European Employment Insights

> The Swedish Government has decided to increase the maintenance requirement for labor migrants.

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Introduction

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European Employment Insights

The guide provides an overview from over 20 European countries of recent legal developments, tips for navigating complex legal issues, and staying up to date on notable cases.

October Issue

September Issue

Context

Andersen Employment and Labor Service Line is your go-to partner for navigating the complexities of local and international labor laws and customs. We help you steer clear of employee-related issues while staying competitive in the global economy.

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Albania

Closed-ended funds give employers the opportunity to negotiate certain terms and conditions with management companies.

LAW
New law on private pension funds

A recent enactment, Law no. 76/2023 dated 21 September 2023 on Private Pension Funds has officially entered into force. This law, which is partially aligned with the EU's IORP II Directive, aims to increase the participation of employers and employees in private pension funds.

One notable aspect is the introduction of two types of pension funds, namely open-ended and closed-ended. Closed-ended funds give employers the opportunity to negotiate certain terms and conditions with management companies.

Moreover, the law raises the maximum threshold for preferential taxation of members' monthly contributions to the level of the national minimum wage (i.e. ALL 40,000, approx. EUR 390). In addition, the law provides for an increase in the limit on the deductible costs incurred by employers for contributions made on behalf of employees.

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Foreign employees posted in Albania may benefit from exemptions on social security and health insurance contributions, thanks to reciprocity agreements. Albania has ratified agreements with Montenegro, while the agreement with Swiss Confederation is now effective from October 2023.

LAW
New Bilateral Agreements on Social Protection

Foreign employees posted in Albania may be exempt from social security and health insurance contributions on the basis of reciprocity agreements between Albania and their respective countries, provided that they meet the conditions specified in the respective reciprocity agreements. Albania has formally ratified social security reciprocity agreements with several countries and is actively pursuing agreements with others.

Recently, the agreement between the Republic of Albania and Montenegro on social security was ratified by Law No. 70/2023 which entered into force on 25 October 2023. In addition, the agreement between the Republic of Albania and the Swiss Confederation on social protection entered into force on 1 October 2023.

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Belgium

Belgium's response to high inflation and constrained wage growth in 2022 is to empower companies with substantial profits to reward their staff in 2023.

GUIDELINES
Tax circular regarding purchase power premium for companies with high profits in 2022

As a result of the high inflation in 2022 and small margin for salary increases, the Belgian government has taken measures to allow companies that had high profits in 2022 or had positive results during the corona crisis to grant their employees a purchasing power premium in 2023. The Belgian Tax Administration has published a tax circular (2023/C/82) regarding the rules and conditions for granting this purchase power premium for a favorable tax treatment. The Belgian Tax Administration has determined that the amount of premium granted by the employer depends on the degree of the profit and may not exceed 500 EUR if the employer has made a high profit or 750 EUR if the employer has made an exceptional high profit during 2022. The purchasing power premium is tax free for the employee and deductible as a business expense for the employer. The purchasing power premium is exempt from social security contributions from the employees' side, a special employer's contribution of 16.5% is due on behalf of the employer. This purchasing power premium must be granted in the form of consumption vouchers and may not be granted as a replacement for or conversion of remuneration or other existing benefits. This purchasing power premium can be granted until 31 December 2023.

"... the decree initiates a "duty of care" which imposes the main contractor to request for specific information – such information regarding the foreign workers - with the subcontractor(s) in order to improve the chain liability in case of illegal employment.

LAW
Chain liability for employment of foreign workers

In July 2022, a large number of illegal foreign workers were discovered at a construction site of an important Belgian chemical company located at the Port of Antwerp. These workers were victims of human trafficking, who were working and living in severe conditions. In the light of these events and investigations regarding illegal employment, several questions were asked to the Flemish parliament which resulted in drafting a decree on elimination of illegal employment and fraudulent structures. (the decree of the Flemish Government was adopted on 25 October 2023). Therefore, the decree initiates a "duty of care" which imposes the main contractor to request for specific information – such information regarding the foreign workers - with the subcontractor(s) in order to improve the chain liability in case of illegal employment. If no information can be provided, the main contractor is obliged to notify this to the social inspection. The decree expands the definition of a "worker" as well.

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Bosnia and Herzegovina

LAW
Increased annual quota of work permits for employment of foreigners

The employment of a foreign employee in Bosnia and Herzegovina is possible after obtaining a work and residence permit. The annual quota of work permits for employment of foreign employees is determined by the Council of Ministers of Bosnia and Herzegovina.

By the Decision from 31 August, Council of Ministers increased annual quota of work permits that can be issued to foreign employees in 2023. Namely, the labor market in Bosnia and Herzegovina is undergoing changes due to migration of domestic population, so that there is a deficit of domestic employees. For this reason, employers in certain economic sectors, especially in the construction sector, have to hire foreign employees.

The total annual quota of work permits in 2023 is set at 3,995 work permits, while in 2022 it was set at 2,540 work permits.

COURT
Judicial protection against mobbing

The Supreme Court of the Federation of Bosnia and Herzegovina, with regard to the implementation of judicial protection against mobbing, has taken the position that, in the procedural sense, the plaintiff must prove that he or she has previously approached the employer with a request for protection of rights. A lawsuit for protection against mobbing is also a dispute arising from the employment relationship. Therefore, the court may dismiss the case as inadmissible if the plaintiff does not prove that he/she had previously approached the employer.

