Littler The Global Guide Quarterly

Labor and employment law updates from around the globe

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Read the latest headlines from our featured countries.

Australia

Victorian Labour Hire Licensing Update

New Legislation Enacted

Author: Naomi Seddon, Shareholder - Littler United States

From October 30, 2019, heavy penalties will apply to labor hire providers who operate without a license and to businesses that use unlicensed labor hire providers in Victoria. Similar schemes apply in Queensland (since 2018) and in South Australia from November 1, 2019. A company taken to provide labor hire services must hold a valid labor hire license, unless they fall within one of the exceptions set out in the Regulations. To obtain a license under the Victorian scheme, providers must pass a "fit and proper person test" and demonstrate compliance with workplace laws, labor hire laws and relevant standards.

New Christmas Eve Public Holiday for Queensland from 2019

New Order or Decree

Author: Naomi Seddon, Shareholder - Littler United States

In September 2019, the Queensland Government announced its intention to introduce a new public holiday in Queensland from December 2019 whereby Queenslanders will be entitled to the night before Christmas as a half-day public holiday. It is intended that the public holiday hours will commence at 6pm on December 24. Industrial Relations Minister Grace Grace said the proposed law change would mean workers could decline to work after 6pm on the night before Christmas, or be compensated with public holiday penalty rates if they are scheduled to work from 6pm onwards. Similar laws are already in place in South Australia and the Northern Territory. The idea will be open to public comment in Queensland for the next month, but the government plans to change the law before Christmas this year and it is expected that the new law will come into effect.

Federal Court Defines Meaning of a "Day" for Purposes of Personal Leave

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

Under the Fair Work Act 2009, employees are entitled to 10 days of paid personal/carer's leave per year. The Act does not define a "day" for this purpose and there is inconsistency on this issue within the Act. In August 2019, the Full Bench of the Federal Court handed down a decision regarding the meaning of a "day" for the purpose of personal/carer's leave under the Act. The Court concluded that a "day" of personal leave referred to a "working day." A "working day" is based on the portion of a 24-hour period that would otherwise have been allotted to work if the person had not taken leave.

Fair Work Commission Finds Dismissal for Social Media Posts Harsh

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

A recent FWC decision confirms that employers are entitled to manage their employee social media use outside of the workplace, but the FWC will pay careful attention to the context and circumstances surrounding an employee's conduct when deciding whether a dismissal for a breach of a social media policy is warranted. The employee's personal circumstances including their psychological state at the time the conduct took place, the impact on the employer's business and reputation, as well as the impact on other employees needs to be considered. Of note, in this case, although the company had a social media policy that was rolled out to its employees, the company did not conduct education or training on the policy and this was taken into account by the FWC in determining that the dismissal was harsh. As such, companies should ensure that they not only have adequate policies in place but that employees are trained regularly on workplace policies.

Fair Work Commission Defines "Worker" to Include "Carer" for Purposes of Anti-Bullying Jurisdiction

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder - Littler United States

The Fair Work Commission has permitted a foster carer to have legal representation in respect to a stop-bullying order application. The respondent charity raised a jurisdictional objection on the basis that the carer was not defined as a 'worker' under the Fair Work Act 2009 and was therefore ineligible to bring an application under the provisions of the Act. However, the Commission ultimately concluded that the carer was a 'worker'. In making this finding, the Commission considered relevant the fact that the worker had entered into a Foster Care Agreement, which provided further support for the finding that the work being performed was 'for' the charitable organization.

Brazil

Digitalization of Documents

New Legislation Enacted

Author: Renata Neeser, Shareholder - Littler United States

On September 20, 2019, Law 13.874/2019 was enacted and is already in effect. This law, known as the Economic Freedom Act, modifies a few bodies of law, including Law 12.682/2012 that specifically sets procedures to create and store documents in electronic format. Under the new rules, after documents have been digitized and once the integrity of the digital document has been verified, the original may be destroyed (except for documents of historical value) and, after the respective statutes of limitation have run, they can be deleted. This may resolve once and for all the question of whether wet-ink original HR documents must be kept indefinitely.

Brazilian Employee Booklet Goes Digital

New Legislation Enacted

Author: Renata Neeser, Shareholder - Littler United States

Under a new law, known as the Economic Freedom Act (Law 13.874/2019), which was enacted on September 20, 2019, and is already in effect, all employees in Brazil must have an employee booklet (CTPS), which includes employee's personal information and employment history. Additionally, the new law introduced several changes to the format, content, and required updates of the CTPS. Among other changes, the new CTPS will be issued only electronically (except in some circumstances) and will display only the employee's taxpayer identification number

and no other types of identification. Employers will have five business days to update the CTPS (up from the former 48-hour requirement), and the updates will eventually be made electronically.

Control of Working Hours

New Legislation Enacted

Author: Renata Neeser, Shareholder - Littler United States

Under the new Economic Freedom Act (Law 13.874/2019), which was enacted on September 20, 2019, and is already in effect, employers will no longer need to have the working hours posted in a bulletin board. Such information must be incorporated into the employees' registry. Mandatory control of working hours, which was applicable to employers with more than 10 employees, now applies only to those with more than 20 employees. The new law also allows timekeeping "per exception," meaning that only overtime is recorded, provided that there is an individual or collective agreement in place.

TST Rules in Favor of Full Release

Precedential Decision by Judiciary or Regulatory Agency

Author: Renata Neeser, Shareholder - Littler United States

On September 11, 2019, the Fourth Tribunal of the Superior Labor Court (TST), the highest labor court in Brazil, unanimously ruled that if the legal requirements are met, it is not possible to question the will of the parties involved and the merit of their agreement. Therefore, with the mandatory representation by counsel of the employee during the proceedings, the parties' private settlement with general and unrestricted release of claims must be deemed valid and ratified by the court.

eSocial: Electronic Reporting to Be Simplified

New Regulation or Official Guidance

Author: Renata Neeser, Shareholder - Littler United States

Technical Note # 15/2019 (as amended) has brought several modifications to eSocial's layout (version 2.5), the electronic reporting system for employers. The main change was the conversion of some fields from "mandatory" to "optional," such as, for example, the field related to admission's documents (event # S-2200), which no longer needs to be filled out. Additionally, several events have been dismissed, such as event # S-1300 (employer's union fees). Under the new Law 13.874/2019, eSocial will be replaced by a simplified version and layout, which will determine how and which information must be reported into the national system, as well as the timeline for the replacement/elimination of several obligations. In the meantime, employers are required to continue using the current system, as applicable to its revenue/tax band.

