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Geida D. Sanlate, Littler Editor

Australia

Victoria Introduces Sick Pay Guarantee for Casual Employees

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler

The Victorian Government has launched the Victorian Sick Pay Guarantee, a pilot scheme which allows certain casual employees and self-employed workers to claim up to 38 hours of paid sick or carer's leave each year. Employees must meet certain criteria to be eligible for the sick pay guarantee. Claims must be submitted within 60 days of the worker's absence and must be for a minimum of three hours for any day. The maximum amount a worker can claim in any 12-month period is 38 hours. Each claim is paid at the national minimum wage.

Although applications under the sick pay guarantee do not require the involvement of employers, employers are required to provide employees with evidence of employment upon request. Employers may also be contacted by the Department of Jobs, Precincts and Regions to verify a worker's claim. The sick pay guarantee will be taxpayer funded during its trial phase. However, the Victorian Government has stated that any ongoing scheme will be funded by an industry levy.

Denying Employee Remote Work Arrangement Requests

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler

In a recent Queensland Industrial Relations Commission decision, the Queensland Industrial Relations Commission has confirmed that employers may decline requests for remote working arrangements where there are practical and operational reasons which make them unviable. While the decision involved a public sector employer, the principles

considered by the Commission in this case are similar to those that apply in respect to employee requests for flexible work arrangements under the Fair Work Act 2009 (Cth).

The Commission in this case found that it was not unreasonable "for an employer to determine the operational requirements for delivery of key accountabilities" and that the working preferences of an employee needed to be balanced with the "operational requirements of the employer." Nonetheless, private sector employers must ensure that they comply with the Fair Work Act when considering flexible work requests and only deny such requests on reasonable business grounds.

Whether Mandating Vaccination Evidence Contravenes the Privacy Act

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler

In an important decision for employers in Australia, the Fair Work Commission confirmed on January 21, 2022, that an employer's mandatory vaccination policy, which required employees to provide evidence of vaccination status, was a lawful and reasonable direction and did not contravene the Privacy Act 1988 (Cth). The employer required employees to provide either the Government-issued COVID-19 digital certificate or an immunization history statement.

The Commission held that the collection of this evidence was reasonably necessary in accordance with the Privacy Act. However, it is important to note that employers must comply with the Privacy Act in the collection of such information from their employees and in situations where the vaccination is optional or employees are able to work from home as opposed to coming to an office, an alternative approach such as a health declaration may be more appropriate without collecting employee vaccination records.

Commission Upholds Dismissal for Out-of-Hours Social Media Post

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler

On February 15, 2022, the Fair Work Commission upheld the dismissal of an employee who made offensive and discriminatory posts on a social media platform out of work hours. Deputy President Masson found that the posts were likely to cause serious damage to the relationship between the employer and the employee and that the conduct was incompatible with the employee's employment duties and breached employer policies.

Importantly, despite finding that there had been some issues regarding the procedural fairness as part of the dismissal process, the Commission nonetheless held that the dismissal had not been unfair, dismissing the application. The case follows a number of similar decisions confirming that employee out of hours conduct can constitute valid grounds for dismissal if the conduct may damage the employer's reputation.

Personal Use of Company Car Can be Used to Meet High-Income Threshold

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler

On February 18, 2022, the Fair Work Commission held that a manager's personal use of a business car could tip her annual earnings over the high-income threshold and therefore render her ineligible to file an unfair dismissal claim. Commissioner Spencer applied the Fewings formula, finding that the vehicle costs together with the employee's annual salary, health insurance, and mobile phone meant her salary was over the high-income threshold of $153,600. As such, the employee's application was dismissed. The decision is an important reminder that certain employment benefits can be included in the calculation to determine whether an employee falls outside of the unfair dismissal jurisdiction.

Austria

Suspension of the Announced General Vaccination Obligation

New Order or Decree

Author: Paul Moosmann, Associate – Gerlach Löscher | Littler

The general vaccination mandate, which has been announced and already enacted by law, has been suspended for the time being by means of a decree. This was due to fundamental rights concerns, as the effectiveness of existing vaccines against the newer variants of COVID-19 is considered insufficient to justify compulsory vaccination. However, the discussion has only been postponed, as the underlying law has not been repealed.

Noncompliance with Mask Mandates Does Not Constitute a "World View"

Precedential Decision by Judiciary or Regulatory Agency

Author: Sandra Grasser, Associate – Gerlach Löscher | Littler

In a recent case, the Austrian Supreme Court (OGH) ruled that in the employment relationship (and also in the course of its termination), no one may be directly or indirectly discriminated against on the basis of their "world view" (ideology). In the underlying case, the employee had said that the coronavirus was "about as dangerous as the influenza virus" and that "constitutional laws [should] be respected" and refused to wear the mandatory mask. According to the OGH, these statements do not constitute a world view in the sense of the relevant provisions, which is why the dismissal could not be challenged on grounds of discrimination.

New Penal Sanctions Against Wage Dumping Apply to All Pending Proceedings

Precedential Decision by Judiciary or Regulatory Agency

Author: Markus Löscher, Partner – Gerlach Löscher | Littler

According to ECJ case law, the previous legal situation, according to which administrative penalties could be accumulated (*e.g.*, per employee concerned and per individual violation), was incompatible with EU law. The Austrian Administrative High Court (VwGH) now has also established that the legal changes made in the meantime will also take effect for administrative court proceedings that are already pending. The changes made were insufficient insofar as related penal norms from another law were not adapted accordingly and thus an unplanned legal loophole was created. However, according to the decision of the VwGH, this gap is to be closed by analogy, which ensures that the new provision, which complies with EU law, also applies to proceedings that are already pending.

Substantial Repeal of the "3G"-Requirement at the Workplace, Effective March 5, 2022

New Regulation or Official Guidance

Author: Markus Löscher, Partner – Gerlach Löscher | Littler

With the new regulation of the Ministry of Health, the COVID-19 measures at the workplace were largely abolished as of March 5, 2022. The "3G"-requirement at the workplace, according to which the employer had been responsible for randomly checking whether workers have been vaccinated, have recovered or have been tested, is largely repealed. However, the obligation to provide proof of "3G" remains in place in sensitive areas such as hospitals. Due to the rapidly increasing number of cases in the second half of March, the general obligation to wear a mask at the workplace has been reinstated for the time being. Nevertheless, the employer is no longer obligated to check the "3G"-certificate.

End of Pandemic-related Short-time Work Subsidy

New Regulation or Official Guidance

Author: Paul Moosmann, Associate – Gerlach Löscher | Littler

The state-funded COVID-19 short-time work with full cost compensation for companies expired at the end of March 2022. To make the transition period more manageable for companies and to counteract persistent slumps in demand and supply chain problems, the maximum duration for claiming regular, non-COVID-19 related, state-supported short-time work will be extended by two months. Affected companies can thus claim 85% short-time work subsidy until the end of June 2022 at the latest.

Brazil

Onsite Work by Pregnant Employees, Amidst COVID-19 Pandemic

New Legislation Enacted

Authors: Marília Minicucci, Partner – Chiode Minicucci | Littler, and Renata Neeser, Shareholder – Littler

Law # 14,311/2022, published on March 10, 2022, establishes that during the COVID-19 public health emergency, only pregnant employees who have not yet been fully immunized must remain away from onsite activities, without prejudice to their remuneration, but must remain available to perform the job through telework or remote work if possible. Under this law, the employer can modify the pregnant employee's activities until the employee returns to onsite work. Unless the employer decides to keep her in telework, the pregnant employee must return to onsite work: (1) after the end of the COVID-19 health emergency; (ii) after completing the COVID-19 vaccination series; or (iii) through the exercise of a legitimate individual option for nonvaccination against COVID-19.

A pregnant employee who refuses vaccination must sign a term of responsibility and free consent to work onsite, agreeing to comply with all preventive measures adopted by the employer. Finally, the law provides that no restrictions of rights can be imposed on pregnant employees, who choose not to get vaccinated. It is possible that the constitutionality of this new law will be challenged on various grounds, including the employee's right to self-determination.

New Executive Order on Telework

New Order or Decree

Authors: Marília Minicucci, Partner – Chiode Minicucci | Littler, and Renata Neeser, Shareholder – Littler

Executive Order # 1,108/2022, which was published on March 28, 2022, among other things, regulates telework. Article 62 of the Brazilian Labor Code used to provide that employees on telework were exempted from working hours' control. However, under the new EO, such exception applies only to "employees on telework, who render services by production or task." The exception, therefore, does not apply to employees on telework who render services under the "working period" modality. In the latter case, companies will need to control the employees' working hours, even on telework, and the alternative, electronic control of working hours requires collective bargaining.

This order, which became effective immediately, will remain in force for 60 days, and may be extended for an equal period if not voted on within the first 60 days. At the end of the 120 days, if not converted into law, the order will expire.

New Executive Order to Safeguard Jobs

New Order or Decree

Authors: Marília Minicucci, Partner – Chiode Minicucci | Littler, and Renata Neeser, Shareholder – Littler

Executive Order # 1,109/2022, which was published on March 28, 2022, reestablishes alternative measures to safeguard employment, which include the implementation of telework, anticipation of individual vacations, authorization of collective (blanket) vacations, use and anticipation of holidays, bank of hours, and suspension of the FGTS (the unemployment guarantee fund) payments. This order also includes the possibility of reinstating the Emergency Employment and Income Maintenance Program, which the federal executive branch had implemented in the beginning of the pandemic. That program authorized the temporary suspension of labor contracts, as well as proportional reduction of working hours and wages.

The measures set out in EO # 1,109/2022 are not yet effective, pending final regulations from the Ministry of Labor and Welfare.

Brazilian Ministry of Justice Regulates Visa for "Digital Nomads"

New Regulation or Official Guidance

Authors: Marília Minicucci, Partner – Chiode Minicucci | Littler, and Renata Neeser, Shareholder – Littler

The National Immigration Council published Resolution # 45/2021 on January 24, 2022, authorizing temporary visas and residence permits to immigrants who are "digital nomads," *i.e.*, with no employment relationship in Brazil, but whose professional activity can be carried out remotely on behalf of a foreign employer. A "digital nomad" visa holder can receive a one-year residency permit, which can be renewed for an equal period, provided all necessary documents are presented. For the time being, the Brazilian Federal Revenue has not issued any guidance on whether the foreign employer is exempted from withholding taxes and Social Security, in Brazil.

Canada

Ontario Court Decides on ESA Prohibition Against Noncompete Agreements

Precedential Decision by Judiciary or Regulatory Agency

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

Among other things, Ontario's Bill 27, Working for Workers Act, 2021 (Act), which became law on December 2, 2021, amends the Employment Standards Act, 2000 to prohibit current and prospective employers from entering into an employment contract or other agreement with an employee or an applicant for employment that is, or that includes, a noncompete agreement, except upon the sale of a business or if the employee is an "executive." The Act provides that this prohibition is deemed to be in force effective October 25, 2021, but it does not indicate whether the prohibition applies to noncompete clauses entered into prior to this effective date. This question was recently answered by the Ontario Superior Court of Justice, when it held that the prohibition does not apply to noncompete agreements entered into prior to October 25, 2021.

Ontario Court of Appeal Dismisses Appeal of Decision Exceeding 24-month "High End" of Reasonable Notice for Long-term Employees

Precedential Decision by Judiciary or Regulatory Agency

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

The Ontario Court of Appeal (OCA) recently dismissed the employer's appeal of a lower court decision in which the trial judge held "exceptional circumstances" existed to justify making an award of 26 months' salary in lieu of notice that exceeded the 24-month "high end" amount of reasonable notice for long-term employees. That case involved

a 40-year employee whose employment was terminated when she was 58 years old, had only specialized skills that were not easily transferable, and limited computer skills. This decision was rendered despite the precedent where, in similar circumstances, the court reduced a 30-month reasonable notice award to 24 months, because such factors are already "recognized" and "rewarded" by the 24-month notice period, and they do not establish "exceptional circumstances."