Bearing that in mind, the plaintiff has to primarily address the employer with the request for protection of his/her rights, in order to acquire the right to appeal to the court if his/her rights are not protected by the employer.

Read More

The Supreme Court now requires employees to first request rights protection from their employer before seeking judicial protection against mobbing. Failing to do so may result in their court appeals being dismissed.

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Bulgaria

Amendments to the Bulgarian Labor Code, effective from June 2025 (with a 2026 exception for civil officers), will usher in electronic labor books and a unified employment register, enhancing transparency and safeguarding data integrity.

LAW
Introduction of Digital Labor Records

The National Assembly has adopted amendments and additions to the Bulgarian Labor Code. The amendments were published in the Official Gazette No. 85 of 10 October 2023 and will enter into force on 1 June 2025, with the exception of civil servants, where the amendments will enter into force on 1 June 2026. The aim is to abolish the paper work book and introduce an electronic one, as well as an electronic register, which will provide transparency in the employment relationship and prevent the loss of paper work books and the data they contain.

When the amendments come into force, employees will have an electronic work record instead of a paper work book, which must contain all the legal requirements and will be an official document establishing the work service. The National Revenue Agency will create and maintain an employment register that will contain the unified electronic work record of employees.

Read More

The Bulgarian legislation allows any employment documents to be electronically signed.

LAW
Can the employment contract be electronically signed by the parties?

The Bulgarian Whistleblower Protection The requirements for storing electronic documents in employees' files are set out in Article 128b of the Bulgarian Labor Code and in secondary legislation on its application. Employers are obliged to provide employees with permanent and free access to their electronic files.

The Bulgarian legislation allows any employment documents to be electronically signed. Signing by the employer with a qualified electronic signature is permissible as long as the signature does meet the requirements, set in Regulation (EU) 910/2014 and this is agreed between the parties in the employment contract. The employee may sign the document with simple or qualified electronic signature as agreed between the parties. The cost of using the electronic signature by the employee

is borne by the employer. Generally, the employment contracts are not sealed, but if the employment documents are uploaded in an electronic file, the uploaded version must be uploaded with an electronic time seal.

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Czech Republic

Early retirement options have been limited, requiring longer participation and reducing early pension amounts.

LAW
Early retirement less attractive and with more restricted access

A small reform of the Czech pension system came into effect on 1 October 2023, affecting the regulation of early retirement.

Previously, it was possible to retire early five years before the standard retirement date; now it is three years. Also, the minimum length of participation in the social security system for early retirement has been increased from 35 years to 40 years.

In addition, the amount of the early pension will decrease by a fixed 1.5 percent for every 90 days before the normal retirement date (previously, this decrease was lower in the last two years). Very importantly, the pension will not be indexed before the standard retirement date.

The aim is to motivate people to stay in the labor market longer and curb the trend of early retirement, which is now used by almost 30 percent of pensioners in the Czech Republic in total and increasing.

The long-awaited major reform of the pension system to ensure its sustainable financing is still pending.

LAW
Electronic Delivery of Documents Simplified

The recent amendment to the Labor Code has affected - among many other things - also the permitted ways of delivering employment documents to the employees. Strict rules continue to apply to the delivery of documents related to the unilateral termination of the employment relationship. Nevertheless, under specific circumstances, the employers can now effectively use electronic delivery via e-mail.

Although the previous regulation also provided for electronic delivery, its actual use was significantly limited due to impractical requirements of the law. Now, electronic delivery has been simplified.

To validly deliver such documents electronically, the employer must sign the document with a recognized electronic signature. In addition, the delivery must be made to a private e-mail address that the employee has previously provided in writing in a separate document (informed consent).

If the document arrives in the employee's e-mail inbox, it is deemed to have been delivered after no more than 15 days, which is an important change from the previous regulation, which required the employee to confirm receipt of the document in order for electronic delivery to be effective.

A similar simplified procedure applies to execution of bilateral documents, e.g. amendments to employment contracts or termination by mutual agreement.

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Croatia

In 2024, the minimum monthly salary jumps by 20% to EUR 840 gross. The move will benefit low-paying sectors and raise the minimum hourly student rate to EUR 5.25.

LAW
Minimum wage increases for 2024

On 25 October 2023, the Croatian government announced that the minimum monthly salary for 2024 will stand at EUR 840 gross, i.e. net amount of EUR 677, which represents an increase of 20% from the present EUR 700 gross, i.e. net amount of EUR 560, applicable for the year 2023. The mentioned decision will lead to necessary salary increases in lowest-paying sectors. Additionally, minimum hourly student rate will also increase from EUR 4,48 to EUR 5,25, since its calculation is based on the minimum gross salary.

The minimum wage is established once a year, no later than 31 October of the current year for the following calendar year, after consultation with employers and trade unions. Furthermore, it may not be set at an amount lower than the amount established for the previous year, with the intention of the provision being to ensure a growth for every year.

COLLECTIVE AGREEMENTS
Changes in the Construction Industry

In July 2023, changes to the collective agreement for the construction industry were successfully negotiated and signed. The changes are intended to help maintain the sustainability of the domestic construction sector and retain employees in times of crisis, when the sector faces a significant increase in the cost of construction materials.

