European Employment Insights

> “It is now possible to impose a sanction of prohibition of business activity for up to two years for permitting illegal work.”

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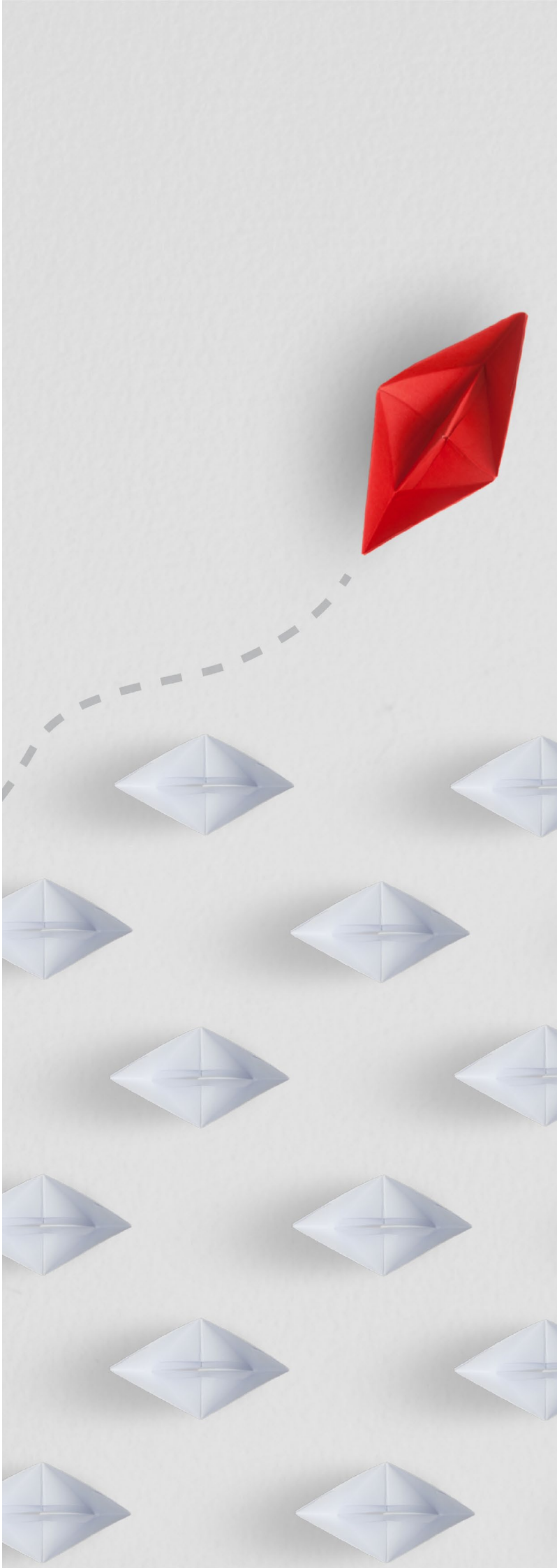

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INDEX

Introduction

European Guide to Support Employers
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Context

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Austria

Until the end of the child's 24th month of life, both parents can agree to share the parental leave. Each parent takes at least two months of leave.

LAW
Parental leave splitting

In implementing the Work-Life Balance Directive, the Austrian legislator has amended the regulations on taking parental leave. Since 1 November 2023, parental leave can only be taken until the end of the child's 24th month of life if both parents agree to split the leave and each parent takes at least two months of leave. If only one parent takes parental leave, the duration of parental leave is generally limited to the end of the 22nd month of the child's life.

However, there is an exception for single parents, who are still entitled to parental leave for a full two years. A comparable exception also applies in cases where one parent is not entitled to parental leave (e.g. because they are studying or self-employed).

LAW
Parental part-time work

The implementation of the Work-Life Balance Directive has also brought significant changes with regard to part-time parental leave.

Whereas previously there was an entitlement to part-time employment until the child reached the age of 7 if the employee had been with the company for three years or more and there were more than 20 employees, part-time parental leave can now be claimed for a maximum of seven years until the child reaches the age of 8. From these seven years, periods of non-employment after the birth and the parental leave periods of both parents for the same child are deducted, and the period between the child turning 7 and starting school later is added.

Agreed parental part-time work can now be taken until the child reaches the age of 8 (instead of the previous age of 4).

Both options require - as before - that the normal weekly working hours are reduced by at least 20% and are not less than twelve hours.

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Bosnia and Herzegovina

LAW
Annual quota of work permits for foreign employment in Bosnia and Herzegovina for 2024

The Council of Ministers of Bosnia and Herzegovina has prescribed the annual quota of work permits for foreign employees. For 2024, the annual quota of work permits that can be issued to foreign employees has been increased to 6.073, as per the decision made on 11 January, 2024.

A total of 4.295 work permits will be allocated to the Federation of Bosnia and Herzegovina, 1.400 to the Republic of Srpska, and 378 to the Brčko District of Bosnia and Herzegovina. Furthermore, a maximum of 2.450 work permits can be issued to extend existing ones.

It is important to note that the number of work permits allocated varies by activity and occupation. The number of work permits for new employees may vary depending on the activity, but cannot exceed the limit established by this decision, which is based on territorial distribution.

LAW
Increase of minimum wage for 2024

On 29 December 2023, Government of Republic of Srpska announced the Decision on the lowest salary in the Republic of Srpska for 2024, which will be a net amount BAM 900 (approximately EUR 450), and will be used for salary calculations starting from January 2024. On the same day, Government of the Federation of Bosnia and Herzegovina announced the Decision on the lowest salary in the entity for 2024, which will be a net amount BAM 619 (approximately EUR 310).

However, this does not imply that the minimum incomes are not equal in both entities. The minimum wage in Republic of Srpska includes additional non-taxable benefits, such as meal allowance and transportation, which are not included in net amount salary in Federation of Bosnia and Herzegovina entity. However, amount of income of employees in Federation of Bosnia and Herzegovina is similar to income of employees in Republic of Srpska, when meal allowance and transportation are included.

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Bulgaria

International companies in Bulgaria must comply with the Bulgarian Whistleblowing Act, ensuring reports are handled confidentially at the local level without involvement from parent companies or group-level.

LAW

Are employees who work remotely protected by law for work-related accidents and illnesses?

The obligation for declaring the work-related injury or illness applies regardless of the place where the work is performed. Therefore, in the case of remote work, the employer and the employee have the same obligations in the event of an occupational injury at the remote worksite as for employees working at the company's premises.

Furthermore, if an injury is qualified as a work-related injury according to the respective authority, the employer bears liability for damages, which have caused temporary or permanent incapacity for work, or the death of the employee, even though the employee has been working remotely.