British Columbia Court Decides Surreptitious Recording of Colleagues Justifies Termination of Employment for Cause

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Court of British Columbia recently dismissed an employee's wrongful dismissal claim and held that the employee's surreptitious recording of conversations with colleagues justified the termination of his employment for just cause because, in making the recordings, the employee fundamentally ruptured the employment relationship, such that the mutual trust between the parties was broken. Factors a court may consider in conducting such an analysis may include the reason why the employee asserts they made the recordings, the period of time over which the recordings were made, the number of recordings made, the sensitivity of the information recorded, and whether the recordings were made in contravention of applicable policies.

If Enacted, Ontario's Bill 88 Will Provide Protections and Rights for Gig Workers, Among Other Changes

Proposed Bill or Initiative

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

Ontario's Bill 88, Working for Workers Act, 2022, (Bill 88) was carried on First Reading on February 28, 2022, and carried at Second Reading on March 23, 2022. It is now under consideration by the Standing Committee on Social Policy. If passed in its current form, Bill 88 would come into force on the day it receives Royal Assent, and enact the new Digital Platform Workers' Rights Act, 2022, which would establish foundational rights and protections for gig workers. Other provisions include amendments to the Employment Standards Act, 2000 (ESA), which would clarify the treatment of certain information technology and business consultants under the ESA, require employers to tell their workers if and how they are being monitored electronically, and expand reservist leave.

The bill also seeks to amend the Fair Access to Regulation Professions and Compulsory Trades Act, 2006, to require a regulated profession to make a registration decision within 30 business days of receiving an application for registration from a "domestic labor mobility applicant." Further, the bill seeks to amend the Occupational Health and Safety Act to require employers to provide and maintain in good condition a naloxone kit in workplaces where they are aware, or ought to be aware, that there may be a risk of a worker having an opioid overdose, increase maximum fines if there is a failure to provide a safe work environment and it leads to a worker's severe injury or death on the job, and establish the aggravating factors that should be considered upon determining penalties against corporate and individual defendants.

Canada No Longer Requires Fully Vaccinated Travelers to Provide Pre-entry COVID-19 Test Result to Enter Country

Important Action by Regulatory Agency

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

On March 17, 2022, Canada announced that, effective April 1, 2022, fully vaccinated travelers will no longer be required to provide a pre-entry COVID-19 test result to enter Canada. Pre-entry testing requirements did not change for partially or unvaccinated travelers who are allowed to travel to Canada.

Colombia

Right to Disconnect from Work

New Legislation Enacted

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

Law 2191 of 2022 defines the right to disconnect as the right of all employees to avoid any work-related contact outside their working hours, ordinary or overtime work, vacations, or any other statutory/contractual leaves. Thus, any clause or agreement that goes against the right to disconnect is not enforceable. Under the law, a persistent or recurrent infringement of the right to disconnect from work can be considered labor harassment. Some employees or situations can be exempted from this right: 1) employees in positions of trust (such as managerial positions), (2) employees who must be permanently available due to the nature of their role, and (3) in the event of circumstances caused by *force majeure*.

Value of the Support for the Generation of Employment for 2022

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

Resolution 199 of 2022 provides the value of incentives employers will receive to generate employment in 2022, summarized as follows: (1) for additional employees between the ages of 18 and 25, financial support equal to 25% of the minimum wage, *i.e.*, COP 250,000 (approx. USD 66); (2) for additional employees of any other age who earn up to three minimum wages, support equal to 10% of the minimum wage, *i.e.*, COP 100,000 (approx. USD 26); and (3) for additional female employees over 28 who earn up to three minimum wages, support equal to 15% of the minimum wage, *i.e.*, COP 150,000 (approx. USD 39).

Cost of Occupational Medical Evaluations and Complementary Tests or Assessments

New Regulation or Official Guidance

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

Through Circular 015 of 2022, the Ministry of Labor reiterates the employers' obligation to undertake the cost of occupational medical evaluations and complementary tests or assessments. The Ministry pointed out that, by virtue of its inspection and surveillance powers, it may impose fines equivalent to the amount of 1 to 500 current minimum monthly legal salaries on employers who charge or transfer the cost of occupational medical evaluations to applicants or employees.

Costa Rica

New Law Promotes Employment Opportunities for People 45 and Older

New Legislation Enacted

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

Law No. 10079, which reform the Social Development and Family Allowances Law (FODESAF) and was published on January 25, 2022, creates incentives for employers to hire individuals 45 and older. Employers whose 10% of the total payroll consist of new hires and personnel in that demographic, will receive a 1% deduction in FODESAF contributions, as well as a deduction of 5% in the corporate income tax. The deductions increase to 2% and 7% respectively if the new hires account for 20% of the complete payroll.

Public Employment Framework Law, Law No. 10159, is Enacted

New Legislation Enacted

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

The Public Employment Framework Law was approved on March 7, 2022 and aims to regulate labor relations in the Public Administration sector (excluding non-State public entities, the Fire Department, and the institutions or public companies in competition). Among other things, this law limits places a cap on annual increases, limits the scope of collective bargain, and creates a "global salary" for public employees that would eliminate many of the individualized incentives and fringe benefits that tend to increase the labor cost over the years.

Third Dose of COVID-19 Vaccine Becomes Mandatory for Public Officials

New Regulation or Official Guidance

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

By decision of the National Commission for Vaccination and Epidemiology, taken in extraordinary session No. V-2022 on February 10, 2022, the compulsory nature of the vaccine against the COVID-19 disease is extended to the third dose for public officials. Employers in the private sector can choose to make vaccination mandatory, which includes the possibility to require a booster shot as well.

Denmark

LGBTI Bill Came in Force January 1, 2022

New Legislation Enacted

Author: Tina Reissmann, Partner – Labora Legal

The Danish Parliament adopted the bill to amend the Anti-Discrimination Act, the Equal Treatment Act, etc. The bill follows up on the Government's proposal "Freedom to be different – strengthened rights and possibilities for LGBTI people," which has as high priority to strengthen and clarify the prohibition of discrimination against LGBTI persons and to create equal protection inside and outside the labor market.

Temporary Residence Permit and Work Permit Exemption for Ukrainian Refugees

New Legislation Enacted

Author: Tina Reissmann, Partner – Labora Legal

The Danish Parliament just passed the "Act on Temporary Residence Permit for Persons Expelled from Ukraine," so Ukrainian refugees can get a residence permit in Denmark.

Ukrainian refugees who get a residence permit under the Act will be exempted from the work permit requirement and will therefore have an opportunity to take part in the Danish society and to work in Denmark.

An Employer Was Liable and Fined for Not Preventing or Dealing with Sexual Harassment

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner – Labora Legal

An employer was held liable for not preventing or dealing with an employee's sexual harassment of another employee (verbally, physically and by text messages) and for terminating the female employee when she, a few weeks after she found out that the "harasser" was terminated, informed the employer of the sexual harassment. The decision of the High Court is one of few rulings in Danish case law, which deals with claims related to sexual harassment. The High Court attached importance to the fact that the employer had not taken any preventive measures, such as

establishing guidelines for preventing sexual harassment, and fined the employer a considerable amount in terms of Danish standards.

New Supreme Court Judgment on the Calculation of Sick Days According to the 120-Day Rule

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner – Labora Legal

The Danish Salaried Employees Act § 5.2 (*funktionærloven*) states in relation to a shortened notice period of one month in case of long-term illness: "However, it can be agreed by written contract in each individual case that the employer is entitled to terminate the employment by giving one month's notice to expire on the last day of a month if the salaried employee has received pay during sickness for a total of 120 days during a period of 12 consecutive months. In order for such termination to be valid, notice must be given immediately after the expiry of the 120 sick days and while the salaried employee is still sick, whereas the validity of the termination is not affected by the salaried employee having resumed work after the date of notice."

In a judgment of March 18, 2022, the Supreme Court has finally established that weekends, public holidays, and other days off work are to be included in the calculation of when an employee absent due to sickness on a full-time basis has been sick for 120 days according to the 120-day rule if the employee has been absent on a full-time basis the day immediately before and the day immediately after the days in question off work. Approximately 70 cases at the city and High Courts were awaiting this verdict, which, hopefully, ended years of debating how "to count to 120."

Tripartite Agreement on Initiatives Against Sexual Harassment

Proposed Bill or Initiative

Author: Tina Reissmann, Partner – Labora Legal

The Government and its social partners have entered into a tripartite agreement on 17 initiatives to fight or reduce sexual harassment in the workplace. The agreement will enable the employers to prevent and deal with sexual harassment and support a "mental" change in certain workplaces. The 17 initiatives are concentrated within legal framework, knowledge of and focus on sexual harassment especially towards apprentices and trainees. The initiatives, which could be implemented without amendments to the law entered into force on March 4, 2022, and the remaining initiatives will be implemented after the usual process in the Danish Parliament.

Dominican Republic

Salary Increase for Workers in the Sugar Industry and NGO Employees

New Order or Decree

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

The National Wage Committee modified the monthly minimum wage for workers in the sugar industry, raising it by almost 100%, retroactive to January 1, 2022. Thus, the new monthly minimum wage is RD 12,000 (approx. USD 222); it will increase to RD 15,000 (approx. USD 277) as of October 1, 2022. Additionally, the daily minimum wage for field workers dedicated to harvesting sugar canes increased to RD 400 (approx. USD 7.40).

Moreover, the Committee also increased the minimum salary of employees working in nongovernmental organizations (NGOs) that provide health, education, and rehabilitation services for people with disabilities. The new monthly minimum salary is RD 14,500 (approx. USD 268.51).

Ministry of Labor Accepts Proposals for Labor Reform During Consultation Period

Important Action by Regulatory Agency

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

The Ministry of Labor began public consultation to reform the Labor Code. As of February 10, 2022, the Ministry will be receiving proposals to modernize the labor legislation of the Dominican Republic. This decision was adopted by the Labor Consultative Council (CCT), during its second session with the participation of the government, labor, and union sectors. The window to submit proposals expires after 30 days, *i.e.*, on March 10, 2022.

Ministry of Labor Initiates Public Consultation on Resolution of Internships

Important Action by Regulatory Agency

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

The Ministry of Labor announced that the period for public consultation on both the draft Resolution on the Rules for the Operation of Employment Agencies and the draft Resolution on the Internship or Professional Training Practice will close on March 15, 2022. The first mentioned draft seeks to establish the proper management of private and public employment agencies that operate in the Dominican Republic (per ILO Convention 122). The draft mentioned second seeks to establish the process by which students apply the knowledge acquired during the course of their academic training. The internship does not generate an employment relationship between the parties and cannot be used to cover vacancies nor to replace personnel.

El Salvador

Proposal to Increase Sanctions for Violation of Labor Rights

Proposed Bill or Initiative

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

Members of the legislature have introduced proposals to reform the Labor Code to increase the penalties for violation of labor rights to ensure that employees' right to redress is protected. Currently, the maximum penalty imposed on an employer who violates employee working conditions is approximately USD 57.14. With the proposed amendment, employers would be subject to financial penalties that approximately equal the harm caused to the employees.

European Union

European Parliament Adopts Post-Pandemic Health and Safety Resolution

New Regulation or Official Guidance

Authors: Kate Potts, Senior Associate, and Raoul Parekh, Partner – GQ | Littler

In March 2022, the European Parliament adopted an EU strategic framework on health and safety post 2020. The framework sets out key priorities for improving workers' health and safety in the post-pandemic world of work. The resolution: (1) Includes better protection for workers in relation to harmful substances, stress at work and repetitive motion injuries; (2) Outlines the need for better preparedness for future public health crises; (3) Recommends that telework rules are updated (including the right to disconnect across Europe); and (4) Sets outs ambitious prevention and enforcement measures.

There are currently no specific rules or requirements for employers following the adoption of the resolution and at this stage there are no plans for new EU-wide legislation.