An increase in the gross basic salary from 5% to 15% was agreed upon, all depending on the job group, and it will be additionally increased in March 2024. To comply with the Labor Act, a 50% salary increase for work on Sundays was defined. Other than that, employees in construction have a right to an occasional award in the amount of EUR 300, a Christmas bonus in the amount of EUR 100 as well as a daily allowance and reimbursement of travel expenses in case of an official trip. The application of the Collective Agreement is also mandatory for agency employees when assigned to employers in the construction industry.

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Finland

The length of the employment condition would be extended from the current 26 weeks to 12 months.

LAW

Several amendments proposed to the Unemployment Insurance Act to boost employment

The Finnish Government has submitted a proposal to Parliament to reform the unemployment benefit system to make it more work-incentive. The proposed changes would concern the condition of employment for employees, the conciliation of unemployment benefits, the starting date of entitlement to unemployment benefits, and child supplements to unemployment benefits.

Unemployment benefit will be available if the employment condition for an employee is met. Currently, the main rule is that 18 hours or more of work in a calendar week accumulates the working condition. The draft proposes that the working time condition should henceforth be determined on the basis of income from paid employment. The change would mean that, as a general rule, the working time condition would be based on wages paid during the calendar month. The length of the employment condition would be extended from the current 26 weeks to 12 months. As a general rule, a month of employment would mean a calendar month during which the income before withholding tax paid would be at least EUR 930 per month. The changes to the employment condition for employees would enter into force on 2 September 2024.

The long-awaited major reform of the pension system to ensure its sustainable financing is still pending.

Employer broke the law by changing employees' working hours as employment contracts contained a binding clause on the pattern of working hours.

COURT

Employment contracts contained a binding working time clause that the employer could not unilaterally change

The employer had unilaterally changed the working hours of the employees, adding a half-hour unpaid lunch break to the working day, when previously the employees had been allowed to eat during working hours. The employees had been employed by the municipality on indefinite employment contracts in various nursing care positions and the employment relationships were governed by the municipal General Collective Labor Agreement.

The Supreme Administrative Court held, on the basis of its judgment, that the vast majority of employment contracts contained a binding clause on the pattern of working hours which the employer was not entitled to change unilaterally. The municipality was found to have acted in breach of the employees' employment contracts by unilaterally ordering them to change their working hours from formal periodic working hours to general working hours from 8 June 2015.

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France

COURT
Non-compete and renewal

In a decision of 13 September 2023, the French Supreme Court clarified whether it is possible to renew a non-competition clause. According to the judges, it is unenforceable against the former employee to provide that a non-competition clause with an initial duration of one year may be renewed for an equivalent duration by a simple decision of the former employer after the termination of the employment contract. Such a clause leaves the former employee uncertain as to the extent of his freedom to work and significantly restricts his chances of finding a new job, since he does not know from the outset what the actual duration of the non-competition clause will be. As a reminder, the validity conditions of a non-competition clause in France are as follows: must be indispensable for the protection of the employer's legitimate interests, must consider the specific nature of the employment relationship, must be limited in time and place, and must provide for financial compensation.

Employers must demonstrate the offensive, defamatory or excessive nature of employees' comments to justify dismissals.

COURT
Employee freedom to speak and misuse

In a ruling issued on 11 October 2023, the French Supreme Court underscores that, except in cases of misuse, employees have the right to freedom of expression both within and outside the workplace. Thus, an employee who makes insulting, defamatory or excessive comments is considered to have abused freedom of expression. On the other hand, an employee who is content to question the decisions of the company that employs him or her, without being polemical, insulting or disrespectful, is not necessarily guilty of abusing his or her freedom of expression in the eyes of the judges. As an employer, our clients must therefore be particularly careful to always show how an employee's comments are insulting, defamatory or excessive in order to justify an employee's misconduct in exercising his or her freedom of expression, otherwise the employee may challenge his or her dismissal.

Any document containing obligations for the employee or provisions the knowledge of which is necessary for the performance of his or her work must be drafted in French.

COURT
Using English and French at work

Our foreign clients who employ employees in France often ask whether it is obligatory to translate into French all documents sent to these employees under French law. In a decision dated on 11 October 2023, the French Supreme Court once again confirmed the applicable principle: any document containing obligations for the employee or provisions the knowledge of which is necessary for the performance of his or her work must be drafted in French. The only exception to this principle is that no translation is required if the document is intended for foreign employees working in France. Thus, the communication in English, without translation, of the objectives necessary to determine variable remuneration to a French employee rendered them unenforceable against the employee. To avoid being ordered to pay the entire variable remuneration to the French employee, it is advisable to ensure that documents are always translated into French so that they can be enforced against employees in France.

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Germany

A commission has now made proposals for further legislation to determine the appropriate remuneration of works council members.