Canada

Significant Amendments to Federal Canada Labour Code, Effective as of July 29, 2019 and September 1, 2019

New Legislation Enacted

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel - Littler Canada

With some Canada Labour Code (CLC) amendments in Bill C-44, the Budget Implementation Act, 2017, No. 1 (Bill 44) having come into force in 2017 and earlier in 2019, some additional amendments in Bill C-44 came into force as of July 29, 2019. They relate to, among other things, the employee complaint procedure, the transfer of the powers, duties and functions of appeals officers, and the transfer of responsibility for unjust dismissal complaints to the CIRB.

Bill C-63, the Budget Implementation Act, 2017, No. 2 (Bill C-63) and Bill C-86, the Budget Implementation Act, 2018, No. 2 (Bill C-86) came into force on September 1, 2019. Key amendments to the CLC in Bill C-63 relate to the flexibility of work arrangements, overtime, shift changes, leaves of absence, and vacation. Key amendments to the CLC in Bill C-86 relate to notice of work schedule, breaks, rest periods, vacation, minimum length of service requirement, leaves of absence, and continuity of employment.

Federal Accessible Canada Act Proclaimed in Force as of July 11, 2019

New Legislation Enacted

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel - Littler Canada

Bill C-81, An Act to Ensure a Barrier-free Canada was proclaimed in force as of July 11, 2019, thereby enacting the Accessible Canada Act (ACA), which applies to federally-regulated organizations in the private and public sectors. The stated purpose of the ACA is to remove barriers for persons with disabilities in relation to employment, among other things. Organizations subject to the ACA are required to prepare and publish accessibility plans and establish processes for receiving and addressing feedback with regard to those plans.

Bill 2, An Act to Make Alberta Open for Business, Amends Alberta's Employment Standards Code and Labour Relations Code

New Legislation Enacted

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel - Littler Canada

Alberta's Bill 2, An Act to Make Alberta Open for Business (Bill 2), received Royal Assent on July 18, 2019. Bill 2 made amendments to Alberta's *Employment Standards Code* relating to holiday pay and overtime agreements that came into force on September 1, 2019. It also made amendments to Alberta's Labour Relations Code relating to union certification votes and marshalling proceedings that came into force on Royal Assent. Changes to employee supports, also included in Bill 2, will be coming into force on October 1, 2019.

Substance Not Form Will Determine Independent Contractor or Employee Status

Precedential Decision by Judiciary or Regulatory Agency

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel - Littler Canada

The Supreme Court of Canada recently held that the parties' agreement (in this case, a franchise agreement) will not be determinative in determining employee or independent contractor status, and that a highly contextual and fact-specific inquiry into the actual and substantive nature of the parties' relationship must be conducted.

Incentive Plan Compensation Documentation During Reasonable Notice Period

Precedential Decision by Judiciary or Regulatory Agency

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel - Littler Canada

In a recent decision, the Ontario Court of Appeal (OCA) considered whether a terminated employee was entitled to damages in lieu of a lost opportunity to earn incentive plan compensation during his or her reasonable notice period. The OCA confirmed that when an employer terminates an employee without cause, the employer is liable to the employee for damages for breach of contract, including for, among other things, the loss of bonuses or incentive payments that are an integral part of the employee's compensation. However, the court went on to note that if the incentive compensation plan contains a term that clearly and unambiguously removes the employee's right to these damages, and if the term is brought to the attention of the employee, the employee will be precluded from earning incentive plan compensation during the reasonable notice period.

Colombia

Unemployment Aid May be Used to Receive Government Funds

New Legislation Enacted

Author: María Paula Aristizábal Domínguez, Associate - Littler Colombia

Pursuant to Decree 1562 of 2019, employees can withdraw unemployment aid savings from the government fund. Historically, this option was available only for housing and educational purposes.

Guidelines to Prevent and Assess Psychosocial Risks

New Order or Decree

Author: María Paula Aristizábal Domínguez, Associate - Littler Colombia

On July 29, 2019, the Labor Ministry, through Resolution 2404, unified and established the means through which employers can assess psychosocial risk factors inside their companies. The means created include different questionnaires and protocols that guide the actions for the intervention of these risk factors in any type of contract. The Ministry Labor will provide the software for employers to use to implement this measure.

Labor Ministry's Authorization is Mandatory to Terminate Disabled Employee

New Regulation or Official Guidance

Author: María Paula Aristizábal Domínguez, Associate - Littler Colombia

Under the Labor Ministry's Circular 49 of 2019, employers have an obligation to request authorization from the Labor Ministry to terminate the contract of an employee protected from termination due to a health condition, even if there exists an objective reason or cause for the redundancy. Under the circular, if there is a just cause, the Labor Inspector must verify that the disciplinary procedure has been observed. If the health condition of the employee is incompatible for his or her position, the Inspector must verify that the employer supported the employee's rehabilitation process and that the employee could not recover to continue working. Without a just cause, the Inspector cannot give the authorization.

Conciliation is Regulated by Labor Ministry

New Regulation or Official Guidance

Author: María Paula Aristizábal Domínguez, Associate - Littler Colombia

To strengthen the formal alternative conflict resolution mechanisms, the Labor Ministry issued guidelines for Labor Inspectors to manage conciliation proceedings. This is an important opportunity to conciliate legal differences through a formal procedure and according to the parties' private will. Both employee and employer must submit a request for a conciliation meeting with the Labor Ministry.

Costa Rica

Law to Regulate Remote Working Enacted

New Legislation Enacted

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

On August 27, 2019, the Legislative Chamber passed bill no. 21.141, called "Law to Regulate Remote Working," which was published on the official gazette on September 30, 2019, as Law no. 9738. This law represents the first time that remote working is regulated for the private sector, although it is intended to apply to both public and private entities. Under Law 9738, remote working is voluntary for both employees and employers and can be revoked by the employer

with a ten-day notice, as long as it is reasonably justified. The law also allows employers to ensure appropriate safety measures are in place to ensure the confidential nature of their sensitive information, including the ability to inspect equipment owned by employees, as long as they are present and their privacy is respected.

