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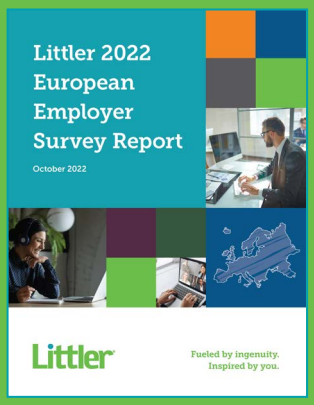

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Geida D. Sanlate, Littler Editor

Australia

2022 Minimum Wage Increases

New Order or Decree

Author: Naomi Seddon, Shareholder – Littler

The national minimum wage increased on July 1, 2022, by 5.2% to $21.38 per hour or $812 per week. The Fair Work Commission also announced an increase to modern award minimum wages but decided to implement a proportionately higher increase for low-paid employees. Additionally, modern award minimum wages increased by at least 4.6%, subject to a minimum increase for adult award classifications of AU$40 per week. This means that modern award rates above AU$869.60 per week have received a 4.6% increase, while wage rates currently below AU$869.60 per week have received an AU$40 per week increase. The new rates have all now taken effect, with some rates increasing effective July 1 and others October 1.

2022 Changes to Superannuation Contribution Rates

New Order or Decree

Author: Naomi Seddon, Shareholder – Littler

The superannuation contribution rate in Australia has increased effective July 1, 2022, to 10.5%. The rate will continue to progressively increase annually by 0.5% until July 2025 when the rate will reach 12%. The $450 monthly eligibility threshold that previously existed to qualify for superannuation contributions has also now been abolished, meaning that employees can be eligible for superannuation payments regardless of how much they earn.

Government Introduces Respect@Work Legislation

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler

On September 27, the Australian Federal Government introduced legislation that implements an additional seven of the Sex Discrimination Commissioner's 2020 Respect@Work Report recommendations, including a positive duty for employers to prevent workplace sex discrimination, harassment, and victimization. The proposed changes also include an amendment to the Australian Human Rights Commission's powers to enforce compliance by conducting inquiries, making recommendations to achieve compliance, giving compliance notices specifying actions to address noncompliance, applying to the courts for an auditor to direct compliance with notices and a power to enter into enforceable undertakings. Both the states of the Northern Territory and Victoria have also proposed changes to their anti-discrimination legislation to impose similar positive requirements for employers to eliminate discrimination, harassment and victimization.

Legislative Proposal to Provide Paid Family and Domestic Violence Leave

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler

The Government has adopted the Fair Work Commission's proposed amendment to legislation to introduce 10 days paid family and domestic violence leave, while it is separately pushing ahead with ratifying the ILO Convention Concerning Minimum Age for Admission to Employment, 1973 (No. 138). Ratification of the convention is part of the National Action Plan to Combat Modern Slavery 2020-25.

Jobs Summit Signals IR Changes on the Way

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler

On September 1 and 2, 2022, a Jobs and Skills Summit was held in Australia, which provided some detail for the employment and workplace relations changes that we can expect from the newly elected government.

Workplace Relations Minister Tony Burke has indicated that the government's planned amendments include the following: (i) improving access to flexible working arrangements and unpaid parental leave; (ii) increasing protections for workers against adverse action, discrimination and harassment; (iii) ensuring that workers and employers can negotiate agreements in good faith, extending to small businesses, women in the care and community services sectors, and Indigenous people; (iv) making sure workers and businesses have "flexible options" for reaching agreements, including removing "unnecessary limitations" on access to single and multiemployer agreements; (v) allowing employers and workers who already successfully negotiate enterprise agreements to continue to do so; (vi) removing unnecessary complexity, including making the better-off overall test simple, flexible and fair; (vii) giving the Fair Work Commission the capacity to proactively help workers and employers reach agreements that benefit them, particularly new entrants and small and medium businesses; (viii) providing proper support for employer bargaining representatives and union delegates; and (ix) ensuring the process for agreement terminations is "fit for purpose" and fair, while providing for the "sunsetting" of enterprise agreements that have passed their nominal expiry date, but which remain preserved by law.

Austria

Use of Time Credits during Leave of Absence

Precedential Decision by Judiciary or Regulatory Agency

Author: Michaela Gerlach, Partner – Gerlach Löscher | Littler

According to Supreme Court case law, the use of vacation time cannot be ordered unilaterally by the employer, but always requires an agreement, even in the case of a paid leave of absence ordered by the employer (*e.g.,* during the notice period). However, the duty of loyalty may give rise to an exceptional obligation on the part of the employee to use up their vacation within the notice period if this can reasonably be expected from the employee. The Vienna Higher Regional Court recently affirmed such an obligation with regard to time credits, since the leave of absence extended beyond three months, the employee had built up very high time credits (around 385 hours in addition to vacation) and the leave of absence fell within the usual vacation period during the summer. It ruled that the use of at least half of the time credits could reasonably be requested from the employee.

Joint Culpability in Case of Unjustified Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Markus Löscher, Partner – Gerlach Löscher | Littler

In principle, the joint culpability rule applies in the case of justified early termination of an employment relationship, so that any claim for compensation can be determined by a court based on the proportion of culpability from both sides. According to a recent decision of the Vienna Higher Regional Court, however, the rule also applies in the case of unjustified early termination by the employer. Therefore, if the employee is partly to blame for the premature dismissal by the employer, the dismissal remains unjustified, but the court may mitigate the employee's claim for compensation on the basis of the employee's contributory negligence.

New Draft Law Regarding Annual Leave Payment

Proposed Bill or Initiative

Author: Christopher Badalec, Attorney-at-Law – Gerlach Löscher | Littler

We previously reported that the European Court of Justice (ECJ) ruled that employees are entitled to monetary compensation for unused annual leave even after unjustifiably terminating their employment early. The Austrian Vacation Act denies such an entitlement. However, following the ECJ's ruling, the Austrian Social Affairs Committee of the Parliament introduced a draft law to amend the Vacation Act that would provide compensation for up to four unused vacation weeks in cases of unjustified early termination by the employee, but would not compensate for the fifth and sixth weeks. This aspect of the proposed law follows the Austrian Supreme Court's view that the ECJ's ruling applies only as to the minimum leave entitlement of four weeks under EU law. Currently, the draft law is pending review in Parliament, but is expected to be passed as suggested by the Social Affairs Committee.

Proposal to Re-launch the Special Care Time for Children Infected with COVID-19

Proposed Bill or Initiative

Author: Armin Popp, Senior Associate – Gerlach Löscher | Littler

The Austrian Social Affairs Committee proposed a re-launch of the special care time for children who are infected with COVID-19. This shall apply for the period from September 5 (retroactively) to December 31, 2022. Parents would be entitled to up to three weeks of care time if their child is prevented from visiting the childcare facility due to official COVID-19 related movement restrictions. Employers will receive a compensation of the costs from the COVID-19 Crisis Management Fund. A possibility to agree on a voluntary care time with the right to such compensation is not provided for anymore. Whether the Parliament will consent to this proposal still remains to be seen.

Proposed Inflation Relief Package Seeks to Increase Annual Valorization of Family and Social Benefits

Proposed Bill or Initiative

Author: Brigitte Sammer, Attorney-at-Law – Gerlach Löscher | Littler

A broad majority in the Austrian Social Affairs Committee voted in favor of annual valorization of family and social benefits (inflation relief package III). In addition to special care allowance, this will also apply to other social and family benefits in the future (such as family allowance, childcare allowance, study allowance, etc.), but not to unemployment benefits or emergency aid. An additional new feature is that the support benefit for the so-called "*Papamonat*" (father's month, which is a paternity leave of one month to care for the child and the mother after the birth) will no longer be counted towards the childcare allowance that the father may receive in the future. We will report on whether the Parliament implements this proposal.

Brazil

New Law Regulating Telework and Granting Food Aid

New Legislation Enacted

Authors: Marília Nascimento Minicucci, Partner, and Renata Neeser, Shareholder - Littler

Newly enacted Law # 14,442/2022, published on September 5, 2022, regulates teleworking and grants food aid to employees. Under the law, teleworking employees who render services under the "working period" modality are subject to time tracking; companies can adopt teleworking for interns and apprentices; when assigning activities that can be carried out through telework, companies must give priority to employees with disabilities and employees with children (or who have judicial custody of children four years old or younger); and employees who are hired in Brazil but choose to work abroad are subject to Brazilian law (except for Law # 7,064/1982), unless the parties agree otherwise.

Further, the law grants food aid, providing that the amounts the companies pay must be used exclusively for the payment of meals or edible goods in establishments (e.g., restaurants, supermarkets, etc.) and provides for civil penalties (such as cancelation of taxpayer registrations) and fines (ranging from BRL 5,000.00 to BRL 50,000.00, or doubled, in case of recidivism) in the event of a deviation of said purposes.

New Law Sets Compliance Deadline to Implement Anti-Sexual Harassment Measures and Creates "Employ + Women" Program

New Legislation Enacted

Authors: Marília Nascimento Minicucci, Partner, and Renata Neeser, Shareholder - Littler

Newly enacted Law # 14,457/2022, published on September 22, 2022, provides for new measures to prevent sexual harassment in the workplace, requiring companies adopt the measures within 180 days from the date the law became effective (i.e., September 22, 2022).

Further, the new law establishes the "Employ + Women Program," which aims to increase the employment of women through several measures, such as the flexibilization of maternity leave and the suspension of the employment contracts of working parents, so they can spend more time with their children during the important development stages.

