Littler The Global Guide Quarterly

Labor and employment law updates from around the globe

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Geida D. Sanlate, Littler Editor

Australia

Paid Parental Leave Amendment

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

Australia has amended its Paid Parental Leave law in order to make the leave more accessible, flexible, and gender neutral. Effective July 1, 2023, employees will be able to combine the 18 weeks of paid parental leave to which they are entitled with the two weeks available for Dad and Partner Pay. Parents who are single at the time of their claim can access the full 20 weeks. Partnered employees can claim a maximum of 20 weeks' pay between them, with two weeks per claimant reserved on a "use it or lose it" basis. In addition, under the amended law, the primary claimant of parental leave pay is not required to be the birth parent. This will allow families to decide who will claim first and how they will share the entitlement.

New Reporting Requirements to Close Gender Pay Gap

New Legislation Enacted

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

The Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023 amended the Workplace Gender Equality Act 2012, aiming to accelerate workplace gender equality in Australia. The reform covers organizations that are required to report annually to the Workplace Gender Equality Agency (WGEA), including private sector employers with 100 or more employees. The amendment requires WGEA to publish employer gender pay gaps. In addition, the amendment includes significant changes to employer reporting obligations.

Under the amended law, employers must collect more detailed information such as an employee's age (year of birth), primary workplace location, and CEO, head of business and casual manager remuneration. Additionally, employers must provide data on prevention and response to harassment on the grounds of sex or discrimination in the workplace.

Increase to Minimum Award Wages, Effective July 1, 2023

New Order or Decree

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

The Fair Work Commission has announced that the minimum award wages will increase by 5.75% effective July 1, 2023. With respect to The National Minimum Wage rate for employees not covered by an award or registered agreement will also be increased by 5.75%. The new National Minimum Wage will be $882.80 per week or $23.23 per hour. The increase will apply from the first full pay period starting on or after July 1, 2023.

Increase in Minimum Required Pay for Work Visa Holders to $70,000

New Order or Decree

Authors: Naomi Seddon, Shareholder, and Xi (Grace) Yang, Of Counsel – Littler

Effective July 1, 2023, the Temporary Skilled Migration Income Threshold (TSMIT) will increase from $53,900 to $70,000. New nomination applications will need to meet the new TSMIT of $70,000 or the annual market salary rate, whichever is higher. This increase will not affect existing visa holders and nominations lodged before this date.

Brazil

New Rules on Professional Apprenticeship

New Legislation Enacted

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

New rules on professional apprenticeship were established through Decree #11,479/2023, published on April 6, 2023, and effective as of that date. Under the new decree, employers can no longer calculate the legal apprenticeship quota based on the average number of employees in each establishment, the number of apprentices hired as indefinite-term employees or count certain hires twice. (Articles 51-A to 51-C of Decree #9,579/2018, which regulated how to calculate this quota, are now revoked.)

Additionally, employees hired under an intermittent work regime and employees on Social Security leaves are no longer excluded from the calculation of the apprenticeship quota. Further, apprenticeship contracts signed under Decree #11,061/2022 will remain valid until their terms expire.

Inclusion of Race/Ethnicity Data in Employment Documents

New Legislation Enacted

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

On April 24, 2023, Law #14,553/2023 was published, providing for the inclusion of race/ethnicity data in employment documents, based on employees' self-classification criteria. This data field must be included in documents, such as hiring and termination forms and work accident forms.

New Minimum Wage Established

New Order or Decree

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

On May 1, 2023, Executive Order #1,172/2023 was published, establishing Brazil's new minimum wage as BRL 1,320.00. Accordingly, the daily minimum wage was adjusted to BRL 44.00 and the hourly rate to BRL 6.00. This adjustment represents an increase of BRL 18.00 over the monthly minimum wage.

Executive Orders are effective immediately upon being published, but they must be approved by Congress within 120 days or they will expire. Congress may also convert it into a new bill.

Mandatory Consent to Process Personal Data of Children and Adolescents

New Regulation or Official Guidance

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

On May 24, 2023, Statement CD/ANPD #1 (from the National Data Protection Authority) was published, allowing the processing of personal data of children and adolescents on the legal grounds provided in Article 7 or Article 11 of the General Data Protection Law (LGPD), provided their best interests are protected. This must be assessed in each specific case and in accordance with Article 14 of the LGPD.

New Developments Regarding the Labor Claims' Event in the eSocial System

New Regulation or Official Guidance

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

On June 30, 2023, the Government announced that the submission of new labor lawsuits into the eSocial system will no longer start as of July 1, 2023, as predicted. Also on June 30, the Federal Revenue Normative Instruction # 2,147 was published, announcing that the DCTFWeb will replace the GFIP in October 2023, for purposes of reporting labor claims.

Canada

British Columbia's Pay Transparency Act Comes into Force

New Legislation Enacted

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

On May 11, 2023, British Columbia, Canada's Bill 13, Pay Transparency Act (Act), received Royal Assent and came into force with the exception of Section 2 of the Act. Section 2, which addresses the employer's obligations regarding publicly advertised job opportunities, comes into force on November 1, 2023.

Unilateral Dismissal of Employee is Constructive Dismissal Unless Contract Provides Otherwise

Precedential Decision by Judiciary or Regulatory Agency

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

In *Pham v. Qualified Metal Fabricators Ltd.,* 2023 ONCA 255, the Ontario Court of Appeal found that unless an employee's employment contract provides otherwise, via an express or implied term, an employer's unilateral layoff of an employee will constitute constructive dismissal, even when the layoff is temporary.

Over $200K in Damages When Employer Manufactures Just Cause for Termination

Precedential Decision by Judiciary or Regulatory Agency

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

In *Chu v. China Southern Airlines Company Limited*, 2023 BCSC 21, the court held that an employer that attempted to manufacture just cause for the termination of a vulnerable employee breached its duty of good faith and fair dealing. The employee was awarded over $200,000 in damages; $58,053 in damages for wrongful dismissal, $50,000 for aggravated damages, and $100,000 for punitive damages.

Employer Justly Terminated Remote Worker's Employment for Time Theft

Precedential Decision by Judiciary or Regulatory Agency

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

In *Besse v. Reach CPA Inc*., 2023 BCCRT 27 the British Columbia, Canada Civil Resolution Tribunal (Tribunal) found the employer had just cause for terminating a remote worker's employment for time theft. The time-tracking program it had installed on the employee's work laptop revealed that 50.76 unaccounted hours were recorded on her timesheets and the Tribunal ordered the employee to compensate the employer for the theft of the unaccounted-for hours.

Alberta Court Recognizes New Tort of Harassment

Precedential Decision by Judiciary or Regulatory Agency

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

In *Alberta Health Services v. Johnston*, 2023 ABKB 209, the Court of King's Bench of Alberta recognized a new tort of harassment. It remains to be seen whether other Canadian courts will revisit their previous rejection of a harassment tort, and whether any court will find employers vicariously liable for such behavior.

China

Measures for the Standard Contract for Outbound Transfer of Personal Information

New Legislation Enacted

Author: Xi (Grace) Yang, Of Counsel – Littler

China's Measures for the Standard Contract for Outbound Transfer of Personal Information (the Measures), promulgated by the Cyberspace Administration of China (CAC), came into effect on June 1, 2023. Under the Personal Information Protection Law, personal information (PI) handlers may legally transfer personal data out of China by entering into a standard contract with the overseas data recipient, provided it meets applicable thresholds and conditions under the Measures. The PI handler must conduct a PI impact assessment (PIA) before cross-border data transfer.

The Measures include a template Standard Contract. The PI handler may agree on additional clauses with the data recipient as long as the additional clauses do not conflict with the Standard Contract. The PI handler must, within ten working days of the effective date of the Standard Contract, file the contract and the PIA with the provincial level CAC. Right before the implementation of the Measures, the CAC released the Guideline on Filing Standard Contract for the Outbound Transfer of Personal Information (First Edition) that clarifies the filing requirements and timeline, including the documentation that needs to be submitted when filing the Standard Contract and a template PIA.

New Rules on Administrative Law Enforcement by the Cyberspace Administration of China

New Legislation Enacted

Author: Xi (Grace) Yang, Of Counsel – Littler

China's Provisions on the Administrative Law Enforcement of Cyberspace Affairs Departments (the Provisions), promulgated by the Cyberspace Administration of China (CAC) took effect on June 1, 2023. The Provisions apply to the implementation of administrative penalties and other administrative law enforcement by the CAC and local cyberspace administrations.

Among other things, the Provisions improved the process for administrative punishment. For example, the cyberspace department will make a text or audio/video record of the entire process of administrative punishment in accordance with law, including initiation, investigation, collection of evidence, review, decision, service, and enforcement, and will archive and store the records. Under certain circumstances such as cases involving major public interests, relevant personnel must conduct a legal review before an administrative punishment decision is made. The rules also require the responsible persons of the cyberspace department to collectively discuss, transcribe, and decide upon the imposition of administrative penalties for complicated circumstances or major illegal acts.

Colombia

Interest Rate of Pension Bonds

New Legislation Enacted

Author: Juliana Ramos, Associate – Godoy Córdoba Littler

Circular 17 of 2023 of the Superintendence of Finance establishes the interest rate of pension bonds. Such bonds will accrue interest at a rate equivalent to the DTF from the date of issuance until the date of surrender.

