 on the Arrangement of Relations between Employees and Employers in the Press Profession. The Court determined that the 5% daily penalty imposed against employers for untimely paid overtime wages violated Articles 2, 10, 13 and 48 of the Constitution. Although the Court acknowledged that journalists' financial rights should be guaranteed, since journalists are crucial to a democratic society, the law must strike a reasonable balance between the employers' freedom of enterprise and the interests of journalists and society. The Court determined that the provision imposed an excessive and unbearable burden on employers and could unjustly enrich employees. The Court also ruled that the provision disproportionately advantaged press employees versus other employees, thus violating the principle of equality. Click here to read the full decision.

UNITED KINGDOM

POST-TERMINATION RESTRICTIONS

The UK Supreme Court delivered a significant judgment concerning the enforceability of post-termination restrictions (PTRs) in employment contracts. The judgment in *Tillman v. Egon Zehnder* is generally good news for employers seeking to protect their business against the competitive threat posed by departing employees. It clarifies that the power of the UK courts to sever unenforceable parts of post-termination restrictions and enforce the remaining parts is broader than had been feared. UK courts can sever language from otherwise unenforceable PTRs if the unenforceable part can be removed/deleted without needing to add to or change the wording that remains, and if the removal of the unenforceable part does not significantly change the overall effect of all PTRs in the contract. However, the UK Supreme Court has left open the question of who bears the costs when an employer successfully persuades a court to sever certain words from a restriction in order to make it enforceable. The employer may still have to pay some or all of the legal costs for not getting the drafting of its restrictions right in the first place.

SHARED PARENTAL PAY

As of 2019, in the UK, new mothers are entitled to statutory maternity leave of up to 52 weeks and statutory maternity pay of up to 39 weeks. If a mother elects to do so, the majority of that leave and pay may be curtailed and instead shared with their co-parent as shared parental leave and pay. The Court of Appeal found that it is not, on the face of it, unlawfully discriminatory for an employer to offer women enhanced maternity pay and only offer men statutory shared parental leave pay. Click here for more information.

TAXATION OF INDEPENDENT CONTRACTORS

The UK Government announced new "off-payroll working" tax rules (commonly known as IR35) that will apply to the UK private sector beginning April 6, 2020. Equivalent rules have applied in the UK public sector since 2017. The move will shift responsibility

for determining the tax status of individuals who personally provide services through an intermediary "loan out"/personal service company from that PSC to the end user client. Each PSC relationship will need to be assessed, using "reasonable care," and a "status determination statement" issued. Where employment is found, the "fee-payer" (*i.e.*, the end-user client, or where there is an intermediary agency, the agency) will be responsible for tax and social security withholdings, together with employer social security contributions at a rate of up to 13.8 per cent. Click here for more information.

UNITED STATES

In 2019, there were a number of federal law changes and dozens of other new state and local laws in the area of employment. There are a number of other publications that focus exclusively on the changes in US employment law. As a result, here we are highlighting: (i) what we believe to be the most important federal law change, (ii) a significant US Supreme Court decision regarding the interpretation of arbitration agreements, and (iii) themost significant trends reflected in changes in the laws of certain select states.

FEDERAL LEGISLATION

The US Department of Labor Issues Final Overtime Exemption Rule

On September 24, 2019, the US Department of Labor announced its final version of the overtime exemption rule, which went into effect on January 1, 2020. Among other things, the rule raises the annual salary threshold to meet the white collar overtime exemption under the Fair Labor Standards Act to $35,568 per year or $684 per week, up from the prior threshold of $23,660 per year or $455 per week. In addition, the highly compensated employee exemption threshold was raised to $107,432 effective January 1, 2020, up from $100,000.

US SUPREME COURT

The Supreme Court's Decision in *Henry Schein v. Archer and White Sales Inc.*

Many employment-related contracts in the United States include provisions requiring the parties to arbitrate future disputes. In January 2019, the Supreme Court addressed the question of whether the federal arbitration act permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator if the court concludes that the claims of arbitrability is "wholly groundless." In a unanimous opinion written by Justice Brett Kavanaugh, the Court reiterated its prior decisions that parties to a contract have the ultimate say in whether to have an arbitrator or a court resolve disputes between them. This includes not only the merits of such disputes, but also the question of whether a particular dispute is arbitrable. The Court found that, in the parties' contract, the parties had delegated to an arbitrator the question of arbitrability. As a result, the Court was not permitted to override the contract and resolve the arbitrability question even if the Court believed that the claim of arbitrability was wholly groundless. 139 S. Ct. 524 (2019).

TRENDS IN STATE AND LOCAL LEGISLATION

New State and City Minimum Wage Increases

Over 20 states and numerous municipalities raised the minimum wage for workers effective January 1, 2020.

Equal Pay Protections

A number of states, including New York, New Jersey and Colorado, passed legislation in 2019 making it illegal—starting in January 2020—to ask job applicants for information about their salary history.

Misclassification of Workers

Signed into law in September 2019 by Governor Gavin Newsom, California's AB5 (popularly known as the "gig worker bill") went into effect on January 1, 2020. AB5 requires companies that hire independent contractors to reclassify them as employees with few exceptions. Under AB5, all workers are automatically assumed to be employees unless the employer can prove the following three things: (i) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (ii) the worker is performing work tasks that are outside the usual course of the company's business activities; and (iii) the worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed. More than 50 professions and types of businesses are exempt from AB5, including insurance agents, lawyers, real estate agents, and certain types of business-to-business contractors and referral agencies. Companies that are not exempt will have to take a closer look at how they classify employees and independent contractors to ensure that they are not violating this new law.

Expansion of Paid Family and Medical Leave

A number of states, including California, Illinois, Maine, Nevada and Oregon, passed new laws related to the expansion of paid family and/or medical leave in 2019 that have or will become effective in 2020.

Anti-Harassment Training in the Wake of #MeToo

A number of states, including Connecticut, Illinois and Washington, passed laws establishing new anti-harassment training requirements for employers or other harassment protections in the wake of the #MeToo movement.

VIETNAM

REVISED LABOR CODE

On November 20, 2019, the National Assembly of Vietnam issued a long-awaited revised version of the Labor Code, the primary legislation governing employment and employer-employee relationships in Vietnam. The new Labor Code, which will take effect January 1, 2021, will replace the current Labor Code of 2012. Among the notable changes introduced by the new Labor Code are an additional holiday (the September 2 National Day will become a two-day holiday), a phased-in increase of the retirement age (rising to 60 for women and 62 for men), the validity of electronic labor contracts, and stronger protections against sexual harassment and discrimination.

NEW MINIMUM WAGE

On January 1, 2020, region-based minimum wages for non-state employees in Vietnam increased by an average of 5.5%. The new monthly minimum wages range from VND 3,070,000 (approximately USD 132) for the least developed areas to VND 4,420,000 (approximately USD 190) for large metropolitan areas like Hanoi and Ho Chi Minh City.

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