Finland

Rules Concerning the Noncompetition Agreement Are Not Applicable to a Confidentiality Clause

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd

On March 15, 2022, the Supreme Court ruled that the employer and employee can competently agree on post-termination noncompete and confidentiality obligations as well as that the rules concerning noncompetition agreement are not applicable to the confidentiality obligation.

In this case, the employee had after the termination of employment started a competing real estate business as well as utilized client information which was considered trade secrets of the employer. The Supreme Court stated that both noncompete and confidentiality obligations may be based on the need to protect the trade secrets of the employer, but the confidentiality obligation does not, in principle, prevent the employee's right to practice their profession.

The Supreme Court ruled in favor of the employer that confidentiality obligation should not be equated to noncompetition agreement and the said clause did not restrict the employee's possibility to practice their profession beyond what is acceptable of the protection of trade secrets. The employee had breached both confidentiality and noncompete obligations and was obliged to pay an amount equaling six months' salary as liquidated damages for each breach.

Collective Agreement Based on Geographical Restriction Cannot Be Applied When Assessing Reduction of Work

Precedential Decision by Judiciary or Regulatory Agency

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd

On March 16, 2022, the Supreme Court ruled on a case relating to employer's possibility to apply a collective agreement based on geographical restriction of the redeployment obligation when assessing whether the work had diminished substantially and permanently. In accordance with the Finnish Employment Contracts Act, the employer is obliged to offer other work to the employee during their notice period, without any geographical restrictions, to avoid the termination. However, this provision can be deviated from with a national collective agreement.

In this case, the applicable collective agreement included a provision according to which the employer's redeployment obligation was restricted to a geographical area in which the employee could commute on a daily basis from their home. The employer had assessed the reduction of work only in the restricted geographical area. After terminating the employment, the employer had recruited several employees to the similar duties in which the employee had worked but to different locations. The Supreme Court ruled in favor of the employee that the employer was obliged to assess the reduction of work nationwide and thus, the employer was obliged to pay compensation for an unlawful termination.

Proposed Amendments to the Employer's Right to Collect Employees' Personal Data

Proposed Bill or Initiative

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd

On March 24, 2022, the Finnish government proposed amendments to the Finnish Act on the Protection of Privacy in Working Life relating to the employer's right to collect personal data of its employees. The aim is to clarify the regulation in relation to the General Data Protection Regulation (EU) and practices in work. The collection of employee's personal data from a third party is generally subject to the employee's consent.

In the future, the consent would not be required when the collection of personal data is based on the implementation of employer's statutory rights and obligations. However, the consent still needs to be obtained when personal data is

collected from third parties for recruitment. The amendment would not affect the obligation to process only personal data necessary for the employment.

Employer's Right to Process Personal Data Concerning Employees' COVID-19 Vaccination Status or Recovered COVID-19 Disease

Proposed Bill or Initiative

Authors: Samuel Kääriäinen, Partner and Head of Employment, and Emma Mäkeläinen, Associate – Dottir Attorneys Ltd

A working group has assessed safety aspects relating to COVID-19 within working environment and proposed amendments to the Occupational Safety and Health Act. In accordance with the draft proposal, the employer would be entitled to process personal data relating to employees' vaccination status or recovered disease.

If approved, the processing of COVID-19 related personal data would be legitimate provided that there is an obvious risk of being exposed to COVID-19 at work and the processing is necessary for conducting a risk assessment and/or implementing necessary measures to diminish and prevent the risk of exposure. Upon request, the employee should provide the employer with a reliable statement of that information.

France

A New Law Improves the Protection of Whistleblowers

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

A law dated March 21, 2022, provides a new definition of whistleblowers, and improves the protection system in place. Whistleblowers are defined as individuals who report or disclose information relating to a violation of law, without direct financial compensation, and in good faith. He or she may report a violation or an attempt to conceal a violation of law. The condition of "serious and manifest" violation of law, in place until now, is removed. In the professional context, a whistleblower can now report facts for which he has only indirect knowledge.

For whistleblowers who have the status of employee, it is no longer required to report to the employer or its representatives. They may choose to report externally, especially to the Human Rights Defender, the judicial authority or a competent authority designated by decree.

Whistleblowers are not liable for damages caused by the disclosure of a report, as long as they had reasonable grounds to believe that the disclosure was necessary to protect the interests at stake. In criminal matters, the law broadens the scope of protection of whistleblowers, especially concerning the confidentiality of the documents obtained.

New Law Aiming to Accelerate Economic and Professional Equity Between Women and Men: Indicators to be Published

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

Every year, companies with at least 50 employees must calculate and publish on their website the results obtained for each indicator relating to gender pay gaps. The "Rixain" law dated December 24, 2021 and its implementation decree reinforces the constraints on companies with a score below 75/100. These companies must publish the corrective and remedial "measures" implemented either by agreement or unilateral decision on the same internet page as the results obtained. When the score obtained is less than 85/100, then the employer must publish the progress targets defined by the agreement or the unilateral decision for the indicators for which it has not achieved the maximum score.

The corrective measures envisaged or already implemented, the targets for the improvement of each of the indicators, as well as the methods of publication, must be transmitted to the services of the French Minister of Labor. This information is also made available to the social and economic committee in the economic, social, and environmental database (BDESE).

Professional Equity: Gender Diversity in the Directorship of Large Corporations

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

In companies with at least 1,000 employees, the law dated December 24, 2021, sets out new obligations in terms of the representation of women and men in management positions. The new system will be implemented in successive steps. As of March 1, 2022, employers falling in the scope of the legislation must publish every year the existing gaps, if any, in the representation of women and men among senior executives and members of management bodies. These gaps will be made public on the website of the Ministry of Labor as of March 1, 2023.

As of March 1, 2026, the proportion of persons of each sex among senior executives and members of management bodies may not be less than 30%. Companies that do not meet this quota will have to publish improvement targets and the corrective measures adopted. As of March 1, 2028, failure to meet this quota may result in a financial penalty being imposed by the authorities. Finally, as of March 1, 2029, this minimum proportion of persons of each sex will be increased to 40%.

Protection of Employees Who Have Reported Breaches of Ethical Obligations

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

The French Supreme Court has rendered an interesting decision regarding the protection granted to an employee who reports illegal acts and behaviors observed in a professional context and, more precisely on the validity of a dismissal notified before the entry into force of the provisions protecting whistleblowers. In the absence of such protection, the dismissal has been declared null and void on the grounds of infringement of the freedom of expression, guaranteed by Article 10 § 1 of the European Convention on Human Rights.

In 2016, the French Supreme Court had already ruled that the dismissal of an employee for having reported or testified, in good faith, to facts of which he had knowledge in the performance of his duties and which, if established, would be of such a nature as to characterize criminal offenses, is rendered void. The French Supreme Court added in this case that an employee must not suffer any retaliation for having reported breaches of ethical obligations provided for by law or regulation.

Sanction for Refusing a Transfer Because of Religious Beliefs

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

In this matter, a cleaning agent had refused his transfer to a cemetery because his religious convictions (Hinduism) forbade him to work in such a place. Citing the employee's failure to meet his contractual obligations, the employer decided to transfer him to another site for disciplinary reasons and then to dismiss him for this new refusal. The employee invoked the infringement of his religious freedom to request the cancellation of the disciplinary transfer and his dismissal.

The French Supreme Court recalled that, in order to be lawful, restrictions on religious freedom must be justified by the nature of the task to be performed, meet an essential and determining professional requirement and be proportionate to the aim sought. The Court considered that the disciplinary transfer ordered by the employer was

justified by an essential and determining professional requirement and proportionate to the aim sought. On the one hand, the mobility clause had been legitimately implemented and, on the other hand, the employer had pronounced a disciplinary sanction allowing the maintenance of the employment relationship by assigning the employee to another cleaning site.

Germany

Abusive Reduction in Working Hours Regarding Part-time Work

Precedential Decision by Judiciary or Regulatory Agency

Author: Andre Gieseler, Senior Associate – vangard | Littler

An employee whose employment relationship in a company with regularly more than 15 employees has existed for more than six months may demand to be allowed to work part-time. The employer must agree to the reduction in working hours if there are no operational reasons to the contrary. An opposing operational reason is given in particular if the implementation of the working time request significantly impairs the organization, workflow or operational safety or leads to the cause of disproportionate costs. In addition, the employer may also refuse its consent if the employee's request is an abuse of rights.

According to a recent ruling by the Berlin-Brandenburg Regional Labor Court, the assertion of a claim for a reduction in working hours of less than 10% is an abuse of rights if it is intended solely to prevent the employee from being scheduled for a particular shift in the future. This decision is in line with past rulings of the Federal Labor Court in similar cases, whereby an individual case must always be considered.

Police Doctor Fired for Criticizing COVID Policy

Precedential Decision by Judiciary or Regulatory Agency

Author: Dr. Luisa Rödemer, Senior Associate – vangard | Littler

The Baden-Württemberg State Labor Court heard an action for protection against dismissal brought by a doctor employed by the Baden-Württemberg State Police. The plaintiff published an advertisement under her name in a newspaper that equated the Infection Protection Act with the "Enabling Act" of March 23, 1933. The state of Baden-Württemberg justified the ordinary termination in particular with the plaintiff's lack of suitability for the job as a police doctor in the public service. In addition, the plaintiff had violated her contractual duties with her conduct.

The duties of loyalty include not to disparage the state, the constitution and state organs. The plaintiff's statement was not covered by the fundamental right of freedom of speech. The court is convinced that the plaintiff violated her duty of consideration for the interests of the defendant state, in particular her duty to support the free democratic basic order.

Proposal of the European Commission on a Regulation on Corporate Sustainability Due Diligence

New Regulation or Official Guidance

Author: Dr. Sabine Vianden, Associate – vangard | Littler

The European Commission has adopted a proposal for a Directive on corporate sustainability due diligence on February 23, 2022. The Directive includes all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide) as well as other limited liability companies operating in defined high impact sectors and having more than 250 employees and a net turnover of EUR 40 million worldwide and more.

The proposed Directive goes beyond the German Supply Chain Due Diligence Act in several aspects. With regard to duties and due diligence, the Directive sets higher standards when it comes to global warming and the scope of the supply chain. Finally, the Directive provides for stricter consequences because it contains a civil liability provision that can be used to take legal action against the companies causing the damages. The Commission's draft now passes to the European Parliament and the Council in the further procedure. Once it has been adopted, it needs to be implemented in the national law of the member states. This creates a need for adaptation into German law.

Increase in Statutory Minimum Wage and Remuneration Ceiling for Mini-Jobbers

Proposed Bill or Initiative

Author: Lara Müller-Esch, Associate – vangard | Littler

The statutory minimum wage shall increase to 12 euros per hour as of October 1, 2022, and the mini-job limit from EUR 450 to EUR 520. The federal cabinet has approved the proposed bill on February 23, 2022.

Easier Access to Short-time Allowance Continues

Proposed Bill or Initiative

Author: Andre Gieseler, Senior Associate – vangard | Littler

The special regulations for short-time allowance will be extended. The access requirements will remain reduced because it cannot be ruled out that the pandemic-related restrictions will continue. Therefore, on February 18, 2022, the federal cabinet set in motion that the following regulations should continue to apply until June 30, 2022: (1) The requirements for access to short-time allowance will remain lowered; (2) The accrual of minus hours will be waived; (3) Income from mini-jobs taken up during short-time working will not be offset against short-time allowance; and (4) Increased benefit rates to apply from the fourth or seventh month of receipt.

The bill also aims to extend the maximum period for which short-time allowance can be drawn to 28 months. It is currently 24 months.

Hungary

New Tool to Track Obligatory Vaccination of Medical Staff

New Order or Decree

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

The government's new decree entitled the medical employers to receive information from the authority whether their medical employees duly received the obligatory COVID-19 vaccines to facilitate the control of the compliance of the medical employees with their obligatory COVID-19 vaccination.