COURT
Legal certainty in the determining the remuneration of works councils

The Federal Court of Justice (BGH) has ruled that several Volkswagen managers could be liable to prosecution for embezzlement. At issue is the granting of prohibited benefits in the form of salaries of up to EUR 560,000 to works council members on permanent leave of absence. According to the Federal Court of Justice, the salaries are excessive because they are not comparable with the salaries of other comparable employees. The reduction of some salaries by Volkswagen led to legal action by works council members concerned. Contrary to the Federal Court of Justice, various labor courts considered the salaries to be justified on the basis of a hypothetical career path of the respective works council member. A commission has now made proposals for further legislation to determine the appropriate remuneration of works council members. For example, it should be possible to establish comparison groups and comparison criteria in works agreements.

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In the case of "on-call work" with indefinite weekly working hours, the Fixed-Term Contracts Act implies a 20-hour work week, as confirmed by a recent Federal Labor Court ruling.

COURT
On-call work - duration of weekly working time

If the employer and the employee agree on "on-call-work" without specifying the weekly working time, the Part-Time and Fixed-term Contracts Act stipulates that a weekly working time of 20 hours is deemed to have been agreed. According to a ruling of the Federal Labor Court dated on 18 October 2023 (5 AZR 22/23), a deviation from this rule can only be assumed if there are objective indications to the contrary and if the statutory legal presumption is deemed to be unreasonable. In the present case, an employee claimed that she had worked an average of 103.2 hours per month in the past and demanded corresponding remuneration. However, the courts of instance including the Federal Labor Court upheld the statutory regulation of 20 hours per week. The Federal Labor Court emphasized that the employer's call-off behavior alone is not sufficient to prove an implicit change in working time.

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Greece

Under on-demand contracts, employees agree to be available for work within a predetermined period.

LAW
On demand contracts

New employment Law 5053/2023 introduces the concept of on-demand employment contracts, under which employees agree to be available to provide work within a pre-defined reference period. On-demand contracts must provide for a minimum number of paid working hours that are not less than one quarter (1/4) of the agreed total number of hours, otherwise employment contract is considered invalid.

Employees are obliged to provide their services on condition that the employment contract sets out specific reference days and hours for the provision of work and the employee receives prior written notice by the employer, which in principle cannot be less than 24 hours. If the employer cancels the request at any time after such notice is given and before the commencement of work, employee is entitled to the corresponding wages.

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LAW
Provisions for 6th day work: rules and regulations

Law 5053/2023 also introduces provisions that, exceptionally, allow the provision of work on the 6th day in the case of companies that apply a 5-day working system for their personnel. In this case, the employment on the 6th day of the week must be registered by the employer in ERGANI II prior to the performance of the assigned service.

New employment law states that the employment on the additional (6th) day cannot exceed 8 hours. In fact, during the 6th day employee may not overwork or provide overtime work. Finally, it is ensured that the minimum working time limits and the provisions on health and safety are respected on behalf of the employee.

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Hungary

Any trade union that meets the conditions for the ability to conclude a collective agreement is also entitled to initiate an amendment to the collective agreement and may participate in negotiations on the amendment.

COLLECTIVE AGREEMENTS
Constitutional Court's decision on the collective bargaining capacity of the trade unions

In a recent ruling (Case no III/882/2023), the Hungarian Constitutional Court has invalidated a restrictive provision within the Labor Code. The provision in question stipulated that a trade union, which fulfils the conditions for collective bargaining capacity after a collective agreement has been concluded, could only participate in the negotiations for amending the agreement with the right to be consulted. The court found this distinction between trade unions unacceptable when it comes to amending a collective agreement.

The Constitutional Court determined that this provision violated the constitutional prohibition of arbitrary discrimination, as it needlessly and disproportionately discriminated between trade unions capable of concluding collective agreements with employers. The Court found no serious constitutional justification or reasonable basis for this discrimination. As a result the provision in the Labor Code will be applied from 5 October 2023 allowing trade unions that meet the conditions for collective agreement capacity after the collective agreement has been concluded to both initiate and participate in the negotiations to amend the collective agreement without restrictions.

An increase of between 10 and 15 percent was prognosed for the minimum wage.

COLLECTIVE AGREEMENTS
Minimum wage for 2024

The minimum wage negotiations for next year are well underway in the Permanent Consultative Forum between the industry and the government, with an agreement likely to be signed in the second half of November, 2023 according to the Ministry of Economic Development. At the Consultative Forum, an increase of between 10 and 15 percent was prognosed for the minimum wage next year. The respective piece of legislation on the approved increase hasn't yet been adopted.

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Italy

LAW
Italy's 2024 budget law

At the end of October the Italian Government approved the annual budget law draft and related draft laws. It includes several draft provisions that have an impact on employment relations (social security incentives, retirement provisions, impatriates' benefits and so forth). Those measures are not law yet and are subject to changes during the legislative process: we will provide an update when laws are finally adopted.

LAW
Cyclic part-time social security allowance

On 18 October 2023 a governmental law decree was published extending a lump sum allowance in favor of so-called "cyclic part time" workers, i.e. part-timers that work only during certain periods of the year. The lump sum had been adopted for the first time in 2021 as a one-time measure and then extended. It applies to cyclic workers that have no other job or unemployment benefits and whose working schedule provides for at least one consecutive idle month and a total of at least seven idle weeks.