New Law to Create and Regulate Dual Education System in Costa Rica

New Legislation Enacted

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

On August 12, 2019, the Legislative Chamber passed Bill 20786, which for the first time creates and regulates a dual education system in Costa Rica. Under the new law, the National Learning Institute (INA) will spearhead a multi-agency effort to promote dual education in Costa Rica, so that people 15 years old and up can undertake a more practice-focused education that would, in theory, enable an easier transition into the labor market. Universities, high schools, technical institutes and other educational institutions will work with public and private companies to enable students to perform part of their studies in a work-like environment. The law specifically states that relationships carried out under this system do not generate employment rights or benefits, but companies should still be careful with how they handle these relationships to avoid unwanted risks. As of this writing, the law has not been published or become enforceable.

Denmark

Temporary Injuries May Also Be Deemed Industrial Accidents

New Legislation Enacted

Author: Tina Reissmann, Partner - Labora Legal

It is the assessment of the legislators that the injury concept had become too narrow in practice, since injuries not requiring treatment to heal, pass or be reduced cannot be recognized as "industrial injuries." The new Act – which comes into force on January 1, 2020 – specifically sets out that "temporary" injuries may also be recognized as "industrial injuries." "Temporary" injuries do not necessarily require treatment to heal or pass. Examples include a wound, strain or minor psychological reaction healing or passing by itself within a short period of time, as long as the injury "has psychological or physical consequences, which in any way affect the general condition or daily life of the injured person either on a temporary or permanent basis."

Supreme Court Decision on Audio Recordings of Conversation with Employer

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The Danish Supreme Court (with nine judges instead of the usual five) has held that it was not justified to summarily dismiss an employee with retroactive effect, when the employer found he had covertly recorded a conversation with a manager, who was not aware hereof.

High Court Decision on the Act on Equal Treatment of Men and Women

Precedential Decision by Judiciary or Regulatory Agency

Author: Tina Reissmann, Partner - Labora Legal

The dismissal of an employee, who called in sick on the first day after a period of childbirth-related leave and holiday was not in conflict with the Act on Equal Treatment of Men and Women.

Finland

The Reform of the Working Time Act, Effective as of January 1, 2020

New Legislation Enacted

Author: Samuel Kääriäinen, Partner - Dottir Attorneys, Ltd.

The new Working Time Act addresses changes in the labor market and in working life. It also responds to the requirements of the Working Time Directive and its interpretative practice. The changes will take effect on January 1, 2020.

Supreme Court Rules on Validity of a Termination Agreement

Precedential Decision by Judiciary or Regulatory Agency

Author: Samuel Kääriäinen, Partner - Dottir Attorneys, Ltd.

On September 10, 2019, the Supreme Court of Finland ruled on the validity of a mutual agreement on termination of employment. The Court held that the otherwise appropriate signed agreement was invalid mainly because the employee had not received a fair chance to assess the offer before signing it. The parties entered into the agreement on the employer's initiative and at the end of a two-hour negotiation. The employee was not allowed to assess the offer until the next day. The employee had not been informed in advance that the meeting was to deal with the termination of his employment. Since the employee had not been given sufficient time for reflection and access to expert assistance before committing to the contract, the Court held that the contract had been concluded in circumstances where it would make it incompatible with honor and good faith for anyone knowing of those circumstances to invoke the contract.

The National Employment Board: Opinion on the Consent and Agreement of Overtime

New Regulation or Official Guidance

Author: Samuel Kääriäinen, Partner - Dottir Attorneys, Ltd.

The Federation of Finnish Trade Unions (SAK) requested an opinion from the National Employment Board on whether the consent to work overtime (hours in addition to full working time) and additional time (hours in addition to agreed hours but until full working time) must be explicit or whether it is sufficient to agree on them in the employment contract or refer to the respective provisions of the applicable collective agreement. The National Employment Board ruled on August 20, 2019, that the consent to work overtime cannot be given beforehand and the employee's separate consent for overtime is needed each time overtime work is rendered. However, additional time can be validly agreed already in an employment contract. It is also possible to validly agree on additional work in collective agreements, however, in such case, the employee shall have a right to refuse additional time for reasonable personal reasons.

France

Bonus-Penalty System for Unemployment Insurance

New Order or Decree

Author: Guillaume Desmoulin, Partner - Littler France

A decree, dated July 26, 2019, has set a principle of modulation of employers' contribution to the mandatory unemployment scheme (between 3 and 5.05%) depending on the number of contract terminations. All terminations count, except resignations and a few State-aided contracts. This derogatory scheme will apply to all companies employing 11 employees and more, in industries having the highest rate of contract terminations. For instance, companies frequently using fixed-term contracts will have a higher contribution rate. The contribution rate will

be determined by comparison between the company's termination rate and the average termination rate at an industry level. The terminations held against the companies will be those generating registration as jobseekers. The Government is currently contemplating the expansion of this scheme to other industries. This will be enforced in 2021, based on the company policies of 2020.

Supreme Court Validates Statutory Scale of Compensation for Unfair Dismissal Cases

Precedential Decision by Judiciary or Regulatory Agency
Author: Guillaume Desmoulin, Partner - Littler France

In an opinion dated July 17, 2019, the French Supreme Court held that the provisions of the French labor code setting the compensation scale in case of unfair dismissal, with minimum and maximum amounts, do comply with various international agreements as well as Convention 158 of the International Labor Organization. Prior to this decision, some local labor courts have refused to apply the statutory scale, based on adequate and appropriate indemnification. This opinion is not a ruling, and therefore not binding.

Anxiety Damages Extended to All Employees Exposed to Asbestos or Other Toxic Substance

Precedential Decision by Judiciary or Regulatory Agency
Author: Guillaume Desmoulin, Partner - Littler France

Through several recent decisions, the French Supreme Court awarded anxiety damages, not only for all workers exposed to asbestos, but also for injuries and illnesses related to other toxic substances. The French Supreme Court explained, "In compliance with the general principle of obligation to provide safety for employees, the employee who justifies an exposure to a harmful or toxic substance generating a high risk of developing a serious pathology and an anxiety injury personally suffered as a result of such exposure, may act against his employer for breach of his obligation of security."