Support for Employers with Ukrainian Employees

New Order or Decree

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

The government provides financial support for employers employing Ukrainian citizens who arrived in Hungary on or after February 24, 2022, as war refugees. The financial support is for employees who work for at least 20 hours per week and the support is granted for maximum 12 months, which period can be prolonged for another 12 months, but only for the period of the employment. The support has to be spent on renting flats for these employees, the amount of monthly support is 50% of the rental fee, but maximum the sum of HUF 60,000 (approximately USD 180) plus additional HUF 12,000 (approximately USD 35) per child, if the employee has minor children. Part of the rent not covered by this sum is paid 50% by the employer and 50% by the employee.

India

Haryana Local Employment Law Update

New Legislation Enacted

Authors: Vikram Shroff, Partner and Head of Employment, and Sayantani Saha, Associate – Nishith Desai Associates

The Haryana State Employment Local Candidates Act, 2020, came into effect on January 15, 2022. The law mandates employers in the state of Haryana to employ at least 75% Haryana state domiciled local candidates in vacancies with gross salary of up to INR 30,000 (approx. USD 400) per month. The vacancies need to be registered on a notified government portal, within three months of commencement of the law.

The law will remain in effect for 10 years from the date of its commencement and inability to comply with the law may lead to penalty ranging between INR 10,000 (approx. USD 140) to INR 200,000 (approx. USD 2700). The constitutionality of the law is currently being litigated before the Punjab & Haryana High Court, which had earlier stayed the operation of the law in view of such litigation. However, the stay direction was overturned in an appeal before the Supreme Court of India.

Amendment to the Maharashtra Shops and Establishments Law

New Legislation Enacted

Authors: Vikram Shroff, Partner and Head of Employment, and Sayantani Saha, Associate – Nishith Desai Associates

The Maharashtra state government notified an amendment to the Maharashtra Shops and Establishments (Conditions of Service and Regulation of Employment) Act, 2017 (MSEA) on March 17, 2022. As a result of the amendment, it is mandatory for all establishments in the state to display their names on the name board in Marathi (the official state language) in a prescribed manner. It also clarifies that except for a limited requirement to notify certain details to the labor authorities, the other provisions of the MSEA will not be applicable to commercial establishments in Maharashtra state with less than 10 employees. Further, the amendment does away with the requirement for employers at commercial establishments in Maharashtra state to include details of the employees' Aadhar card number in the identity card to be issued by employers.

Implementation of Labor Codes Delayed

Proposed Bill or Initiative

Authors: Vikram Shroff, Partner and Head of Employment, and Sayantani Saha, Associate – Nishith Desai Associates

The implementation of the four newly enacted labor codes, being the Code on Wages, 2019, Code on Social Security, 2020, Industrial Relations Code, 2020, and Occupational Safety, Health and Working Conditions Code, 2020, have been further delayed. As per a press release issued by the (Indian) Ministry of Labor and Employment (MoLE) on March 21, 2022, 27 states / union territories (UTs) have pre-published draft rules under Code on Wages, 2019, 23 states / UTs under Industrial Relations Code, 2020, 21 states / UTs under Code on Social Security, 2020, and 18 states / UTs under the Occupational Safety, Health and Working Conditions Code, 2020. The MoLE is currently in the consultation process with stakeholders, prior to implementation of the labor codes, having held at least nine tripartite consultations with trade unions and employers' associations until date.

Increased Instances of Moonlighting in India

Trend

Authors: Vikram Shroff, Partner and Head of Employment, and Sayantani Saha, Associate – Nishith Desai Associates

With increase in remote working practices and lack of centralized database to monitor, there has been an increase in moonlighting cases amongst employees in India. Owing to the COVID-19 pandemic, employers were forced to adopt

remote working and hybrid working practices to ensure social distancing among their employees, and such remote working arrangements continue at large especially among employers in the technology and outsourcing sectors. Remote working has led to a lower direct supervision of employees, who find is easier to work on multiple jobs or take on some other assignments while being employed.

Moonlighting leads to a high risk of data privacy and confidentiality breach, besides risk of intellectual property rights breaches. Employers are currently navigating options to ensure higher degree of background scrutiny of onboarding employees and monitoring of existing employees, to identify cases of moonlighting.

Employers Prepare for Return to Office

Trend

Authors: Vikram Shroff, Partner and Head of Employment, and Sayantani Saha, Associate – Nishith Desai Associates

The (Indian) Ministry of Home Affairs (MHA), through its letters to Indian state and union territory (UT) administrators dated March 22, 2022, has declared that there will not be a renewal of the federal level notification on guidelines for containment of COVID-19 post March 31, 2022. However, Indian states are free to impose their own restrictions.

As a result, some of the Indian states, including states of Karnataka, Maharashtra, Haryana, and Telangana, have withdrawn or expired their previous notifications imposing restrictions on private establishments in their state that mandated practices for containment of COVID-19 pandemic. With relaxation of COVID related restrictions, employers are cautiously preparing to have their employees return to office. Recommendation on continuing observation of COVID-19 appropriate behavior, *inter alia* on using face mask and hand hygiene, is however likely to continue to guide the national response to COVID pandemic.

Ireland

Government Announces New Public Holiday

New Legislation Enacted

Authors: Niall Pelly, Partner, and Alison Finn, Senior Associate – GQ | Littler

In January 2022, the government announced that there will be a once off public holiday on March 18, 2022 to remember those who lost their life during the pandemic and to recognize the efforts of all citizens during the pandemic.

In addition, from 2023 onwards a new public holiday has been added to the annual public holiday calendar bringing the total number to ten. The new public holiday, which will be in honor of St. Brigid's day, will be the first Monday in every February, except where St. Brigid's day, February 1, falls on a Friday, in which case that Friday, February 1, will be the public holiday. The introduction of the new annual public holiday brings Ireland more into line with the European average.

Government Announces Details on Gender Pay Gap Reporting

New Regulation or Official Guidance

Authors: Niall Pelly, Partner, and Alison Finn, Senior Associate – GQ | Littler

To coincide with International Women's Day 2022, the government announced that the commencement order for gender pay gap reporting obligations for employers in Ireland will be published in the coming weeks. The regulations will require organizations with over 250 employees to report on their gender pay gap in 2022. Employers will be required to identify a specified "snapshot" date of their employees in June 2022 and then report the requisite pay and bonus information for those employees on the same date in December 2022. Employers will also be required to

publish a statement setting out, in the employers' opinion, the reasons for the gender pay gap and what measures are being taken or proposed to be taken by the employer to eliminate or reduce that pay gap.

The reporting requirement will initially only apply to employers with 250 or more employees but will extend over time to employers with 50 or more employees. It is expected that the regulations setting out the precise details that will need to be reported this year will be published shortly.

Bill to Transpose EU Whistleblower Directive Expands Scope and Breadth of Protections

Proposed Bill or Initiative

Authors: Niall Pelly, Partner, and Alison Finn, Senior Associate – GQ | Littler

In February, the government published the Protected Disclosures (Amendment) Bill 2022 (the Bill), which will transpose the "EU Whistleblower Directive" (*i.e.*, Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law). The legislation will further extend the scope and breadth of the protections afforded to individuals who make protected disclosures in Ireland.

A wider list of employers will be within the scope of the new legislation and the list of issues that constitute protected disclosures will also be extended. Under the existing regime, only public bodies are required to have reporting procedures in place for protected disclosures. The Bill extends this requirement to include private entities with over 50 employees from December 17, 2021. The new laws will not come into effect for most private sector employers with between 50 and 249 employees until December 2023.

Government Publishes Right to Request Remote Working Bill 2022

Proposed Bill or Initiative

Authors: Niall Pelly, Partner, and Alison Finn, Senior Associate – GQ | Littler

The General Scheme of the Right to Request Remote Working Bill 2022 (the Bill) was published in January 2022. As proposed, the Bill will require employers to have a written statement specifying the manner in which remote working requests are managed, the time frame within which decisions will be made and the specific conditions which will apply to remote working generally within the organization. Employees with more than 26 weeks' service will be able to make a formal request for remote working, to which an employer is obliged to accept, refuse or to make a counteroffer of an alternative remote working arrangement within 12 weeks. The Bill sets out a non-exhaustive list of 13 potential business grounds for refusing a remote working request.

As currently proposed, where an employer fails to respond to a request, or fails to provide a reason for refusing a request, an employee may appeal to the Workplace Relations Commission. The legislation remains at draft stage and it has been subject to much criticism so significant changes should be anticipated between now and the time at which it is enacted later in the year.

Sick Leave Bill 2022 Approved by Government

Proposed Bill or Initiative

Authors: Niall Pelly, Senior Associate, and Alison Finn, Senior Associate – GQ | Littler

The publication of the Government's Sick Leave Bill 2022 (the Bill) was announced in March and will now progress through the usual legislative process. The Bill imposes a mandatory obligation on the part of employers to provide sick pay. No such obligation currently exists.

The Bill provides for statutory sick leave payment (SSP) for an employee initially up to three days absence a year due to illness or injury, which will then rise to five days in 224, seven days in 2025 and ten days in 2026. An employee becomes entitled to SSP after they have completed 13 weeks of continuous service with their employer and will have

to provide a medical certificate confirming that they are unable to work. SSP will be paid at the rate of 70% of regular earnings, up to €110 per day.

Italy

COVID-19: "Green Pass" for Employees

New Legislation Enacted

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

The Italian government has recently approved the Legislative Decree of 24 of March 24, 2022, which loosens the rules governing employees' access to their workplace. Unlike what was previously established by previous regulations, all employees – until April 30, 2022 – will be required to show the basic "Green Pass," *i.e.*, the health record issued by the authorities in case of a full course of vaccination for COVID-19, certified recovery from the virus and in case of a rapid or molecular test with a negative result. Therefore, the differences between general employees and employees over 50, for whom the possession of the "enhanced Green Pass" (*rafforzato*) – *i.e.*, the one issued in case of vaccination cycle or certified – are no longer applicable.

It should be noted, in this regard, that Legislative Decree n. 44 of 2021 has provided for the compulsory vaccination against the COVID-19 virus – until June 15, 2022 – for all subjects over 50 residing or staying in the Italian territory, except those who have proven health problems. The Ministry of Health can carry out checks through the registers kept by local health authorities and, if it finds that a subject required to be vaccinated is not vaccinated, it can impose fines.

Remote Working: Extension of "Simplified" Smart Working

New Legislation Enacted

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

Legislative Decree of March 24, 2022, extended the possibility for employers, until June 30, 2022, to use so-called "simplified" Smart Working: this allows companies to activate Smart Working without the need for an individual agreement with employees. Employers will have to communicate to the Ministry of Labor, exclusively with the forms made available on the relevant website and through the application therein (usable only with the SPID digital identity), the names of the employees concerned and the duration of the remote work service (whether fixed-term or open-ended).

After this period – unless further extensions are granted by the Italian Government – it will be necessary to stipulate an individual agreement with the workers who will work in Smart Working. The agreement will have to comply with the relevant legislation (Law no. 81 of 2017) and the Protocol concluded between the social partners in December 2021. These sources provide that, within the agreement (or in the company policy if any, to which the agreement may refer) a number of elements will have to be indicated, including, the alternation between the time in which the worker must work inside the company premises and remotely, the places from which smart working cannot be performed, the right to disconnect from the devices used to work, and possibly the manner in which the expenses for carrying out remote work are reimbursed, which, unlike telework, are not compulsorily borne by the employer.

Ukrainian Crisis: Refugee Flows and Hosting Conditions

New Order or Decree

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

In light of the recent conflict that exploded in Ukraine, to provide a more efficient response to the large migratory flows across the EU, the EU Council adopted Decision 2022/382 on March 4, 2022, which implemented the EU

Directive 2001/55/EC, known as "Temporary Protection." This is an exceptional protection regime for refugees from, among other countries, Ukraine, which entails the obligation for the Member States to provide such persons with residence permits for one year (extendable). To activate temporary protection internally, the Italian government has issued a measure in which it recognizes the Temporary Protection for one year, starting from March 4, 2022, which applies to refugees from Ukraine since February 24, 2022 (Ukrainian citizens as well as stateless persons or citizens of third countries who benefited from Temporary Protection or other equivalent treatment before this date), through the issuance of a residence permit for one year, extendable by six months in six months for a maximum period of one year.