COURT
Non-executive board members are not liable for breach of occupational safety rules

With decision published on 30 October 2023 ("Corte di Cassazione penale 43819") the Italian supreme court acquitted two board of directors' members that had been found guilty for breaches of occupational safety prevention measures by lower courts. The lower courts had followed a stream of case law according to which, absent clear delegations within a board, all members are liable under occupational safety laws, while the supreme court this time followed a different line of case law, according to which only board members that have neglected their duties or that actual decision taking and spending powers may be deemed liable under the law.

COURT
Courts may review the adequacy of remuneration even if aligned with national collective agreements

On 2 October 2023 the Italian supreme court ("Corte di Cassazione penale 27711") address the matter of employees' constitutional right to a remuneration proportional to the quantity and quality of their work, and in any event sufficient to ensure a free and decent life. The annulled merit decision had opined that a remuneration equal to the minimum outlined by national collective agreements negotiated by major unions was by definition adequate in accordance with the Constitution and exempt from judicial review. The supreme Court instead opined that courts may always review the adequacy of remuneration. In so doing courts may use various parameters, such as other collective agreements, for similar business fields and similar duties, but also other data, such as the statistical poverty line and the ratio between the contractual minimum remuneration and the statistical median remuneration. Employers should also prudently pau attention to such criteria, especially when obliged by law to be jointly and severally liable for the adequate remuneration of their suppliers' employees.

COURT
Duties of a safety coordinator in the execution phase, at a construction site

On 14 September 2023 the Italian supreme court for criminal matters ("Corte di Cassazione penale 37479") confirmed the conviction of an architect who had the role of execution safety coordinator at a construction site ("coordinatore per l'esecuzione dei lavori"), for failing to: (i) adequately addressing the risks of a step of the works in the safety and coordination plan ("piano di sicurezza e coordinamento"), required by law for works to be conducted at construction site where more companies are involved; (ii) checking that the safety operational plan ("piano operativo sicurezza") of the active companies, was aligned to the safety and coordination plan in that respect; and (iii) adequately checking the implementation of the plans and relevant safety measures and, if necessary, update the safety and coordination plan. The accused architect had tried to defend himself arguing that his instructions had been breached, but the judges had found no trace of such measures in the safety and coordination plan.

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Lithuania

The 2024 modernisation of the civil service aims to redefine the role of civil servants. Specialised positions in public institutions may shift to employee status, potentially affecting both the public and private sectors.

LAW
Civil servants to become employees

With the changes in the Civil Service Act coming into force in 2024, efforts have been made to align the public sector with the private one in terms of flexibility and competitiveness. In addition to introducing a new system for calculating salaries and negotiations thereof involving professional unions, the very definition of a civil servant has also been changed.

Officials currently working in the positions of inner administration of public institutions, such as personnel or IT management specialists, will no longer hold the status of civil servants. Instead, their status must be revised to that of employees working under an employment agreement, or they will have to face dismissal. Consequently, such alterations may impact not only the public but the private sector as well. While the precise effect on the labor market is yet to be determined, employers should pay closer attention to the potential recruitment prospects as well as risks.

COURT
Annual leave of CEOs

The Supreme Court of Lithuania has recently rendered a ruling on the paid annual leave for CEOs. So far, it has been customary for CEOs to determine and approve their own paid annual leaves. Nevertheless, a legal question emerged regarding whether a CEO's travels of recreational nature could be considered as work. The Court provided a peculiar perspective, highlighting that an individual cannot make a unilateral agreement with oneself. Instead, the CEO must seek confirmation from the company's shareholders regarding their paid annual leave. The judgement introduces an ambiguity for company administration. It remains uncertain how this process could function in practice, particularly where, for instance, a CEO cannot predict the annual leave opportunities well in advance and organize shareholders' meeting due to the nature of the business.

COURT
Colleague discrimination as a ground for dismissal

The Supreme Court of Lithuania issued a ruling in a case involving the dismissal of a lorry driver due to his disrespectful and offensive telephone conversation with a female colleague. Generally, there is a presumption of discrimination, meaning that once preliminary evidence of discrimination is provided, it is the respondent who must disprove it. However, the Court highlighted that the discrimination was merely a secondary issue, with the primary concern being a labor dispute over wrongful dismissal. Since the presumption shifting the burden of proof did not apply, the ruling was in favour of the driver. Consequently, the case indicates that in labor disputes, where discrimination is not the primary focus, parties cannot rely on the presumption of discrimination. Therefore, employers should be well-prepared if they intend to dismiss employees for their discriminatory behavior with colleagues.

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Malta

Discover the key changes to the employment contract rules, particularly in relation to fixed-term contracts, introduced in December 2022.

COURT
CEO not entitled to compensation but parties to reach an agreement regarding compensation

A CEO of a Maltese authority had filed a case before the Industrial Tribunal in Malta claiming unfair dismissal and demanding a compensation. The CEO had resigned from his position following verbal reassurance by relative stakeholders that he would be given compensation in terms of his contract, or an alternative post. In fact, in his resignation letter, the CEO had written that he is resigning without prejudice to a settlement or alternative proposal. Whilst the Industrial Tr ibunal had concluded that the CEO had resigned from the post voluntarily, and therefore he was not entitled to compensation, the Tribunal also concluded that the CEO was led to believe that he would be given compensation or an alternative post. In light of this, the Industrial Tribunal called on the parties to reach an amicable solution. This judgement comes as a surprise to the industry because whilst asserting that the CEO was not owed a compensation, the Tribunal ordered the parties to reach a settlement regarding the compensation. In similar instances, as long as the Tribunal is satisfied that compensation is due, the Tribunal would proceed to award a sum of compensation itself, rather than calling upon the parties to reach an amicable agreement.