"Zero Alcohol Tolerance" Introduced in Company Bylaws

Precedential Decision by Judiciary or Regulatory Agency
Author: Guillaume Desmoulin, Partner - Littler France

On July 8, 2019, the French Supreme Administrative Court ruled in favor of a "zero alcohol tolerance" introduced in company bylaws, banning any consumption of alcohol in dangerous workplaces (for electricians, mechanics or where employees must operate machinery). Company bylaws may determine a list of employees covered by the ban, according to the post they occupy. The ban must, however, be justified by the nature of the work and must be proportional to the aim sought. This justification does not need to be explicitly addressed in the bylaws and may be based on external elements.

Contractual Termination of Employment: Importance of a Copy Ratified by Both Parties

Precedential Decision by Judiciary or Regulatory Agency
Author: Guillaume Desmoulin, Partner - Littler France

Through two recent decisions, the French Supreme Court specified its jurisprudence on contractual termination of employment. First, the French Supreme Court ruled that the employee must receive a copy of the preliminary termination agreement ratified by both parties, in order to exercise his or her right of withdrawal. This will ensure their second ruling, by which the judges insisted on the necessity to prove that a copy of the preliminary agreement has been given to the employee.

Honduras

Proposed Bill Would Grant Debt Relief to Employees

Proposed Bill or Initiative

Author: Marielos Acosta, Associate - BDS, Member of Littler Global

A new proposed bill would grant relief to employees with high levels of debt. The bill would ensure that at least 40% of an employee's salary is free from reductions and would allow employees to access better conditions for their loans, such as longer terms and lower interest rates, to ensure their salary is not completely compromised.

India

New Code on Wages

New Legislation Enacted

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On August 8, 2019, India's new Code on Wages (Code) received the Presidential assent and was notified in the official gazette. The Code consolidates four major federal-level labor laws pertaining to wages paid by the employer. Amongst other changes, the Code has expanded the ambit of the law to cover a broader working population by removing the concept of scheduled employments and introducing floor wages. Further, it has removed multiple and overlapping definitions of terms (like wages and employees) and accordingly seems to ensure ease of compliance and ability to do business in India seamlessly. The effective date of the Code is currently awaited.

Employers to Contribute Social Security (Provident Fund) on Universal Allowances

Precedential Decision by Judiciary or Regulatory Agency

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On February 28, 2019, the Supreme Court of India held in a landmark ruling that special allowances that form part of wages shall be subject to provident fund (PF) contributions in India. As a result of the judgment, allowances that are universally, ordinarily and necessarily paid to employees across the board are to be considered as "basic wages" for payment of PF contributions (unless they are specifically excluded by law). The judgment is likely to increase the employees' PF contributions, which in turn would decrease their current take-home pay, but eventually increase their retirement savings.

Maternity Benefit Rules in the States of Karnataka (Bangalore) and Haryana (Gurgaon) for Crèche (Day Care) Facility

New Regulation or Official Guidance

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

The State Government of Karnataka has notified the Karnataka Maternity Benefit (Amendment) Rules, 2019, on August 8, 2019. Similarly, draft rules on crèche facility have been issued by the State Government of Haryana on July 9, 2019. These rules provide for implementation of crèche facility to be provided to female employees as per the Maternity Benefit Act, 1961 of India (as amended in 2017) to introduce crèche facility provisions, including the distance of the crèche facility from the establishments, age of the children until which crèche facility is to be provided.

Standing Orders Law Applicability in Bangalore (State of Karnataka) and Gurgaon (State of Haryana)

Upcoming Deadline for Legal Compliance

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

On May 25, 2019, the Karnataka State Government renewed the exemption from the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders Act) in the state of Karnataka (Bangalore) for the information technology and information technology-enabled sectors (along with certain other knowledge-based sectors) for five years. Separately, the Standing Orders Act was extended to commercial establishments in the State of Haryana, effective from December 12, 2018. The Standing Orders Act *inter alia* governs the employment conditions of the employees employed in an establishment.

Registration of Anti-sexual Harassment Committee Mandatory in Select Indian States

Upcoming Deadline for Legal Compliance

Authors: Vikram Shroff, Leader and Archita Mohapatra, Attorney-at-Law - Nishith Desai Associates

The Department of Women and Child Development in the Indian States of Telangana & Maharashtra, respectively, issued a circular for Telangana (on July 1, 2019) and an office order for Mumbai (on March 23, 2017), mandating registration of the employer's Internal Committees (IC) formed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Concerning Telangana, the employers are required to register their ICs on the Telangana SHe-Box website; for Mumbai, the employers are required to submit details of their ICs in a prescribed form.

Ireland

Reasonable Accommodation in the Workplace – the View from the Supreme Court

Precedential Decision by Judiciary or Regulatory Agency

Author: Emmet Whelan, Partner - ByrneWallace

The Supreme Court of Ireland recently examined the extent of the obligation on employers, under Irish Employment Equality legislation, to put in place "appropriate measures" to adapt a place of work to reasonably accommodate disabled employees. In the decision, the Court addressed questions of redistribution of tasks/duties; whether employers have a duty to consult with employees; and the burden of accommodation.

€150,000 Fine for Employer Relying on Consent as Basis for Processing Personal Data

Important Action by Regulatory Agency

Author: Emmet Whelan, Partner - ByrneWallace

The Hellenic Data Protection Authority (HDPA) recently fined an employer €150,000 and ordered the company to take corrective actions following an investigation that uncovered breaches by the company of Article 5 of the GDPR. The investigation revealed that the company was requiring employees to give their consent for the processing of their personal data at work, and was highly critical of this practice. The decision will be of relevance to Irish-based employers, as it applies the GDPR provisions.