The residence permit allows access to the national health system, the labor system, and the school system and there is also a system of accommodation in specific facilities. Moreover, the Department of Civil Protection is authorized to recognize the persons requesting Temporary Protection who have found independent accommodation, a one-off contribution of 300 euros per month per person, for a maximum duration of three months from the date of entry into the national territory, conventionally identified in the date of submission of the application for Temporary Protection if not otherwise determinable, and in any case not later than December 31st, 2022. In the presence of minors, in favor of the adult holder of legal guardianship or custody, an additional monthly contribution of 150 euros is recognized for each child under the age of 18 years.

Family Protection

New Order or Decree

Author: Carlo Majer, Partner, and Caterina Colombano, Associate – Littler

On March 31, 2022, the Italian government approved the draft of the Legislative Decree that implements the Directive (EU) 2019/1158 of the European Parliament and of the Council of June 20th, 2019 on work-life balance for parents and care providers and repealing Council Directive 2010/18/EU, with the aim of promoting gender equality and a better distribution of care loads within families. Confirmation of the measures will have to wait for the publication of the official decree, which will take place by 2022.

As for new fathers, the changes introduced by the Budget Law of 2022, which establish a mandatory leave of 10 days to be used in the five months following childbirth, adoption, or foster care, would have been confirmed. The period of parental leave for single parents would have been extended from 10 to 11 months. Moreover, the maximum period within which parents taking paternity leave to receive an allowance equal to 30% of their salary, up to the child's 12th birthday, would have been extended from six to nine months. Other changes would include priority access to smart working to caregivers; automatic admission to remote working for parents of children with disabilities; maternity allowance for self-employed and freelance professionals.

Disability Protection in the Working Environment: Permits under Law no. 104/1992

Important Action by Regulatory Agency

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

Art. 33 of Law 104/1992 – *i.e.*, the law on assistance, social integration, and the rights of disabled persons – provides that employees may benefit from three days' monthly leave to assist a spouse or relative up to the third degree who is disabled. Of relevance is Law no. 76/2016, which regulates civil unions between persons of the same sex and de facto cohabitations, and further provides that the regulatory provisions referring to marriage or spouses also apply to each of the parties to the civil union. Moreover, the Constitutional Court (Italy's highest court of justice) has declared the illegitimacy of art. 33 of Law no. 104/1992 because it did not include the cohabitant among the subjects entitled to benefit from leaves of absence.

In light of this, with Circular No. 38 of 2017, the National Institute of Social Security (INPS) has specified that the party to a civil union between persons of the same sex may take advantage of the permits de quo, as well as the de facto

cohabitant. With Circular no. 36 of March 7, 2022, the INPS expanded the guidance, specifying that the relationship between the party to the civil union and the relatives of the other party must be legally recognized, with the result that the permits under Law 104/1992 must be recognized for the party to the civil union, even if the person assists relatives of the other party. At the same time, however, INPS pointed out that the legal bond of cohabitation is not recognized between the "de facto" partner and the relatives of the other partner, as the cohabitation is not a legal institution, but a factual situation. This is a reminder that in order to qualify a party to a civil union, one can refer to the records of the civil union registered in the civil status archives.

Kingdom of Saudi Arabia

Ministry of Human Resources and Social Development Adopts New List of Fines

New Legislation Enacted

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

The Ministry of Human Resources and Social Development (MHRSD) on December 17, 2021, published an amended set of penalties for employer noncompliance with the Saudi employment regulations. The new law provides a revised list of penalties for violations of various employment regulations, including sanctions for noncompliance with Saudization requirements, work authorization obligations, and payment of wages. It also provides a separate list of sanctions applicable to recruitment companies.

The level of penalties depends on the employer's headcount and, in some instances, the penalties are multiplied by the number of workers affected by the employer's noncompliance. Companies are grouped into three categories: (1) 51 workers or more; (2) 11 to 50 workers; and (3) 10 workers or less. Employers must settle (or appeal) all penalties within 60 days of being served by the MHRSD, and failure to do so will result in the suspension of all services provided by MHRSD.

Saudi Arabia Ministerial Decision No. 70273/1440 On the Approval of the Implementing Regulation of the Labor Law

New Legislation Enacted

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

Ministerial Decision No. 70273/1440 has been updated, adding a new national holiday under Article 24 of the regulations. Pursuant to this amendment, a new national holiday titled "The Foundation Day" will take place on February 22 of every year. The amendment further provides that in the event that the Foundation Day or the National Day (which takes place on the first day of the Libra astrological sign, pursuant to the Umm alQura calendar) fall on any day off or leave taken, no compensation shall be given to the employee.

Malaysia

Passing of the Employment (Amendment) Bill 2021

New Legislation Enacted

Authors: Selvamalar Alagaratnam, Partner, and Teng Wei Hun, Associate – Skrine

On March 30, 2022, the Malaysian Parliament passed the Employment (Amendment) Bill 2021 (the Bill) which includes the following changes to the law: redefining an "apprentice contract" by limiting it to a minimum duration of six months and a maximum duration of 24 months; increasing paid maternity leave period from 60 to 98 days; allowing paternity leave of seven days; imposing the requirement on employers to obtain prior approval from Director General of Labor before employing a foreign employee; empowering the Director General of Labor to inquire into

and decide matters relating to discrimination in employment; providing procedure for applications of flexible working arrangement by an employee and increasing the fine which the employer is liable to pay relating to sexual harassment complaints from RM10,000 to RM50,000. The Bill is not in force yet and is pending royal assent.

The scope of application of the Employment Act post its amendment is as yet unknown as the Ministerial Order that will define the scope has not yet been made public.

Ratification of ILO Protocol 29 – the Forced Labour Convention

New Order or Decree

Authors: Selvamalar Alagaratnam, Partner, and Teng Wei Hun, Associate – Skrine

Malaysia has formally ratified the ILO's Protocol 29, a protocol to the Forced Labour Convention, on March 21, 2022. Once ratified, Malaysia shall take effective measures to prevent and eliminate forced labor, to provide the victims protection and access to appropriate and effective remedies such as compensation, and sanction perpetrators of forced or compulsory labor; develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labor.

"Transition to Endemic" Phase, Effective April 1, 2022

New Regulation or Official Guidance

Authors: Selvamalar Alagaratnam, Partner, and Teng Wei Hun, Associate – Skrine

Effective April 1, 2022, Malaysia will enter into the "Transition to Endemic" phase of COVID-19 with all restrictions on business operating hours removed. Limits on the number employees allowed in the workplace based on vaccination coverage is also abolished. However, the wearing of face masks in public places is still mandatory.

Minimum Wage Raised to RM 1,500, Effective May 1, 2022

New Regulation or Official Guidance

Authors: Selvamalar Alagaratnam, Partner, and Teng Wei Hun, Associate – Skrine

On March 19, 2022, it was announced by the Prime Minister of Malaysia, that the national minimum wage will be revised to RM1,500 from the current minimum of RM1,200 with effect from May 1, 2022. However, there is confusion as to when the revised minimum wage will actually take effect and the covered employees within its scope. The Prime Minister and Human Resources Minister were cited as stating that the new minimum wage would only apply to companies with five or more employees and there may be certain sectors which are exempted from implementing the minimum wage for two years. No official confirmation is available as yet.

Trade Unions (Amendment) Bill 2022

Proposed Bill or Initiative

Authors: Selvamalar Alagaratnam, Partner, and Teng Wei Hun, Associate – Skrine

The Trade Unions (Amendment) Act 2022 (the Bill), tabled for first reading in the lower house of the Parliament, seeks to remove restrictions on registration of trade union based on certain establishments or similarities in trade, occupation, or industry. The Bill, if passed, will significantly limit the grounds on which the Director General of Trade Union (DGTU) may refuse registration or cancellation of registration of a trade union. The important grounds for refusing registration removed are where "any of the objects of the trade union is unlawful" or where "it is not in the interest of the workmen concerned that there be another trade union in respect of that particular establishment, trade, occupation or industry." The Bill also proposes an obligation on the DGTU to provide reasons for refusal of registration of a trade union. In addition, the Bill seeks to remove the power of the DGTU to suspend a branch of a trade union.

In respect of strikes and lockouts, the Bill seeks to lower the minimum number of votes required to call for strikes and lockouts from two-thirds to one-half of at least 60% votes of the total number of union members who are entitled to vote and in whose respect the strike is called. However, the Bill proposes to double the amount of fine for organizing strikes or lockouts without first obtaining consent of its members through secret ballot.

Mexico

Increase to the UMA Value Announced for 2022

New Order or Decree

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

On January 7, 2022, Mexico's National Institute of Statistics and Geography (INEGI by its acronym in Spanish) published the new values for the Updated Metric Unit (*Unidad de Medida y Actualización* or UMA) that took effect on February 1, 2022, as provided by Article 5 of the Law to determine the value of the UMA. The UMA serves as the basis for calculating the payments, obligations, or penalties that are owed to the government, whether under federal or state law. Its updated value is published on an annual basis. The values of the UMA for 2022 will be as follows: Daily, MXN 96.22; monthly, MXN 2,925.09; and annual, MXN 35,101.08.

Venezuelans Will Need Visa to Enter Mexico as of January 21, 2022

New Order or Decree

Authors: Rogelio Alanis Robles, Associate, and Alondra Valdez Padilla, Associate – Littler

On January 6, 2022, the Mexican Ministry of the Interior published in the *Official Gazette of the Federation* an agreement announcing a change in Mexican migration policy, requiring Venezuelan citizens to obtain a visa to enter national territory. This change took effect on January 21, 2022, and requires all Venezuelan citizens wanting to enter Mexico to first obtain an ordinary visa from a Mexican consular representation abroad.

Importantly, as with other nationalities that require a visa, Venezuelan citizens may be exempted from applying for a Mexican visa if they prove any of the following conditions: (1) the individual is a permanent resident of Canada, the United States of America, Japan, the United Kingdom of Great Britain and Northern Ireland, any of the countries that make up the Schengen Area of Europe, or of a member country of the Pacific Alliance (Chile, Colombia, and Peru); or (2) the individual holds a valid visa from Canada, the U.S., Japan, the United Kingdom of Great Britain and Northern Ireland, or any of the countries that make up the Schengen Area.

Netherlands

Appeal Court: Equity Partner of Big Accounting Firm Not an Employee

Precedential Decision by Judiciary or Regulatory Agency

Authors: Eric van Dam, Partner, and Dennis Veldhuizen, Partner – Clint | Littler

On March 29, 2022, the Appeal Court of The Hague ruled that an equity partner of a big accounting firm does not qualify as employee. The qualification of the agreement between the firm and the partner became an issue when the firm terminated this agreement. The partner was of the opinion that this termination was unlawful, since the requirements for terminating an employment agreement were not met. However, the court refused to annul the termination of the agreement, because of substantial differences between the position of the partner and the position of employees, like the voting rights of the partner as shareholder, the compensation of the partner and the possibility to refuse clients.

Bill Proposes a Statutory Obligation to Install a Trustee

Proposed Bill or Initiative

Authors: Eric van Dam, Partner, and Dennis Veldhuizen, Partner – Clint | Littler

On January 26, 2022, a bill was submitted to the House of Representatives proposing to implement a statutory obligation for companies to install a trustee. The obligation should be included in the Working Conditions Act, will apply to all companies, irrespective of the number of employees and provides the trustee with protection against retaliation. Misconduct in the workplace and the importance of easily accessible procedures to raise concerns or complaints has great societal interest at the moment. However, it is expected that the House will be critical because they do not want the bill to cause increasing burdens on employers.