The DTF for February 2023 for pension bonds of members of the Individual Savings Regime transferred before December 31, 1998, is 1.97%. The DTF for February 2023 for pension bonds of members of the Individual Savings Regime transferred after December 31, 1998, is 1.89%

Interest Rate for Transfers of Pension Savings

New Legislation Enacted

Author: Juliana Ramos, Associate – Godoy Córdoba Littler

Circular 18 of 2023 of the Superintendence of Finance establishes that the interest rate for February 2023, for transfers of pension savings from the Individual Saving Regime to the Collective Savings Regime is -2.42%

Multilateral Agreement on Social Security Declared Constitutional

New Legislation Enacted

Author: Gabriela Pacheco, Associate – Godoy Córdoba Littler

The Constitutional Court declared that Law 2103 of 2021, which adopted the Ibero-American Multilateral Agreement on Social Security, is constitutional. The agreement, which Colombia signed in 2007, aims to coordinate the social security legislation on pensions, and allows citizens of the signatory countries to access pension, adding their acknowledged years of work in different countries, regardless of their place of residence.

Congress passed this law in 2021 but was pending approval by the Court before going into effect.

Pension and Unemployment Aid Funds Must Guarantee Minimum Return

New Regulation or Official Guidance

Author: Juliana Ramos, Associate – Godoy Córdoba Littler

Circular 16 of 2023 of the Superintendence of Finance establishes that the pension and unemployment aid funds must guarantee their affiliates a minimum return. The circular stipulates the minimum return standards that each type of fund must guarantee.

Costa Rica

Constitutional Chamber of the Supreme Court of Justice Allows Employers to Appeal Decisions that Reinstate Employees

Precedential Decision by Judiciary or Regulatory Agency

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

On May 17, 2023, the Constitutional Chamber of the Supreme Court of Justice announced that the Court had partially ruled in favor of an action brought forward to declare certain provisions (or the lack thereof) of the Code of Labor as unconstitutional. In its ruling, the Constitutional Chamber held that failing to allow employers to appeal a lower court's decision to reinstate terminated employees as an injunctive measure, the Code of Labor is depriving employers from their constitutional right to appeal the decision to a higher court. Once ruling No. 11481-2023 is officially drafted and published, it will be enforceable.

Denmark

New Law on Employment Certificates

New Legislation Enacted

Author: Bo Enevold Uhrenfeldt, Partner – Littler | Enevold

On July 1, 2023, a new Act on Employment Certificates (in Danish: *Ansættelsesbevisloven*) entered into force. The Act applies to employees whose average weekly working time exceeds three hours during a four-week period and introduces several new requirements as to the employment contract and the employer's duty of disclosure. Under the new law, qualifying employees are entitled to take other paid work if this does not interfere with the employee's ability to work in accordance with the original contract and timetable.

Employers must ensure that employees receive written information on the following matters:

- The identity of the user undertakings, when and as soon as known
- Duration and conditions of any probationary period
- Rights regarding paid leave (including holiday and paid maternity/paternity leave)
- Work pattern, if the work pattern is entirely or mostly unpredictable
- Entitlements to training and education provided by the employer
- Information on the identity of the social security institutions receiving the social contributions and any protection

Directive on Pay Transparency Measures

New Regulation or Official Guidance

Author: Bo Enevold Uhrenfeldt, Partner – Littler | Enevold

The European Union adopted the Directive on Pay Transparency Measures, which aims to ensure that the European Union's principle on equal pay is respected and enforced across the European Union by introducing common standards for pay transparency, such as information about the initial salary level or salary range in the job advertisement or prior to a job interview. Further, employers will not be allowed to ask prospective workers about their pay history and employees (or their representatives) will have the right to request information on individual and average pay levels of other workers performing the same work.

26 Weeks of Maternity Benefits to Parents of Twins

Proposed Bill or Initiative

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

In April 2023, the Danish government adopted a new Finance Act. Among other things, the Finance Act allocates money to parents with twins. Thus, parents with twins will be entitled to extra leave. Specifically, the Finance Act introduces 26 weeks of extra leave with maternity benefits to parents who give birth to twins. In Denmark, a similar scheme does already exist for parents who have three or more children simultaneously.

Please note that a specific proposal as to the extra leave has not yet been introduced.

El Salvador

ILO's Violence and Harassment Convention Enters into Force in El Salvador

New Legislation Enacted

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

On June 7, 2023, the International Labour Organization's Convention No. 190 (C190), known as the Convention to Eliminate Violence and Harassment in the World of Work, entered into force in El Salvador. The biggest changes that this convention brings are in the realm of the definition of harassment. Before June 7, 2023, the law defined harassment in the workplace as behaviors and practices that occurred repeatedly and systematically, whereas C190 allows unlawful harassment to be found when a single occurrence has taken place. Also, the convention instructs member countries who ratify it, to adopt legislation to combat discrimination and inequality in the workplace, particularly for vulnerable groups of individuals.

Finland

Employer's Obligations on Occupational Safety and Health at Work

New Legislation Enacted

Authors: Noora Ollitervo, Associate, and Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd.

The government proposed the adoption of the amendment to the Occupational Safety and Health Act, and the new legislation was approved on February 16. The new legislation became effective on June 1, 2023.

From June 1, 2023, employers must consider that the personal qualities of employees may require individual health and safety measures in the workplace. When assessing harms and hazards arising from the work, an employer shall also consider the risks associated with ageing and the physical and psychosocial stress factors in the workplace. In addition, the provision on work including particular hazards was clarified so that, in addition to pregnant employees, employees who are breastfeeding or who have recently given birth are now covered.

Extending Enforcement of the Non-Discrimination Act and Refining Equality Planning

New Legislation Enacted

Authors: Noora Ollitervo, Associate, and Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd.

The government proposed the adoption of the amendment of the Non-Discrimination Act, and the new legislation was approved on December 20, 2022. The new legislation became effective on June 1, 2023.

The amendment extended the competence of the Non-Discrimination Ombudsman so that the Ombudsman has the competence to monitor compliance with the Non-Discrimination Act also in working life. The Labor Protection Authority also has the right to request the employer to assess and promote equality in the workplace. When the employer assesses the realization of equality in the workplace, the employer shall also conduct an assessment in relation to recruitment and the workplace equality plan must contain the conclusions of the equality assessment.

Assessment of Employment Relationship in Unclear and Ambiguous Situations

New Legislation Enacted

Author: Noora Ollitervo, Associate, and Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd.

The amendment to the scope of the Employment Contracts Act was adopted on March 3, 2023, and will become effective on July 1, 2023. The aim of the amendment is to make it easier to draw the line between when a person is working as an employee and when as a self-employed individual in situations where the nature of the legal relationship is unclear.

According to the new provision, the existence of an employment relationship must be assessed based on an overall assessment if the existence of an employment relationship remains unclear after an examination of the characteristics of an employment relationship provided for in the Employment Contracts Act. The overall assessment considers the conditions under which the work is performed, the circumstances in which the work is performed, the intention of the parties as to the nature of the legal relationship and other factors affecting the parties' actual position in the legal relationship. No changes have been made to the basic definition of an employment relationship.

Criminal Liability of Legal Persons and Corporate Fines

Precedential Decision by Judiciary or Regulatory Agency

Author: Noora Ollitervo, Associate, and Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd.

The executive director of the limited company had been convicted of two sexual assaults, an occupational safety and health offence and work discrimination. The offenses had been committed during a photo shoot with the intention of producing material for the employer's use.

The breaches of occupational health and safety regulations were not motivated by an objective to benefit the company but by the executive manager's personal motives. The Finnish Supreme Court held that the executive director had not acted on behalf of or for the benefit of the company in such a way that his offense could be regarded as having been committed in the course of the company's activities in the manner required for the company to be held legally responsible.

New Government Program 2023-2027

Trend

Author: Noora Ollitervo, Associate, and Samuel Kääriäinen, Partner and Head of Employment – Dottir Attorneys Ltd.

As a result of the Spring 2023 parliamentary elections, Finland has a new government. The new government program for 2023-2027 was finalized in June 2023 and contains several topics that may have an impact on different aspects of working life. Changes are planned in areas such as local agreements, the right to strike, sick pay and processes for dismissals and redundancies. However, the government program is only a preliminary plan, and the real effects, if any, shall only be known when the actual proposed changes to the relevant legislation are drafted and made public.

France

Decree on Abandonment of Position and Resignation

New Order or Decree

Author: Guillaume Desmoulin, Partner – Littler France

Decree no. 2023-275 of April 17, 2023, introduced a presumption of resignation in the event of voluntary abandonment of post by an employee.

Under this decree, an employer who finds that an employee has abandoned their post and intends to invoke the presumption of resignation must give the employee formal notice, by registered letter or by letter delivered personally against a receipt, to justify their absence and return to their post. The employee might have a legitimate reason for the absence (such as medical reasons) or wish to exercise a right (such as the right of withdrawal, the right to strike, refusal to carry out an instruction contrary to regulations or to modify the employment contract on the employer's initiative). In such cases, the employee must indicate such reason in the reply to the aforementioned formal notice.

The deadline set by the employer for the employee to justify the absence and return to work may not be less than 15 days.