Italy

Minimum Legal Framework for Gig Workers

New Legislation Enacted

Author: Carlo Majer, Partner - Littler Italy

New Decree Law n. 101/2019, effective on September 5, 2019, introduces a minimum legal framework for gig workers, providing the applicability of the discipline of subordinate employment relationships. The remuneration of the riders can be determined on a piecework basis, but not to a prevailing extent. The eventual hourly remuneration provided for by collective bargaining agreements will be recognized for each working hour on condition that the rider has accepted at least one call. Additionally, riders shall be subject to the discipline for subordinate employees concerning insurance coverage for accidents at work and occupational disease.

It Is Unlawful to Dismiss an Employee Who Refused to Work on a Day of Required Holiday

Precedential Decision by Judiciary or Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On July 15, 2019, the Supreme Court ruled that it is unlawful to dismiss an employee who refused to work on a day of required holiday. The right of the employee to not work on mandatory holidays (in this case, May 1st, Workers' Day) cannot be waived at the sole request of the employer. Rather, a specific agreement between the parties would be required, also in the form of a collective agreement entered into by unions, to which the employee has given a specific mandate for this purpose.

Compatibility of the Ownership of Corporate Offices with Employee Status

New Regulation or Official Guidance

Author: Carlo Majer, Partner - Littler Italy

On September 17, 2019, the Italian Authority for Social Security Contributions reaffirmed the criteria of compatibility of the ownership of corporate offices and the performance of subordinate employment activities for the same company. Namely: 1) the ownership of the decision-making power in the hands of the Board of directors; 2) the existence of a subordination relationship with respect to the Board of directors as a whole; 3) the performance of tasks as an employee, unrelated to the role of director.

The Processing of Personal Data

Important Action by Regulatory Agency

Author: Carlo Majer, Partner - Littler Italy

On July 29, 2019, the Italian Data Protection Authority (IDPA) issued new provisions on the processing of personal data, applicable to all the subjects who process personal data to select candidates, establish, manage or terminate any kind of employment relationship. Under the IDPA, during the selection process, the processing of data concerning health or revealing ethnic origin (even if explicitly mentioned in the CV) is permitted only if essential to evaluate the applicant or to comply with specific legal provisions (e.g., minimum number of jobs reserved for disabled individuals). After the hiring, the processing of personal data revealing ethnic origin, religious beliefs, or trade union membership is prohibited, unless it is necessary for the granting of work permits related to religious festivities, for the provision of the cafeteria service or to exercise trade union rights.

Japan

Minimum Wage Increase

New Regulation or Official Guidance

Author: Aki Tanaka, Of Counsel - Littler United States

Japan sets both regional minimum wage and industrial minimum wage. The regional minimum wage is reviewed and revised, as needed on an annual basis. Each prefectures in Japan (i.e., total 47 prefectures) sets its own minimum wage, which becomes effective in October. The national average amount this time is 901 yen per hour, which represents a large increase from 874 yen last year. For the first time in history, Tokyo (1013 yen) and Kanagawa (1011 yen) exceed 1000 yen.

Malaysia

Worker's Minimum Standard of Housing and Amenities (Amendment) Act 2019

New Legislation Enacted

Author: Tan Su Ning, Senior Associate - Skrine

The Workers' Minimum Standard of Housing and Amenities (Amendment) Act 2019 aims to expand the minimum standard of housing and provision of basic facilities for workers in all sectors. The Act received Royal Assent on September 18, 2019, and was published on the official gazette on September 23, 2019. It will come into operation on a date to be appointed by the Minister. Previously, the Workers' Minimum Standards of Housing and Amenities Act only compelled employers of estate workers to provide accommodation. The proposed amendments to the Act will now make it compulsory for employers in all industrial sectors (such as plantation, construction and manufacturing, including hi-tech industries) to provide centralized accommodation.

Federal Court Judgment on Union-Busting Tactics

Precedential Decision by Judiciary or Regulatory Agency

Author: Tan Su Ning, Senior Associate - Skrine

The Malaysian Federal Court ruled that two banks were guilty of union busting tactics in promoting employees to executive positions without according them any "real" executive powers that should come with the job. The National Union of Bank Employees (NUBE) contended that the action of the two banks tantamount to union-busting as the clerical staff concerned had been "promoted" to executives merely to preempt their joining the union. NUBE had contended that the action of the two banks was aimed at diluting its influence and bargaining power, and tantamount to union-busting. The Federal Court dismissed the appeals of banks with costs, thus bringing a seven-year-battle to an end.

Industry Code of Practice for Management of Occupational Noise Exposure and Hearing Conservation

New Regulation or Official Guidance

Author: Tan Su Ning, Senior Associate – Skrine

A new industry code of practice known as the "Industry Code of Practice for Management of Occupational Noise Exposure and Hearing Conservation" was approved by the Minister. The Code of Practice was promulgated under Section 37 of Occupational Safety and Health Act 1994 [Act 514] as a guidance to comply with the provisions of Occupational Safety and Health (Noise Exposure) Regulations 2019.

Mexico

New Protocol for the Legitimization of Existing Collective Bargaining Agreements, Requiring Employee Ratification Vote

New Regulation or Official Guidance

Authors: Mónica Schiaffino, Shareholder and Andrés Díaz Barriga Ocampo, Associate - Littler Mexico

On July 31, 2019, the Mexican Ministry of Labor (STPS by its acronym in Spanish) issued the Protocol for the Legitimization of existing Collective Bargaining Agreements (Protocol), which was published in the Official Gazette of the Federation. The Protocol will require all unions in Mexico that are parties to collective bargaining agreements to revisit employee support for the current agreement; otherwise, if the legitimization process is not carried out, the collective bargaining agreement will be terminated.

Panama

Resolution Enabling Electronic Filings

New Regulation or Official Guidance

Author: Ana Carolina Ríos, Partner - BDS, Member of Littler Global

On September 2, 2019, the Ministry of Labor issued resolution No. DM-402-19, published the following day on the official government publication, which enables individuals to comply with various filing requirements under the law, that previously could only be completed personally or by proxy. Some of the filings that can be completed online include: request to register resignation letters, request to register employment agreements, request for approval of internal bylaws, request for union leaves, etc. Currently, both the in-person and electronic filings will be available.