São Paulo Issues Guidance to Prevent and Control Monkeypox

Trend

Authors: Marília Nascimento Minicucci, Partner, and Renata Neeser, Shareholder - Littler

On August 24, 2022, São Paulo's City Government released guidance to prevent and control monkeypox, including specific recommendations for the adoption of sanitary measures in the workplace, including the use of a face mask, referring suspected cases to a Health Unit, cleaning and disinfection of facilities, among other measures. The guidance further recommends that when a suspected case is confirmed, the individual should be isolated and removed from their activities until the rash has fully healed and a new layer of intact skin has formed. Cases with an undetected test result may be released from isolation.

Although the guidance is a set of recommendations, following them may help employers defend against labor lawsuits from employees or investigations by the Ministry of Labor or the Labor Prosecutor's Office if there is a claim that the infection occurred at the workplace.

Canada

Alberta Court of Appeal: Employees Entitled to Common Law Reasonable Notice When Termination Clause Is Ambiguous

Precedential Decision by Judiciary or Regulatory Agency

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

In [*Bryant*], 2022 ABCA 220, the Alberta Court of Appeal found three long-term employees who signed a standard form employment contract with a termination clause entitling them to "sixty (60) days or more written notice," were entitled to common law reasonable notice because the termination clause was not sufficiently clear, unequivocal and unambiguous.

Alberta Court of Appeal: Employee Must Express Lack of Consent to Employer's Unilateral Compensation Reduction Quickly

Precedential Decision by Judiciary or Regulatory Agency

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

In [*Kosteckyj*], 2022 ABCA 230, the Alberta Court of Appeal found that an employee who does not accept a unilateral reduction in compensation should say so quickly as their failure to do so may cause a constructive dismissal claim to fail.

Ontario Court of Appeal: Employers' Discretion in Awarding Discretionary Bonuses Must be Exercised Fairly and Reasonably

Precedential Decision by Judiciary or Regulatory Agency

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

In [*Bowen*], 2022 ONCA 614, the Ontario Court of Appeal put employers on notice that their discretion in awarding discretionary bonuses is not unconstrained and must be exercised fairly and reasonably.

Ontario Arbitrator Finds Three-Dose Mandatory Vaccination Requirement Reasonable in Long-Term Care Homes

Precedential Decision by Judiciary or Regulatory Agency

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

In a recent case (2022 CanLII 78173), an arbitrator decided that a mandatory vaccination policy requiring employees in two long-term care homes to receive three doses of the COVID-19 vaccine was reasonable.

Canada Removes All COVID-19 Entry Restrictions for All Travelers Regardless of Citizenship Effective October 1, 2022

Important Action by Regulatory Agency

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

Effective October 1, 2022, Canada's COVID-19 entry restrictions were removed for all travelers regardless of citizenship, and Transport Canada removed existing travel requirements.

Colombia

New Decree Facilitates Teleworking Arrangements

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

The Ministry of Labor issued Decree 1227 of 2022, to remove barriers for the implementation of teleworking. In relevant part, the decree eliminates the obligation for the internal working rules to include stipulations related to teleworking. Further, it requires teleworking employees comply with the teleworking policies and allows the parties to the employment relationship (i.e., employer and employee) to enter into their own agreement regarding the monthly allowance amount to compensate for costs related to teleworking (*e.g.*, provision of public services).

New Decree Regulates the Various Economic Allowances by the System of Social Security in Health

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

New Decree 1427 of 2022 regulates the various economic allowances provided by the General System of Social Security in Health (*Sistema General de Seguridad Social en Salud* or SGSSS). Under the decree, to recognize a maternity leave, the mother's affiliation to the SGSSS, payments of social security contributions during the pregnancy period, and a maternity leave certificate issued by the treating physician are required. If the employee does not pay social security contributions during the entire pregnancy term, the maternity leave will be paid proportionally to the contributions made. If the maternity leave is extended to the father due to the mother´s death, the paternity leave and the maternity leave will be compatible.

For a medical leave caused by common sickness or disease to be recognized and paid, the employee must be affiliated to the SGSSS for at least four weeks before the medical leave and present a certificate of medical leave issued by the treating physician.

New Decree Regarding Unemployment Benefits

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

New Decree 1493 of 2022 amends Decree 1072 of 2015 in various parts as it relates to the economic benefits for the unemployed provided by the unemployment fund (*Fondo de Solidaridad de Fomento al Empleo y Protección al Cesante* or FOSFEC). One of the main changes is that the unemployment benefits will be paid by the SGSSS. Accordingly, individuals who seek to receive these benefits must apply at the compensation fund to which they were last affiliated and such fund must respond within 15 days from the date of application.

Costa Rica

Digital Nomads Regulation

New Legislation Enacted

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

Law 10,008, which was signed into law on July 4, 2022, will regulate the migratory status of digital nomads. The nonresident status (called fifth stay) will allow remote workers who have flexible working conditions to telework from Costa Rica, which will represent an economic and social benefit for the country.

Gradual Reduction to Minimum Tax Base for Social Security

New Legislation Enacted

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

On September 1, 2022, the Costa Rican Social Security Fund agreed to a gradual reduction of the minimum tax base for social security, by approving the amendment of article 63 of the Health Insurance Regulations and articles 2 and 34 of the Disability, Old Age and Death Insurance Regulations. Such amendments adjust the rules regarding the minimum base for the contributions of part-time workers and employees with salaries lower than a specific threshold. The amendments also provide for a gradual adjustment in the upcoming years, starting January 2023 and for same periods of 2024 and 2025.

Extraordinary Salary Increase for the Private Sector

New Order or Decree

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

By a majority of votes, the National Salary Council approved an extraordinary increase of 1.24% for all salary categories in the private sector. This increase applies to minimum wages effective July 1, 2022.

Dominican Republic

Minimum Wage for Domestic Workers

New Order or Decree

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

On August 24, 2022, the National Wage Committee issued Resolution No. CNS-11-2022, which sets the minimum wage for domestic work at RD$10,000.00. This resolution was issued in compliance with International Labor Organization's Convention 189 on domestic workers.

Working Conditions of Domestic Workers Regulated by Resolution

New Regulation or Official Guidance

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

The Minister of Labor, through Resolution 14-2022, formalized the regulations for the labor relations between domestic workers and their employers. The resolution recognizes rights, such as the entitlement to an eight-hour workday, overtime pay, and registration in the social security system, conditions that were not regulated before.

Co-payment for High-cost Illnesses Reduced by 50% for Affiliated Workers

New Regulation or Official Guidance

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

On September 22, 2002, the National Social Security Council issued Resolution No.553-02, which reduces by 50% the co-payment of the Family Health Insurance (SFS) of the Contributory Regime for hospitalization services, cesarean sections, surgeries, renal transplants, and other high-cost diseases. It also extends coverage of high-cost drugs.

El Salvador

New Social Security Obligation

New Legislation Enacted

Author: Manuel Rosa, Partner – BDS, Member of Littler Global

A new employer obligation has been added to Article 29 of the Labor Code. Specifically, employers must enroll and pay for social security contributions for employees that (a) are in probationary period, or (b) have agreed to a term/defined employment relationship. This obligation existed in other laws but was incorporated into the main Labor Code.

Obligation to Provide Early Childhood Development Services

New Legislation Enacted

Author: Manuel Rosa, Partner – BDS, Member of Littler Global

The new Growing Together Law requires employers of 100 or more employees on their payroll to provide early childhood development services to their employees. This obligation may be fulfilled through the following options: a) operating a care center in the company's facilities; b) outsourcing said service; or c) joining with other companies to jointly operate such care center.

Sanctions for Failure to Hire People with Disabilities

New Regulation or Official Guidance

Author: Manuel Rosa, Partner – BDS, Member of Littler Global

Under the Special Law on Inclusion of People with Disabilities, employers are required to hire one person with a disability for every 20 workers in their employ. The law imposing sanctions for failure to meet this requirement has been extended to January 1, 2023.

Finland

Reform of Family Leave Legislation

New Legislation Enacted

Authors: Emma Mäkeläinen, Associate, and Samuel Kaariainen, Partner – Dottir Attorneys Ltd.

The reform of the family leave legislation entered into force August 1, 2022. The old maternity and paternity leaves were replaced by pregnancy leave and quotas for parental leave. The special maternity leave was also renamed as special pregnancy leave. In addition, a new filial leave was introduced.

According to the new legislation the pregnancy leave is 40 days and the quotas for parental leave are 160 days for both parents and 320 days in total. Of these 160 day quotas, 63 days can be transferred to the other parent. The new filial leave gives the employees a right to a maximum of five calendar days of filial leave during a calendar year.

Implementation of the European Union Whistleblowing Directive

New Legislation Enacted

Authors: Emma Mäkeläinen, Associate, and Samuel Kaariainen, Partner – Dottir Attorneys Ltd.

On September 19, 2022, the Finnish government issued a proposal for the implementation of the so-called Whistleblowing Directive (i.e., the European Union's Directive on the protection of persons who report breaches of Union law). The proposed act is planned to take effect as soon as possible. Organizations with more than 250 employees in the private sector and 50 or more in the public sector should implement the channel within three months from the date the legislation takes effect, whereas private companies with at least 50 employees should implement the channel by December 17, 2023.

The aim is to encourage people who observe or suspect serious misconduct of public interest within the areas defined in the proposed act, to report their observations. In accordance with the proposal, the whistleblowers should be provided with a safe (and anonymous if so decided by the organization) channel for written and/or verbal reporting as well as protect them against any negative consequences. The implementation of the reporting channel is subject to dialogue with the personnel or their representatives if the organization falls within the scope of the Cooperation Act.

Actions to Raise the Employment Rate of over 55-year-olds

New Legislation Enacted

Authors: Emma Mäkeläinen, Associate, and Samuel Kaariainen, Partner – Dottir Attorneys Ltd.