Dismissal of a Whistleblower is Invalid Only if the Facts Reported Constitute a Crime or Misdemeanor

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

An employee wrote to the company's CEO to express the employee's disagreement with the introduction of a loyalty card. The employee was dismissed for gross misconduct and poor performance, for which a lawsuit was filed challenging the dismissal. The court ruled that the dismissal was due, at least in part, to the reporting of an act that could be classified as a criminal offense and was therefore null and void.

The French Supreme Court (*Cour de Cassation*) censured the appeal court's decision. It points out that no employee can be dismissed for having reported, in good faith, facts constituting a misdemeanor or a crime of which the employee may have become aware in the course of the employment, or for having filed a report. However, the Court noted, the Court of Appeals had not ruled on the criminal nature of the facts reported by the employee.

Proving Discrimination Can Justify Invading the Privacy of Other Employees

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

Several employees, believing they had been discriminated against because of their trade union activities, applied to the court's summary proceedings panel for information enabling them to assess their situation in relation to that of other employees in a comparable situation. The Court of Appeal granted their request. It noted that employees must have precise information on their colleagues whose situation can be compared, in terms of seniority, age, qualification, diploma, type of contract, and so on. The disclosure of first and last names is essential and proportionate to the protection of the right to evidence of employees who may be victims of discrimination. The court therefore ordered the company to disclose the pay slips of people hired on the same site, in the same year or in the two preceding years, in the same professional category, at the same level or a similar level of qualification.

The French Supreme Court (*Cour de Cassation*) upheld the appellate ruling, pointing out that it is up to the judge, on receiving a request for disclosure of documents, to determine first whether such disclosure is necessary for the exercise of the right to proof of the alleged union discrimination and proportionate to the aim pursued. Secondly, if the information requested is likely to affect the personal lives of other employees, the judge must verify which measures are indispensable to the exercise of the right to evidence, if necessary, by limiting the scope of production of the documents requested.

Bill on a Better Profit Sharing with Employees in Companies

Proposed Bill or Initiative

Author: Guillaume Desmoulin, Partner – Littler France

A bill transposing a national interprofessional collective agreement on the sharing of value within the company has been adopted by the French National Assembly. The bill includes the following obligations for employers:

- Obligation for companies with 11 to 49 employees, whose net profit represents at least 1% of sales for three consecutive years, to set up at least one of the existing value-sharing schemes: profit-sharing, incentive schemes, employee savings schemes, Profit Sharing Bonus. The measure takes the form of a five-year experiment, starting in 2024.
- Obligation for professional branches to draw up, by December 31, 2024, an assessment of their actions to promote and improve gender diversity in the workplace.
- Obligation for companies with at least 50 employees, when they have a union representative and record an "exceptional increase" in profits, to enter into negotiations on the sharing of profits.

Germany

German Whistleblower Protection Act

New Legislation Enacted

Author: Matthias Pallentin, Partner – vangard | Littler

After long discussions and more than one draft bill, the German Whistleblower Protection Act (the "Act") will finally become effective on July 2, 2023, implementing the EU Whistleblower Directive (2019/1937) and establishing whistleblower protection in German law for the first time. Under the Act, employers will be required to set up internal reporting channels. Initially, only employers with at least 250 employees are obligated to set up these channels. Companies with 50 or more employees will be covered from December 17, 2023. Contrary to public statements by the EU Commission and corresponding transposition laws in other EU member states, the draft law allows for more flexibility and the use of centrally provided reporting systems, *e.g.*, at a group parent company.

The Act includes comprehensive protection for whistleblowers against all forms of retaliation. In addition, under the Act, the whistleblower can decide whether to report a violation internally to the body set up by the company or externally to the body set up at the Federal Department of Justice. Immediate disclosure to the public will be required only in exceptional cases. Given the whistleblower's ability to decide the reporting channel and the fines that will apply if employers fail to establish and operate internal reporting channels, employers should consider evaluating whether their whistleblowing channels meet the new requirements. Making internal reporting channels attractive will be particularly important in order to provide a clear incentive to report internally and to avoid the potential reputational damage that could result if employees prefer to report externally from the outset.

Visit Littler | Whistle Protect, the whistleblowing tool we have developed to help you comply with the relevant legal standards, available at https://www.littler.com/littler-whistle-protect

Federal Labor Court Questions Consequences of Mistakes in Mass Redundancy Notifications

Precedential Decision by Judiciary or Regulatory Agency

Author: Pia Papke, LL.M., Associate – vangard | Littler

The Federal Labor Court has called into question its past decisions stating that, in the event of a workforce reduction, mistakes in submitting the mass redundancy notification result in the ineffectiveness of terminations. The court has asked the European Court of Justice (ECJ) for clarification on potential consequences of mistakes (May 11, 2023 – ref. no. 6 AZR 157/22). Until the ECJ decides whether the ineffectiveness of terminations is a proportionate consequence for potential mistakes, the Federal Labor Court has paused the underlying proceeding.

In the underlying case, the employer assumed it was not obligated to submit a mass redundancy notification on the basis that the relevant thresholds had not been reached, which the court found to be wrong. The employer had calculated the number of employees by checking the amount on a record date rather than using the required method of a backwards assessment of past headcount numbers and estimate of future headcount developments. While the ECJ may release employers of a significant burden when planning a reduction in force, employers should still consider the significant risks allocated to mass redundancy notifications when planning personnel developments.

No Equal Pay for Temporary Workers

Precedential Decision by Judiciary or Regulatory Agency

Author: Kim Kleinert, Associate – vangard | Littler

On May 31, 2023 (5 AZR 143/19), the Federal Labor Court (*Bundesarbeitsgericht* – BAG) decided that temporary workers may be paid less for the same work than permanent employees of the hiring company. This unequal treatment is ultimately compensated for in other ways according to the court. Collective agreements can deviate from the principle of equal pay in this respect. This was decided by the court after a referral to the European Court of Justice, thus putting an end to the fight of a temporary worker for higher payment.

The court stipulated that temporary employment agencies must bear the economic and operational risk for periods during which the temporary workers are not hired out. The court added that the collectively agreed remuneration of temporary agency workers may not fall below the lower wage limits set by the state and the statutory minimum wage. Finally, employers should keep in mind that the principle of equal pay may only be diverted from during the first nine months of the temporary employment relationship.

Draft Law on Working Time Recording

Proposed Bill or Initiative

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

On April 18, 2023, the Federal Ministry of Labor and Social Affairs presented a draft law on working time recording. This draft has been eagerly awaited following the Federal Labor Court's decision from September 13, 2022, that employers must implement a comprehensive system for recording the working time of employees (Case No. 1 ABR 22/21). The draft bill provides for amendments to both the Working Hours Act and the Youth Employment Protection Act.

The draft bill stipulates electronic recording on the day the work is performed and only allows parties to a collective bargaining agreement leeway for deviations. The records must be kept available in German for at least two years. A copy of these records and information on the recorded working time must be provided by the employer to the employee upon request.

The draft has now been passed over to Committee for Labor and Social Affairs to be discussed with experts before it potentially will be amended and discussed in parliament.

Easier Access to Short-Time Allowance Expires

Proposed Bill or Initiative

Author: Lucas A. Gropengiesser, Associate – vangard | Littler

On June 30, 2023, the easier access to short-time work allowance, implemented by the German government during the COVID-19 pandemic, will expire. After a boom during the economic downturn of the COVID-19 pandemic, there is a low prevalence of companies implementing short-time work. However, to prevent job losses, short-time work remains a valuable strategy to offset temporary revenue setbacks. This tool allows companies to retain their workforce even during periods of reduced orders.

As was the case before the pandemic, at least one-third of a company's employees will have to be affected by short-time work to qualify for short-term allowance, instead of the ten percent required during the pandemic. Moreover, if this type of working time arrangement is customary in the company, employees will have to build up negative working time balances again before short-time work takes effect.

Honduras

Energy Rationing Measures Impact Employers in Honduras

Trend

Author: Angel Herrera, Partner – BDS, Member of Littler Global

In the past few weeks, Honduras adopted severe energy rationing measures across the country, for periods between four to eight hours in most of the country, and up to 24 hours in specific regions. The lack of power supply has forced some employers to halt their operations or close their business altogether, which requires payment of severance and other benefits upon termination, under Honduras law.

Hungary

New Whistleblowing Act

New Legislation Enacted

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

The legislation passed a new Whistleblowing Act which prohibits any onerous action (including employment's termination, demotion, refusal of promotion, giving a bad referral, salary decrease etc.) regarding the whistleblowing employee's employment if the employee exercised the whistleblowing rights lawfully. All employers (i) having at least 50 employees or (ii) falling under the Anti-Money Laundering Act (e.g., banks, insurers, other financial institutions, auditors, law firms etc.) are obliged to implement an internal whistleblowing system.