Peru

Regulation on Prevention and Sanction of Sexual Harassment

New Regulation or Official Guidance

Author: César Gonzáles Hunt, Partner - Littler Peru

Through the Supreme Decree N° 014-2019-MIMP, the Ministry of Women and Vulnerable Populations has regulated the Law of Prevention and Sanction of Sexual Harassment. This new regulation has two important points. First, it creates special procedures to be followed in cases when sexual harassment occurs, whether in the workplace or related to an employment or contractual relationship (the special procedures take into account whether the entity or institution is educational, private, public, etc.). Second, it establishes the obligation of every organization to form and implement a Committee of Intervention Against Sexual Harassment that will be in charge of investigating any and all cases of sexual harassment that may occur in the workplace or related to an employment or contractual relationship.

Guidelines for Granting Reasonable Adjustments

New Regulation or Official Guidance

Author: César Gonzáles Hunt, Partner - Littler Peru

In July 2019, the Ministry of Labor and Promotion of Employment issued Ministerial Resolution N°171-2019-TR, to regulate the way in which reasonable adjustments should be made for people with disabilities. The new rules established by the Resolution include: (1) The ability for a person with a disability to request reasonable adjustments during the hiring process and once the employment relationship has started; (2) the person with the disability is entitled to request the reasonable adjustments and the employer or future employer has the obligation to implement

them; (3) an employer may be exempted from this obligation if it can establish that said adjustments would create a "disproportionate burden."

Philippines

Service Charges Collected by Hotels, Restaurants, and Other Similar Establishments Now to be Fully Distributed to All Covered Employees

New Legislation Enacted

Author: Emerico O. De Guzman, Managing Partner - Angara Abello Concepcion Regala & Cruz Law Office (ACCRALAW)

Beginning September 3, 2019, 100% of the service charges collected by hotels, restaurants and similar establishments shall now be distributed equally among all covered workers, excluding managerial employees, pursuant to Republic Act No. 11360. Previously, the distribution of service charges was at 85% for covered employees, and 15% for management as a reserve for losses and breakages, and at its discretion, for distribution to managerial employees. In case of an increase in the minimum wage by law or wage order, the new law also explicitly excludes service charges paid by the employer in determining compliance with said increase in minimum wage.

Portugal

Amendments to the Retirement Statute and the New Early Retirement Scheme

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Junior Associate - Garrigues Portugal SLP Sucursal

The Decree-law no. 108/2019, of August 13, published in *Diário da República*, introduced amendments to the Retirement Statute and created the new early retirement scheme. This decree-law reviews the early retirement scheme of the General Pension Fund's (CGA) subscribers, bringing it closer to the general social security scheme. This decree-law takes effect from October 1, 2019. Among other changes, the new Decree-law addresses retirement for long contributive careers; contributory periods in other social security schemes; early retirement; and personal retirement age extension.

Employees' Rights are Increased by the Parenting Protection Regime

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Junior Associate - Garrigues Portugal SLP Sucursal

Laws no. 90/2019 and 93/2019, of September 4, were published in *Diário da República*, which introduced various amendments regarding the parenting protection regime, including: Creation of two new leaves (concerning assistance to children with cancer and travel to a hospital unit located outside the island of residence); extension of the initial parental leave (e.g., for child hospitalization and childbirth); amendments to paternity leave; extension of the adoption leave; creation of new leaves (including for travels between islands of pregnant, postpartum or lactating employees); and creation of new allowances under the social security system.

15th Amendment to the Labor Code and Contributory Code

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Junior Associate - Garrigues Portugal SLP Sucursal

Law no. 93/2019, of September 4, was published in *Diário da República*, which introduced changes to the Labor Code and its Regulation, as well as to the Code of Contributory Regimes of the Social Security Social Security System and its Regulation. The amendments to the Labor Code address various provisions, including: Trial periods; fixed-term contracts; additional contribution by excessive turnover; very short term employment contracts; intermittent work; temporary work; hour bank; termination of the employment contract; and employees' rights. The new law enters into force on October 1, 2019.

Puerto Rico

Law Providing Unpaid Leave and Reasonable Accommodation for Victims of Abuse Enacted

New Legislation Enacted

Authors: Erika Berríos-Berríos, Capital Member, Ana Beatriz Rivera Beltrán, Member and Daniel Limés Rodríguez, Associate - Littler Puerto Rico

Act No. 83 of August 1, 2019, (Act 83) provides up to 15 days of unpaid leave, and/or reasonable accommodation, for employees who are themselves victims of abusive situations, or have a close family member who is. Additionally, it prohibits adverse actions and/or discrimination against the employee for partaking in this type of leave or reasonable accommodation. This is a detailed leave act that imposes several specific requirements on the employee as well as the employer, including an obligation for the employer to update its policies and procedures and to train employees regarding this leave. Employers that fail to comply with Act 83 may be subject to penalties of up to $5,000, as well as damages, including back pay.

Supreme Court Holds Act 2's Counterclaim Bar Does Not Preclude Employer's Independent Suit

Precedential Decision by Judiciary or Regulatory Agency

Authors: Erika Berríos-Berríos, Capital Member and Daniel Limés Rodríguez, Associate - Littler Puerto Rico

On July 26, 2019, the Supreme Court of Puerto Rico held that the express language of Puerto Rico's Summary Procedure Act (Act 2), barring employer's counterclaims, does not preclude a separate and independent action against the employee. The Supreme Court reasoned that Act 2's counter claim bar may promote judicial efficiency in employment claims, but the Act itself does not create or eliminate causes of action. The opinion then addressed the possibility of parallel litigation, and highlighted the ample procedural flexibility of trial courts under Act 2. This opinion clarifies that an employer may still pursue any possible claims it may have against the employee, even when defending itself under Act 2's summary procedure.

Saudi Arabia

Amendment to Laws of Travel Document, Civil Status, Social Insurance and the Labour Law

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co.

The amendment, among other things, permits women over the age of 21 to obtain passports and travel abroad without the need to secure the permission of their "guardians," and also seeks to create equality as between males

and females in relation to the Ministry of Labour and Social Development Regulations, including with respect to retirement age.

Decision No. 209517 of the KSA Ministry of Labour and Social Development Dated 22/11/1440

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co.

The decision adopts guidelines that ban smoking in the workplace.