Parliament accepted the proposed amendments in relation to promoting the employment rate of over 55-year-old employees. The amendments are scheduled to enter into force January 1, 2023. The new redundancy package progressively withdraws the previous right to additional days of unemployment allowance and implements the right to re-employment allowance, training, and longer employment leave for employees over 55 years dismissed due to redundancy, provided that the employment with the same employer has lasted at least five years.

A so-called redundancy contribution is imposed to the employer dismissing at least 55-year-old employees due to redundancy provided that the payroll subject to the unemployment insurance exceeds the lower limit. The contribution is not applicable to the smallest employers. Additionally, the employees over 55 years that have been employed by the same employer for at least three years are entitled to reduced working hours upon request and the employer must endeavor to organize the working hours to part-time. The aim is to support the wellbeing as well as to lengthen the careers of employees.

Proposed Amendments to the Nondiscrimination Act

Proposed Bill or Initiative

Authors: Emma Mäkeläinen, Associate, and Samuel Kaariainen, Partner – Dottir Attorneys Ltd.

On September 19, 2022, the Finnish government proposed amendments to the Nondiscrimination Act relating to the employer's duty to promote equality, and the competence of the nondiscrimination ombudsman to evaluate and oversee the realization of equality in the workplace. The amendments are scheduled to enter into force June 1, 2023.

In accordance with the proposal, the employer must take into consideration the different potential reasons for discrimination when assessing the realization of equality in the workplace. This assessment should also be conducted during recruitment processes. Additionally, the conclusions of the assessment should be included in the written equality plan. The aim is to clarify the responsibilities of the employer. In addition to the employer's responsibilities, the competence of the nondiscrimination ombudsman would be extended, without prejudice to the provisions on confidentiality, to obtain information on equality matters from the employer, as well as to carry out on-the-spot checks at the workplace. This proposal would increase the competence of the nondiscrimination ombudsman on the equality matters within working life.

France

Measures against Inflation: Exemptions on Overtime and Purchase of Rest Days

New Legislation Enacted

Authors: Guillaume Desmoulin, Partner, and Nicolas Daimez, Knowledge Management Counsel – Fromont Briens | Littler

The law relating to the protection of purchasing power introduces a fixed deduction of employer's contributions on overtime payment for companies with at least 20 employees and less than 250 employees. Such scheme already exists for companies with less than 20 employees. The new deduction is applicable to all overtime hours worked as of October 1, 2022. A decree must specify the amount of this deduction. Overtime hours worked by part-time employees do not benefit from the scheme.

Published on the same day, the Amending Finance Act for 2022 raises the income tax exemption ceiling for overtime and complementary hours. Remuneration paid as counterpart of overtime and additional hours worked since January 1, 2022, is now tax exempted up to €7,500 per year (previously €5,000). It also provides for a system allowing employees to "purchase" rest days or reduced working hours. Any employee can ask their employer to give up all or part of their rest days acquired from January 1, 2022, to December 31, 2025. The amount paid in return is increased and benefits from the same tax and social exemptions as overtime.

Exceptional "Value-sharing" Bonus

New Legislation Enacted

Authors: Guillaume Desmoulin, Partner, and Nicolas Daimez, Knowledge Management Counsel – Fromont Briens | Littler

The value-sharing bonus is actually the extension of an existing exceptional bonus created in 2018. It is an optional scheme aiming to encourage employers to pay an additional annual bonus to their employees. The bonus is exempted from social security contributions up to a limit of €3,000. This limit is raised to €6,000 in certain cases, such as the implementation of a profit-sharing scheme.

Employees earning up to three times the minimum wage are also exempted from income tax. The payment of this bonus can be implemented through a company agreement or unilateral decision of the employer. The bonus may be the same for all, modulated or reserved for certain categories of personnel according to criteria of remuneration,

classification level, seniority in the company, length of effective presence during the past year or working hours. It may be paid in one or more installments, up to a maximum of once per quarter, during the calendar year.

Early Release of Profit-sharing and Incentive Payments

New Legislation Enacted

Authors: Guillaume Desmoulin, Partner, and Nicolas Daimez, Knowledge Management Counsel – Fromont Briens | Littler

Article 5 of Law No. 2022-1158 of August 16, 2022, offers current or former employees the possibility of unblocking on an exceptional basis profit-sharing rights and sums allocated under the incentive scheme. When invested in an employee savings plan, these amounts are normally unavailable for five years. The exceptional release mechanism allows beneficiaries to request the withdrawal, until December 31, 2022, of all or part of the assets blocked in an employee savings plan, with the exception of certain types of plans such as group retirement savings plans (PERCO). Amounts released in this way may be exempt from income tax. However, the income from these sums is subject to social security deductions on investment products.

The amount of money released under this scheme is limited to €10,000 per beneficiary, net of social security contributions. The law provides that the amount released must finance the purchase of one or more goods or the provision of one or more services. The administration specifies that these sums are intended to support household consumption and are therefore not intended to be reinvested in other savings schemes.

Labor Relations within the Platform Sector

New Legislation Enacted

Authors: Guillaume Desmoulin, Partner, and Nicolas Daimez, Knowledge Management Counsel – Fromont Briens | Littler

An order dated April 6, 2022, organized so-called "labor relations" in the mobility platform sector. Collective agreements can now be concluded between workers' organizations and professional organizations of platforms recognized as representative in their sector, the list of which was published in the Official Journal on September 13. Two decrees of September 21, 2022, specify the conditions of publication of sector agreements on the website of the Employment Platforms Labor Relations Authority (ARPE), as well as the information and communication obligations of the platforms to the workers with the establishment of a digital space.

An approval procedure for agreements making the text mandatory for all platforms is modeled on the extension procedure for traditional collective agreements. In case of dispute on the implementation of the agreement, the ARPE plays a mediation role. The self-employed person can mandate a representative to seize the ARPE and to represent them during the mediation process. Once seized by the representative, the ARPE informs the platform that it has a period of two months to accept to engage in mediation.

Germany

New Statutory Regulations on the Adjustment of Employment Contracts

New Legislation Enacted

Author: Jan-Ove Becker, Partner – vangard | Littler

The German legislator has passed the law implementing EU Directive 2019/1152 on transparent and predictable working conditions in the European Union, which came into force on August 1, 2022, and entailed numerous changes to labor law, in particular to the German Evidence Act. Evidence of the material terms of the contract must be in

writing, as electronic form is expressly excluded. In addition, for the first time, violations of certain provisions of the German Evidence Act will be treated as administrative offenses, each punishable by a fine of up to 2,000 euros.

Under the law, employers must provide employees with the name and address of the contracting parties, the required information on remuneration and the agreed working hours in a written record no later than on the first day of work performance. Other evidence (*e.g.*, the start and duration of the employment relationship, a description of the work to be performed by the employee) must be provided no later than on the seventh day after the agreed start of the employment relationship and only in a few cases the previous one-month deadline does apply.

Employer's Obligation to Comprehensively Record Working Hours

New Order or Decree

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

According to the decision of the Federal Labor Court of September 13, 2022 (1 ABR 22/21), employers are obliged to record all working hours of employees in accordance with the interpretation of Section 3 (2) No. 1 of the German Occupational Health and Safety Act in conformity with Union law. In this respect, this obligation also applies beyond the recording of working hours exceeding eight hours per day, as well as work on Sundays and public holidays, which is expressly required by the Working Hours Act.

Following the opinion of the judges, the employer's scope of action is already conclusively defined by the law, and a right of initiative of the works council to introduce a system for recording working hours resulting from co-determination is excluded. It will be necessary to examine what leeway the decision still allows, how closely the occupational health and safety authorities now check the existence of a working time recording system, and whether the federal government can still keep its promise in the coalition agreement to save trust-based working time. In particular, it is necessary to await the detailed reasons for the decision, which are yet to be published.

ECJ: Vacation Entitlement Can Override Statute of Limitations

Precedential Decision by Judiciary or Regulatory Agency

Author: Kim Kleinert, Associate – vangard | Littler

The European Court of Justice ruled that a vacation claim is subject to the statute of limitations only if the employee has been informed of such vacation entitlement. If an employer has not informed employees of the possible forfeiture of vacation, a vacation claim cannot become time barred. In this respect, the German regulations on the statute of limitations are contrary to Union law. The ECJ ruled that an employer who violates the duty to inform should not be rewarded with a statute of limitations.

Employee Leasing - Extension of the Statutory Maximum Duration by Collective Agreement

Precedential Decision by Judiciary or Regulatory Agency

Author: Luisa Rödemer, Senior Associate – vangard | Littler

In the case of temporary employee leasing, a collective bargaining agreement (CBA) between the parties to the CBA in the sector in which the employee is to be deployed may provide a different maximum leasing period in deviation from the legally permissible period of 18 months. This also applies with effect for the leased employee and the lender, regardless of whether they are bound by the CBA. Due to this effect, an employment contract between the temporary worker and the hirer is not concluded by operation of law on the basis of exceeding the statutory maximum temporary employment period.

The decision of the Federal Labor Court of September 14, 2022, thereby confirms that the parties to the CBA have considerable leeway with regard to a regulation that goes beyond the statutory maximum duration of the temporary employment relationship.

Hungary

Facilitating the Employment of Foreign Employees

New Legislation Enacted

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

The recent amendment of the Labor Act introduced the category of qualified staffing agencies. To stipulate the more detailed provisions on these agencies, the government issued a decree regulating these staffing agencies who are entitled to place foreign employees as temporary staffing to Hungarian companies. An existing staffing agency may apply to be licensed as qualified staffing agency by the competent authority. The applicant must comply with several conditions, among them at least 500 employees in average for the previous business year, a bank deposit of HUF 50,000,000 (approximately USD 117,000) dedicated to the payment of any potential tax fine, and a status of taxpayer without tax debts, as certified by the tax authority.