India

Maharashtra (Mumbai and Pune) Decriminalizes Non-Compliances under Certain State Labor Laws

New Legislation Enacted

Authors: Nipasha Mahanta, Associate, and Sayantani Saha, Associate – Nishith Desai Associates

On April 11, 2023, the state of Maharashtra enacted the Maharashtra Labor Laws (Amendment) Act, 2022. The law amends certain state level labor laws, doing away with criminal penalties for non-compliances in respect thereof. The notification decriminalizes non-compliances under the following Maharashtra state legislations:

- Maharashtra Industrial Relations Act, 1947
- Maharashtra Labour Welfare Fund Act, 1953
- Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969
- Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981
- Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983

By decriminalizing offenses under such labor laws, the amendment promotes ease of doing business and prevents bureaucratic inefficiencies in the state of Maharashtra (which includes the cities of Mumbai and Pune).

New Compliance Requirements for Commercial Establishment Employers in Tamil Nadu (Chennai)

New Legislation Enacted

Authors: Nipasha Mahanta, Associate, and Sayantani Saha, Associate – Nishith Desai Associates

On May 19, 2023, the state of Tamil Nadu (Chennai) has notified the Tamil Nadu Shops and Establishments (Amendment) Act 2023 to amend its shops and establishments statute. The amendment is yet to be made effective. Owing to the amendment, employers of commercial establishments in Tamil Nadu will need to ensure certain additional welfare measures in their establishments.

These include ensuring *inter alia:*

- sufficient supply of drinking water for employees at the workplace
- sufficient number of latrine and urinals at the workplace accessible at all times for all employees during their working hours
- lunchrooms and restrooms at the workplace with provision for drinking water, maintained in a prescribed manner
- first-aid facilities at the workplace as per prescribed standards

Updates on Employees' Pension Scheme, 1995

New Regulation or Official Guidance

Authors: Nipasha Mahanta, Associate, and Sayantani Saha, Associate – Nishith Desai Associates

On November 4, 2022, the Honorable Supreme Court of India (in the matter *Employees Provident Fund Organisation & Anr. etc. v. Sunil Kumar B. and Ors.*) upheld rights of eligible members of Employees' Provident Fund (EPF) to file joint options with Employees' Provident Fund Organisation (EPFO) for contributing to Employees' Pension Scheme, 1995 (EPS) on wages exceeding INR 15000 (approx. US$183). Employees can file their joint options until July 11, 2023, on EPFO's online portal.

On May 4, 2023, the (Indian) Ministry of Labor and Employment announced the employer's contribution rates towards the pension fund to be: 8.33% on wages up to INR 15000; 9.49% on wages above INR 15000 (inclusive of 1.16% administrative charges). These provisions have been made retroactively to September 1, 2014. Additionally, the EPFO issued several clarificatory circulars for higher pension contributions.

Aadhar Seeding of Newly Registered ESIC Members

New Regulation or Official Guidance

Authors: Nipasha Mahanta, Associate, and Sayantani Saha, Associate – Nishith Desai Associates

The (Indian) Ministry of Labor and Employment issued a circular dated January 13, 2023 allowing Employees' State Insurance Corporation (ESIC) to perform Aadhaar authentication for providing social security benefits as per Employees' State Insurance Act, 1948 (ESI Act). Accordingly, on April 17, 2023, the ESIC issued a notification implementing and outlining the process of seeding Aadhaar details of newly registered employees.

The circular lays down the detailed process that an employer needs to follow to complete the Aadhar seeding of new registrants (earning monthly wages below INR 21000 (approx. US$ 256) who need to be covered under ESI Act as an insured person.

Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023

Proposed Bill or Initiative

Authors: Nipasha Mahanta, Associate, and Sayantani Saha, Associate – Nishith Desai Associates

The state of Rajasthan in India has recently introduced the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023 (RGW Bil") which is a first of its kind state bill (yet to be enacted as a law) to provide social security benefits to gig and platform workers. The RGW bill envisages the establishment of the Rajasthan Platform-based Gig Workers Welfare Board (the Board) whose primary responsibilities will include:

- registering platform-based workers their aggregators and primary employers
- integrating monetary levies into aggregator operations
- formulating and notifying social security schemes for gig workers from the social security fund
- ensuring accessibility to services provided under the scheme

Penalties for non-compliance with the law (as may be enacted) may include fine of up to INR 1 million (approx. US$12,000) for the initial violation and up to INR 10 million (approx. US$120,000) for subsequent violations by aggregators and in the case of other individuals, including primary employers, penalties of up to INR 1 million (approx. US$12,000) can be imposed.

Indonesia

Sweeping Employment Law Reform in Indonesia

New Legislation Enacted

Authors: Syahdan Z. Aziz, Partner and Head of Employment, and Richard D. Emmerson, Of Counsel – SSEK Law Firm

As of Q2 2023, Indonesia has codified several years of sweeping employment law reforms with the promulgation of the Job Creation Law No. 6 of 2023 which fundamentally amends the main Manpower Law No. 13 of 2003. These reforms are described as fairly employer friendly. The highlights include the following topics:

- Notice of Termination Procedure: Indonesia has adopted the notice of termination concept whereas all terminations were previously subject to approval by the Labor Court unless previously agreed to by the employer and employee. Under the new law, employers must give 14 working days' notice of termination and notice is effective unless the employee objects in writing within seven working days.
- Reduction of Termination Entitlements: The Manpower Law sets out specific statutory benefits for resignation, retirement, and termination depending on the grounds. With the passage of Law 6 together with Government Regulation 35 of 2021, these statutory benefits have been reduced across the board and one specific entitlement known as the "health and housing allowance" has been eliminated.
- Foreign Employees: Work permit procedures have been simplified but the prohibition on employing foreigners in human resources positions has been continued. Foreign employees can only be hired on fixed-term employment agreements.
- Fixed-term Employees: Fixed-term employment agreements can now be made for a maximum of five years without any break. Indonesian fixed-term employees are now entitled to a modest new entitlement upon expiration of the agreement, and that entitlement is payable in addition to the existing entitlement for early termination.
- Outsourcing: Outsourcing of work is permitted in certain circumstances which will be clarified by an upcoming implementing regulation.

Italy

Amendments to Fixed-Term Employment Contracts Framework

New Legislation Enacted

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

Law Decree no. 48\2023 (so-called *Decreto Lavoro*), which was enacted on May 1, 2023, regulates fixed-term employment contracts. The new decree amends the law concerning the so-called "reasons" (*causali*), which must be included in any fixed-term employment contract that exceeds 12 months. The new *causali* includes replacement of other employees, as well as reasons provided for in collective agreements (such as those entered at the national, territorial or company level by the national trade union associations and company collective bargaining agreements entered into by their company or unitary trade union representatives).

The regulation also provides that the fixed-term employment contract might be freely extended and renewed in the first 12 months. For purposes of calculating the 12-month maximum duration, only previous contracts entered into as of the effective date of this decree will be considered.

New Employment Decree Has Significant Implications

New Legislation Enacted

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

Law Decree no. 48\2023 (*Decreto Lavoro*), which was enacted on May 1, 2023, amended the employment law in various respects, including:

- Staff-leasing activities *(somministrazione di lavoro)*: amendment of the thresholds for open-ended staff-leasing, impacting apprentices and workers who had been receiving unemployment benefits or redundancy payments or were in a disadvantaged situation for more than six months.
- Working transparency condition requirements: simplification of employer obligations to provide employees with a range of information (*e.g.*, vacation leave, initial amount of pay, scheduling of normal working hours). The employer can now simply make reference to applicable provisions in the law or collective agreements. The employers are also obliged to inform the employees of the use of decision-making or monitoring systems only in case they are fully automated.
- "Fringe benefits": Benefits up to EUR 3,000 are exempted from income. Such benefits include the value of goods sold and services rendered to employees with children, as well as the amounts disbursed or reimbursed to the same employees by employers for the payment of household utilities of integrated water service, electricity and natural gas.
- Benefits for women victims of violence: In addition to special tax benefits, these employees can enjoy special personalized programs of assistance and re-employment.
- Hiring incentives: Contribution exemptions of up to EUR 8,000.00 per year for a maximum of 12 months (or 24 in case of transformation of a fixed-term contract) for employers who hire beneficiaries of the new "*assegno di inclusione*" or the so-called *Neet* (young people under the age of 30 not working and not in education or training) registered in a specific youth employment program.
- Tax reduction for night and holiday work: For employees of the tourism sector, subject to specific requirements.

New Remote Working Rules

New Legislation Enacted

Authors: Carlo Majer, Partner, and Elena Guerrera, Associate – Littler Italy

Law Decree no. 48\2023 (*Decreto Lavoro*), which was enacted on May 1, 2023, amended the "smart-working" (*lavoro agile*) framework in several respects:

- "Fragile" workers: The obligation for employers to allow "smart working" for this group of workers is extended until September 30, 2023. This is without prejudice to more favorable provisions under the collective agreements.
- Working parents: If having at least one child under the age of 14 and there is no other parent in the household who is a beneficiary of income support for the suspension or termination of employment or is working, these workers are entitled to perform work in agile mode, even in the absence of the individual agreements and provided that this mode is compatible with the characteristics of the service. This rule applies until December 31, 2023.

Privacy Authority: The Latest Measures

New Regulation or Official Guidance

Authors: Carlo Majer, Partner, and Elena Guerrera, Associate – Littler Italy

With newsletter No. 503 dated May 26, 2023, the Italian Privacy Authority (*Garante della Privacy*), as part of a case against a clothing company with more than 160 stores in Italy and raised by a report of a union, has underlined that the installation of video surveillance systems, in the absence of an agreement with workers' representatives or a permit from the Labor Inspectorate, violates the GDPR, the Privacy Code and the Workers' Statute (Law. No. 300/1970).