Ministerial Decision Approving the Violation and Penalty Table

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co.

Ministerial Decision No. 178743, dated June 1, 2019, issues an updated table of violations and penalties for any Labor Law breaches, replacing the previous table (issued by Ministerial Resolution No. 88478 of 1439). Additional fines, mainly surrounding employment of women, noncompliance with general employment rights, such as daily breaks and various breaches pertaining to the practice of recruitment activities have been added. Fines pertaining to certain offenses have been reduced, such as retaining passports, recruiting employees without issuing a contract of employment and non-payment or irregular payment of wages. Increases to certain fines have also been applied, such as non-compliance with health and safety, noncompliance with employer childcare requirements, and noncompliance with female night-time working restrictions. Lastly, the timeframe for payment and appealing the fine have been reduced to 10 working days and 30 days, respectively.

Ministerial Resolution on Female Workplace Environment

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co.

Ministerial Resolution No. 215739 sets out the framework in which female employees may be employed, including the sectors in which female employees may undertake night shifts, rules pertaining to work attire and wages, and general facility requirements for female employees within different types of work environment.

Ministerial Resolution on Female and Nationalization Controls Within the Workplace

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law - Clyde & Co.

Ministerial Resolution No. 215738 sets out in what specific activities employers are obliged to employ female Saudi employees, male Saudi employees and non-Saudi female employees.

Singapore

Changes to the Work Injury Compensation Act

New Legislation Enacted

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

The Work Injury Compensation Bill 2019 was passed in Parliament on September 3, 2019. The new Act aims to facilitate more accurate insurance premium pricing to reward safer companies, expedite compensation claims processing, enhance protection for employees and provide more certainty for employers. The new Work Injury Compensation Act will take effect on September 1, 2020, while related subsidiary legislation amendments are scheduled to take effect from January 2020 onwards.

National Registration Identity Card Advisory Guidelines to Take Effect

New Regulation or Official Guidance

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

On September 1, 2019, Singapore's Personal Data Protection Commission's National Registration Identity Card Advisory Guidelines came into effect. Pursuant to these guidelines, organizations are generally not allowed to collect, use, retain or disclose National Registration Identity Card (NRIC) and other national identification numbers. However, employers may continue to collect, use or disclose the NRIC numbers of employees where required by law or it is necessary to accurately establish or verify their identities to a high degree of fidelity.

Progressive Wage Model Bonus and Annual Increment to be Implemented in Cleaning Industry and Landscape Maintenance Sector

New Regulation or Official Guidance

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

Employees in the cleaning industry and landscape maintenance sector may be eligible for a bonus under the Progressive Wage Model (PWM) from January 1, 2020. The government will also be implementing a 3% annual wage increase to the PWM wage levels from July 1 of each year, from 2020 to 2022 for the cleaning industry and 2023 to 2025 for the landscape maintenance sector. The PWM specifies the starting wages for workers in these sectors according to their skill and experience levels, such that workers can receive higher pay as they upgrade their skills. The new measures will be implemented in the cleaning industry under the cleaning business licensing scheme as licensing conditions, while landscape industries must comply with the PWM in order to be registered on the National Parks Board Landscape Company Register.

Government to Implement Measures to Strengthen Support for Older Workers

Important Action by Regulatory Agency

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

On August 19, 2019, the Ministry of Manpower announced that it will implement all the recommendations submitted by the Tripartite Workgroup on Older Workers in their Report on Strengthening Support for Older Workers. The key measures to be implemented are raising the retirement age from 62 to 65 by 2030, raising the re-employment age from 67 to 70 by 2030, and raising the Central Provident Fund contribution rates of workers who are above the age of 55.

Decisions under the Workplace Safety and Health Act in Q3

Trend

Authors: Benjamin Gaw, Director and Elizabeth Tong, Director - Drew & Napier LLC

The Ministry of Manpower has issued a series of decisions involving both individuals and companies under the Workplace Safety and Health Act (WSH Act) in the third quarter of 2019. A sole proprietor was fined S$140,000, the highest amount imposed on an individual prosecuted under the WSH Act, for a fatal incident resulting from unsafe lifting operations. The maximum sentence for such an offence is a S$200,000 fine, up to two years' imprisonment, or both. Additionally, an Authorized Examiner was convicted for the first time under the WSH Act for failing to exercise due diligence in certifying equipment to be safe for use. Separately, three companies were fined an average of S$210,000 each in separate decisions for failing to take adequate safety measures to ensure the safety of their employees.

United Kingdom

Employer Not Liable for Employee's Offensive Social Media Posting on Personal Account

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Mark Callaghan, Associate - Littler United Kingdom

The Employment Appeal Tribunal (EAT) provided useful clarity on when an act by an employee is done "in the course of employment" making the employer liable. The claimant had seen a colleague's social media post featuring a "golliwog" (a racist caricature), which was unquestionably offensive, but which was posted outside of working hours. The EAT upheld the Employment Tribunal's decision, and found that the posting of this image was not done in the course of employment. However, it emphasized that this issue was determined on a case-by-case basis, and very much dependent on the facts. Indeed, employers have been held liable for employees' social media use in other cases. Therefore, employers should not assume too hastily that any use of social media will fall outside of the employment context.

Holiday Pay for Part-Year Workers Cannot be Pro-Rated

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Arooj Khan, Trainee Solicitor - Littler United Kingdom

On August 6, 2019, the Court of Appeal (CoA) held that all part-year or zero-hours workers employed under permanent contracts should receive 5.6 weeks' holiday pay, using the average rate of pay over the 12-week period immediately before the holiday as the basis for this calculation. The claimant, a visiting music teacher employed under a zero-hours contract and working 32-35 weeks each year, argued that, as a worker, she should be entitled to 5.6 weeks' statutory holiday entitlement. The CoA agreed: if the Claimant worked for 32 weeks in one year, she should be paid 5.6 weeks' holiday pay, which would (in this case) represent 17.05% of her annual earnings. The common commercial practice of calculating accrued holiday entitlement at a rate of 12.07% of hours worked was incorrect in these circumstances, as it did not equate to the 5.6 weeks' holiday entitlement.