Voting Participation Right of the Employees

New Legislation Enacted

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

The new amendment of the Labor Act obliges employers to make possible for employees to participate on the parliamentary and EU parliamentary and municipal elections and referenda.

India

Work from Home Amendment and Guidelines for Employers in Special Economic Zones

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Ajay Singh Solanki, Partner – Nishith Desai Associates

The Indian Ministry of Commerce and Industry has notified the Special Economic Zones (Amendment) Rules, 2022 on July 14, 2022, permitting employers in notified Special Economic Zones (SEZ) to allow up to 50% of their employee strength in SEZ (including contract workers) to work from home (WFH) or remotely from any place outside SEZ, subject to compliance with certain requirements.

WFH permission can be provided to employees in SEZ units registered as Information Technology/ Information Technology enabled Services, employees who are travelling, employees who are working off-site and employees who are temporarily incapacitated. In order to enable employees to WFH, employers will need to submit a WFH proposal to the SEZ Development Commissioner (DC) in a prescribed manner. Compliance requirements for permitting SEZ employees to WFH include submitting a WFH proposal to the DC for approval. Additionally, as per guidelines issued by the Ministry of Commerce and Industry dated August 12, 2022 (SOPs), the WFH proposal needs to include details of employees or categories of employees who are proposed to be permitted to work remotely, subject to the applicable 50% cap. The SOPs place necessary discretion upon the DC of each SEZ, in approving WFH proposals of SEZ employers for permitting more than 50% of their employee strength (including contract workers) to WFH in line with existing practices.

Notification of HIV Policy under HIV Act

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Ajay Singh Solanki, Partner – Nishith Desai Associates

The Indian Ministry of Health and Family Welfare has notified the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Policy for Establishments, 2022 (HIV Policy) as per provisions of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (HIV Act) read with the federal rules thereto.

The HIV Policy requires all establishments to adopt the principles of nondiscrimination against people infected with and affected by HIV and AIDS, confidentiality related to one's HIV and HIV related data and grievance redressal mechanism in the form of appointing a complaints officer at the establishment for receiving complaints on noncompliances with provisions of HIV Act. The HIV Policy extends protection against discrimination (including discrimination in form of denial of, or termination from employment or occupation or unfair treatment) to not only persons with HIV but also their immediate family members and progeny, residing in the same house. As per federal rules to the HIV Act, the HIV policy is required to adopted by every establishment covered under the HIV Act upon its notification and the text of policy needs to be communicated to all persons working in the establishment by the person in charge of the establishment in a prescribed manner. All establishments are also required to conduct annual training sessions for persons working in the establishment for understanding and implementing the HIV Policy.

Madhya Pradesh Night Shift Work for Women

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Ajay Singh Solanki, Partner – Nishith Desai Associates

The Madhya Pradesh state government through a notification dated August 1, 2022, has permitted employers of commercial establishments in Madhya Pradesh to engage women employees between 9 p.m. and 7 a.m. subject to compliance with certain terms and conditions. Such terms and conditions inter alia include taking certain prescribed steps to prevent sexual harassment at the workplace, maintaining a complaint mechanism in the establishment for time-bound resolution of complaints, complying with certain health and safety related requirements, employing women employees in batches of at least 10 women workers per batch ensuring that at least two-thirds of total strength of workers at nighttime is women.

There are additional requirements in respect of providing transportation facilities and arranging pick-up and drop services for women employees working at night, appointing female wardens at night, granting additional paid menstruation leave to women workers, having monthly meeting with women contract workers once in eight weeks to address reasonable grievances, etc.

Online Application for Exemption under Certain Provisions of Delhi Shops and Establishments Act, 1954

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Ajay Singh Solanki, Partner – Nishith Desai Associates

The Labor Department, Government of Delhi has notified an online portal on August 5, 2022, for receiving the application for allowing exemption from applicability of under Sections 14, 15 and 16 of the Delhi Shops and Establishment Act, 1954 (DSEA). The exemption under section 14 is for allowing young persons and women to work between 9 p.m. to 7 a.m. during the summer and between 8 p.m. to 8 a.m. in the winter. The exemption under section 15 is with respect to opening and closing hours of establishment and the exemption under section 16 is for allowing opening of establishments on weekly off day or on national holidays.

The online application for seeking exemptions under the aforesaid provisions of DSEA can be made at: https://dlabourwelfareboard.delhi.gov.in/shopexemption.

Uttar Pradesh to Consolidate All State Labor Laws into Four Codes

Proposed Bill or Initiative

Authors: Sayantani Saha, Associate, and Ajay Singh Solanki, Partner – Nishith Desai Associates

As per recent news reports, the Uttar Pradesh state government is considering consolidation of eight state labor laws into one or two labor codes. This is to simplify the applicable legislations and reduce multiplicity of legal provisions. Currently, there are at least eight state and 29 central laws applicable in the state of Uttar Pradesh and the government is considering simplifying the same by subsuming the state laws into codes, in a similar manner as the Indian Ministry of Labor and Employment has codified 29 central labor laws into four labor codes.

Italy

Smart Working Arrangements Extended until December 31, 2022

New Legislation Enacted

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

Through enactment of Law No. 142/2022, the Italian government introduced various provisions governing "smart working." First, the law that allows employers to arrange smart working for employees without the need to conclude individual agreements is now extended to December 31, 2022. Further, vulnerable employees (*i.e.*, workers suffering from chronic illnesses that impair their immune system) and employees with a certification of "severe disability" are entitled to perform their work activities through smart working, including being assigned to different tasks within the same legal category or area of classification or performing their professional training activities remotely. The right to smart working also extends to employees who have at least one child under the age of 14, provided that there is no other parent who is a beneficiary of income support measures in the event of suspension or termination of employment or that there is no nonworking parent.

Additionally, as of September 1, 2022, new telematic communication methods were introduced through Ministry of Labor Decree No. 149/2022, by which employers must report the details of employees for whom smart working is activated, including names, start and termination dates of the smart working arrangement.

Italy Transposes into National Law EU's Directive on Transparent Working Conditions

New Legislation Enacted

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

With the enactment of legislative Decree No. 104/2022 (*Decreto Trasparenza*), which is effective August 13, 2022, the Italian government adopted the EU Directive on transparent working conditions, which in part imposes various obligations on private sector employers and mandates administrative fines for noncompliance. Specifically, employment contracts must explicit state the identity of the parties, working hours, place of work, type of employment relationship, probationary period, manner, and terms of notice in case of termination, employees' right to training, vacation and other paid leaves, and the entities receiving social security and welfare contributions. Additionally, employers must notify employees of any automatic monitoring or decision-making systems the company uses to recruit or manage performance (including managing the employment relationship, assigning duties) and how such systems affect supervision, evaluation, performance, and contractual obligations.

The legislation has also modified various labor law frameworks, including (i) the probationary period, establishing the maximum duration and extension in the case of events suspending the employment relationship; (ii) the possibility for the worker to combine other work activities when employed by an employer, with the exception of certain situations where this option may be excluded or limited; (iii) compulsory training; (iv) the possibility, in certain cases and under specific assumptions, of requiring more predictable, secure and stable forms of employment; and (v) protection

against discrimination and wrongful termination in the case of violations of transparency regulations. Further, under the new law, employers must provide employees – via physical or digital delivery – with the relevant provisions of the National Collective Bargaining Agreements that apply to the employment relationship.

New Work Life Balance Law

New Legislation Enacted

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

With legislative Decree No. 105/2022, Italy transposed into national law the EU Directive 2019/1158 on work-life balance. The new law introduced important changes, some of which are mentioned here. First, it introduced mandatory paternity leave, amounting to 10 days in the timeframe from two months before the expected date of birth until five months after the child's birth, adoption, or foster care placement. The leave is 20 working days in the case of multiple births. During the leave, the father is entitled to an allowance equal to 100% of his salary.

The law also creates a parental leave of 10 months for parents to take within the first 12 years of the child's birth, adoption, or foster care placement, with various restrictions. For each child with a serious disability, the mother (or alternatively the father) is entitled to an extension of this parental leave, which may be taken continuously or in installments, for a maximum period of three years, provided that the child is not placed full-time in specialized facilities (with some exceptions). Additionally, employees on parental leave may extend the period of leave and be eligible for compensatory allowances, based on circumstances specifically outlined under the law. Periods of parental leave are counted towards seniority and cannot result in a reduction of vacation, rest, or additional monthly payments, with the exception of various ancillary remunerations, except as otherwise provided by the applicable collective bargaining agreements.

Amendment to Anti-Delocalization Law

New Legislation Enacted

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

With Decree Law No. 144/2022, the Italian government amended its "anti-delocalization" law. Briefly, the law provides that employers with an average of at least 250 employees and who intend to close a plant (a head office, an office, or an autonomous department) located in the Italian territory – with definitive shut down of the related activity and laying off at least 50 employees – must necessarily follow a preventive procedure, the first phase of which provides for communication burdens. In fact, the intention of closure must be communicated in advance to the company's internal trade unions, to the most representative territorial trade unions at the national level and to the regions concerned, to the Ministry of Labor, to the Ministry of Economic Development and to ANPAL (Active Labor Policies Agency).

Employers who are in a situation of crisis or insolvency are excluded from these rules. The notification must be made at least 90 days before the start of the collective dismissal procedure, and within 60 days, the employer must draw up a plan (no longer than 12 months) to limit the employment fallout and submit it to the trade union representatives and the above-mentioned subjects. The plan must be discussed within 120 days and the subjects must be updated monthly on the implementation of the plan.