Moreover, the Italian Privacy Authority recently published a guide regarding the application of the GDPR, which is a useful reference in the public and private sectors, particularly for small and medium-sized businesses. The guide provides an overview of the main aspects to consider when implementing the GDPR.

Kingdom of Saudi Arabia

Nationalization of Procurement Professions

New Order or Decree

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

Under Ministerial Decree No. 141612 dated 11-09/1444 AH, private sector companies with three or more employees working in the below procurement professions will need to reach a Saudization rate of 50% by December 24, 2023:

- Purchasing manager
- Purchasing representative
- Contracts manager
- Private trademark supply specialist
- Bidding specialist
- Procurement specialist

Nationalization of Postal and Freight Activities

New Regulation or Official Guidance

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

The following postal and freight activities are subject to a Saudization requirement of 100% by October 26, 2023:

- Freight brokers
- Freight forwarders (freight brokers by sea)
- Packing and unloading
- Loading and unloading of air cargos
- Freight handling activities
- Transport and marine freight agencies
- Accredited air freight agencies
- Shipping and distributing goods services
- Air freight consolidation agencies
- Air freight handling of goods and parcel services
- Cargo handling activities
- Receiving and unloading goods and products from conveyors, describing them and arranging them on the shelves
- Loading and unloading of cargo and passenger baggage, regardless of the mode of transport
- Air transportation of goods

The following professions are exempt from the above requirement provided that the percentage of these professions does not exceed 20% of total workers in one shift at a time: professions in loading and unloading, packaging, and wrapping, shelving, product sorting, wheelbarrowing, storing and facility cleaning.

New Special Economic Zones

Important Action by Regulatory Agency

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

Four new Special Economic Zones (SEZ) have been established in the Kingdom which will offer incentives for companies seeking to expand their business to strategic locations within the Kingdom, including Riyadh, Jazan, Ras Al-Khair, and Makkah. The new zones will be regulated by the Economic Cities and Special Zones authority.

It has been announced that an integrated government services platform will be established, which will streamline and simplify the processes related to the issuance of business licenses and employment of workers, including the introduction of standardized employment contracts, exemption from expat levy fees, and the ability to transfer workers across different companies within a SEZ. Saudization requirements are likely to continue within the SEZ, but relaxation on corporate tax rates, and customs duties on imports and production is expected.

Qiwa Employee Transfer Services Restricted

Important Action by Regulatory Agency

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

Qiwa platform will stop the transfer of employees between establishments in instances where the establishment has reached the maximum permissible limit of professions of employees who are not related to the establishment's licensed activity. The platform demands that establishments obtain employees with the relevant profession in line with the establishment's licensed activity.

Malaysia

Filing of Claim for Compensation Under Wrongful Dismissal (Loss of Employment) in Civil Court is Abuse of Process

Precedential Decision by Judiciary or Regulatory Agency

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

The Court of Appeal recently struck out a claim filed by an employee in the civil court for damages in breach of employment contract, constructive dismissal, tort of intentionally causing emotional distress, tort of harassment and bullying, and negligence for being an abuse of process. The Court of Appeal held that, as a matter of principle, if a claim is one for compensation for wrongful dismissal (loss of employment), then it is a claim which ought to be ventilated via the statutory dispute mechanism provided under the Industrial Relations Act 1967, i.e., in the Industrial Court and not the civil court. Accordingly, if the claim were to be allowed to go to trial, the civil court would be usurping the jurisdiction of the Industrial Court and consequently, amounts to an abuse of process of the civil court.

The Court of Appeal also affirmed the established principle that, while an employee may file a common law claim for loss of employment in the civil court, such a claim is confined, as a matter of law, to "meagre" damages in the form of salary in lieu of notice.

Industrial Court has Jurisdiction to Hear Claims from Employee Even if it is a Pure Monetary Claim without Seeking Reinstatement

Precedential Decision by Judiciary or Regulatory Agency

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

The Court of Appeal, in the case of *Ace Holding Bhd v Norahayu Rahmad & Anor* [2023] 6 CLJ 159, held that the Industrial Court does not cease to have jurisdiction to hear an employee's claim merely because he had not sought for the remedy of reinstatement to his former employment as specifically provided for in section 20(1) of the Industrial Relations Act 1967 (IRA). In this case, the employee in his pleadings only claimed for "full wages and benefits" and the employer had raised a preliminary objection on the ground that the employee had failed to plead for reinstatement.

The Court of Appeal reasoned that, if the Industrial Court is allowed to decide itself that it ceases to have jurisdiction to hear an employee's claim solely because the employee has abandoned a reinstatement remedy in his claim, this would render redundant the Minister's reference. The Court of Appeal went on to hold that the Industrial Court has been specifically established by the legislature to be a specialized tribunal to decide on, amongst others, an employee's claim for unlawful dismissal and therefore, even if the employee abandoned his reinstatement remedy, the employee is allowed to proceed with his pure monetary claim against the employer at the Industrial Court.

Employee Who Suffered Injury while Travelling on Off-Day in Order to Arrive at Work the Next Day Entitled to Disability Benefit

Precedential Decision by Judiciary or Regulatory Agency

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

The case of *Sathiaseelan Nagappan v Ketua Pengarah, Pertubuhan Keselamatan Sosial* [2023] 5 CLJ 416 involved a claim by an employee for temporary disability benefits under a compulsory fault-free insurance scheme for injuries suffered in an accident while making his journey back to work (from his place of residence in another state which is some 150km away) on his off-day on Sunday in order to arrive to work at the factory on Monday morning (the said

journey). The Social Security Organization rejected the claim on the basis that the accident did not arise out of or in the course of his employment.

The Court of Appeal held that the said journey was clearly a journey which is "directly connected" to the employee's employment and thus, falling within the deeming provision. In other words, had it not been for his employment, the employee would not have made the said journey. The said journey was therefore held to be a necessity. On the second issue, the Court of Appeal held that any interruption or deviation from the said journey must mean a substantial one arising out of some other economic or enjoyment pursuit which was not the case here; and that the approach should be how best to allow the insured employee to claim and not how best he could be excluded from claiming under the social security scheme.

Reassigning Employee Back to Original Position from Temporary Position is not Constructive Dismissal

Precedential Decision by Judiciary or Regulatory Agency

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

In the Court of Appeal decision of *Keretapi Tanah Melayu Bhd v Mohan Vythialingam & Anor And Another Appeal* [2023] 4 CLJ 532, it was held that the act of reassigning the employee back to his original position (and thus cease receiving his "acting allowance") after he was reassigned to two different acting positions which the employee claims to be a demotion, did not amount to constructive dismissal. The Court held that the acting position was merely a temporary assignment and not a permanent one. Nor was there evidence to show that it would become permanent. As such, the employer need not provide any justification for reassigning the employee back to his original position from his acting position.

Taking away the acting position would have been considered a demotion if it was not bona fide and resulted in significant decrease in the employee's responsibilities, pay or status, and if such demotion was found to be significant, could be considered a constructive dismissal. However, if the change in position was only temporary, properly communicated to the employee, and with the understanding that the employee would return to his original position, it may not be considered constructive dismissal.

Peru

New National Holiday

New Legislation Enacted

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

Law 31788, enacted on June 15, 2023, established June 7 to be a new national holiday to celebrate the "Battle of Arica and Flag Day." For practical purposes, this new holiday means that: (1) when this falls on a working day (Monday through Friday), it will not be considered as a working day for purposes of the accounting of judicial and administrative deadlines; (2) employees have the right to paid rest on such occasion, and must receive their ordinary remuneration corresponding to one day of work; and (3) the work performed on such date shall be paid with the surcharge corresponding to the work performed on a holiday, *i.e.*, a surcharge of 100% or subject to substitute rest.

End of the Sanitary Emergency

Legal Compliance

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

The Sanitary Emergency, continuously extended since March 2020, reached an end on May 25 of this year. Therefore, the labor obligations that were suspended or modified by the emergency are once again enforceable under the same terms that existed prior to the pandemic. This includes provisions related to the performance of occupational medical examinations, occupational health and safety services, audits of the occupational health and safety management system, and the election of the supervisor or committee on occupational health and safety.

Philippines

New Procedural Rules on Labor Inspections

New Order or Decree

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

On April 12, 2023, the Department of Labor and Employment (DOLE) issued the new Rules on the Administration and Enforcement of Labor Standards (Rules), which went into effect on April 29, 2023. The Rules define priority establishments for inspection, such as construction projects and those who may be engaging in hazardous work. The DOLE likewise revise the avenues by which employers may be inspected for compliance with labor standards, namely, a technical advisory visit for micro establishments (employers with less than nine workers), a labor inspection, an occupational health and safety investigation following violations in plain view, imminent danger situations, or cases involving a disabling injury. The Rules revise the process flow for each of these avenues for inspection and provide penalties for refusal of access to DOLE inspectors.