Besides that, it is usually very difficult for the employer to prove throughout the court dispute, any contribution to the incident, done by the employee, which will have an impact on the amount of the compensation for damages. The court may decide to reduce the amount claimed if the employee contributed to the damages.

GUIDELINES

Do the parent companies have access to the reports received by the subsidiaries' reporting channel under the Bulgarian Whistleblowing Act

The international companies with presence in Bulgaria (via local subsidiaries or branches) shall follow the Bulgarian Whistleblowing Act and the secondary legislation on its application. For each report received within the established local reporting channel, the respective local entity obtains a unique identification number by the Bulgarian Commission for Protection of Personal Data. Disclosure of the report to third parties is not permitted.

Where the local reporting channel is created within a larger channel system, introduced by the parent company or within the respective company group, the local channel can only receive guidelines from a central level how to handle the processing of the internal reporting channels and the reports, but disclosure of the report content and conducted investigation, respectively its results, cannot be disclosed to the parent company or within the respective company group.

In addition to the above, the internal investigation shall be conducted by the local internal channel only and no assistance or participation by the parent company or representatives of the channel, established on a group level is permitted. increase of 20%. Interestingly, the minimum wage may not be set at a lower level than the one established for the previous year.

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Croatia

COURT
Restriction of the right to strike

In a recent decision, the Constitutional Court repealed the provision of the Act on Croatian Radio and Television, which regulated the restriction of the right to strike at Croatian Radio and Television (hereinafter: HRT) in such a way that when HRT performs its activities as a public service, HRT employees do not have the right to strike, and which is regulated in more detail by the general act of HRT or the collective agreement.

The Constitutional Court found that the transfer of legislative authority to the director of HRT (who would pass a general act) or to the collective agreement is not in accordance with the Constitution and the rule of law. Therefore, the right to strike in the public service can be limited only by a law that will prescribe the circumstances when a strike is completely or partially prohibited. For this reason, the Constitutional Court rendered a ruling that the disputed article does not meet the requirements of legal certainty of the objective legal order and is contrary to the requirements arising from the rule of law as the highest value of the constitutional order of the Republic of Croatia.

Read More

COLLECTIVE AGREEMENTS
Amendments to the Collective Agreement for Construction

The Association of Construction Employers and the Croatian Construction Trade Union have signed the seventh amendments to the Collective Agreement for Construction, which will come into force on 1 April, 2024 for all groups of employees in the construction industry. The latest amendments to the Collective Agreement for Construction bring public powers to the Croatian Construction Trade Union to control the application of the collective agreement regarding the minimum wages and the implementation of these wages.

The amendments also determine the increase in wages, which will come into effect on April 1, 2024. Wages will increase by 9 to 10 percent compared to the previous ones, adding that with this increase, the wages of construction workers will rise above the current rate of inflation.

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Cyprus

Law 25(I)/2023 reduced the maximum probationary period for non-managerial private sector employees to six months.

LAW
Statutory maximum probation term shortened

The statutory maximum probation period has now been shortened by Law 25(I)/2023 for employees in the private sector occupying non-managerial positions to no more than six months. Entrenchment provisions apply only for employment contracts concerning management personnel which can validly provide for a probation period exceeding six months provided that: (a) the term of probation does not exceed a maximum of two years; and, (b) both parties to the employment contract consent to such extended probation term at the commencement of the employment. Overall, the notion of a probation term in an employment contract governed by Cyprus law remains optional, with its validity, relevance and enforcement requiring the contractual consent of both parties to an employment contract.

LAW
Increase in the basic pension

The Ministry of Labor and Social Insurance announced that the base variable making up the pension from the Social Insurance Fund will increase by 3.89% in accordance with the provisions of the legislation and following a decision of the Council of Ministers to issue a decree that will be effective from January 2024.

In particular, the monthly amount of the full basic pension will increase from EUR 465.65 to EUR 483.77 and the minimum pension will increase from EUR 395.80 to EUR 411.20 for beneficiaries without dependents, whilst the monthly amount of the social pension will increase from EUR 377.18 to EUR 391.85.

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Czech Republic

Under the proposed system, employees would still be entitled to severance pay and a reasonable notice period.

LAW

Breakthrough discussion over dismissal without cause opened

A proposal by the National Economic Council of the Government (NERV) stirs up debate regarding the introduction of termination without cause in employment contracts. Currently, while employees can resign without providing a reason, employers can only terminate employment for specific legal reasons.

Supporters of the current system claim that its strictness contributes to an impressively low unemployment rate compared to the EU average, while opponents argue that it poses a challenge for employers, especially those seeking to dismiss underperforming employees. One notable consequence of this regulation is the prevalence of fixed-term contracts, which can last up to 9 consecutive years.

Finance Minister Zbyněk Stanjura advocates for the proposed change, arguing that it would give companies the flexibility they need to cope with fluctuating labor market conditions. Under the proposed system, employees would still be entitled to severance pay and a reasonable notice period in the event of termination, aimed at safeguarding their interests.

However, critics question the necessity of such a shift, pointing to countries like Sweden and Denmark with similarly strict dismissal policies but without the proposed flexibility. Concerns about potential employer abuse leading to discrimination and unfair dismissals have also been raised by unions and opposition parties.

Discussion of the issue is likely to continue over the coming months, but it is likely to remain on the government's agenda.

LAW

Whistleblowing Act already mandates internal reporting systems in medium-sized enterprises

An important amendment to the Employment Act came into force at the beginning of the year, changing the definition of illegal work (work performed without an employment contract or by a third-country national without a work permit).

Prior to the amendment, the definition of illegal work required the work to be performed continuously over a long period of time. This condition will no longer apply and only the actual occasional performance will be sufficient to constitute illegal work.

The main purpose of this new regulation is to make it easier for the labor inspectorate to detect the performance of illegal work. In the past, the continuous performance of illegal work was the main obstacle in proving and determining illegal work.

The same amendment also introduced stricter penalties for illegal work. It is now possible to impose a sanction of prohibition of business activity for up to two years for allowing illegal work. In addition to this sanction, employers can still be fined up to CZK 10 million (approx. EUR 400,000).

It is now possible to impose a sanction of prohibition of business activity for up to two years for permitting illegal work.

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Estonia

LAW

Estonia's Riigikogu amends Family and Employment Laws to recognize same-sex marriage and parental rights

Last summer Estonian parliament Riigikogu adopted amendments to the Family Law Act, giving same-sex couples the legal right to marry. In relation to this the amendments were introduced to the Employment Contracts Act which aim to ensure equal treatment of same-sex families raising children, and to allow equal treatment of all parents in employment relationships when exercising leave rights related to raising a minor child. Parental leaves and paternity leave are intended to enable a parent to care for a child and, after the relevant amendments, these leaves are available to both same-sex and different-sex parents in the same way. For example, the law adds that in the case of same-sex parents, the parent of the child is entitled to paternity leave, irrespective of their sex.