In the event of actual termination of activity, with concomitant personnel reduction of 40% of the average staff employed in the last year (nationally, locally, or in the department concerned), the employer is obliged to return subsidies, grants and financial aids or economic advantages charged to public finance, from which the offices or plants concerned have benefited (and which are among those subject to mandatory registration in the State aid register), received in the 10 years preceding the start of the procedure, in proportion to the percentage of staff reduction. Until full repayment is made, no further financial aid may be granted to the debtor entity.

Corporate Welfare Measures

New Legislation Enacted

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

New Law no. 142/2022 provides that the value of goods and services rendered to employees, as well as sums disbursed or reimbursed to them by employers for the payment of domestic water, electricity, and natural gas utilities within the limit total of EUR 600.00 do not contribute to income. The exemption threshold of the forms of remuneration in kind that employers can offer to their employees is EUR 258.23 as the ordinary cap.

Amounts paid as reimbursement for household utilities can be factored in the total limit. However, the "fuel bonus" (provided by Decree Law No. 21/2022) does not fall within the mentioned total limit.

Kingdom of Saudi Arabia

Ministerial Decision on Saudization in Select Professions

New Order or Decree

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

The Ministry of Human Resources and Social Development has issued a Ministerial Decision No. 165575 of 28/08/1443 related to Saudization in select professions in amusement parks and entertainment centers, such as branch managers, supervisors, customer service and sales agents, effective September 23, 2022.

Establishments in the entertainment cities within malls are required to comply with 100% Saudization requirements and establishments in independent and seasonal entertainment cities and family entertainment centers are required to comply with 70% Saudization requirements. Exemptions and conditions apply.

Ministerial Decision on Participatory Electronic Platforms

New Order or Decree

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

The Ministry of Human Resources and Social Development has issued a decision supplementing Ministerial Decision 105576 publishing an official procedural guide for employees that work through participatory electronic platforms.

Malaysia

Amendment to Employment Act 2021, Effective January 1, 2023

New Legislation Enacted

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

The Employment (Amendment) Act 2021, which was passed on March 30, 2022, was previously slated to come into effect on September 1, 2022. However, this has been delayed to January 1, 2023, to allow businesses time to implement the necessary changes.

By way of a Ministerial Order, it has been announced that all provisions of the Employment Act 1955, including the amendments passed by the Employment (Amendment) Act 2021 will apply to all employees regardless of their wages. However, entitlement to overtime pay, holiday pay, allowance for shift work and termination, lay-off and retirement benefits is limited to only employees (i) who earn monthly wages of RM4,000 or below; or (ii) regardless of wages, employees who are engaged in or supervise manual labor or in the operation of maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for commercial purposes.

Both SOCSO Amendment and EIS Amendment Came into Force on September 1, 2022

New Legislation Enacted

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

Both the Employees' Social Security (Amendment) Bill 2022 (SOCSO Amendment) and Employment Insurance System (Amendment) Act 2022 (EIS Amendment) came into force on September 1, 2022. The SOCSO Amendment, in part, increases the maximum limit of the insurable amount of monthly wages of an employee from RM4,000 to RM5,000 per month. Similarly, the EIS Amendment increases the maximum limit of the insurable amount of wages of an employee from RM4,000 to RM5,000 per month.

Further Relaxation of COVID-19 Standard Operating Procedures

New Regulation or Official Guidance

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

The Minister of Health announced that mask-wearing is no longer mandatory in Malaysia including while boarding a plane, ending the last of its significant COVID-19 restrictions.

Mexico

New Guidelines on Union Democracy Released

New Order or Decree

Authors: Jorge Sales Boyoli, Shareholder, and Erick Fernandez Mata, Associate – Littler

On July 26, 2022, the Governing Board of Mexico's Federal Center for Conciliation and Labor Registration unanimously approved the General Guidelines for Union Democracy Procedures, which standardize labor relations criteria for unions, companies, and the Federal Labor Center itself. This document, which has gone somewhat unnoticed, addresses relevant aspects of union organizing and are mandatory as of April 18, 2022. The new document is the result of two years' worth of union election analysis and of the various claims found in labor complaints filed in the framework of the United States-Mexico-Canada Agreement (USMCA), under the rapid response mechanism. Although it is questionable whether the guidelines exceed Federal Labor Law regulations and are therefore unconstitutional, the document is undoubtedly a useful instrument in the face of the changing era of labor relations that Mexico is experiencing.

Netherlands

Minimum Wage Raised as of July 1, 2022

New Legislation Enacted

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

Per January and July of every year the statutory minimum wage gets adapted. As of July 1, 2022, the statutory minimum wage is €1,756.20 gross per month for fulltime working employees of 21 years or older. Whether fulltime is 36, 38 or 40 hours per week depends on the sector underpinning the employment relationship.

Falsifying COVID-19 Test Justifies Dismissal with Immediate Effect

Precedential Decision by Judiciary or Regulatory Agency

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

An employer dismissed an employee with immediate effect after discovering that the employee called in sick using a falsified positive COVID-19 test. The court considered that the falsification is criminalized and understood that it made the employer lose trust in the employee. As the employee's conduct was extremely culpable, the dismissal with immediate effect was justified and the employee lost the right to severance payment.

Large Manufacturer Liable for Damage to Employees' Health by Excessive Exposure to Substance

Precedential Decision by Judiciary or Regulatory Agency

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

Former employees of a manufacturing company claimed to have suffered miscarriages and stillbirths due to excessive exposure to a harmful solvent during their work. The court ruled that the company failed to sufficiently protect employees from exposure to dangerous amounts of the solvent between the years of 1964 and 2004. The court now must determine the extent of the health damage per employee.

Retailer Discriminates When Requiring Female Employees to Wear Make-up to Work

Precedential Decision by Judiciary or Regulatory Agency

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

Retailer requires female employees to wear make-up to work, while male employees are allowed to wear make-up but not required to do so. Since wearing make-up is only a small part of the activities for the company, the make-up requirement for female employees is not necessary and functional. The discrimination the requirement causes is therefore forbidden. Rulings of the College for Human Rights are not binding, but can be used to strengthen civil cases before the courts.

Nicaragua

Digital Delivery Company Ordered to Pay Compensation to Contractor

Precedential Decision by Judiciary or Regulatory Agency

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

The National Labor Court of Appeals has established that "delivery" companies that work through a digital platform (such as apps) maintain a working relationship with their contractors, classifying as "contractual simulation" the commercial transport contracts signed between the parties.

Panama

ILO's C190 Close to Being Adopted as Law

Proposed Bill or Initiative

Author: Yeris Nielsen, Partner – BDS, Member of Littler Global

Bill 672 seeks to adopt the International Labour Organization's Convention 190 to eliminate violence and harassment in the workplace. The bill received approval in the third debate of the legislative plenary session and is close to becoming a law of the Republic.

Peru

New Teleworking Law

New Legislation Enacted

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

Act 31572 was published on September 11, 2022, and it constitutes the new Teleworking Law. This new legislation combines the Remote Work and Teleworking frameworks. The law: (i) creates an obligation to compensate employees for internet and electricity costs; (ii) regulates the right of all teleworkers to disconnect; and (iii) prescribes the specific provisions that must be included in an employment agreement for a teleworking arrangement. Further, the law introduces a new set of administrative fines for noncompliance. The Act established an implementation period of 60 calendar days since the publication of the regulations for this new law. To date, the regulations have not been published.

Use of Masks in the Workplace

New Order or Decree

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

On September 29, 2022, the Supreme Decree 118-2022-PCM was published, extending the National State of Emergency for 31 calendar days, for the whole month of October. Among other provisions, the decree states that the use of masks is optional in open spaces and closed spaces with ventilation.

Whether workplaces are closed or open spaces is open to interpretation. Accordingly, employers are encouraged to assess their facilities and determine whether to modify their policy on the use of masks in the workplace, especially considering the employer's obligation to safeguard employees' health.

Extension of the Sanitary Emergency

New Regulation or Official Guidance

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

On August 16, 2022, the Supreme Decree 015-2022-SA extended the Sanitary Emergency until February 25, 2023. This extension means that other measures linked to the Sanitary Emergency – such as the modification of work hours, the mandate to apply remote work for people in a situation of disability, and pregnant and lactating employees – are also extended.

New Protocol for the Inspection of Outsourcing

New Regulation or Official Guidance

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

On August 23, 2022, the Superintendency Resolution N° 428-2022-SUNAFIL was published. This protocol is to assist with the inspection of compliance with the new outsourcing rules that are entering into force. Among other provisions, the protocol establishes the possibility of using technological means for the inspections, and sets forth a list of obligations on outsourcing for each company being inspected, and the way in which any noncompliance can be corrected or, otherwise, sanctioned with an administrative fine.

Modifications to the Guideline for the Surveillance of Employees' Health

New Regulation or Official Guidance

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

The Ministerial Resolution 675-2022/MINSA, published on September 3, 2022, modifies the Guideline for the surveillance, prevention and control of the employees' health before the risk of exposure to the SARS-CoV-2, approved through the Ministerial Resolution 1275-2021/MINSA.

The main modification in this new Resolution is that it eliminates the requirement of full vaccination against COVID-19 to be able to perform in person work and establishes that it is only preferred that employees are duly vaccinated against COVID-19. Other important changes include the introduction of Annex 10, regarding the guide for the use of CO2 in work environments, and the simplification of the procedure to return to in-person work for personnel in the risk group.