Union Requests for Financial Information for Collective Bargaining Negotiations

New Regulation or Official Guidance

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

On March 17, 2023, the National Privacy Commission (NPC) issued Advisory Opinion No. 2023-011 regarding the National Federation of Labor's (NFL) request for financial information from employers who are either hospitals or educational institutions. The purpose of the request was to assist the NFL, which is a federation of labor unions, in negotiating collective bargaining agreements. However, employers were bargaining with refused access to the information on the grounds of data privacy concerns. While noting that the opinion is not meant to adjudicate the rights and obligations of the parties involved, the NPC denied the application of the Data Privacy Act to employers who are juridical entities.

The NPC nonetheless opined that the processing of the personal information relating to NFL members may be based on a legitimate interest of the unions to advocate for the welfare of the employees and to effectively negotiate with employers, especially considering the right given to unions under the Labor Code to request audited financial statements from employers for use in collective bargaining negotiations. The NPC noted that the disclosure of information relating to NFL's individual members must still be governed by the Data Privacy Act with strict adherence to transparency, proportionality, and legitimate purpose.

Portugal

Restriction on Waivers of Rights

New Legislation Enacted

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

With the termination of an employment contract, there was a common practice where parties could agree to waive certain rights (remuneration, vacation days, allowances, etc.) by stating that "there is nothing more to receive or to be paid from X or Y." With the enactment of the Decent Work Agenda (DWA), which is effective as of May 1, 2023, such practices seem to have been limited. Under the DWA, such waivers of rights are no longer generally allowed, unless through an agreement approved by the court. However, the law is ambiguous as to whether the restriction applies before or after termination.

New Regime for Trial Period

New Legislation Enacted

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

On May 1, the Decent Work Agenda was enacted, which amongst other things, introduced new provisions concerning the trial period. Specifically, the employer is required to inform the employee about the duration and conditions of the trial period. If the employer fails to do so within seven days from the execution of the contract, there will be a presumption that the trial period is excluded from the contract, unless the parties specifically stipulated otherwise.

Additionally, the 180-day trial period for first-time job seekers and the long-term unemployed is reduced or excluded, depending on whether the duration of the previous fixed-term employment contract with a different employer was equal to or greater than 90 days. However, the trial period is reduced depending on whether the duration of the professional traineeship with positive evaluation for the same activity and different employer was equal to or greater than 90 days during the last 12 months. (The employee must provide evidence of the positive evaluation.) Finally, if a contract is terminated after more than 120 days and during the trial period, it must be made with a minimum notice of 30 days.

A New Prohibition on Outsourcing?

New Legislation Enacted

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

With the enactment of the Decent Work Agenda, which is effective as of May 1, 2023, outsourcing services (seemingly) are prohibited where such services were being provided by an employee whose contract was terminated in the previous 12 months due to a collective dismissal or the elimination of the position. However, the law is not clear whether outsourcing is lawful before the termination. For example, a service provider is hired under an outsourcing regime and, while working with the remaining employees, the company determines that such employees may be subject to redundancy. It has been argued that such prohibition of outsourcing may be deemed unconstitutional. In such regard, we must wait and see.

Workers Compensation Fund – Suspended or Extinguished?

New Legislation Enacted

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

The Decent Work Agenda created a new rule on workers compensation funds. As of May 1, 2023, employers are no longer required to (i) provide for admission to the funds, (ii) communicate such admission, nor (iii) pay into the workers compensation fund (1% of base remuneration on a monthly basis). Such obligations are suspended and will be extinguished in 2023. Employers should be on alert, however, on how they will be reimbursed of such payments made. A new law is expected.

Puerto Rico

End of COVID-19 State of Emergency and Implications for the Workplace

New Order or Decree

Author: Alberto Tabales-Maldonado, Associate – Schuster LLC | Littler

On May 11, 2023, Puerto Rico Governor Hon. Pedro Pierluisi issued Executive Order No. 2023-012, through which he declared the end of the state of emergency caused by COVID-19. Governor Pierluisi reiterated, however, that the Secretary of the Puerto Rico Department of Health retains the authority to publish and implement regulations, directives, administrative orders, protocols or recommendations to deal with COVID-19. The same day, the Secretary of the PR DOH issued Administrative Order No. 571.

The administrative order made vaccination and the use of face masks voluntary, in all sectors, including the healthcare sector. The PR DOH still recommends the use of vaccination, face masks, as well as distancing measures to reduce the exposure to COVID-19. Perhaps the most important and relevant aspect of Administrative Order No. 571 for employers is that the Secretary revoked Administrative Order No. 533, which implemented mandatory isolation guidelines for persons who tested positive for COVID-19 as well as quarantine guidelines for persons who were in close contact with a COVID-19-diagnosed individual.

Russia

Employers Required to Report Information About Workers to Military Enlistment Offices

New Legislation Enacted

Author: Marcin Snarski, Senior Associate – PCS | Littler

Effective April 14, 2023, Russian employers must act as intermediaries by sharing information with the military about their workers. Under Federal Law No. 127-FZ (dated April 14, 2023), employers must inform the military about any changes in information for workers who are required to register with the military. Generally, the information must be provided within five days but, concerning employees who have not completed their military registration, the employer must file the report within three days. The employer must submit such information in an official on-line portal.

Additionally, when a summon for military enlistment is delivered at the employer's site, the employer must notify the employee as soon as the summon is received. Employees who fail to register in military service records must be provided with a referral to complete the registration. The Russian government considers implementing other measures to regulate the hiring of individuals without military registration documents.

Employees to Agree Amongst Themselves on Payment for Industrial Design

New Order or Decree

Author: Marcin Snarski, Senior Associate – PCS | Littler

According to an amendment to a government decree, employees will receive remuneration for creation of *e.g.*, invention or an industrial design in a proportion determined by agreement between the co-authors. Where an agreement is reached, any of the co-authors should notify the employer and provide a copy of the agreement within five calendar days.

In the absence of notification, it will be considered that the creative contribution of employees was equal and the renumeration will be split evenly between employees involved in creating the invention. However, distribution of renumeration may be still challenged in a court.

Remote Workers to Pay Russian Income Tax Regardless of Tax Residency

Proposed Bill or Initiative

Author: Marcin Snarski, Senior Associate – PCS | Littler

The Russian Parliament currently is discussing a bill that will introduce tax obligations for remote workers cooperating with Russian organizations from abroad. If the bill is passed, as of 2024, employers will be required to levy an income tax of 13% from remote employees even if they are not Russian tax residents. For income exceeding five million Rubles per year, the tax rate will be higher and will amount to 15%.

The bill is considered as a move to impose tax on Russian workers who have decided to leave their country but continue to work for Russian entities from abroad.

South Korea

Supreme Court Abolishes "Social Norm Reasonableness" Standard for Disadvantageous Changes to Rules of Employment

Precedential Decision by Judiciary or Regulatory Agency

Authors: Yongjae Jung, Partner, and Johnny Ji Yong Hong, Associate – Kim & Chang

In principle, an employer must obtain group consent from employees through a collective decision-making process to amend the rules of employment (ROE) that could result in disadvantageous changes to working conditions that deprive employees of their vested rights and interests. The Supreme Court's firmly established position on this has been that failure to obtain group consent in and of itself will not nullify the disadvantageous change if the change is reasonable in light of social norms, notwithstanding the potential disadvantage to employees.

On May 11, 2023, however, the Supreme Court issued an *en banc* decision reversing its position, holding that "...unless there are special circumstances to conclude that the labor union or employees abused their group consent right, the disadvantageous change shall not be deemed valid solely on the ground that it is reasonable in light of social norms..." (Supreme Court Decision 2017Da35588, 35595 (Consolidated) rendered on May 11, 2023).

The Supreme Court highlighted the group consent right as a significant procedural requirement and held that the proposed change being "reasonable in light of social norms" cannot justify the failure to fulfill such a procedural requirement in making disadvantageous changes to the ROE.

The Statute of Limitations Period for a Claim Seeking Damages Caused by Illegal Dispatch Can be Ten Years

Precedential Decision by Judiciary or Regulatory Agency

Authors: Yongjae Jung, Partner, and Johnny Ji Yong Hong, Associate – Kim & Chang

On April 27, 2023, the Supreme Court upheld the lower court's decision that the applicable statute of limitations period for a claim seeking damages caused by illegal dispatch can be up to 10 years (which also happens to be the maximum limitations period for tortious acts under the Civil Code), not the statute of limitations applicable to wage claims (three years) under the Labor Standards Act. The Court's rationale for such decision is that the damages claim filed by the subcontractor's employees against the principal company was in fact based on a tort claim for damages. This ruling is the first of its kind that explicitly determined the statute of limitations period for a claim seeking damages caused by illegal dispatch.

Supreme Court Decision on Retirees' Right to Expect Re-Employment

Precedential Decision by Judiciary or Regulatory Agency

Authors: Yongjae Jung, Partner, and Johnny Ji Yong Hong, Associate – Kim & Chang

In a case that raised the question of whether an employee, who reached the company's retirement age after filing a lawsuit for confirmation of dismissal invalidation, could seek back pay, including the period after retirement, the Supreme Court ruled that the plaintiff had the right to expect re-employment as a fixed-term employee after retirement under the particular circumstances of the case. Accordingly, by affirming the lower court's decision, the Supreme Court held that the plaintiff should be paid the amount equivalent to his wages that he would have been paid if he were rehired as a fixed-term employee after retirement.