The Estonian Labor Inspectorate publishes its first-ever list of warnings ahead of inspections for 2024.

GUIDELINES

Estonian Labor Inspectorate releases pre-inspection company list for 2024

For the first time, the Estonian Labor Inspectorate has published a forewarning list of companies which will be inspected by the Inspectorate during 2024. The companies have been selected on the basis of various criteria. The list includes entities where no occupational risk assessment has been submitted, where the number of occupational accidents and disputes at the workplace is high, and which field of activity involves higher working environment risk. The purpose of publishing such list is to encourage employers to think more about safety and health at work. It will give the relevant employers the opportunity to check already before inspection that their working environment is safe, the risk assessment is up to date and any other obligations are properly fulfilled.

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Finland

COURT

Equal pay and transfer of business

The Finnish Supreme Court has issued a preliminary ruling (SAC:2024:9) on the obligation to harmonize wages after a transfer of a business. A hospital district had paid different salaries to paramedics performing the same or equivalent work from 1 January 2014 to 16 August 2019, when the paramedics who had received higher salaries had joined it by transfer of business on 1 January 2014. As of 1 May 2014, the hospital district had switched to the municipal general collective agreement for all paramedics, whereby the pay per task of paramedics performing the same work was determined in a uniform manner and the differences in pay were due to the pay supplements paid to the higher-paid paramedics.

The Supreme Court held that the Hospital District had not acted in breach of the requirement of equal treatment laid down in the Employment Contracts Act. The measures taken by the hospital district to eliminate the pay gap as of 1 January 2019 could be regarded as sufficient. However, it is still not possible to derive from the case law any precise maximum generally acceptable period within which harmonization of the pay gap should be achieved.

LAW

Amendments to industrial peace legislation sent out for comments

The Finnish Government has circulated a draft proposal on amendments to the so-called industrial peace for comments. The draft would introduce a number of amendments to the Collective Agreements Act, the Act on the Mediation in Labor Disputes, the Employment Contracts Act and the Maritime Labor Contracts Act. The duration of political industrial action would be limited to 24 hours and other industrial action to a maximum of two weeks. In addition, disproportionate sympathy industrial action and political industrial action exceeding the maximum duration should be avoided. The fine for industrial action in breach of the obligation to respect industrial peace would range from EUR 10,000 to EUR 150,000, and the employee would have to pay compensation (EUR 200) to their employer if they continued to take industrial action which had been declared unlawful by the court after being informed of the judgment.

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France

LAW
Simplification of the French Labor Code

On 15 February 2024, parliamentarians commissioned by the French Ministry of the Economy presented a report on the simplification of the French Labor Code, including several proposals for implementation. These include raising to 250 employees the threshold for the obligation to set up a works council (CSE) with extended prerogatives or to draw up internal regulations (the threshold is currently 50 employees) or allowing young companies with fewer than 50 employees to derogate from collective bargaining agreements (e.g. by not complying with agreed minimum wages) with the individual consent of the employees.

The report also proposes to reduce the limitation period for contesting a termination of an employment contract (currently 12 months) to 2 months. In terms of timing, the draft law on the simplification of the French Labor Code is expected to be submitted to Parliament by the summer. A first presentation of the project is planned for the end of May/beginning of June, after consultation with the trade unions.

COURT
Remote working for medical reasons and home occupation allowance

On the recommendation of the occupational doctor, an employee worked from home for 15 months. At the end of the teleworking period, the employee requested compensation for the occupation of his home for professional purposes. In a decision dated December 21, 2023, the Paris Court of Appeal ruled that if the employee could not claim a home occupation allowance when a business premises was made available, this was not the case when the employee had to work remote at the request of the occupational doctor and not on his own initiative. Consequently, since remote working was indispensable for the protection of his health, it could not lead to a reduction in the employee's remuneration by making him bear the professional expenses generated by remote working. In this case, the employer was ordered to pay the cost of occupying the employee's home for work purposes (EUR 1,800 for the use of 4 square meters for 15 months).

Paris Court of Appeal mandates employer compensation for home office expenses, setting a precedent for remote work initiated for health reasons.

COURT
Damages and breach of the employer's safety obligation

The French Supreme Court has recognized the existence of a new automatic prejudice for employees justifying the payment of damages based on the employer's breach of its safety obligation. In a decision issued on 7 February 2024, the judges ruled that an employee who is the victim of an employer's failure to respect rest periods between two periods of work may, on this basis alone, obtain damages without having to justify any specific prejudice. In this case, the minimum rest period between two shifts was 12 hours (the legal minimum is 11 hours). The employer had not respected this 12-hour rest period, thereby violating its safety obligation and justifying the employee's claim for damages, even though he could not prove any specific prejudice.

Read More

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Germany

It is at the discretion of the works council whether it participates in in works council trainings in in-person trainings or webinars.

COURT
Right of the works council to choose between in-person trainings and webinars

Works councils have a right to necessary training at the employer's expense. During the pandemic, these training sessions were regularly held via webinars, which saved employers travel and hotel costs. Since the end of the pandemic, it has been disputed whether the works council is entitled to reimbursement of travel expenses for face-to-face training if a webinar with the same content would also be possible.

The German Federal Labor Court (BAG) decided on February 7, 2024 in favor of the works council and highlighted the autonomy of employee representation bodies in choosing training formats for their members (Case 7 ABR 8/23). This decision underscores the principle that the format of training—whether online or face-to-face—is at the discretion of the employee representatives, reinforcing their autonomy in training matters. The BAG emphasizes the importance of recognizing the unique benefits that in-person training can offer, such as enhanced networking opportunities and a more engaging learning environment. It sets a precedent for the respect of decision-making rights of employee bodies in training-related issues, highlighting a broader move towards flexibility and choice in educational formats for works council trainings.

COURT
No co-determination of the works council in the use of AI by employees

In the fast-paced world of work, artificial intelligence (AI) is increasingly becoming a tool to enhance productivity and efficiency for many employers. Whether and which co-determination rights the works council can be entitled to in the case of use by employees is controversial. The Hamburg Labor Court has now provided initial guidelines in its decision on January 16, 2024 (Case 24 BVGa 1/24).

In the case, the employer wanted to allow its employees to use generative AI as a new tool to support their work. It published guidelines on the intranet for allowing the use of IT tools with AI at work without the consent of the works council. The employees were allowed to use private AI accounts at their own expense via web browser. The court ruled that the works council's co-determination rights were not violated since the guidelines merely affected the manner of work and did not involve employer monitoring through the use of private ChatGPT accounts. Before using AI the information and consultation rights pursuant to Section 90 (1) No. 3, (2) BetrVG, which expressly mentions AI, must be upheld. However, Section 90 BetrVG only grants information and consultation rights and not co-determination rights.