Social Economic Council Published Advice on Statutorily Regulating Hybrid Working

Proposed Bill or Initiative

Authors: Eric van Dam, Partner, and Dennis Veldhuizen, Partner – Clint | Littler

On March 31, 2022, the Dutch Social Economic Council published guidance on hybrid working, which was requested by the Minister of Employment and Social Affairs. The council, consisting of both employee and employer representatives, advises to statutorily regulate that employers have to accept a request to adjust the workplace if, based on reasonableness and fairness, the employer's interests have to take second place to that of the employee and the requests concerns a workplace within the EU at which place the employee will live or that is otherwise suitable to work from. If the requested workplace does not meet these criteria, the employer has to discuss the request with the employee in case the employee intends to refuse it. Whether the advice will be followed is not clear yet. The government will first discuss the advice and respond to it in a letter to the House of Representatives.

Nicaragua

Minimum Wage Increase and Salary Adjustments for Several Sectors and Industries

Important Action by Regulatory Agency

Author: Francisco Cerda, Partner – BDS, Member of Littler Global

The National Minimum Wage Commission increased the minimum wage by 7% for various sectors, including: Agriculture, fishing, manufacturing, commerce, construction (mostly administrative employees), financial and insurance establishments, among others.

Additionally, the Ministry of Labor applied an adjustment of 9.28% to the salary per unit of time for carpenters, bricklayers, and shipowners in the construction industry, and an adjustment of 9% to the prices of the "Table of Prices for Piece Labor." The increase is mandatory for any national or foreign company that operates in Nicaragua.

Norway

Limitation on Temporary Employment

New Legislation Enacted

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The current possibility to use temporary employment for up to 12 months without having to document a justified cause prescribed by law, is repealed from July 1, 2022.

Employer's Duty to Pay Salary the First Part of a Temporary Layoff

New Legislation Enacted

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

From March 1, 2022, the employer's duty to pay salary to employees who are temporarily laid off was extended from the previous 10 days to 15 days.

Can Employees on Sick Leave Demand a Change from Full-time to Part-time Position?

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

One of the questions to determine whether a termination of an employee on sick leave is lawful is whether the employer has fulfilled their duty to make the necessary adaptions for that employee. The question before the Supreme Court was whether this duty to adapt included dividing the employee's previous full time, permanent position, to two 50 % part-time, permanent positions. The court concluded negatively in this specific matter and stated that the employer's duty to adapt does not require them to implement a permanent change in the position and organizational structure.

Amendment of Regulations Concerning Home Office

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The current regulation provides the minimum requirements of a written and individual agreement between the employer and an employee for employees who may work from home, *e.g.*, time and number of hours per week/month. The regulations have been amended to empower the Labor Inspection Authority to supervise compliance with these requirements.

Further, the amended regulations now limit employees' possibility to work from home after 9:00 P.M. and during weekends; clarify situations where a written agreement is not required (when home office is ordered or recommended by the government); and place emphasis on the fact that an employer's responsibilities for employees working from home also include the psychosocial working environment. The amendments are in force from July 1, 2022.

Proposal Concerning Harassment in the World of Work

Proposed Bill or Initiative

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The government has issued a consultation paper where they propose to ratify ILO Convention no. 190 to eliminate violence and harassment in the workplace. In addition, they state a desire to have an offensive gender equality policy. The government also proposes to introduce a duty for employers to have policies concerning harassment and sexual harassment in the workplace and to clarify the safety representative's duty to ensure that the psychosocial working environment of employees are safeguarded. The consultation paper is sent on a public hearing round with deadline for statements on June 8, 2022.

Peru

Amendment to Outsourcing Regulation

New Legislation Enacted

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

Supreme Decree 001-2022-TR, which was published on February 23, 2022, modified the Regulation of the Law of Outsourcing of Services. In this sense, it established a series of limitations that require companies that outsource services to evaluate a series of elements regarding the outsourced activities to ensure compliance with the new regulation, especially as it relates to the core business activities. The Decree also sets forth a maximum of 180 calendar days to comply with its provisions.

Requirement of Three Doses of the Vaccine for Work

New Order or Decree

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

Supreme Decree 030-2022-PCM, which was published on March 28, 2022, modified the decree that declared the National State of Emergency and set forth measures to follow during the reestablishment of the social coexistence. Among its provisions, it extended the state of emergency until April 30. Further, it established that starting on April 16, 2022, any person that performs in-person work must accredit their full vaccination status with the three doses of the vaccine. When this is not met, they must provide services through remote work. If the job is not compatible with remote work, they will be subject to a perfect suspension of work, which means the employee no longer performs their job and the employer is not required to pay a remuneration, though the employment relationship continues as valid.

Extension of Health Emergency

New Order or Decree

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

Supreme Decree 003-2022-SA, which was published on January 22, 2022, extended the Health Emergency from March 2, 2022 until August 28, 2022, for a total of 180 days. This extension also applies to other related measures linked to the emergency, such as the modification of work hours, the mandate to apply remote work for people in a situation of disability, classification of risk groups, treatment of pregnant and lactating employees, the suspension of medical examinations and facilities for family members of people from a risk group.

Philippines

Isolation and Quarantine Leaves for Employees in the Private Sector

New Regulation or Official Guidance

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

On January 17, 2022, the Department of Labor and Employment issued Labor Advisory No. 1, Series of 2022, which urges employers, in consultation with its employees or employees' representative to adopt and implement an appropriate paid isolation and quarantine leave program on top of existing leave benefits under company policy,

collective bargaining agreement, and law. The paid isolation and quarantine leaves are without prejudice to other benefits provided for by the Social Security System and the Employees Compensation Commission.

Payment of Wages on National Vaccination Day

New Regulation or Official Guidance

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

On March 10, 2022, the Department of Labor and Employment issued Labor Advisory No. 5, series of 22, which applies to individuals in the private sector, particularly those (1) individuals with due second and missed doses, (2) remaining individuals under Priority Group A2, (3) in the health and economic sector who are yet to receive their booster doses, and (4) who will accompany their children. Employers are highly encouraged to allow their employees to be vaccinated or accompany their children to be vaccinated without being considered as absent. The concerned employees may likewise be allowed to use their available leave credits during the National Vaccination Day, subject to company policy or a collective bargaining agreement.

Poland

Polish Special Legislation for Russo-Ukrainian War Refugees Is in Place

New Legislation Enacted

Authors: Robert Stępień, Partner; Miłosz Awedyk, Partner, and Jakub Grabowski, Associate – PCS | Littler

The Russian invasion in Ukraine provoked an unprecedented refugee crisis, as never seen before in the region since World War II. In just one month, 4.2 million people have fled Ukraine. Since the beginning of the offensive on February 24, 2022, almost 2.5 million refugees entered Poland to seek safety from Russian aggression. This forced Polish authorities to adopt emergency legislation that would regulate the legal status of such enormous group of people (Act of 12 March 2022 on Aid to Ukrainian Citizens with Regard to an Armed Conflict in the Territory of that State).

Accordingly, all Ukrainian citizens who arrived in Poland on or after February 24, 2022, are considered legal immigrants without the need to obtain any type of permit/refugee status. They can legally stay in the territory of Poland for 18 months from the beginning of war (*i.e.*, until August 24, 2023). Until that day, if they wish to stay here longer, they need to file an application for a residence permit/refugee status. All Ukrainian citizens have a duty to register their entry to Poland within 60 days from entry.

Ukrainian citizens are eligible to obtain PESEL (National Electronic Identification Number). This allows them to receive financial aid from the Polish state. Ukrainian citizens who obtain PESEL can work in Poland without a work permit. Employers will have to notify that fact to employment authorities within 14 days from hiring.

Restrictions Loosened but Employer Takes Responsibility

New Order or Decree

Authors: Robert Stępień, Partner; Miłosz Awedyk, Partner, and Katarzyna Fedoruk, Associate – PCS | Littler

Since March 25, 2022, COVID-19 restrictions have been mitigated by a new Regulation of the Council of Ministers. Wearing face masks is not obligatory anymore unless in pharmacies or in buildings where medical activity is conducted. Thus, masks are not required in most employment establishments. However, since an employer is responsible for providing health and safety at working establishment, a decision on resigning from obligatory masks should be preceded by a comprehensive analysis of working conditions and possible risks.

According to the new Regulation, there is no mandatory self-isolation or quarantine. However, if a person has begun self-isolation or quarantine before March 25, previous regulations should be applied, and such self-isolation/quarantine must be undertaken.

"New Polish Deal" Soon to be Amended

Proposed Bill or Initiative

Authors: Robert Stępień, Partner; Miłosz Awedyk, Partner, and Jakub Grabowski, Associate – PCS | Littler

On January 1, 2022 one of Poland's biggest tax reforms (known as the New Polish Deal) came into force. It deeply changed the way due personal income tax is calculated, in many cases making it more complicated. Payroll services in Poland have struggled with application of new tax rules, as often it would lower the salaries. The government issued an ordinance that obligated employers to calculate personal income tax advance in two different manners at the same time – according to 2021 and 2022 rules and choosing the more favorable one. The constitutionality of this ordinance has been heavily contested. The government announced that PIT Act would be amended to implement this double-calculation mechanism.

Further, in light of recent historically high inflation (for the first time from 1995 hitting two-digits margin) the government announced that they intend to lower tax rate from 17% to 12% and change the rules on healthcare contributions, effective as of July 1, 2022. No bill has been presented to the public, yet. Many of the solutions proposed by the original New Polish Deal are to be abandoned.

Parental Rights of Polish Employees to be Extended

Proposed Bill or Initiative

Authors: Robert Stępień, Partner; Miłosz Awedyk, Partner, and Katarzyna Fedoruk, Associate – PCS | Littler

A bill proposing amendments to the Labor Code arising from the Directive (EU) 2019/1158 of the European Parliament and of the Council of June 20, 2019, on work-life balance for parents and carers, and repealing Council Directive 2010/18/EU, commonly known as the work-life balance directive, was published on February 15 in the Government Legislation Center. The draft bill introduces (or extends) a set of parental rights, including: Paternity leave – fathers are allowed to take two weeks of paternity leave not later than until the child's first birthday; parental leave – period of parental leave is extended to 41 weeks or 43 weeks (depending on the number of children) and each parent has exclusive right to nine weeks of parental leave which cannot be transferred to the other parent; flexible working arrangements – reduce working hours, flexible working hours, flexibility in place of work applicable under the employee's request until the child's eighth birthday; and carers' leave – of five days during a calendar year for workers providing personal care or support to a relative or person living in the same household.

According to the bill, employees exercising their parental rights are under special protection from the moment of submitting a relevant request until the end of the leave – within such period an employer cannot terminate their employment nor undertake any actions in preparation for such termination. However, the bill does not define "preparation for termination," which makes it unclear what actions can or cannot be undertaken by the employer. Furthermore, it does not state whether the protection also applies to employees whose request was not accepted by the employer. Thus, there are still matters which are not (but should be) covered by the bill. Since works on the project are in progress, we expect the authors to clarify the issues.

Portugal

New Law on Flying and Resting Times

New Legislation Enacted

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

The government issued Decree Law No. 25/2022, dated March 15, 2022, which places flight time limits, service time and rest requirements for mobile staff in civil aviation, and applies to commercial air transport operations with helicopters, in particular in the context of emergency medical services, where the operator has its principal place of business in Portugal.

Among other employment measures, with regard to rest conditions, the aircraft operator shall ensure the following: (1) If the flight duty period for the reinforced technical crew exceeds 16 hours there must be on board, for each reinforced technical crew member, a bed or equivalent separate and isolated from the flight deck and passengers, (2) If the flight duty period for the reinforced technical crew is 16 hours or less, a bunk or equivalent or a comfortable reclining chair separated and isolated from the flight deck and passengers must be carried on board for each reinforced technical crew member, and (3) Comfortable reclining chairs separate from the flight deck and isolated from the passengers must be provided on board for the rest of either one-third or one-quarter of the cabin crew depending on whether the flight duty period is longer than 16 hours or between 14 and 16 hours. The operator must also provide the crew member with at least seven local days off for each calendar month, and 96 local days off in each calendar year.