Poland

Bill Seeks to Facilitate Hiring Foreigners

Proposed Bill or Initiative

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

Ministry of Family and Social Policy has presented a bill to amend the current legislation regarding employment of foreigners. Currently it is a formalized, bureaucratic process where everything needs to be done on paper. Proposed legislation provides that the whole process would be handled electronically, using a special government platform. Each candidate will gain personal access to the platform to make communication with the authority more fluent.

The so-called "Labor Market Test" (obligating employers to seek Polish candidates first) would be abolished. This will allow employers to skip the lengthy procedure of checking the local labor market conditions.

Bill Seeks to Amend the Collective Disputes Law

Proposed Bill or Initiative

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

The government has presented a bill to repeal the current Collective Disputes Act of 1991 and replace it with new legislation. The bill seeks to strengthen consensual methods of settling disputes and coordinating the actions of all trade unions that are active in a given workplace.

If approved, the new law would be beneficial to the employers as it will prevent situations where one trade union is singlehandedly blocking the agreement. Moreover, the right to strike will be regulated as a last resort measure. It is explicitly against the proposed law to strike without first negotiating with the employer.

COVID-19 State of Emergency Ending on October 30, 2022

Upcoming Deadline for Legal Compliance

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

After almost three years, the state of emergency resulting from COVID-19 seems to be a thing of the past. Although the government has extended the state of emergency until October 30, 2022, it is likely that there will not be any additional extensions. If the state of emergency ceases, employers likely will need to revise their internal by-laws and regulations related to COVID-19, including arrangements for work from home, working time arrangements, severance pay limits, noncompetition termination, among others.

Portugal

Government Revokes a Number of COVID-19 Measures

New Order or Decree

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

During the third quarter of the year, the Portuguese Government has revoked a number of COVID-19 measures. Specifically, on June 30, 2022, Decree-Law no. 42-A/2022 revoked the obligation to present digital certificates or any negative tests for COVID-19 as a requirement to enter Portuguese territory by plane. On August 26, 2022, Decree-Law no. 57-A/2022 abolished the obligation of mask use in public transport, including flights, taxis, and mobility applications, as well as in pharmacies. On the other hand, it is still mandatory to wear them in health establishments and services, and nursing homes.

Additionally, on September 29, 2022, the Council of Ministers voted against extending the COVID-19 declaration of alert. Accordingly, effective October 1, persons with COVID-19 are not required to isolate nor notify the National Health Service about the infection, and the COVID-19 tests are no longer prescribed via the Portuguese National Health Services (SNS). Further, the temporary incapacity to work due to COVID-19 ceases; such cases will be treated under the ordinary disease regime.

New Visa for Job Seekers to Promote Hiring of Foreigners

New Order or Decree

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

With the enactment of Law 18/2022, published in the Portuguese Official Gazette on August 25, 2022, the "Foreigners Law" (*Lei dos Estrangeiros*), Law 7/2007, was amended to create a temporary stay and residence visa for digital nomads; eliminate quotas for visa for subordinate professional activity; and create a new visa for job seekers. It has been noted that, with this new law, the Government seeks to promote safe and orderly immigration and tackle the labor shortage, by promoting international employment contracts and hiring of foreigners.

The new visa for job seekers is available to third country nationals (non-EU citizens), provided the requirements for the visa are met. This visa, which can last 120 days, may be extended for another 60 days, and is limited to the national territory. Within 120 days after the visa is granted, the visa holder will be automatically scheduled to appear before the competent authorities for an application for a residence permit after the formalization of the employment relationship.

A New Path for Fixed-Term Employment Contracts for Public Administration?

Precedential Decision by Judiciary or Regulatory Agency

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

The Supreme Administrative Court (STA) recently published a landmark decision (*i.e.*, Cláudio Ramos Monteiro), marking an important page in Public Administration labor law. In this decision, the STA deviated from its past rulings where it had taken a clear position on the nonconvertibility of fixed-term employment contracts in and for the Public Administration.

In the new decision, the STA recognized the possibility of converting fixed-term employment contracts in a situation of abuse arising from the successive fixed-term employment contracts, exceeding the time limits and maximum number of permitted renewals. The STA considered the absence in Portuguese law of a rule enabling the determination of contractual conversion as a violation of EU Law and, therefore, also considered the principle of Union law primacy. The STA's decision is controversial, but it is still considered a turning point in the labor law of and in the Public Administration. It remains to be seen how the system will remain in place and how civil service workers should be classified.

Digital Platform Companies Created a Business Association

Trend

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

In September, three digital platform companies in Portugal came together to create a business association, named APAD (*Associação Portuguesa das Aplicações Digitais*). According to its founders, the association's goal is to represent its members in Portugal in defense of their common interests.

This association arrives in a time when the Parliament discusses the contractual relations between the platform collaborators and the companies, as well as the standards within the context of the Government's "Decent Work Agenda" (*Agenda do Trabalho Digno*) initiative. Under the Agenda, there is a presumption of employment contracts when there is evidence of an employment relationship between the companies and the platform collaborators, as well as between the platform collaborator and the clients. The association intends to participate in the public hearings on the Agenda.

Puerto Rico

New Legislation on Remote Workers of "Out-of-State" Employers

New Legislation Enacted

Author: Shiara Diloné-Fernández, Capital Member – Schuster LLC | Littler

On June 30, 2022, the governor of Puerto Rico signed into law Act No. 52 (Act 52-2022), which amended the concept of "engaged in trade or business" under the Puerto Rico Internal Revenue Code of 2011, to address the pandemic-related issue of employees working remotely from the Island for "out-of-state" employers with no business nexus to Puerto Rico.

Pursuant to Act 52-2022, for taxable years commencing after December 31, 2021, businesses with employees working remotely from Puerto Rico will not be deemed "engaged in trade or business," provided that (i) at no time during the taxable year, the business (i.e., the taxpayer) has an office or a fixed place of business in Puerto Rico; (ii) at no time during the taxable year, the taxpayer has an "economic nexus" with Puerto Rico; (iii) the taxpayer is not considered a merchant under the provisions of the Puerto Rico Internal Revenue Code; (iv) the remote worker is not an officer, director or majority shareholder of the taxpayer; (v) the services provided by the remote worker are provided for the benefit of clients or businesses of the taxpayer that do not have a nexus with Puerto Rico; and (vi) the taxpayer reports the income paid to the remote worker on a Federal Form W-2 or on a Form 499R-2/W-2PR.

Monkeypox State of Emergency: Why Should Employers Take Note?

New Order or Decree

Author: Anabel Rodriguez-Alonso, Capital Member – Schuster LLC | Littler

In response to the COVID-19 pandemic, Puerto Rico enacted Act No. 37-2020, which created a special five-day paid leave for nonexempt employees in the private sector. Act No. 37 amended the Puerto Rico Minimum Salary, Vacation and Sick Leave Act, by establishing a special paid leave for nonexempt employees infected (or are suspected of being infected) by an illness or epidemic that triggers a state of emergency declared by either the Governor of Puerto Rico or the Secretary of the Puerto Rico Health Department.

On September 1, 2022, Governor Pedro Pierluisi issued Executive Order 2022-044, declaring a State of Emergency in Puerto Rico as a result of the monkeypox virus and empowering the Department of Health to implement the efforts and measures necessary to safeguard the health, well-being, and public safety of citizens, in the face of the increase in cases reported in recent days. As a result of this declaration, non-exempt employees may be entitled to the special paid leave if they are infected or suspected of having been infected with monkeypox.

Secretary of Labor Defines PYMES for Purposes of Act 41-2022

New Regulation or Official Guidance

Author: Mariela Rexach-Rexach, Capital Member – Schuster LLC | Littler

Last month, Puerto Rico's governor approved Act 41-2022, which includes a series of amendments to Puerto Rico's Act 4-2017, better known as the Labor Transformation and Flexibility Act (LTFA), and other employment legislation. Act 41-2022 includes various provisions, including those providing special treatment for employers that are deemed microenterprises, small or medium businesses (jointly "PYMES" by its Spanish acronym) based on their gross income and number of employees during a determined period (as defined by Act 62-2014). The Puerto Rico Secretary of Labor and Human Resources' Opinion No. 2022-02 provides the criteria for PYMES classification.

The special treatment for employers classified as PYMES includes: (i) a 90-day deferred effective date of Act 41-2022 (i.e., until September 18, 2022); (ii) a special hours-worked requirement for employees hired after the effective date of the LFTA in order to be entitled to the Christmas bonus; and (iii) an exemption to the double pay provision applicable when a student works on the day of rest or seventh consecutive day of work.

Puerto Rico Secretary of Labor Interprets Vacation and Sick Leave Accrual for Part-Time Employees under Act 41-2022

New Regulation or Official Guidance

Author: Mariela Rexach-Rexach, Capital Member – Schuster LLC | Littler

Puerto Rico's Vacation and Sick Leave Act (Act 180-1998), which establishes the vacation and sick leave accrual entitlement for nonexempt employees in the private sector, has been amended through the enactment of Act 41-2022. Among other things, the amendment establishes the accrual entitlement of employees, commonly known as "part-time employees," who work less 115 hours, but at least 20 hours per week. Should the employee satisfy both requirements regarding hours worked, they are entitled to accrue a half day of vacation and a half day of sick leave per month, except in the case of Puerto Rico employers with 12 or fewer employees, in which case the vacation accrual rate shall be reduced to one quarter day per month.

Because of the Act's reliance on two different time-worked concepts – to wit, total weekly and monthly hours worked – the Secretary of Labor and Human Resources recognized it has led to varied interpretative proposals and contrary opinions, particularly as to whether compliance with the weekly hours' requirement is based on an average of weekly hours worked during a given month, or, alternatively, whether the employee must work at least 20 hours every week of the month. After reviewing the Act's legislative history, the Secretary, in Opinion 2022-03, adopts the latter approach.