COURT
Incompatibility of Works Council Chair and the Data Protection Officer (DPO)

The Federal Labor Court of Germany (BAG) decided on the complex issue of holding the roles of the Works Council Chair and the DPO on June 6, 2023 (Case 9 AZR 383/19). The case arose when an employee, who served as both the works council chair and the DPO for a company, was dismissed from his DPO role due to perceived conflicts of interest.

The BAG found that typically, the roles of a works council chair and a DPO are incompatible due to the potential for conflicts of interest. The primary reason is that the works council chair is involved in decisions regarding the processing of personal data within the company, which could compromise the neutrality and objectivity required of a DPO. According to German Federal Data Protection Act and the principles laid out by the European Court of Justice, a DPO must maintain impartiality, particularly in supervising compliance with data protection laws. The court's decision underscored the importance of separating roles within an organization to preserve the integrity and effectiveness of data protection practices. This ruling sets a precedent that emphasizes the need for clear boundaries between the functions of organizational governance and data protection oversight.

Federal Labor Court rules against dual role as Works Council Chairman and DPO.

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Greece

LAW
Reinstatement of seniority allowances

The application of any laws, regulatory provisions, collective labor agreements or arbitration awards that provided for salary increases based solely on seniority has been suspended since 14 February 2012, as part of Greece's austerity measures. Under Law 5053/2023, such suspension is now lifted as of January 1, 2024 and the seniority of employees for pay purposes will resume as of that date, but without retroactive effect. In particular, the suspension period from 14 February 2012 until 31 December 2023 will not be taken into account for calculating seniority allowances.

LAW
Retired employee

The new social security law no. 5078/2023 fundamentally changes the rules applicable to pensioners who elected to continue working.

Under the previous legislation, employees who had retired and elected to continue working were penalized by a 30% reduction in their primary and auxiliary pension. This reduction was replaced by a contribution from the pensioners who continue working at the national social security institution e-EFKA, which is much less than 30% of the amount of their pension. This change undoubtedly provides more incentives for pensioners to continue working.

Furthermore, for the first time the obligation of the employees to inform the employers that they have submitted an application for retirement or they have already retired was introduced.

The new social security law no. 5078/2023 fundamentally changes the rules applicable to pensioners who elect to continue working.

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Hungary

COURT
First judgment in relation to platform work

In judgment No.Mfv.VIII.10.091/2023/7 the Curia (the supreme judicial body of Hungary) for the first time dealt with the issue of platform work. The question was whether courier as a contractor, had an employment relationship with a platform operator that provided intermediary services between customers ordering food and restaurants.

The Curia found that the platform operator did not have a broad right of instruction and control, which proved the existence of subordination, the primary qualifying feature of employment and that the civil contractor's relationship concerned could not be classified as employment.

The fact that platform operator determines the way in which the couriers perform their individual tasks (e.g. wearing of branding elements) and the requirement to be available and to accept a transport within the active period of the contracted period do not constitute a broad employer's instruction within the meaning of the Labor Code. The courier did not carry out his duties by working within the organization of the platform operator, there was no hierarchical relationship and the instructions received in the case in question did not cover all the phases and elements of the work. The fact that the assignment of tasks was done through an application does not in itself justify a subordination either. The verification that the delivery had taken place was necessary to confirm the performance on which the remuneration was based.

The Curia also took into account the fact that the courier had himself allocated the time during which he wished to perform his duties. As regards the form of remuneration, the fact that the platform operator invoiced the courier on the basis of the work carried out every two weeks and that the remuneration partly included an hourly rate for the active period of time actually worked and signed up for, cannot mean that this constituted wages. The fact that the courier activity was carried out using the person's own resources, also negated the existence of an employment relationship.

In judgment No.Mfv.VIII.10.091/2023/7 the Curia for the first time dealt with issue of platform work.

LAW
Employment protection fines to increase as of March 2024

On 14 February 2024, a new Government Decree (25/2024 (II.14.) was adopted on the detailed rules for the amount and imposing of employment protection fines and the Government Decree (115/2021. (III. 10.) on labor supervision activities will also

amended. As a result, fines for violations of occupational health and safety and labor law regulations will increase significantly in Hungary as of March 1, 2024.

Employers should be aware that the lower limit for employment protection fines will be doubled to HUF 100,000, while the upper limit will be increased tenfold to HUF 100 million per employee depending on a number of factors such as the number of violations, the extent of, and/or the duration of the endangerment.

In addition, the minimum fine for labor law violations will increase fivefold to HUF 150,000 and in some cases, it may even reach the amount of HUF 25 million.

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Ireland

COURT
Right to silence in the employment law context

The High Court recently handed down an interesting decision in relation to the right to silence in an employment law context, and in circumstances where there is a concurrent criminal investigation being conducted.

It was alleged that certain ESB employees, including the defendant, were demanding cash payments for expediting the completion of works by the ESB. This was subsequently reported to An Garda Síochána, who commenced an investigation into the matter.

ESB asked the defendant to provide answers to questions relating to involvement in the alleged offences. The letter referred to the defendant's contractual obligation to cooperate with ESB and his obligation to 'obey all reasonable and lawful directions' of the ESB. The plaintiff argued that the defendant, in refusing to answer the questions, repudiated his contract of employment or alternatively, his contract of employment can be treated as having been terminated.

The court ultimately held that the defendant was entitled to refuse to comply with the directions issued to him for the time being. However, this right will cease as soon as the criminal investigation has finished, or when interest in performance by the defendant of his contractual obligations outweighs the risk of infringement the constitutionally protected right to silence.

LAW
New employment law fines

New fines for breaches of certain employment laws were recently introduced in The Workplace Relations Act 2015 (Fixed Payment Notice) Regulations 2023.

The Regulations state that where employers fail to consult with employees' representatives and provide them with mandatory information where there is a collective redundancy the fine is EUR 2,000.

A fine of EUR 1,500 applies when an employer fails to provide an employee with terms of employment within one month of the start date of their employment or provides false/misleading information to an employee.

When an employer fails to provide an employee with a written statement of wages and the nature and amount of any deductions from wages the fine is EUR 1,500.

A fine of EUR 1,500 applies when an employer does not provide an employee with a statement of their average hourly rate of pay for a pay reference period on request by the employee.

Where an employer fails to provide employees with a written statement on the distribution of tips and gratuities or fails to treat a service charge as a tip the fine is EUR 750, and finally, a EUR 500 applies where an employer does not display a 'tips and gratuities notice' or a 'contract workers tips and gratuities notice'.

Ireland is introducing fines for violations in employment practices, aimed at enforcing transparency and fairness in employee-employer relationships.