Previously, courts have rendered conflicting decisions on this issue. However, the above Supreme Court decision has established precedent by explicitly ruling that the right to expect re-employment can be recognized based on the practice of re-employment after retirement, even if there is no explicit provision on re-employment after retirement in the company regulations.

Spain

Deadline for the Implementation of the Whistleblowing Reporting System

New Legislation Enacted

Authors: Sonia Cortés, Partner, and Isabel Herrero, Attorney-at-Law – Abdón Pedrajas | Littler

Law 2/2023 on whistleblower protection requires companies with 50 or more employees to have (1) an internal reporting system through which regulatory violations can be reported and (2) a whistleblower management and protection system to prevent retaliation against whistleblowers. Employers with more than 250 employees must have these systems in place by June 13, 2023, and those with between 50 and 249 employees by December 1, 2023. The implementation of the internal reporting system must be carried out after consultation with the legal representation of employees.

LGTBI Equality and Non-Discrimination Protocol in Companies

New Legislation Enacted

Authors: Sonia Cortés, Partner, and Isabel Herrero, Attorney-at-Law – Abdón Pedrajas | Littler

Law 4/2023 for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people establishes, among others, the obligation for employers to implement a specific protocol to prevent discrimination against LGTBI employees and their families in companies with more than 50 employees. The protocol must include measures and resources offered by the employer to guarantee equality, as well as the steps the employer will take to prevent, detect, and act in the event of harassment or violence against these employees. The Protocol must be negotiated with workers' representatives and be in force by March 2, 2024.

Communication of Sick Leave

New Order or Decree

Authors: Sonia Cortés, Partner, and Isabel Herrero, Attorney-at-Law – Abdón Pedrajas | Littler

Effective April 1, 2023, Royal Decree 1060/2022 established that employees are no longer obligated to send the sick leave reports to their employers. Rather, the Public Health Service (INSS), the mutual or collaborating company, must send the sick leave data, including the confirmation and discharge reports, to the employer, by electronic means, immediately, and no later than the first working day following the day on which the reports are issued.

Preventive Measures Against High Temperatures

New Order or Decree

Authors: Sonia Cortés, Partner, and Isabel Herrero, Attorney-at-Law – Abdón Pedrajas | Littler

Royal Decree Law 4/2023 requires the employer to take appropriate measures to protect employees against the risks arising from adverse weather phenomena, including extreme temperatures. For this purpose, an occupational risk assessment is required that takes into consideration (1) the meteorological phenomena that may occur, (2) the activity that is carried out, and (3) the personal and biological conditions of the employee. Likewise, the law makes it compulsory for employers to adapt working conditions, including the reduction or modification of the hours of the scheduled working day, when the preventive measures adopted do not guarantee the protection of workers in instances where the Spanish National Weather Service (or the corresponding regional agency, as applicable) issues an orange or red weather warning.

Sweden

Coverage of Accidents While Working from Home Under Occupational Injury Insurance

Precedential Decision by Judiciary or Regulatory Agency

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

The Swedish Supreme Administrative Court recently ruled in two separate cases (case no. 441-22 and 3375-22) where two employees were injured by an accident when working from their respective home. In both cases, the Supreme Administrative Court clarified that for there to be a connection between work and an accident incurred during remote work, the accident must occur when the insured person is carrying out work duties. Thus, an injury resulting from an accident that occurs while the employee is doing something unrelated to work should not be assessed as a work-related injury for purposes of occupational injury insurance.

In both cases, the court stated that since the central aspect in the assessment of the connection between accidents occurring when working from home is the distinction between work and private life, it is irrelevant whether the remote work was voluntary or ordered by the employer.

Switzerland

Minimum Wages in Two Major Cities

New Regulation or Official Guidance

Authors: Dr. Ueli Sommer, Partner, and Dr. Regula Rhiner, Senior Associate – Littler | LEL

Two major Swiss cities – Zurich and Winterthur – decided (by popular vote) to introduce a statutory minimum wage. In Switzerland, there is no nationwide legal minimum wage and so far, only five cantons (provinces) have implemented such regulations. It is unclear whether individual municipalities even have the authority to enact minimum wage regulations for their areas; the Federal Supreme Court has so far only ruled that cantons are entitled to do so as long as such measures can be justified in terms of social policy.

The statutory minimum wages to be introduced in these two cities are CHF 23.90 and CHF 23 per hour (plus vacation and public holiday compensation), respectively, and override any deviating provisions of collective employment agreements. Provided that these statutory regulations will not be considered unconstitutional by the Federal Supreme Court, their compliance will be ensured through possible civil proceedings as well as government controls (whereby non-compliant employers can be fined).

United Arab Emirates

Nationalization of Beauty Salons and Tailors for Women

New Order or Decree

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

Under the Ministerial Decree No. 141602 dated 11/09/1444 AH, the professions for beauty and tailoring for women are subject to 100% Saudization requirements by December 24, 2023:

- Branch manager
- Deputy branch Manager
- Human resources supervisor
- Department supervisor
- Client accountant
- Receptionist
- Customer service
- Inventory keeper
- Sales professions

In addition, a minimum of one Saudi female employee must be employed by December 24, 2023, in outlets which employ 10 or more non-Saudi workers in the following professions:

- Tailor for women
- Make-up artist
- Hair care professional
- Photography and montage professional
- Skin care professional

Nationalization of Project Management Professions

New Order or Decree

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

Under Ministerial Decision No. 141749 Dated 11/09/1444 AH, private sector companies with three or more employees working in the below project management professions are required to reach a Saudization rate of 35% by December 24, 2023, and 40% by December 12, 2024:

- Project manager
- Project management specialist
- Project management office specialist
- Communications project manager
- Project manager for business services
- Transportation project manager

Saudization Rate for Sales Profession

New Regulation or Official Guidance

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

Private sector companies with five or more employees working in the below sales professions are required to reach a Saudization rate of 15% by December 24, 2023:

- Sales manages
- Retail sales manager
- Commercial specialist
- Sales specialist
- Wholesale sales manager
- Information and communication technology equipment sales specialist
- Sales representative
- Commodity Broker
- Futures commodity broker

New Saudization Requirements for Various Sectors

Precedential Decision by Judiciary or Regulatory Agency

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

The Ministry of Human Resources and Social Development has implemented further Saudization ratios for select businesses in the following sectors:

- Ladies beauty salons and tailors for women: 100% by December 24, 2023
- Postal and freight activities: 100% by October 26, 2023
- Sales professions: 15% by December 24, 2023
- Procurement professions: 50% by December 24, 2023
- Project management professions: 35% by December 24, 2023, and 40% by December 12, 2024

Saudization of Women's Centers and Sewing Activities

Precedential Decision by Judiciary or Regulatory Agency

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

The Ministry of Human Resources and Social Development has implemented Saudization of women centers and sewing activities, in cooperation with the Ministry of Municipal and Rural Affairs and Housing, with the aim of increasing jobs within technical administrative professions.

United Kingdom

Retained EU Employment Law Reform

New Legislation Enacted

Authors: Stephanie Compson, Professional Support Lawyer, and Raoul Parekh, Partner – GQ | Littler

The Retained EU Law (Revocation and Reform) Act (the Act) has now been passed. It aims to end the special status of retained EU law - a category of domestic law, consisting of certain EU-derived laws that were preserved in UK law post-Brexit by the European Union (Withdrawal) Act 2018. Some of the Act is now in force, other parts come into force following a two-month period or take effect from the end of 2023.

The impact of the Act on retained EU employment law will have to be awaited until it is put into practice but will not likely be immediate. The UK government has, however, released a policy paper and consultation which confirmed: 1) the vast majority of retained EU employment laws will be preserved where it is "not either consulting on reforms or revoking legislation that is now irrelevant," and 2) some modest retained EU employment law reforms to remove unnecessary red tape or complexity. These specific reforms are currently limited to Great Britain (England, Wales and Scotland) and to areas in respect of working time, rules regarding vacation, consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations and limiting the length of post-employment non-competes. For additional discussion on this subject, please read *"Proposed Law May Change the Future of UK's Employment Law"* available at https://www.littler.com/publication-press/publication/littler-global-guide-united-kingdom-q3-2022 and "*UK: Proposals to limit post-employment non-compete clauses to 3-months in length*," below in this quarter's UK edition.

New Employment Law Bills Receive Royal Assent

New Legislation Enacted

Authors: Hannah Drury, Trainee Solicitor, and Raoul Parekh, Partner – GQ | Littler

Four key employment law bills received Royal Assent in May 2023, resulting in four new acts. These are: 1) the Carer's Leave Act 2023, 2) the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, 3) the Neonatal Care (Leave and Pay) Act 2023, and 4) the Employment (Allocation of Tips) Act 2023. We provided a more detailed overview of the first three of these Acts in our Q4 2022 and Q1 2023 updates. Each Act requires further regulations to confirm the scope of the applicable statutory leave and the relevant protections. Until these regulations are introduced and come into force, no immediate action needs to be taken by employers.