LAW
Amendments to the Employment and Industrial Relations Act

In December 2022, several amendments were introduced to the regulation of the probationary period in an employment relationship specifically with respect to definite contracts.

A definite contract needs to have a duration period of at least 6 months unless a shorter period is justified by objective reasons based on precise and concrete circumstances characterizing a given activity. The said objective reason would need to be stipulated within the contract of employment.

In the case of the renewal of a definite contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.

In a fixed term contract of between 6 - 15 months duration, the probationary period shall be calculated on the basis of 2 months probationary period per 6 months contract duration. If the fixed-term contract is shorter than 6 months, the probationary period shall be one-third of the duration of the same fixed-term contract. If the fixed term contract exceeds 15 months duration, the probationary period shall be 6 months.

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European Employment Insights: **November 2023**

Norway

COURT

Claim for enrolment in a pension scheme is a monetary claim and thus subject to a limitation period

The Supreme Court in Norway ruled in September 2023 in case HR-2023-1637-A (called the Ishavskatedral-case) that a demand for subsequent enrolment in the employer's occupational pension scheme must be considered as a monetary claim and is thus subject to a limitation period of 3 years. The Court of Appeal had ruled with final effect that a musician playing concerts in the Arctic Cathedral for many years had been a permanent employee and not a contractor for several years. The question for the Supreme Court was a consequence of the fact that the musician was to be considered an employee and not a contractor.

The Norwegian government has recently come up with a legislative proposal involving an increase in the rates for fees that the Norwegian Labor Inspection Authority can impose.

LAW

A proposal of higher fines from the Labor Inspection Authority

The Norwegian government has recently come up with a legislative proposal involving an increase in the rates for fees that the Norwegian Labor Inspection Authority can impose. The proposal has been submitted for consultation and the consultation deadline is in December 2023. The Norwegian Labor and Welfare Authority can, as of today, issue fines of up to 15 times the national basic amount (as of now NOK 118,620 – i.e. a total of NOK 1,779,300). The proposal is that the maximum rate must be increased to the higher of 50 times the national basic amount and 4% of the company's or possibly the group's turnover. If this is adopted, this will mean an extensive increase in the fines and this will naturally hit businesses far harder than at present.

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Poland

Changes to ergonomics and workplace safety include the provision of stationary monitors and peripherals for employees, with a deadline for employers to comply within six months of the new regulations, which will take effect on November 17, 2023.

LAW

New regulations for workplace computer monitor safety and ergonomics

The Minister of Labor and Social Policy has amended the regulation on occupational safety and health for workstations equipped with computer monitors.

Employers will be required to provide stationary computer monitors or stands, an additional keyboard, and a mouse to employees who use laptops for at least half of their daily working hours (i.e., 4 hours). The new rules also require employers to provide employees with corrective eyeglasses or contact lenses if eye examinations indicate that they are necessary for the job.

Chairs must have adjustable armrests, not just armrests as before. In addition, there is no longer a requirement to equip workstations with document holders or footrests, as these items should be provided at the employee's request. With regard to lighting, the regulation specifies how to reduce glare and requires appropriate lighting fixtures and devices to mitigate excessive sunlight at the workstation.

These changes will take effect on 17 November 2023. Employers will have six months from that date to modify workstations to meet the minimum workplace safety and ergonomic requirements outlined in the amended regulation.

COURT

Equalizing overtime rights for part-time employees

Overtime is defined as work performed beyond an employee's regular hours. Employees are entitled to their normal pay plus an allowance of 50-100% of their salary, depending on whether the work was on a regular working day or a day off. These regulations apply to all employees, including both full-time and part-time workers. Part-time employees may agree, in their contracts, to receive an allowance for each hour worked beyond the agreed full-time hours. However, if this is not specified in the contract, a part-time employee is generally not entitled to an overtime allowance unless the excess hours are beyond the permissible limit, typically starting from the 9th hour of work.

Recent CJEU case law, as seen in the judgment of 19 October 2023 (Case C-660/20 Lufthansa CityLine), deems it

unacceptable to place part-time employees at a disadvantage regarding increased remuneration for exceeding a specific number of working hours. The national court will need to address this issue in the near future to ensure equal rights for both full-time and part-time employees.

Read More

COURT
Taxation of reimbursement for private vehicle use for the employer business needs

In a recent ruling by the Supreme Administrative Court, dated on 14 September 2023, ref. II FSK 2632/20, the issue of whether reimbursement for using private vehicles for business purposes constitutes taxable income for employees was clarified. The legal question arose due to conflicting interpretations by administrative courts, creating uncertainty for both employers and employees. Previous rulings had disagreed on whether these reimbursements were taxable income of an employee, leading to legal disputes.

The law allows for civil contracts allowing private vehicles to be used for business purposes, and the Minister of Infrastructure has issued regulations defining the conditions for reimbursement. However, until this ruling, the issue remained unresolved, causing ongoing disputes.