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Italy

LAW
Italy-Japan Social Security Agreement enters into force

On April 1, 2024, the international mobility of employees between Italy and Japan will be eased by the entry into force of the Social Security Agreement between the two countries ("Agreement Between the Italian Republic and Japan on Social Security" of February 6, 2009). Under said Agreement, Italian employers sending employees to Japan will be able to make payments of social security contributions related to old age pension, invalidity and unemployment in Italy, in favor of employees posted to Japan, for a maximum period five years. This period can be extended upon request by the employer and agreement between the social security authorities of the two states. Similar provisions apply with regard to employees posted by Japanese companies to Italy. However, it is important to note that the application of the Agreement is partial, being limited to specific social security matters. As a result, some contributions not covered by the Agreement, may have to be paid in both countries.

LAW
The possibility to conclude fixed-term agreements up to 24 months was extended until December 31, 2024

With the so-called Thousand Extensions Decree (finally voted into law on February 21, 2024 and not yet published in the Official Gazette when preparing this note) the possibility to have fixed-term employment relationships of up to 24 months for needs of a technical, organizational or productive nature identified by the parties was extended until December 31st, 2024, if the matter is not otherwise regulated by collective agreements.

As a reminder, in Italy it is possible to conclude fixed-term employment agreements without any need of a cause, up to 12 months. Until May 2023, the possibility of exceeding 12 months was subject to very restrictive legal grounds or to the cases provided by collective agreements. Subsequently, the possibility was introduced, in the absence of reasons provided by collective agreements, to reach 24 months for "for needs of a technical, organizational or productive nature identified by the parties" but only until April 30, 2024. Now this possibility has been extended until December 31, 2024.

COURT
The so-called “Jobs Act” reform of collective dismissals is constitutional

With decision No. 7/2024 filed on January 22, 2024, the Constitutional Court rejected multiple constitutional doubts raised regarding the reform of collective dismissals by the so-called Jobs Act. As it is well known, the Jobs Act has all but eliminated the remedy of reinstatement in the case of collective dismissals deemed unlawful, replacing it with economic compensation. The Constitutional Court decision upheld the constitutionality of a remedy consisting of a compensatory economic indemnity for damages suffered by employees unlawfully dismissed in a collective dismissal, instead of the former reinstatement remedy.

GUIDELINES
Data Protection Agency guidelines on emails management

With **guidelines of December 21, 2023 (published on February 6, 2024)** the Data Protection Agency (“Garante per la protezione dei dati personali – GPDP”) held that email systems that collect fairly common metadata (such as send and delivery time, sender and recipient, subject and size of attachments) must (i) limit the retention period of emails to a maximum of seven days (which can be extended by 48 hours if certain conditions are met), or, alternatively, (ii) be subject to an agreement with the works council or an authorization by the labor inspectorate, according to existing legal provisions which, although controversial, have mostly been interpreted in a way that does not require such an agreement/authorization.

Said guidelines caught many companies by surprise, as they in fact constitute a change from the past and also because breach of the statutory provisions constitutes a crime and is punishable by a fine of EUR 154 to EUR 1,549 or arrest from 15 days to one year. The outcry originated by the guidelines pushed the Data Protection Agency to pass a **resolution on February 22 (but released when this newsletter was being finalized, on February 27, 2024)**, launching a public consultation and postponing the effectiveness of the prior guidelines, until 60 days after the consultation closes. The consultation will begin with the publication in the Official Gazette (which has not yet occurred) of the February 22 resolution and will last 30 days. Employers should bear in mind that the provisions on which the Data Protection Agency had opined, are statutory provisions, the effectiveness of which is not suspended: since the matter will not end here anyway, it is recommendable that employers check what their companies have done in this respect so far.

Italy's Data Protection Agency introduces strict email management guidelines.

COLLECTIVE AGREEMENTS

National collective bargaining agreement for Players, Actresses and Actors in the movie-audiovisual production sector.

On December 20, 2023, employers and unions reached an historic agreement: the first CCNL (national collective labor agreement) for actresses and actors in the movie-audiovisual sector. The bargaining agreement identified contractual types, establishing a dual track: employed and self-employed, defined minimum wages and the operational modalities of performance. It also addressed issues such as the use of artificial intelligence, promotion of equal opportunities, prevention of gender-based violence with the intervention of the Intimacy coordinator, and emphasized non-discrimination for LGBTQ+ workers. It provided the development of an insurance coverage for pension and health care, and a specific supply chain protocol for union representation, to be implemented by March 1, 2024. The collective agreement includes a monitoring system to accompany its implementation and identify critical issues and best practices.

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Liechtenstein

LAW

Things to know about the reference letter under Liechtenstein employment law

Employees under a Liechtenstein employment contract are entitled to an employer's reference. The employee must explicitly request a reference from the employer. The employer does not have to take action on its own initiative.

The employer is free to choose the wording and sentence structure. There are strict limits to the description of the activity. On the other hand, the employer has considerable room for judgement when assessing leadership and performance and is free to decide which positive and negative characteristics and skills they want to emphasize more than others.

An employer's reference must be true and contain all essential facts that are important for an overall assessment and in which a future employer could have a legitimate interest. The employer must vouch for the accuracy of the reference. If it later transpires that important statements in the reference are incorrect, the issuer must reclaim and correct the reference. For example, if it later transpires that the employee has embezzled money from the employer. If he fails to do so, the new employer, who is unaware of this and hires the employee in good faith, can in principle hold the old employer liable for the resulting damages. In addition to the duty to be truthful, the employer has a duty to formulate the reference in a favorable manner. The reference must not unjustifiably impede the employee's professional advancement.

Employees are entitled to a truthful and balanced reference from employers, which is subject to legal accountability for inaccuracies.

LAW

Duties of the employee under a Liechtenstein employment contract

The employee's main obligation is to perform work. However, the employee owes neither a work nor a work result, but must make his work available to the employer in accordance with the contract for a specific or indefinite period of time. The employee must perform the contractually agreed work in his own person, unless otherwise agreed or evident from the circumstances.

One of the key criteria for distinguishing an employment contract from other contracts for work performance is the employee's obligation to follow instructions and their integration into the employer's organization, or the employer's right to issue instructions. The employer can issue general orders and give specific instructions regarding the performance of work and the behavior of employees in the company or household. Employees must follow these in good faith.

The obligation to follow instructions on work performance and on targets regarding the type, scope and organization of the work to be performed means that there is a certain relationship of subordination between employer and employee. The employer can revoke or amend his instructions at any time and can delegate the right to issue instructions to senior employees or third parties.

Liechtenstein employees are bound by the employer's instructions regarding the performance of work and their behavior.

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Lithuania

When the employee is at the employer's disposal, this is working time and must be paid, so even passive on-call time can be considered working time.