Government's Fiscal Measures in Response to Hurricane Fiona

Important Action by Regulatory Agency

Authors: Lourdes C. Hernández-Venegas, Capital Member, and Alberto Tabales Maldonado, Associate – Schuster LLC | Littler

On September 17, 2022, Puerto Rico Governor Hon. Pedro Pierluisi issued Executive Order No. OE-2022-045, declaring a state of emergency due to the impact of Hurricane Fiona. Likewise, on September 21, 2022, President Joseph Biden authorized a disaster declaration for Puerto Rico, opening up additional relief and assistance for Puerto Rico's recovery process after the devastation left by the hurricane. In light of these actions, on September 27, 2022, the Puerto Rico Treasury Department (PR Treasury) issued Administrative Determination No. 22-08 (AD No. 22-08), summarizing the fiscal administration measures for the benefit of taxpayers and authorized representatives affected by the emergency that has been generated as a result of Hurricane Fiona.

Spain

Terminations While on Sick Leave

New Legislation Enacted

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

The Spanish Parliament passed Act 15/2022, of July12, on equal treatment and nondiscrimination to guarantee and promote the right to equal treatment and nondiscrimination according to the Spanish Constitution. The law regulates the rights and obligations of citizens and sets forth principles and measures to prevent, remove and reverse all forms of direct or indirect discrimination, in public and private sectors, including companies. Although this provision came into force recently, one of the key aspects is that "illness" is mentioned as a cause of discrimination. Until this provision was enacted, termination of employees on sick leave could be null and void if the employee could successfully argue that their illness or injuries could be deemed equitable to disability. The employee had the burden of proof of such discrimination (CJEU's Daoudi doctrine). Now, considering this new provision, the termination of a contract in such circumstances may be considered as directly discriminatory and, consequently, the burden of proof has shifted to the employer.

Key Aspects to be Considered Concerning Teleworking Agreements

Precedential Decision by Judiciary or Regulatory Agency

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

Teleworking, also known as "Home Office" or "Remote Work," has stepped up in recent months due to the COVID-19 pandemic. Indeed, teleworking has become a "new working model" and no country has been exempted. Teleworking consists of carrying out the services through the use, exclusively or primarily, of information, electronic and telecommunication systems and means. According to that, the key aspects to be considered in Spain are the obligation to provide such means, equipment, and tools to perform the services remotely by the employer; compensation for expenses derived from teleworking and the obligation of including and specifying such expenses on the teleworking agreement. In the event of the employer infringing these aspects, the employee may be entitled to claim the resources to telework, the compensation of expenses and even the termination of the employment agreement due to an employer's infringement.

Sanction to Employers for Not Respecting Union Freedom

Precedential Decision by Judiciary or Regulatory Agency

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

Union freedom is a principle and fundamental right in the Spanish Constitution, including the right to be eligible for representing employees in a work-council. In this sense, anti-union behaviors of employers are considered as very serious infringements. Concerning this principle, a Court of Justice in Spain ruled in a judgement that the employer had retaliated two employee representatives, thus infringing unionization rights. These employees appealed the termination of their contracts by arguing the employer had seriously infringed their unionization rights. The High Court confirmed the decision and entitled them to severance of 33 days per year worked. However, the most significant aspect is that, additionally to this severance, the High Court judgment condemned the employer to pay a significant compensation for damages of €45,000 to each of them, resulting in €90,000.

United Arab Emirates

New Emiratization Requirements

New Order or Decree

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

Emiratization is generally to be understood as the boost of Emirati citizens to participate in the private economy sector. In the past, Emiratization was pushed especially within the banking and insurance sector as well as in private sector companies with a workforce exceeding 50 employees. A new Ministerial Decision announced in September 2022 requires private sector companies in the mainland to increase their headcount of Emirati employees by 2% per year, until a final headcount of 10% Emirati employees is met in 2026. Starting point of calculation will be the overall number of skilled workers within a company, which will define the actual number of Emirati employees required, starting with a requirement of one Emirati employee for companies with a headcount of up to 50 skilled workers.

New Visa Rules in Force Since October 3, 2022

New Order or Decree

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

Following ongoing developments in strengthening the United Arab Emirates (UAE) as an international investment and economy hub, the UAE cabinet has approved the so-called Advanced visa system and with this extended existing visa types and introduced new possibilities to enter and stay in the country. Until now, foreigners generally required a host or sponsor, when staying in the country for other purposes than tourism. Since October 3, 2022, also eligible job seekers will be able to enter the UAE in order to search for jobs or attend job interviews. Further, the existing and so-called Golden visa, a residence permit, which allows foreigners to stay in the UAE for up to 10 years, sponsor family and domestic workers, was expanded in a way that the eligibility criteria was extended and comprehensively simplified.

United Kingdom

Court of Appeal Confirms that Conduct of a Whistleblower is Separable from the Fact of Making a Protected Disclosure

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ben Rouse, Associate, and Philip Cameron, Partner – GQ | Littler

On July 8, 2022, the UK Court of Appeal confirmed that the conduct of a whistleblower in making protected disclosures in an automatic unfair dismissal claim is separable from the fact of making such disclosures. This judgment means that employees who blow the whistle do not have blanket protection against dismissal when they have acted unreasonably in the manner in which they raised concerns. However, the Court of Appeal said that there were likely to be few cases where employers will be able to rely on upset or inherent criticism caused by whistleblowing as a separate and distinct reason for treatment, thus employers should tread carefully if considering this path.

Supreme Court Clarifies Holiday Pay Rules for Those on Permanent Contracts but Working Irregular Hours

Precedential Decision by Judiciary or Regulatory Agency

Authors: Ben Smith, Associate, and Philip Cameron, Partner – GQ | Littler

On July 20, 2022, the UK Supreme Court clarified the rules on calculating holiday pay for permanent employees and nonemployed workers who work irregular hours in the UK, such as term-time workers or "permanent irregular workers" (*i.e.*, those on zero hours contracts). All employees and nonemployed workers in the UK are entitled to 5.6 weeks of statutory paid holiday per holiday year, although complex statutory rules means that how much employers

should pay is difficult to calculate for Permanent Irregular Workers. Prior to this case, employers had often used a short-hand calculation to calculate paid holiday entitlement as that which accrues as hours are worked, which effectively pro-rated paid holiday entitlement to reflect the time actually worked over a year.

However, the Supreme Court concluded that this method shouldn't be used and instead the value of the 5.6 weeks of paid holiday should be calculated using the "calendar week method" derived from statute. The calendar week method is a complex formula, but essentially requires employers to calculate an average week's pay over a 52-week reference period ending with the start of the leave period (ignoring weeks in which no pay was received, and employers can look back up to a maximum of 104 weeks for relevant pay data) and then multiplying that average by 5.6. This decision increases the complexity of holiday pay calculations for employers in some cases and may result in anomalous outcomes where permanent irregular workers are entitled to disproportionately generous holiday pay compared to employees working full time. The government has indicated it may act to simplify holiday pay in the future, but no proposals have been made.

Court of Appeal Overturns Injunction Preventing Fire and Re-Hire of Employees

Precedential Decision by Judiciary or Regulatory Agency

Authors: Hannah Drury, Trainee Solicitor, Associate, and Philip Cameron, Partner – GQ | Littler

On July 15, 2022, the Court of Appeal (CA) overturned an injunction that had prevented a supermarket from using fire and re-hire to withdraw a right to "retained pay" that had been described in pre-contractual communications as "permanent" and "guaranteed for life". The High Court (HC) had granted the injunction on the basis that use of the word "permanent" implied a term into the contract that the supermarket would not use its contractual right to terminate as a method of removing the employees' right to retained pay.

On appeal, the CA held that although the supermarket had referred to the benefit as "permanent," there was nothing to suggest that its intention had been to limit its ability to terminate the employees' contracts. Unlike the HC, which focused on principles of fire and re-hire, the CA looked in depth at the contracts themselves and the communications surrounding the contracts to determine if the high hurdle for an implied term had been met in this case. In essence, the CA focused on the fact that an employer has an unfettered right to give notice of termination in line with the contractual notice provisions, whether or not that would deprive the employee of a "permanent" right. The remedy would lie in a claim for unfair or wrongful dismissal. This case is a useful reminder, however, that employers should be careful in the language they use when communicating with staff about the terms of their employment.

Proposed Law May Change the Future of UK's Employment Law

Proposed Bill or Initiative

Authors: Stephanie Compson, Professional Support Lawyer, Associate, and Philip Cameron, Partner – GQ | Littler

On September 22, 2022, the Retained EU Law (Revocation and Reform) Bill was introduced into UK Parliament. The Government has said that if the bill is passed into law, it will end the special status of the "Retained EU Law," which is a category of domestic law created at the end of the transition period of the UK exiting the EU and consists of EU-derived legislation that was preserved in UK law by the European Union (Withdrawal) Act 2018. Under this bill, the majority of Retained EU Law will be subject to "sunset provisions" so that it expires on December 31, 2023 (or June 23, 2026, if extended for specified laws), unless it is preserved in some form.

Additionally, the bill proposes to end the supremacy of EU Law over domestic UK legislation and create powers to restate, revoke or replace Retained EU Law. If the bill passes without amendment, it may have huge implications for EU-derived employment rights in the UK (such as those enshrined in the Working Time Regulations) depending on what Retained EU Laws the Government chooses to lose, keep, or change. The bill is in its early stages and has many more hurdles to get through before it becomes law. The next stage is due shortly where the bill will go for its second reading in the House of Commons and will be debated by Members of Parliament.