This recent judgment, however, concluded that reimbursements for using private vehicles for business purposes do not constitute taxable income. According to the court, employees do not gain financial benefit from these reimbursements; they simply receive compensation for expenses they would not have incurred if not for their employer's business needs. As a result, this ruling provides much-needed clarity, ensuring that such reimbursements are not considered taxable income for employees.

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Portugal

> **A professional internship is an extremely useful tool for companies that want to provide young adults with the opportunity to learn and demonstrate their value and talent in the job market.**

LAW
Extracurricular professional internship

In 2011, the government issued a legislative decree establishing the regime of extracurricular professional internships, this regime was amended in 2023. The purpose of this regime was to provide a legal framework for internship programs for graduates in specific fields and for young people who have completed professional and technical courses and other non-higher secondary and post-secondary education. This legal framework has been in force since then and has been a very useful tool for companies willing to provide young adults with an opportunity to learn and demonstrate their value and talent in the labor market.

This scheme has been subject to relevant amendments. The intern is entitled to an internship allowance equal to 80% of the minimum salary approved by the government. In addition, this allowance is subject to the payment of social security contributions, which must be withheld by the company and paid to the social security authorities. Finally, the company must include the intern in its professional insurance policy.

LAW
Proposal for the 2024 State Budget

On 10 October 2023, the proposal for the State Budget for the financial year of 2024 was presented, containing a detailed forecast of state revenue and expenditure, including that of the autonomous funds and services and the social security budget.

As far as employment is concerned, the proposal that has been presented sets the minimum guaranteed monthly wage, or the reference value of the minimum subsistence level, at EUR 820, paid fourteen months a year, representing the biggest wage increase to date, of EUR 60 more compared to the figure for 2023 (EUR 760).

The vote on the State Budget bill will take place within 50 days of the date on which it is accepted by Parliament.

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Slovakia

Clarification on working time: employees' breaks, during which they must be ready to respond within time period defined by employer, should be considered working time if they significantly reduce their personal time.

COURT
Break during the daily working time

The Court of Justice of the European Union, XR vs. Dopravní podnik hl. m. Prahy, akciová společnost, C-107/19, held in its recent judgment that a break granted to an employee during their daily working hours, where the employee must remain on standby to respond within two minutes if needed, qualifies as working time within the definition of the relevant provision. This classification is made when, upon a comprehensive examination of all pertinent circumstances, it becomes evident that the imposed limitations significantly and objectively impact the employee's ability to manage their free time, which is not devoted to professional duties. Although this judgment pertains to Czech jurisdiction, the same principle is expected to be applicable in all member states of European Union included Slovakia.

Read More

LAW
Minimum wage

Since 1 January 2024, the monthly minimum wage will increase from EUR 700 to EUR 750 (based on degree of difficulty of jobs). This amount applies to full time employees working 40 hours per week. The hourly minimum wage will increase to EUR 4,310. The increase of the minimum wage is also related to the increase of some wage allowances for working in non-standard hours. As to the degrees, the employer is obliged to assign each job to a degree in accordance with the characteristics of degrees of difficulty of jobs set in the Labour Code. By notification no. 373/2023 Coll., the minimum wage for 2024 has been set at the following amount: 1. degree – EUR 750 per month; 2. degree – EUR 866 per month, 3. degree – EUR 982 per month, 4. degree – EUR 1 098 per month, 5. degree – EUR 1 214 per month and 6. degree – EUR 1 330 per month.

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Slovenia

Employers should be aware of the forthcoming amendments to labor and social security records, which will require detailed tracking of working hours and the introduction of mandatory electronic records, resulting in additional implementation costs.

LAW
Introduction of electronic timekeeping

On 20 November 2023, amendments to the law regulating records in the field of labour and social security (ZEPDSV-A) will apply. The amendments concern in particular the keeping of records on working time, which means that employers will have to keep detailed information on, among other things, the time at which employees arrive and leave work, and the use and extent of use of breaks during working time. As a novelty, the law also introduces the keeping of electronic working time records, which will be mandatory for those employers who are fined for certain breaches of the Labor Relations Act and also for breaches of the ZEPDSV itself. The new law raises a number of issues for its implementation and imposes additional costs on employers as they have to upgrade or modernise the existing system.

COURT
Calculation of severance pay for part-time workers

In September 2023, the Supreme Court of the Republic of Slovenia issued Judgment VIII Ips 19/2023, in which it decided on the issue of whether a part-time employee whose employment contract was terminated due to incapacity should take into account the average of actually paid wages or the average of full-time wages when calculating severance benefits. The employee worked part-time according to special regulations and was recognized as disabled. The Supreme Court ruling departs from its 2009 practice, when it took the position that the basis for assessing the severance pay of a part-time disabled worker should be the salary, she received in the three months before her dismissal for work actually performed. The basis for calculating the applicant's severance grant is to be the average of the applicant's wages over the last three months, converted into full-time working hours.

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Spain

Spanish Supreme Court has ruled that the mere suspicion of irregularities committed by an employee is sufficient for companies to hire an investigator.

COURT
Legality of the detective evidence based on mere suspicions

On 12 September 2023, the Spanish Supreme Court declared that the existence of mere suspicion about irregularities committed by an employee is enough for the companies to hire a detective when the requirements of suitability, proportionality and necessity in the use of such are met, provided that no fundamental right is violated.