COURT
Passive on-call time at home and its payment

The Supreme Court of Lithuania issued a judgment in a case that focused on whether time spent at home on duty should be treated as working time or rest time. The Court stated that the main criteria for distinguishing between them are the intensity of the restrictions imposed on the employee (place and time), i.e. the obligation to be present at a place determined by the employer, regardless of whether this place coincides with the employee's residence, and the content of the restrictions imposed on the employee, i.e. the strength of the impact on his personal and social interests.

Therefore, in the present case, given the intensity of the restrictions imposed, the employee's on-call time qualifies not as rest time, but as working time, and the employee must be paid for his on-call time as if it were working time. Note that if the employee is at the employer's disposal, this is working time and must be paid, so that even passive on-call time can be considered as working time.

Read More

COURT
Annual leave for the directors of the company

The managing director (the CEO) of a company often has broad authority to act on behalf of the company. Risks arise when the CEO of a company wants to take annual leave.

Recently, the Supreme Court of Lithuania heard a case in which it ruled that the CEO of a company does not have the right to decide whether to take annual leave and how to pay for it. A manager, by reason of his position, does not represent the employer by concluding an employment contract with himself or by otherwise deciding on the performance of his employment rights, including the granting of leave.

It is important to note that matters which do not belong to the competence of the manager, in this case particularly the granting of leave by the manager, should be dealt at the level of the board of directors or, in its absence, at the level of the general meeting of shareholders. Failure to properly exercise this duty exposes the employer to the full risk of the consequences of non-compliance.

LAW
Amendments relating to the trial period for employees

The Parliament of the Republic of Lithuania has registered amendments to the Labor Code of the Republic of Lithuania proposing to shorten the trial period for employees to one month.

According to the current regulation, the trial period of an employee cannot exceed three months. In practice, there are situations when an employer dismisses an employee at the end of the trial period, not because of the employee's unsuitability, but to avoid paying the higher wage stipulated after the trial period.

Therefore, this amendment proposes to introduce a provision stating that the trial period should not last longer than one month. It is hoped that a shorter trial period will be conducive to the protection of employees' rights to social and financial security and the prevention of employer's abuse. If this amendment gets the approval of the Parliament of the Republic of Lithuania, it will enter into force on 1 July, 2024.

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Malta

LAW
New Employment Agencies Regulations

The new Employment Agencies Regulations will come into force on April 1, 2024 and aim to regulate the labor market and protect the rights of employees in Malta. These Regulations apply to recruitment agencies which recruit persons for employment in or outside of Malta, temporary work agencies and outsourcing agencies. For such agencies to continue operating, the Regulations stipulate that a valid license needs to be acquired until June 2024.

The Regulations also require the agency involved in temporary or outsourcing activities, to provide a bank guarantee, the amount of which depends on the number of employees. Once a license is acquired, this is valid for a period of 1 year and can be renewed every year, for a period not exceeding 2 years. Companies who recruit employees to work for their own business are not affected by these Regulations.

The Regulations also list down the reasons upon which the Director of Employment and Industrial Relations may refuse or revoke a license. These include, amongst others, instances where the agency goes against regulations or license requirements, whenever its actions are contrary to its objectives, or when it neglects to notify the director of any changes to its operations.

Failure to comply with the provisions of these Regulations can lead to the imposition of fines, the amounts of which range from EUR 5,000 to EUR 30,000.

Read More

> **For employment agencies to continue operating, the regulations require that a valid license be obtained by June 2024.**

COURT
Right to a fair hearing in cases of dismissal

In Farrugia vs Schembri, the Industrial Tribunal compared the notion of unfair dismissal with one of the most prominent fundamental principles of natural justice. The Tribunal explained that the right to a fair hearing is to be central in any dispute, ensuring that constitutional rights are adhered to on every level.

In its consideration, the Tribunal delved into the vitality of advising employees prior to initiating disciplinary action against them. It explained that any employer has the duty to inform his employee, by writing, of any misconduct, and give him the opportunity to defend himself from any allegations made in his regard. It continued by insisting that no employee should be put in a position where he is not able to defend his position appropriately.

The Tribunal stated that the process of dismissing an employee should start with the notification of a charge, in writing, listing any wrong doings, as well as the date and time of the hearing of the disciplinary board. The employee should further be given the opportunity to bring witnesses and be assisted by a person of his choice.

Consequently, the Tribunal decided that the plaintiff's termination was unjust and illegal, based on the fact that her employment was suddenly terminated without her being given the opportunity to present her case, breaching her fundamental right to a fair hearing.

> **Every employer is required to give an employee written notice of any misconduct and an opportunity to defend himself or herself against any allegations made.**

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Poland

LAW
Remote hearings in labor law cases.

Until recently, Polish regulations did not allow online hearings in civil proceedings. The situation changed after the outbreak of COVID-19. At that time, a regulation was introduced allowing court hearings to be conducted by means of technical devices enabling it to be conducted at a distance with simultaneous direct transmission of video and audio (remote hearings). Remote hearings, despite initial technical difficulties, have proved successful in practice.

The provisions providing for remote hearings were only supposed to be in force until 30 June 2024. However, the legislator decided to transfer these provisions permanently to the Code of Civil Procedure. These provisions will take effect from 14 March 2024.

Pursuant to the new regulation, the judge may order the conduct of a hearing by means of technical devices that allow it to be conducted remotely if this is not prevented by the nature of the actions to be performed and the conduct of the remote hearing guarantees the full protection of the procedural rights of the parties and the proper course of the proceedings. This regulation is also applicable to labor law cases.

Poland permanently adopts remote hearings in civil proceedings, enhancing procedural efficiency and rights protection.

GUIDELINES
The end of attendance bonuses?

The Polish Minister of Labor recently stated in a press interview that 'attendance bonuses should be banned'. This could result in serious consequences for employers. Such bonuses are very popular in Poland and sometimes constitute a significant part of an employee's salary. According to the Minister, this causes employees to hide their illness from their employer (which is an unacceptable).

Currently, the law does not regulate this issue at all, but the courts, as a rule, consider such bonuses to be legal. However, this may change with the minister's statement. It has the full support of the trade unions, which argue that such bonuses lead to health discrimination and, in addition, affect safety as employees are not fully able to perform their duties.

It is currently unclear whether the ban on such bonuses will be introduced into national law or whether the State Labor Inspectorate will more closely analyze workplace remuneration regulations in this respect. However, it is possible that employers will soon have to look for another way to motivate employees.

Polish Labor Minister calls for a ban on attendance bonuses, sparking debate over workplace incentives and employee health transparency.

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Portugal

COURT
Pardon and amnesty for offenses – World Youth Day

In August 2023, Portugal hosted World Youth Day, which is a gathering of young people from around the world to meet with the Pope.