No-Poach Agreements to be a Priority for Portuguese Competition Authority in its 2022 Agenda

Important Action by Regulatory Agency

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

The Portuguese Competition Authority (*Autoridade da Concorrência* or AdC) in a recent Statement outlined its Competition Policy Priorities for 2022, noting that in a context in which the promotion of economic recovery and employment assumes a dominant role, the AdC is committed to continue promoting the labor market's openness to new opportunities that support a resilient, innovative, and inclusive economy. To that end, the AdC will focus on combating nonpoaching (or nonsolicitation) agreements.

The AdC will be attentive to horizontal no-poach agreements by workers, as well as any wage-fixing agreements, which may arise in any type of agreements or activity sector. (Note, it is not clear if this would include collective bargaining agreements.) AdC also states that it will continue raising awareness among professionals of this type of anti-competitive behavior.

COVID-19 and Employment Restrictions: A Cause for Dismissal?

Trend

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

The Superior Court of Lisbon recently issued a decision relating to COVID-19 restrictions and internal rules established for the protection of employees. The court noted that it is impossible to maintain the employment relationship for reasons attributable to the employee when such maintenance can no longer be demanded of the employer, and there is no other sanction capable of remedying the serious contractual crisis opened up by such behavior.

According to the Lisbon Superior Court, this would be the case when an employee who works for a pharmaceutical distributor ignores COVID-19 restrictions, such as social distancing; when the employee leaves the workplace before exit time and then proceeds to smoke in the area of another group of workers that the employer had decided to work separately to minimize the risk of contagion COVID-19.

Puerto Rico

Light at the End of the Tunnel: Puerto Rico Government Eliminates Most COVID-19 Restrictions

New Order or Decree

Authors: Irene Viera Matta, Associate, and Alberto Tabales Maldonado, Associate – Schuster Aguiló LLC | Littler

Puerto Rico Governor Pedro Pierluisi issued Executive Order 2022-019, drastically changing previously issued COVID-19 measures and guidelines by eliminating most requirements regarding masks, capacity limits and vaccination mandates. This EO delegates any additional COVID-19 restrictions to the Puerto Rico Department of Health via administrative orders. Consequently, the PRDOH issued Administrative Order 2022-533 providing further guidelines on COVID-19 restrictions. It is important for employers to note, however, that the Protocol for COVID-19 Case Management in the Workplace issued by the PRDOH is still in effect and employers are currently still required to report all COVID-19 cases in the workplace.

Spain

Interprofessional Minimum Wage (SMI)

New Order or Decree

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

On February 23, 2022, the Official State Gazette (*Boletín Oficial del Estado* or BOE) published Royal Decree 152/2022, of February 22, which sets the interprofessional minimum wage (*Salario Mínimo Interprofesional* or SMI) for 2022, to be paid from January 1 to December 31, 2022. The new amounts, which represent an increase of 3.63% with respect to those provided for in a previous decree, are as follows: (i) EUR 33.33 per day or EUR 1,000 per month, depending on whether the salary is fixed by days or by months, for any activities in agriculture, industry, and services, without distinction of sex or age of the workers; (ii) EUR 47.36 per legal working day for temporary workers and for seasonal workers whose services to the same company do not exceed 120 days; and (iii) EUR 7.82 per hour effectively worked for domestic employees who provide services on an hourly basis, in an external regime, and in accordance with Royal Decree 1620/2011, of November 14.

The RED Mechanism for Employment Flexibility and Stabilization

New Order or Decree

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

Royal Decree 4/2022 of March 15, 2022, establishes the RED Fund and the transitional rules for its financing and the procedure applicable to the RED Mechanism, which will allow companies to apply for measures to reduce working hours and suspend employment contracts. This decree provides for the creation of the RED Fund for Employment Flexibility and Stabilization regulated in article 47 bis.6 of the Workers' Statute (ET), the purpose of which is to cover future financing needs arising from the RED Mechanism in relation to social security benefits and exemptions, including the costs associated with training.

Likewise, it also establishes the rules for the transitory coverage of the financing of the RED Fund as long as it is not sufficiently funded to meet its financial needs. In this regard, the procedure applicable to the RED Mechanism (an employment flexibility and stabilization instrument which, once activated by the Council of Ministers, will allow companies to request measures for the reduction of working hours and the suspension of employment contracts) is also regulated. The RED Mechanism does not yet have its own regulatory framework. Therefore, the Government has established the application of the Regulation through the procedures for collective termination and suspension of contracts and reduction of working hours (Royal Decree 1483/2012), pending the approval of its own regulations.

Mandatory Equality Plan for Companies with More than 50 Employees

New Regulation or Official Guidance

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

Companies with more than 50 employees are required to have equality plans for their workforce as of March 7, 2022, under the Royal Decree-Law on urgent measures to ensure equal treatment of March 7, 2019, which gave these companies three years to implement. Likewise, equality plans were already mandatory for companies with more than 250 employees before the approval of the aforementioned regulation. In this sense, and as of 2020, the equality plans were also mandatory for companies with between 151 and 250 employees: (1) Companies with 50 to 100 employees, by March 7, 2022; (2) companies with 101 to 150 employees, by March 7, 2021; and (3) companies with 151 to 250 employees, by March 7, 2020.

This requirement affects both private companies and public bodies or institutions, as well as non-profit organizations or associations. Furthermore, companies with less than 50 employees are not required to have an equality plan, unless required by the applicable collective bargaining agreement or by the labor authority as a sanctioning measure.

Sweden

Right to Approve Parental Leave in Other Ways than According to the Employee's Wishes

Precedential Decision by Judiciary or Regulatory Agency

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

The Swedish Labor Court recently ruled in a case where three employed prison guards within the Swedish Prison and Probation Service's transport unit had applied for partial parental leave where working hours were to be scheduled with fixed start and end times during two-three days per week. The employer decided that the requested parental leave could only be approved if the employees accepted a relocation to work at a prison. The employer argued that the requested parental leave would give rise to a significant disruption of the transport activities as, among other things, the schedule within the transport unit would mean that the employees could not perform enough work if the requested leave was accepted.

The court agreed and held that the redeployment was a necessary consequence in order for the requested parental leave to be approved and that the employer had thus not violated the prohibition on unfavorable treatment under the Swedish Parental Leave Act.

Official Guidance that Employees Should Work from Home Has Been Abolished

New Regulation or Official Guidance

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

As of February 9, 2022, most COVID-19 restrictions were lifted. This means, among other things, that the official guidance that employees should work from home has been abolished. The return to office shall be made gradually and it is up to the employer to assess the most appropriate way. However, the employer must carry out a risk assessment regarding the return to the office to ensure a safe work environment at the workplace.

United Arab Emirates

United Arab Emirates Enacting an All New Labor Law

New Legislation Enacted

Author: Dr. Luisa Rödemer, Senior Associate – vangard | Littler

On February 2, 2022, Federal Law No. 33 of 2021 came into force within the United Arab Emirates. The new Labor Law fully replaced Federal Law No. 8 of 1980 with its numerous addendums and executive regulations. The new Labor Law applies in all seven Emirates, within the mainland directly and within the numerous free zones amended by the specific free zone's rules and regulations. However, the Dubai International Financial Center Free Zone in Dubai and the Abu Dhabi Global Market Free Zone in Abu Dhabi continue applying their own Labor Laws.

The new Labor Law includes additional forms of employment, such as part-time employment or temporary and flexible employment relationships. While the former Labor Law permitted both, limited-term and unlimited employment contracts, the new Labor Law limits all employment relationships to a fixed-term not exceeding three years. Employers are bound by the new regulations already, while the Ministry of Human Resources & Emiratization grants a one-year period to transfer all existing unlimited employment contracts to fixed-term ones.

First Data Protection Law as Framework for the United Arab Emirates

New Legislation Enacted

Author: Dr. Luisa Rödemer, Senior Associate – vangard | Littler

On January 2, 2022, the first Federal Data Protection Law No. 45 of 2021 for the United Arab Emirates (UAE) came into effect. The Law applies to processing of personal data of data subjects residing in the UAE or having a workplace in the UAE as well as controllers or processor established in the UAE carrying out activities of processing personal data for data subjects in the UAE or abroad and controllers or processors established outside the UAE that carry out such activities within the UAE. The Federal Data Protection Law shall be considered a data protection framework, comparable with the EU General Data Protection Regulation (GDPR) and will be amended by executive regulations in the future.

Mobile Work, Job Sharing and Employment Outsourcing as Accepted Employment Models

New Order or Decree

Author: Dr. Luisa Rödemer, Senior Associate – vangard | Littler

With enacting the new Labor Law, the Cabinet issued its first Resolution No. 1 of 2022 (Executive Regulation). This Executive Regulation specifies the new Labor Law and provides additional work and employment models such as remote work, job sharing or freelance work, while further allowing activities of intermediation, temporary recruitment, and employment outsourcing. Furthermore, the Executive Regulation clarifies the application of noncompetition clauses, especially in which cases a valid noncompetition clause will be exempted. The Regulation also specifies, that companies with more than 50 employees are obligated to implement internal work policies in line with the requirements of the new Labor Law.

United Kingdom

New Regulations Enacted to Enable Employers to Digitally Verify Right to Work

New Legislation Enacted

Authors: Deborah Margolis, Senior Associate, and Raoul Parekh, Partner – GQ | Littler

On April 6, 2022, the Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licenses) (Forms), etc., Regulations 2022 (SI/2022/242) came into force. The Regulations enable employers to use Identification Validation Technology service providers to digitally verify the identity of British and Irish citizens with valid passports (or Irish passport cards) for right to work checks, as an alternative of conducting a manual check. Two associated codes of practice on right to work checks have also been published.

Employer's Exercise of a Payment in Lieu of Notice Clause After an Employee's Resignation Does Not Constitute Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ben Rouse, Associate, and Raoul Parekh, Partner – GQ | Littler

On February 25, 2022, the UK Employment Appeal Tribunal (EAT) decided that an employee will not be considered to have been dismissed by their employer where they resign, and the employer brings forward the last day of employment by invoking a contractual right to pay them in lieu of their notice period. Therefore, for the time being, termination of employment in these circumstances will be considered to be by reason of resignation rather than dismissal. However, the claimant in this case has sought permission to appeal the EAT's findings, meaning that this issue may arise again in the Court of Appeal.

Misclassified Worker Who Had Taken Unpaid Holiday Entitled to Backdated Holiday Pay for Duration of Employment

Precedential Decision by Judiciary or Regulatory Agency

Authors: Josephine Rendall-Neal, Associate, and Raoul Parekh, Partner – GQ | Littler

On February 1, 2022, the Court of Appeal held that a worker who had been misclassified and told that he had no right to paid holiday by his employer was in fact entitled to backdated pay in respect of statutory annual leave for his whole period of employment. The employer had a duty to encourage workers to take their statutory holiday (in this case, the four weeks available under EU law) and to pay them for that holiday. The fact that the worker had in fact taken the holiday (unpaid) did not mean that he had not been discouraged from doing so – the Court said that a worker must have certainty that they will be paid during their holiday so that they're able "fully to benefit from that leave as a period of relaxation and leisure." Furthermore, the Court confirmed that a worker has three months from termination to bring a holiday pay claim (and not three months from the last period of unpaid holiday).

This decision follows the direction of travel in UK cases relating to misclassified "gig economy" workers whose employers face potentially significant liabilities arising from historic failures to meet their obligations under employment law.

Changes to COVID-19 Rules on Self-Isolation, Sick Pay in Q1 2022

New Regulation or Official Guidance

Authors: Ben Smith, Associate, and Raoul Parekh, Partner – GQ | Littler

In Q1 2022, various changes to COVID-related restrictions in England and Wales were announced. As of February 24, mandatory self-isolation has ended in all cases, replaced with nonmandatory advice to isolate following a positive

COVID test. On March 17, the Statutory Sick Pay Rebate Scheme ended, with final claims due by March 24. Also, as of March 24, all COVID-related sick pay rules have been repealed, meaning (1) an employee self-isolating is no longer deemed to be incapable for work and therefore entitled to statutory sick pay (SSP), instead they must show they are unwell under orthodox sick pay rules (self-certification for up to seven days, after which a doctor's note can be required) to qualify for SSP, and (2) entitlement to SSP once more begins on day four of incapacity. As of April 1, access to free COVID tests ended for most in the UK and new guidance was introduced for employers to manage COVID risks in the workplace.