In this case, the company hired the services of a detective to monitor an employee and subsequently dismissed him, being this dismissal declared null and void in the second instance, having the company to readmit the employee and pay a compensation for the violation of his right to privacy. The company appealed the judgment before the Supreme Court, which held that the illegality of the detective evidence is not about the motive that supported it, considering it to be legitimate even in the absence of reasonable suspicions for the company, based on its management power. Furthermore, the Court understood that there was no violation of the employee's right to dignity or privacy since the detective services were contracted to monitor him in the performance of his duties outside the workplace.

Finally, despite ruling out the nullity of the dismissal, the Spanish Supreme Court declared it unjustified, with the subsequent severance payment, considering that the facts alleged against the employee were not sufficiently substantiated.

LAW
Changes in work-life balance leave: Who assumes the cost?

The recent Royal Decree-Law 5/2023 of 28 June 2023, which, among other things, transposes Directive (EU) 2019/1158 of the European Parliament and of the Council (so called Work-Life Balance Directive), introduced changes to parental leave, most of which are paid for by companies.

Thus, employees gained additional days off: up to four days per year (per hour) in cases of proven force majeure related to family members or partners. In addition, an extension from two to five days of leave in case of accident or serious illness, hospitalization or surgery without hospitalization, requiring rest in the home of a spouse, partner or relative up to the second degree of consanguinity or affinity. Then, the 15-day spousal leave is extended to register a domestic partner. This right can be exercised only once for a subsequent marriage to the same partner. Finally, eight weeks, full or part time, continuous or intermittent, to care for a son, daughter or foster child of more than one year, until the child reaches the age of eight (the only one of the above that is unpaid).

These leaves, so necessary to improve the ability of employees to reconcile family and professional life, because they are borne by companies and not by the State, also generate new costs and new needs to reorganize their workforce, sometimes in a very short period of time. Thus, in colloquial Spanish, these measures "strip one saint to clothe another".

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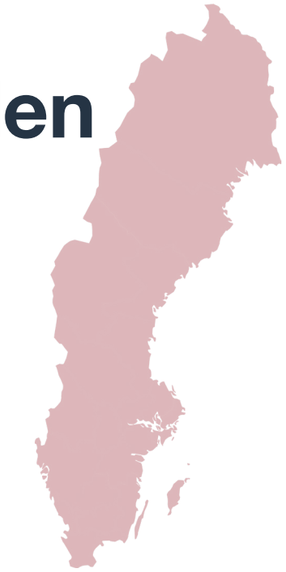

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LAW

Increased maintenance requirement for labor migrants

The Swedish Government has decided to increase the maintenance requirement for labor migrants (currently SEK 13,000 per month). The requirement was defined in connection with changes in the Swedish Aliens Act (2005:716) and the amount is based on 80 percent of the median salary in Sweden, which nowadays amounts to SEK 27,360 per month.

The purpose of the increase is to strengthen the position of labor migrants and counteract competition with low wages.

When applying for a work permit or an extension of a work permit, the salary must be in accordance with the new requirement, which is important to note when conducting business in Sweden.
The maintenance requirement does not apply to labor migrants from the EU nor seasonal workers from third countries under the Seasonal Workers Directive (2014/36/EU). The requirement is valid from 1 November 2023 and there are no transitional provisions.

Switzerland

The aim of this new agreement is to secure lasting coordination of the social security systems of both countries and to ensure the rights acquired by insured persons under the Agreement on the Free Movement of Persons between Switzerland and the EU.

LAW

New social security agreement with the United Kingdom

Following the exit of the United Kingdom from the European Union (Brexit), Switzerland and the United Kingdom have finalized a new social security agreement that entered into force on 1 October 2023 with provisional application from 1 November 2021. The aim of this new agreement is to secure lasting coordination of the social security systems of both countries and to ensure the rights acquired by insured persons under the Agreement on the Free Movement of Persons between Switzerland and the EU.

This agreement includes the same coordination principles as the FMOPA: equal treatment, aggregation of insurance periods, determination of the applicable legislation, administrative assistance, export of benefits and cooperation between authorities and institutions. The provisions of the EU coordination law (EU Regulations No. 883/2004 and No. 987/2009) have been streamlined and adapted to the needs of both countries.

Until 31 December 2023, cross-border commuters can work remotely for 24.99% to 40% of their working hours without facing tax implications. However, they need to inform the proper Italian authorities about their contract and pay the appropriate social security contributions.

LAW

New transitional framework agreement between Switzerland and Italy on Italian cross-border telework

Until 31 December 2023 the Switzerland-Italy transitional agreement on border workers will remain in force. The Italian government has implemented a new regulation allowing cross-border commuters residing in a border municipality to work remotely for up to 40% of their work hours without incurring any tax implications until 31 December 2023. This rule applies solely to those who were previously employed on 31 March 2022.
However, Italy has not taken a stand on the EU framework agreement regarding

cross-border teleworking, meaning that the current ""general rules"" that limit teleworking to 24.99% remain in effect. Thus, Italian cross-border workers can telework for a maximum of 24.99% of their work time without facing any tax or social security repercussions.

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