On the occasion of the event, a pardon of penalties and an amnesty for offenses were established, regulated by Law no. 38-A/2023, of August 2, which covers criminal sanctions relating to offenses committed up to 19 June 2023, by people aged between 16 and 30, accessory sanctions relating to administrative offenses and sanctions relating to disciplinary offenses and military disciplinary offenses, committed up to the aforementioned date.

With relevance to employment relations, it has been debated whether the amnesty in question applies to private employment relations, a matter that was recently analyzed by the Lisbon Court of Appeal, which concluded, in short, that to admit such a possibility would be to empty the [private] employer's disciplinary power, representing, at the same time, an interference by the State in the management and organization of private companies, in violation of the constitutional principles of free enterprise.

Read More

LAW
Collective redundancy and outsourcing

The Dignified Work Agenda - designation given to the amendments to Portuguese labor legislation, implemented in May 2023 - introduced two particularly relevant novelties within the scope of the collective dismissal procedure.

The first concerns the increase in the legal compensation due to employees covered by a collective redundancy, which went from 12 to 14 days of basic pay and seniority for each full year of seniority. As a result of this change, the employee covered in a collective redundancy is now entitled to 14 days' compensation for the period of the contract from 1 May 2023 onwards.

The second relevant change concerns the ban on outsourcing, whereby the employer who resorts to a collective redundancy is prevented from using third parties to fulfil the needs that were provided by the employees made redundant, in the 12 months following the termination of their employment contracts.

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Republic of Moldova

> **Moldovan labor union is not required to opine on the dismissal of the employee who is not its member.**

LAW
New amendments to Moldovan Labor Code on government agenda

Moldova continues its efforts to harmonize the labor legal framework with relevant European Union standards. In this context, several new amendments to Moldovan Labor Code have recently been submitted for government review.

The proposed amendments define the "work in shifts" and excludes the "lunch break" from the rule that the mandatory minimum duration of the work interruption between two consecutive shifts cannot be less than the double duration of the working time of the previous shift. Currently, this mandatory rest duration also includes the lunch break period, which makes the organization of the work process for the employers using shift work very complicated from a logistical perspective.

The pregnant women, women who have recently given birth, and breastfeeding mothers will be eligible to engage in night work, work on rest days, and work on public holidays. For this purpose, these employees shall submit a written request and provide a medical assessment of their health status to the employer, whose consent for such a work is also required.

There are conditions and documentation requirements for a new type of unpaid leave, which is for the employee to care a relative or a household member. Such an unpaid leave will serve as an additional legal ground for the employment suspension (i.e. employment suspension = no work is performed by the employee and no salary is paid by the employer) at the employee's initiative.

Read More

COURT
Labor union's opinion in dismissal is contingent on the employee being the member of the union

In October 2023, the Moldovan Supreme Court has overturned a decision of the appeal court, sent the case for retrial, and found that, while obtaining a consultative opinion from a trade union is a legal safeguard, providing special protection against unjust and arbitrary dismissals, this mechanism is obligatory solely when the dismissed employee is affiliated with the

union. If not, such a legal requirement shall be disregarded by the employer.

In this particular case, the Supreme Court of Justice ascertained the failure of the appeal court to address the critical issue of whether the employee, at the time of the challenged termination, held membership in the labor union at the company level, a prerequisite for mandatory consultation before dismissal.

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Romania

LAW
Taxation and social contributions for telework allowance

Effective January 1, 2024, companies are now required to pay income tax and social contributions for the telework indemnity provided to employees to cover expenses incurred during telework activities. Previously, a maximum monthly amount of RON 400 was exempt from income tax and social contributions if granted to teleworkers.

LAW
Wage payment regulations

Starting January 1, 2024, employers must increase the wages of employees who have been paid the minimum wage for over 24 months, regardless of full-time or part-time contracts. The 24-month period starts from January 1, 2022, for existing employees, and for those hired after this date, it is calculated individually from the employment start date.

Negotiations for the increased basic salary will be conducted with eligible employees, and any changes will be formalized through an additional agreement, signed by both parties, adhering to legal provisions and mutual consent.

To comply with these legal requirements, employers must consider the minimum gross basic salary, as determined by the applicable normative act.

> **Employees with more than two years of service can no longer be paid with the minimum wage.**

LAW
Employer obligations to prevent and combat gender-based and moral harassment in the workplace

The Government approved the Methodology for Preventing and Combating Gender-Based and Moral Harassment at the Workplace on October 17, 2023.

This Methodology outlines obligations and measures to prevent and address these issues, promoting gender equality and a discrimination-free work environment.

The Methodology defines responsibilities and action plans to strengthen gender equality, enhance social policies, prevent discrimination, and foster a non-discriminatory society.

It also identifies scenarios conducive to gender-based and moral harassment in workplaces and establishes protocols for detection, monitoring, and penalization of such instances, including the possibility for victims to lodge complaints and reports.

Employers are urged to familiarize themselves with the obligations and directives outlined in the Methodology and integrate them into internal protocols and procedures no later than 6 months after its entry into force.

> **The Government has put in place a comprehensive framework to promote gender equality and create a discrimination-free work environment by outlining employer obligations, preventive measures and protocols for dealing with harassment.**

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Slovakia

The decision of the employer's statutory body to grant a performance bonus to an employee binds the employer even in the event of non-compliance with the internally regulated approval process, unless the employee knew or should have known about the deficiency.

COURT

(Un)possibility of changing the employer's decision to award a performance bonus to an employee

By decision of the statutory body of the employer - the Board of Directors (the employer was a bank) to the employee was granted an extraordinary performance bonus. The legal regulation concerning banks allows to grant a bonuses as non-callable components of salary only in accordance with the relevant legal regulation, internal regulations of the bank into and in case that the economic situation of the bank allows it.

However, the decision of the statutory body of the employer or a member of the statutory body of the employer to grant a performance bonus to an employee is binding on the employer even in the case of non-compliance with the internally regulated approval process, unless the employee knew or should have known about the deficiency (exceeding the authority of the statutory body of the employer or a member of the statutory body of the employer). There is no legal protection against the retroactive withdrawal of an employee's right to a performance bonus that has already become an eligible component of his or her salary.

LAW

Liability for unpaid wages in supply chains for specified types of services

By amending the Labor Code, Slovakia has implemented Directive 2014/67/EU. The European Commission addressed a reasoned opinion to Slovakia, in which objected to the incompatibility of Slovak national legislation with the Directive and stated that the condition in which the service provider is liable only for the claims of (cross-border) posted employees creates an obstacle to the free provision of services. Similar inconsistencies in the implementation of the Directive have been reported by other Member States, but their arguments have not been accepted by the European Commission.