Considering Private Correspondence in Dismissal Was Permissible

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Dónall Breen, Associate - Littler United Kingdom

On May 14, 2019, the European Court of Human Rights found it is permissible under the European Convention on Human Rights (ECHR) to consider private messages during a dismissal hearing in some cases. The employee sent a series of harassing and threatening messages from a private account to a colleague during working hours. The police passed these messages to his employer, who dismissed him. The employee argued that the employer should not have considered this material as it breached his ECHR Article 8 right to respect for private and family life. The court decided that the employee could not reasonably have expected that the communications in question remain private because: (i) he knew his employer was aware of the issue and had concerns about his conduct so it was no longer "private;" and (ii) the employee had not challenged the use of the private communications during the disciplinary hearing and had, in fact, voluntarily provided further private communications.

Parties Entitled to Opportunity to Challenge Stereotypical Assumptions on Which a Decision is Made

Precedential Decision by Judiciary or Regulatory Agency

Authors: Raoul Parekh, Partner and Lisa Rix, Associate - Littler United Kingdom

On June 28, 2019, the Employment Appeal Tribunal found that where courts make a decision based on stereotypical assumptions, particularly where those do not form part of a party's case, that judgment would be unfair. A party should have the opportunity: (i) to challenge the existence of such stereotypical assumptions; and (ii) to dispute that the decision-maker held such views and/or was influenced by them in his decision-making. The case was remitted to a freshly constituted employment tribunal in order for this to happen. This case is a warning to Employment Tribunals and Courts about how they arrive at their judgments, but is also a useful reminder that employers' decisions should not be made without any employee having a full opportunity to understand and respond to the points against them.

Supreme Court Revises Test for Evaluating Post-Termination Restrictions

Precedential Decision by Judiciary or Regulatory Agency

Author: Sophie Vanhegan, Partner - Littler United Kingdom

On July 3, 2019, the UK Supreme Court held that unenforceable words within a post-termination restriction on working for a competitor could be struck out or "severed" from the rest of the restriction, so that the noncompete became enforceable. The Supreme Court reformulated the test for severance as requiring that: (i) the court can remove the offending words without needing to add to or modify the remainder of the covenant; (ii) what remains of the agreement must continue to be supported by adequate consideration; and (iii) the removal of the offending provision must not generate any major change in the overall effect of the post-termination restrictions for the contract (this final limb being a new test). This decision may open the doors to more employers trying to enforce restrictions that have a couple of words that may be deemed to be too broad, on the basis that they can be severed, but further case law will need to develop what constitutes a "major change" for the final limb of the test.

United States

Illinois' AI Video Interview Act

New Legislation Enacted

Authors: Kwabena A. Appenteng, Shareholder, Philip L. Gordon, Shareholder and Garry G. Mathiason, Shareholder - Littler United States

To address the use of artificial intelligence in the hiring process, on August 9, 2019, Illinois enacted the Artificial Intelligence Video Interview Act (AI Interview Act). The AI Interview Act is the first U.S. law to establish a framework for employers' use of AI in the hiring process. That framework is based on prior notice to applicants "based in Illinois" and the requirement to obtain their affirmative content to participate. The Act also restricts disclosure of the video interview to anyone other than "persons whose expertise or technology is necessary in order to evaluate an applicant's fitness for a position" and requires employers to ensure that all copies of the video interview, whether in the possession of the employer or any third party, are destroyed within 30 days of an applicant's request.

The New York SHIELD Act: What Employers Need To Know

New Legislation Enacted

Authors: Philip Gordon, Shareholder and Jennifer Taiwo, Associate - Littler United States

As mega-breaches heighten concern about the security of personal information and a federal solution does not appear forthcoming, New York recently joined the growing list of states imposing their own security obligations on

businesses. On July 26, 2019, New York's governor signed the "Stop Hacks and Improve Electronic Data Security" (SHIELD) Act, requiring businesses to implement safeguards for the "private information" of New York residents and broadening New York's security breach notification requirements. Every employer with employees in New York must comply with the SHIELD Act because "private information" includes an individual's name and Social Security number. Beyond that, many businesses without a New York presence may be required to comply as the law applies to any business that maintains the "private information" of New York residents.

NLRB Creates New 3-Step Analysis for Unit Determinations

Precedential Decision by Judiciary or Regulatory Agency

Authors: Marie Duarte, Associate and Gregory Brown, Shareholder - Littler United States

On September 9, 2019, the National Labor Relations Board (NLRB) issued a decision, creating a three-step process for determining an appropriate bargaining unit under the community of interests standard. Under this new process, to conclude that a proposed unit is appropriate, the NLRB must first consider whether the proposed unit shares an internal community of interest. If the employees share an internal community of interest, the NLRB must then comparatively analyze and weigh the interest of those within the proposed unit and the shared and distinct interests of those excluded from the unit. Finally, the Board must also consider its prior decisions on appropriate units in the particular industry involved.

The Final Rule on Overtime is Finally Here: Minimum Salary Level for Exemption Increased to $35,568 Effective January 1, 2020

New Regulation or Official Guidance

Author: Tammy McCutchen, Shareholder - Littler United States

The U.S. Department of Labor unveiled its long-awaited final rule on the overtime "white collar" exemptions on September 24, 2019. The final rule increases the minimum salary level for exemption to $684 per week ($35,568 annualized). Under the final rule, employers will have only a single pay period for a final make-up payment to ensure exempt employees receive the full $35,568 for the year. The final rule also increases from $100,000 to $107,432 the total annual compensation required for employees to qualify under the shorter highly compensated test. Highly compensated employees must receive the guaranteed minimum salary of $684 each week, but the remaining compensation may be in commissions, bonuses, or any other type of compensation.

NLRB Issues Proposed Rule to Clarify Status of Private University and College Students Working in Connection with Their Studies

New Regulation or Official Guidance

Authors: Mark Detwiler, Associate and Michael Moschel, Shareholder - Littler United States

On September 20, 2019, the National Labor Relations Board (Board) issued a proposed rule that would exclude from the National Labor Relations Act (Act) undergraduate and graduate students at private colleges and universities who perform services in connection with their studies. Under the proposal, these students would no longer be able to join or form a labor union or engage in collective bargaining.