United States

The Fourth Circuit is First to Rule that ADA Protects Gender Dysphoria

Precedential Decision by Judiciary or Regulatory Agency

Authors: Yvette V. Gatling, Shareholder, and G. Bethany Ingle, Shareholder – Littler

On August 16, 2022, the U.S. Court of Appeals for the Fourth Circuit issued a landmark decision, finding that the Americans with Disabilities Act (ADA) and the Rehabilitation Act protect individuals with gender dysphoria. This decision is the first decision by a federal appellate court on this issue. The defendants may seek U.S. Supreme Court review. If the defendants do not do so, or the Supreme Court declines to hear the case, the Fourth Circuit decision will remain the law within the Fourth Circuit and may be adopted by other circuit courts. Going forward, it will be important for employers to consider this ruling when faced with participating in the interactive process and providing reasonable accommodations to employees with gender dysphoria.

The Fourth Circuit decision potentially has broad implications for employers in Maryland, North Carolina, South Carolina, Virginia, and West Virginia. Under this decision, employees experiencing gender dysphoria are entitled to the protections of the ADA, including reasonable accommodation. Accommodation requests for gender dysphoria could conceivably arise for restroom usage, employer-provided housing, task and shift assignments, and leaves of absence for medical treatment. In addition, employees are protected from discrimination, harassment, and retaliation on the basis of gender dysphoria under the ADA. Therefore, employers should ensure that employees with gender identity disorders are offered accommodations.

Monkeypox Guidance for Employers

New Regulation or Official Guidance

Authors: Alka Ramchandani-Raj, Shareholder, and Eric L. Compere, Of Counsel – Littler

On September 15, 2022, California's Division of Occupational Safety and Health (Cal/OSHA or the Division) published Guidance on Protecting Workers from Monkeypox (MPX). The guidance applies to workplaces covered by the Aerosol Transmissible Disease (ATD) standard, Title 8 Code of Regulations Section 5199, which includes a defined set of healthcare facilities, medical transport, police, and public health services, among others. Of greater impact is the preamble to the guidance, which states that employers not covered by section 5199 must protect their employees under their Injury and Illness Prevention Programs (IIPP) required under Title 8 section 3203 and sanitation requirements set forth under section 3362.

While silent on specific steps non-ATD employers must take, the guidance signals that Cal/OSHA will consider MPX a new workplace hazard subject to an employer's duty to assess, correct and train employees on hazards. Employers are encouraged to take any reported MPX case in their workplace seriously and contact a workplace safety specialist. Further, employers with public-facing employees are encouraged to document hazard assessments and sanitation efforts should Cal/OSHA make moves to utilize IIPP enforcement as a means to address the health hazard. Review full article on Littler.com, as well as "Monkeypox: What Does this Mean for Employers?" also published on Littler.com.

October Visa Bulletin Includes Significant Reduction in EB-2 Visa Availability

Important Action by Regulatory Agency

Author: Deepti Orekondy, Associate – Littler

The U.S. Department of State (DOS) released its Visa Bulletin for October 2022. The Visa Bulletin is a monthly DOS publication regarding immigrant visa availability. The Bulletin lists the cutoff dates that govern visa availability and determines which applicants are eligible to file for adjustment of status (final stage of Green Card processing), as well as which applicants are eligible to be granted permanent residency. Since Congress sets limits on the number of immigrant visas that can be issued each year, to adjust status to legal permanent resident, an immigrant visa must be

available to the applicant both at the time of filing and at the time of adjudication. Applicants who have a priority date earlier than the cutoff date published in the most current Visa Bulletin are eligible to apply for permanent residence depending on varying factors.

The October 2022 Visa Bulletin is of particular importance as it includes a significant retrogression in priority dates for the EB-2 visa category for individuals born in India. During FY2022, the DOS issued Visa Bulletins with substantial forward movement in the EB-2 category for Indian nationals in order to utilize a historically higher number of employment-based immigrant visas that became available as a result of unused visa numbers in FY2021. Given the high volume of applications received in FY2022 under the EB-2 category for India, the Department has projected lower visa availability in the EB-2 category for India during FY 2023, resulting in the drastic retrogression in an effort to avoid exceeding the annual numerical limit. As a result of the retrogression, many Indian nationals will now continue to wait until the Visa Bulletin progresses and their priority date becomes current. As many of these individuals have been waiting for over 10 years, the retrogression is a setback on their long journey to permanent residency.

Proposed New Joint-Employer Standard Would Dramatically Expand Scope of "Joint Employment" under NLRA

Important Action by Regulatory Agency

Authors: James A. Paretti, Jr., Shareholder, and Michael J. Lotito, Shareholder – Littler

On September 6, 2022, the U.S. National Labor Relations Board (NLRB) delivered a proposal to revise yet again its standard for determining joint-employer status under the National Labor Relations Act (the Act). Affected employers will not welcome this lump of autumnal coal. The Board's proposal largely reestablishes the broad Obama-era standard of joint employment, under which one company may be deemed the joint employer of a second company's employees not only where it directly or immediately exercises control over the second company's workforce, but where the first company's putative control is indirect, or even simply reserved but not ever actually exercised. The proposed regulation was approved with a 3-2 margin, with democrat members of the NLRB voting in favor of the proposal, and republican members voted against it.

The importance of this change should not be understated: joint-employer status can have profound consequences for employers. A joint employer may be required to bargain with a union representing jointly employed workers; may be subject to joint and several liability for unfair labor practices committed by the other employer; and may be subject to labor picketing that would otherwise be unlawful. Review full article on Littler.com.

WPI Labor Day Report 2022

Report

Authors: Michael J. Lotito, Shareholder, and Maury Baskin, Shareholder – Littler

Four years ago, Littler Workplace Policy Institute (WPI) issued its first Labor Day Report, analyzing the state of the U.S. workforce, the regulatory and logistical hurdles employers faced, and the challenges that lay ahead. At the time, the country was nearly two years into a new presidential administration, the U.S. labor market enjoyed a historically low unemployment rate yet a relatively low labor market participation rate, and the growing skills gap was becoming more apparent. Four years, a new administration, and a global pandemic later, the issues confronting employers and the U.S. economy are both familiar yet markedly different.

As inflation rises, national and global unrest grows, and the threat of a recession looms, the economy has become more turbulent than ever. Moreover, while many employers and employees continue to recover from the devastating effects of COVID-19, the rate and extent of recovery varies significantly by industry, level of education, and worker demographics. In certain sectors, a sizable gap persists between the number of job openings and the level of unemployment.

This Labor Day Report examines the various reasons for this disparity, how the Biden administration and state and local legislatures have shaped employment policy, the challenges presented by the evolving nature of work, and the urgent need for federal policy reforms.

Venezuela

New Special Economic Zones Law

New Legislation Enacted

Author: Daniela Arevalo, Associate – Littler

Venezuelan President Nicolas Maduro signed a Special Economic Zones law, which will allow the government to offer tax, financial and legal incentives to attract national and international investment in selected regions of the country. The law was sanctioned by the National Assembly on June 30, 2022, and published in the Official Gazette on July 20, 2022.

The law provides for the introduction of three general types of Special Economic Zones (SEZs): (i) SEZs for the Promotion of Exports; (ii) SEZs for the Selective Substitution of Imports (*i.e.*, goods/products predominantly imported and not produced in Venezuela); and (iii) SEZs for Technological Development.

Law on Registration of Criminal Record

New Legislation Enacted

Author: Gabriela Arevalo, Associate – Littler

New Law on the Registration of Criminal Records, published in the Official Gazette No. 6,712 on July 20, 2022, regulates the registration of criminal records to guarantee the rights of individuals and the proper functioning of the justice system, in accordance with the Constitution of the Bolivarian Republic of Venezuela, the international treaties signed and ratified by the Republic, as well as other Venezuelan laws.

The new law guarantees the right to confidentiality of people, and without exception prohibits the employer from requiring job applicants to present their criminal records as an application requirement. Further, the law establishes fines that are 1,000 times the official exchange rate of the currency with the highest value according to the rate published in the Central Bank of Venezuela.

U.S. Dollar Value Increases

Trend

Author: Gabriela Arevalo, Associate – Littler

The bolivar, the currency of Venezuela, was devalued 21% against the U.S. dollar in a week, according to the report offered on August 26, 2022, by the Central Bank of Venezuela (BCV), which places the price of the U.S. currency at 7.85 Bolivars. On August 19, 2022, the dollar closed at 6.18 bolivars in the official market, which represents an increase in the price of 27%, an increase that had not been seen in recent months and that has a direct impact in the prices of goods and services, calculated, for the most part, in U.S. currency.

Minimum Wage in Venezuela Was Devalued Almost 50% Until August 2022

Trend

Author: Gabriela Arevalo, Associate – Littler

On August 31, 2022, the minimum wage of a Venezuelan worker was quoted at USD16.5, calculated at the rate of the Central Bank of Venezuela (BCV). The BCV values the U.S. dollar at 7.86 bolivars per dollar. With the devaluations registered since last March, when President Nicolás Maduro brought workers' income to 130 bolivars, the minimum wage has lost nearly 50% of its value.

This raises additional challenges for employers to compensate workers for the loss of salary value.

Colombia and Venezuela Resumed Diplomatic Relations

Trend

Author: Daniela Arevalo, Associate – Littler

On August 29, 2022, Venezuela and Colombia formally resumed diplomatic relations. The reopening of the common border between the countries took place on September 26, 2022, with the presence of Colombia's President Gustavo Petro.

With this action, both countries seek to reestablish binational relations in different areas, betting on cooperation and integration to consolidate significant advances for both peoples. This is an important step toward restoring diplomatic relations and accomplishing economic gains for both countries.