Slovakia has prepared an amendment to the Labor Code, the object of which is to regulate the conditions of liability of a service provider in Slovakia for the payment of wages not paid to an employee by the employer if the latter is a direct subcontractor of the service provider (the regulation specifies the conditions under which such liability exists, its scope and the areas in which it applies). The main objective of the proposal is to extend liability to national situations, i.e. not only in the case of cross-border provision of services.

The amendment to the Labor Code is currently still in the legislative process and has not yet been approved by Parliament.

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Slovenia

LAW
Minimum wage and other payments

In January 2024, Slovenia announced updates to the minimum wage and rates for various forms of work. A revision in the minimum wage for full-time employment was disclosed, setting it at EUR 1,253.90 gross starting from January 1, 2024.

Additionally, updates were made to the minimum gross hourly rates for temporary and occasional work by pupils, students, and pensioners. For such work, the hourly rate has been fixed at no less than EUR 7.21 gross. For pensioners engaging in temporary or occasional work, the new regulations, effective from March 1, 2024, to February 28, 2025, also cap the annual gross income at EUR 10,781.07.

The minimum wage for full-time work as from 1 January 2024 is EUR 1,253.90 gross.

COURT
Becoming insured as a European Commission staff member

On 19 december 2023, the judgment of the Supreme Court VIII Ips 28/2023 was published, from which it follows that the employment of the European Commission employee and the inclusion in the social security benefits scheme for officials and other servants of the European Communities precludes the obligation to simultaneously include such an employee in the compulsory pension and invalidity insurance on the basis of his status as a partner and manager in the Republic of Slovenia, and thus also the determination of the characteristics of the insured person for the period of that employment and, consequently, the payment of the contributions to the defendant.

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Spain

Spain announced an increase in the interprofessional minimum wage to EUR 1,134 per month in 14 payments.

LAW
New minimum wage in Spain for 2024

On February 7, 2024, the increase in the minimum interprofessional wage was published in the Official State Gazette of Spain. The Spanish government and the unions reached an agreement without the employers' organization in order to raise the minimum interprofessional wage for the year 2024.

This increase is retroactive to January 1 and goes from a gross monthly amount in 2023 of EUR 1,080 in 14 payments to the new total amount of EUR 1,134 per month in 14 payments for full-time workers. As a result, the Spanish government and unions have increased the minimum wage by 54 euros per month compared to the amount set for 2023.

In the previous legislature, the Spanish government raised the minimum wage from EUR 735 to EUR 1,080 in 2023, an increase of 47%. With the increase in the minimum wage agreed for 2024, the minimum wage in Spain has increased by 54% since 2018.

COURT
The notification of the start of a sick leave

Recently, the Spanish National High Court of Spain ("Audiencia Nacional"), in judgment number 136/2023, confirmed that companies could require employees to notify them when they start a sick leave, although in Spain since April 2023 there is no longer a legal obligation for the employee to deliver to the company the medical leave certificate issued by the general practitioner.

The case concerns a collective conflict in which a company demanded its employees to notify in case of starting a sick leave, as well as regarding the use of medical hours. While the trade union argued that this practice infringed the applicable collective bargaining agreement, the company maintained that the notification was adequate and in accordance with that collective bargaining agreement and furthermore was necessary for the proper organization of work.

Finally, the Court rejected the union's collective dispute claim in the absence of prejudice to the employees, emphasizing the difference between the terms "notification" and "communication" of absences, and their "justification". Thus, the fact that there is no longer a legal obligation in the Spanish law for the employee to provide the company with the sick leave report corresponding to a sick leave, does not imply that the company cannot oblige the employee to notify that he or she is absent from work.

The National Court of Spain rules that companies can require employees to report sick, even though there is no legal requirement to provide medical certificates.

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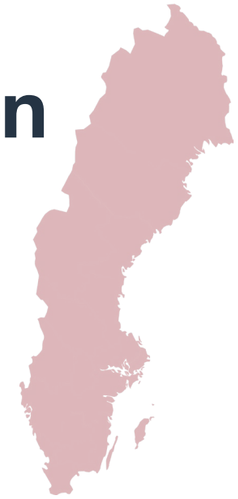
Sweden



The Labor Court found that the company's policy of requiring vaccination for employees who work closely with at-risk groups was justified and in line with Swedish health recommendations.

COURT
Suspension of nurses amid vaccination refusal

In December 2023, the Swedish Labor Court concluded that a private healthcare provider was right to suspend three nurses who refused to get vaccinated, during the covid-19 pandemic. During the pandemic, the healthcare provider had a policy requiring employees to be vaccinated if working closely with patients or other care recipients who were 65 years or older, or who for other reasons belonged to a so-called risk group. The policy was in line with Swedish authorities´ general recommendations regarding vaccination.

The representatives of the employees argued that the company´s behavior was contrary to Article 8 (2) of the ECHR and the personal integrity of the employees, while the employer´s representatives highlighted the employer´s right to manage and distribute the work at the workplace. The Swedish Labor Court considered the policy to be justified and that it was legitimate in relation to the purpose of protecting the patients.

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Switzerland

In 2024, the Federal Council will leave the quotas for workers from third countries and EU/EFTA service providers unchanged and maintain a special quota for workers from the UK.

GUIDELINES
Available quotas for third country nationals workers for 2024

In 2024, the Federal Council will leave the quotas for workers from third countries and EU/EFTA service providers unchanged and maintain a special quota for workers from the UK. The decision supports the Swiss economy by ensuring the recruitment of skilled workers, with a specific quota for workers from non-EU countries and the UK.

However, the immigration of workers from third countries is limited: admission depends on the needs of companies, follows the general economic interest of Switzerland and considers the priority of domestic workers as well as EU/EFTA workers. The quotas of 2023 will be maintained, allowing the admission of 8,500 qualified third-country workers in 2024: 4,500 with a B residence permit and 4,000 with a L short-term residence permit.

There will be also 3,000 quotas for short term residence permit and 500 for permanent residence permit for workers from EU/EFTA countries who work more than 90 or 120 days per year.

LAW
Paternity leave or leave for the other parent

From January 1, 2024, the terms "paternity leave" and "paternity allowance" are replaced in the law by "leave for the other parent" and "allowance for the other parent". This change was made following the introduction of the "Marriage for All" project in 2022, where same-sex couples can legally marry. As a result, the mother's wife is now considered a co-parent if she was married to the mother at the time of the child's birth and if the child was conceived through artificial insemination.

Thus, the father of the child or the mother's wife who is employed is entitled to two weeks' leave, which can be taken in weeks (including weekends) or individual days. In the case of part-time work, the leave entitlement is calculated according to the degree of employment. The leave must be taken within six months of the child's birth. The leave is financed by loss-of-earnings benefits (EO).

The mother's wife is now also entitled to two weeks' leave after the birth of a child.

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