United States

Limitation on Pre-Dispute Arbitration Agreements Signed into Law

New Legislation Enacted

Author: Jay Inman, Shareholder – Littler

On March 3, 2022, President Joe Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (H.R. 4445), which amends the Federal Arbitration Act (FAA) to bar pre-dispute arbitration agreements of claims alleging sexual assault or sexual harassment and includes a bar against any waivers of the right to bring such claims jointly and/or on a class basis. The law went into effect upon enactment and applies "with respect to any dispute or claim that arises or accrues on or after the date of enactment of this Act." Even if the employer has an arbitration agreement already in place before the enactment of the new law, it appears claims or disputes that arise after enactment of the law would not be arbitrable under such agreement.

As guiding principles to be discussed further with counsel, we encourage employers to review and evaluate current agreements to make sure they include, at base, language that carves out nonarbitrable claims under federal law. Additionally, employers should consider adding more specific language to agreements for new employees that specifically includes a carve-out for sexual harassment and sexual assault carve-out under the anticipated law.

U.S. Enacts Law Barring Products Made with Forced Labor in China

New Legislation Enacted

Authors: Lavanga Wijekoon, Shareholder, and Olivia Florio Roberts, Associate – Littler

On December 23, 2021, President Joe Biden signed into law the Uyghur Forced Labor Prevention Act (the Act), which bars the importation into the United States of products made from forced labor in the Xinjiang region of China. This Act will significantly impact many multinational employers' supply chains because raw materials from this region – such as cotton, coal, chemicals, sugar, tomatoes, and polysilicon (a component in solar panels) – have found their way into many global supply chains. Indeed, these materials arrive on U.S. shores directly from China, as well as via third countries, like Vietnam, which imports Xinjiang cotton for manufacturing textiles that eventually reach the United States.

The Act requires that the U.S. Customs and Border Protection (CBP) apply a presumption that any products produced in the Xinjiang region, or by any entity in the lists mentioned above are barred from importation into the United States. This presumption can be overcome only if the company importing the goods can prove, by "clear and convincing evidence" that it has followed the "guidance to importers" and the products were not produced by forced labor. In doing so, the importing company may have to present to the CBP policies, supply chain audit reports, remediation plans, and other evidence that map the origin of the goods. If the company fails to rebut this presumption under the demanding "clear and convincing" standard, then the goods will be subject to exclusion or seizure at the port of entry. Thus, the Act imposes a novel burden of proof on companies seeking to import goods that – at some point in the supply chain – were produced in Xinjiang.

Federal Court Decision Protects Independent Contractor Status

Precedential Decision by Judiciary or Regulatory Agency

Authors: Maury Baskin, Shareholder, and Jim Paretti, Shareholder – Littler

On March 14, 2022, the U.S. District Court for the Eastern District of Texas delivered a victory for businesses that utilize independent contractors, and for independent contractors themselves, when it held that the Department of Labor's 2021 delay and ultimate withdrawal of regulations governing independent contractor status under the Fair Labor Standards Act (FLSA) (the IC Rule) was unlawful. Promulgated in January 2021, the IC Rule clarified the relevant factors that the DOL would use to determine whether workers are in business for themselves and are independent contractors or are economically dependent on a putative employer for work and thus employees under the FLSA. The IC Rule emphasized that the proper analysis is whether a worker is dependent on a purported employer for work as opposed to whether a worker is dependent on the income received.

The court vacated the delay and withdrawal of the IC Rule, and specifically held that the IC Rule became effective on March 8, 2021, and remains in effect today. The decision brings welcome clarity to businesses and others seeking guidance and transparency as to how the DOL would analyze the question of whether a given worker was an independent contractor or an "employee" under the FLSA (thus entitled to, among other things, minimum wage, and overtime). It is unclear whether the Department will appeal this decision, as well as whether it will engage in new rulemaking to propose a new independent contractor standard.

Inflation-Related Wage Changes Require Employers to Keep Their CP-Eye on the Prize

Trend

Author: Sebastian Chilco, Knowledge Management Counsel – Littler

During his State of the Union address, President Biden indicated that getting inflation under control was a top priority, and to businesses he said, "Lower your costs, not your wages." For many employers throughout the country, however, lowering wages has not been their response to the recent health or economic crises. And in parts of the country, by law wages are heading in only one direction – up – as many local minimum wage statutes adjust their rates to changes in the consumer price index (CPI).

On July 1, 2022, numerous additional local mid-year rate adjustments will occur throughout California, so companies should prepare for a potential "wagequake" throughout the Golden State. But the West Coast might not be the only place to experience tremors, as local minimum wage rates in the Midwest (Illinois) and Mid-Atlantic (Maryland) will also change then. And while near-term wage change concerns are purely a local concern, employers throughout the country should brace themselves for the possibility that inflation does not slow significantly through 2022, making it possible that state-level rate increases occur on January 1, 2023, (or December 31, 2022, in New York). Were this to occur, it could affect nonexempt and exempt employees. States often apply a multiplier to the minimum wage to set the minimum salary necessary for the executive, administrative, or professional exemption to apply; a similar minimum wage multiplier scenario might arise with a state-law inside sales exemption. And for certain hourly professionals (or medical, in California), the state may annually adjust the exemption's minimum hourly rate.

How Can Multistate Employers Manage the Compliance Minefield of Wage Disclosure Laws Nationwide?

Trend

Authors: Denise M. Visconti, Shareholder, and Thelma Akpan, Shareholder – Littler

Pay equity, or the desire to achieve it, has been a hot topic for employers in the United States in the past several years. Due to a recent increase in legislation in many states and local jurisdictions, pay equity no longer just means ensuring women and other marginalized groups are being paid similar to their male counterparts who are performing similar

jobs. Many jurisdictions also prohibit employers from relying on, or even asking about, an applicant's past salary history, thereby forcing employers to look at other factors to set a new employee's compensation. In addition, a growing number of cities and states now mandate that employers provide wage information to applicants and in some jurisdictions, current employees, either upon request or on a mandatory basis at a specified point in the hiring process.

Employers in 10 jurisdictions (and counting) are now subject to wage disclosure requirements. Colorado and New York City have made headlines as the first jurisdictions to mandate such disclosures. Employers must review the laws of each individual jurisdiction to remain compliant with this growing collection of wage disclosure laws. For a table providing an overview of these jurisdictions and what they require, view this article on littler.com.

Venezuela

Minimum Salary and Meal Benefit Increase

New Order or Decree

Author: Daniela Arevalo, Associate – Littler

Through Presidential Decree N° 4.653, published in Official Gazette N° 6.691 on March 15, 2022, the minimum salary has been increased by 1,857.14% from VES 7.00 per month to VES 130.00 per month (approx. USD 29.54), while the minimum salary for apprentices was increased from VES 5.25 per month to VES 97.50 per month (equivalent to USD 22.15 at the official exchange rate). These payments correspond to a daily work schedule of eight hours. The payment of a lower salary and/or when it is not paid promptly in the respective week or fortnight, will entail a fine that ranges between the equivalent of 120 tax units and 360 tax units.

Likewise, the food benefit (*Cestaticket*) was increased by 1.5%, from VES 3.00 per month to VES 45.00 per month (approx. USD 10.22). This increase was effectuated through Presidential Decree N° 4.654, published in the same Official Gazette. According to the Socialist CestaTicket Law, employers must provide healthy food during the workday to its employees. This benefit may be granted through coupons or electronic debit cards or be credited through payroll, in which case the employer must notify the employee of the meal amount paid. This benefit is not deemed part of the employee's salary. All benefits are effective from March 15, 2022.

Commission to Investigate Delivery Companies' Compliance with Labor Law

New Order or Decree

Author: Gabriela Arevalo, Associate – Littler

As a byproduct of the COVID-19 quarantine measures in effect since 2020, an increasing number of delivery companies have emerged in Venezuela during the last year. These companies have implemented independent contract regime. In this sense, President Nicolas Maduro ordered on March 2, 2022, to investigate the companies within this industry to verify compliance with the labor laws.

The president has been reported as noting that national and international delivery companies rendering services in Venezuela must comply with Social Protection, Labor and Constitutional Law. To that end, he has commissioned the Ministry of Economy and Ministry of Labor to investigate this situation and issue a memorandum with recommendations to amend any breach of the law. The outcome of this investigation is still pending, and its conclusion may result in new labor law measures being established to apply to delivery companies.

Quarantine Flexibilization

New Order or Decree

Author: Gabriela Arevalo, Associate – Littler

On November 1, 2021, President of Venezuela Nicolas Maduro ordered the total suspension of the COVID-19 quarantine and relaxed the biosecurity measures within the labor and commercial activities context. The quarantine was put in place on March 13, 2020, when the State of Alarm was declared due to the pandemic. As a consequence, there was a general confinement in the country and the remote work regime was applied.

However, in October 2020, the government relaxed the lockdown, by establishing a general quarantine consisting of periods of seven days of quarantine, followed by seven days of relaxation. Notwithstanding this relaxation, there is still the obligation to wear face masks in public places and comply with the biosecurity measures to avoid contagion. Vaccination is available for the population, but it is not mandatory.

Judicial Judgment on Foreign Currency

Precedential Decision by Judiciary or Regulatory Agency

Author: Daniela Arevalo, Associate – Littler

On December 8, 2021, the Social Cassation Chamber of the Supreme Court of Justice published Judgment No. 269, by which the Court allowed the payment of employee's single bonus agreement in foreign currency (USD) since such agreement was subscribed to and approved before the Labor Inspectorate to be paid in foreign currency. Hence, employers would be obliged to pay a benefit in foreign currency when it has expressly been agreed to by the workers. Otherwise, the company may be released from its obligation by paying the equivalent in bolivars. In addition, payments in dollars may be considered as part of the salary depending on the regularity and free availability of payment.

Likewise, the Court determined that the defendant company must pay default interest for late payment. However, it specified that the interest rates set by the Central Bank of Venezuela cannot be applied to amounts established in dollars for the calculation of interest on arrears. For this, it ordered that the dollars be converted to bolivars at the official exchange rate at the time the payment takes place and on this amount the interest rates would be applied from the date when the company should have paid, to obtain an amount to be paid in bolivars and it may be optional for the company to pay such interests in dollars. Lastly, and regarding indexation, the decision contemplates that the adjustment for inflation does not proceed for cases in which payments are ordered in dollars or its equivalent in bolivars at the official or reference rate at the time of payment.

Declaration of Net Income Tax

Upcoming Deadline for Legal Compliance

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The Venezuelan Net Income Tax must be filed by March 31, based on the new monetary expression set forth in Official Gazette N° 42.185, Presidential Decree N° 4.553. As of October 1, 2021, prices, salaries, and other benefits of a social nature, as well as taxes and other sums in national currency contained in financial statements or other accounting documents, or in credit instruments and in general, any operation or reference expressed in national currency, must be expressed in accordance with the bolivar in its new scale. The period for the declaration of Net Income Taxes cannot be extended. Late filing of declaration may lead to fines with interests.

The bolivar resulting from this "new expression" will continue to be represented with the symbol Bs. Consequently, all amounts expressed in national currency before October 1, 2021 must be converted to the "new unit" by dividing by one million (1,000,000). Except for any special provision to the contrary, all those who refuse to make the new monetary expression, or who fail to comply with any of the obligations established in the decree, will be administratively sanctioned by the Central Bank of Venezuela, in accordance with the provisions of Article 135 of the

Decree with rank, value and Force of Law of the Central Bank of Venezuela, which establishes sanctions up to 1% of the paid capital and reserves.