The Employment (Allocation of Tips) Act 2023 is not expected to come into force until May 2024. This act creates a legal obligation for employers to allocate qualifying tips, gratuity and service charges fairly between workers and any eligible agency workers. Employers will need to put in place a written policy and maintain records of how qualifying tips have been allocated to workers, depending on the frequency of receipt of these tips. Workers will have a right to complain to the employment tribunal if tips have not been allocated correctly, or if the employer has failed to comply with their obligations to have a written policy or maintain records. No immediate action needs to be taken until this act comes into force. For additional discussion on this subject, please read *"Protection from Redundancy (Pregnancy and Family Leave) Bill"* and *"Carer's Leave Bill"* available at https://www.littler.com/publication-press/publication/littler-global-guide-united-kingdom-q4-2022 and "*Proposed Statutory Leave and Pay Entitlements for Parents of Babies Requiring Neonatal Care*" available at https://www.littler.com/publication-press/publication/littler-global-guide-united-kingdom-q1-2023.

UK Considering New Data Protection and AI Legislation

Proposed Bill or Initiative

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

The UK government is consulting on its approach to the future regulation of AI. It is not currently proposed that new legislation will be introduced and instead the proposed approach relies on collaboration across government, regulators and businesses. The European Parliament has also just voted to approve the first draft of the new AI Act, the world's first comprehensive law regulating AI. Although the UK is no longer part of the EU, implementation of the AI Act is anticipated to have extra territorial effect, which could impact UK businesses that fall within scope.

With regards to data protection, following the UK's departure from the EU, the UK government is seeking to reform its data protection laws. The Data Protection and Digital Information (No. 2) Bill is currently making its way through the parliamentary process. The content of the bill is still being negotiated but its objective is to simplify the existing obligations required under the UK GDPR (the retained EU law version of GDPR) and to remove some of the "red tape" required for businesses to comply with the existing obligations under the UK GDPR.

Proposals to Limit Post-employment Non-Compete Clauses to Three Months in Length

Proposed Bill or Initiative

Authors: Lisa Coleman, Senior Associate, and Raoul Parekh, Partner – GQ | Littler

The UK government, on May 10 and 12, 2023, announced its intention to limit the length of post-employment non-compete clauses (*i.e.*, restrictions prohibiting an employee from going to work for a competitor or to start a rival business after they have left employment) to just three months. It is proposed that only these specific clauses in employment contracts (or certain worker contracts) will be affected; other forms of contract (*e.g.*, partnership, LLP and shareholder agreements) and other clauses (*e.g.*, confidentiality clauses, other post-termination restrictions, notice and garden leave provisions) are all outside the scope of the proposals. It is currently unknown when the legislation to affect these proposals will be introduced, only that it will be "when parliamentary time allows." It is also anticipated that the limits will apply to Great Britain (England, Wales and Scotland).

United States

Nearly 50 Years Later, the Supreme Court "Clarifies" the Undue Hardship Standard in Religious Accommodation Claims

Precedential Decision by Judiciary or Regulatory Agency

Authors: Dionysia Johnson-Massie, Shareholder, and Laura Saracina, Associate – Littler

In its June 29, 2023, unanimous decision in *Groff v. DeJoy*, the United States Supreme Court upended nearly 50 years of precedent by "clarifying" the undue hardship standard in religious accommodation claims under Title VII of the Civil Rights Act of 1964,1 as amended. In doing so, the Supreme Court effectively dismantled the "*de minimis*" framework and the precedent set in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), and created a new, and much higher, standard.

The heightened standard requires employers assessing religious accommodations requests to deny such requests only if there is evidence that providing the accommodation would result in "substantial increased costs in relation to the conduct of [an employer's] particular business." This is a markedly enhanced requirement for an employer assessing whether religious accommodation requests constitute an undue hardship on its business. Read the full article available at https://www.littler.com/publication-press/publication/nearly-50-years-later-supreme-court-clarifies-undue-hardship-standard.

Express Yourself – Supreme Court Rules that Businesses May Deny "Expressive Services" to the Public Based on Their Owner's Beliefs

Precedential Decision by Judiciary or Regulatory Agency

Authors: Gregory Henninger, Associate, and Sean O'Brien, Associate – Littler

On June 30, 2023, in a 6-3 opinion, a divided Supreme Court issued its decision in *303 Creative, LLC v. Elenis*, holding that the First Amendment's free speech protection bars Colorado from requiring a website designer to create expressive designs that convey messages with which the designer disagrees. The ruling is important for businesses that serve the public that provide goods and services that may be deemed to express the owner's views because the Court clarified that public accommodation laws, while based on compelling state interests, can run afoul of business owners' constitutional rights.

Although the decision does not involve employment law, employers must still be cognizant of their employees' rights. The Supreme Court's ruling did not alter employers' obligations to prohibit discrimination and harassment against employees or their ability to require employees to attend non-discrimination training programs. Importantly, the decision does not change the fact that the First Amendment does not apply to employees of private employers. Employers can create rules ensuring that they provide a respectful, welcoming, and safe environment for their customers and employees. Further, employers may still discipline employees who discriminate against customers. Nevertheless, the case is a reminder that employers should remain vigilant of their employees' differing perspectives and expression of viewpoints in the workplace and ensure that employees and customers are not being subjected to discrimination or harassment. Read the full article available at https://www.littler.com/publication-press/publication/express-yourself-supreme-court-rules-businesses-may-deny-expressive.

U.S. Supreme Court Strikes Down Race-Conscious Admissions – What Does it Mean for Employers?

Precedential Decision by Judiciary or Regulatory Agency

Authors: Jim Thelen, Associate, and Alyesha Asghar Dotson, Shareholder – Littler

On June 29, 2023, the United States Supreme Court ruled that race-conscious admissions practices at Harvard College and the University of North Carolina, which are generally similar to how numerous other higher education institutions around the country have considered an individual's race in the college admissions process, violate the Fourteenth Amendment's Equal Protection Clause of the U.S. Constitution.

The Court did not explicitly overturn its two-decades'-old precedent finding that a narrow consideration of race among other factors in the admissions process could pass "strict scrutiny" constitutional muster. But for all practical purposes, the Court's ruling effectively makes unlawful any ongoing direct consideration of a college applicant's race in achieving student diversity in higher education. A discussion on some predictions regarding the implications of the decision for employers in higher education, private employers with voluntary IE&D programs, and government contractors subject to affirmative action requirements is available at https://www.littler.com/publication-press/publication/us-supreme-court-strikes-down-race-conscious-admissions-what-does-it.

Third Try's the Charm? National Labor Relations Board (Again) Narrows Definition of "Independent Contractor"

Precedential Decision by Judiciary or Regulatory Agency

Authors: Jim Paretti, Shareholder, and Fred Miner, Shareholder – Littler

On June 13, 2023, the National Labor Relations Board (NLRB) issued its long-awaited decision in *The Atlanta Opera*, in which it overturned prior law (*SuperShuttle DFW, Inc.*) and reinstated a narrower test for "independent contractor" (as opposed to "employee") under the National Labor Relations Act (NLRA). In doing so, the NLRB has reinstated a multi-factor, common-law agency test for determining whether workers are employees or independent contractors for NLRA purposes, with no single factor being decisive.

As a practical matter, this means that more workers are likely to be classified as employees—who, unlike independent contractors, are permitted to form and join a union, and otherwise enjoy the workplace protections of the Act—than under prior law. This issue will likely be appealed to the D.C. Circuit for the third time. Read a detailed discussion on this development available at https://www.littler.com/publication-press/publication/third-trys-charm-national-labor-relations-board-again-narrows.

Supreme Court Holds Employers Can Sue for Strike Damages

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sam Wiles, Associate, and Kathryn E. Siegel, Shareholder – Littler

On June 1, 2023, in *Glacier Northwest v. Teamsters*, the United States Supreme Court ruled for the employer in a case with significant implications for the right of unions to strike and the right of employers to respond to strikes with court actions for damages. In *Glacier*, the Court addressed whether the National Labor Relations Act (NLRA) "preempts an employer's state tort claim against a union for property damage that allegedly occurred because workers failed to take reasonable precautions to protect the employer's property before going on strike." The Court held that the NLRA does not preempt state law tort claims alleging intentional destruction of property, particularly where the union fails to take reasonable precautions to protect against foreseeable and imminent harm.

This decision will likely make it easier for employers to pursue damage claims against unions in state court. Conversely, it may make unions more wary of calling strikes that have the potential to damage employer property as the risk of litigation outside the Board's processes might act as a deterrent. Going forward, this decision puts both employers and unions on notice that cases involving foreseeable damage to employer property, particularly where products are perishable, could proceed before a court instead of the NLRB. Read a detailed discussion available at https://www.littler.com/publication-press/publication/supreme-court-holds-employers-can-sue-strike-damages

Venezuela

New Law for Workers with Disability

New Legislation Enacted

Author: Daniela Arevalo, Associate – Littler

A new Special Law for Workers with Disabilities was enacted by the National Assembly and published in Official Gazette N° 6.735 dated January 27, 2023. The new law completes the general Law for People with Disabilities (dated January 5, 2007, Official Gazette N° 38.598), establishing more specific labor rights for employees with disabilities, and new obligations for employers.

New employer obligations include: i) having employment contracts in writing stating the employee's disability for which employers must make necessary accommodations allowing the disabled employee to perform their functions; ii) reporting and declaring quarterly to the Ministry of Labor the number of workers with disabilities on the payroll, the workers' identity, and the type of disability and activity performed by each worker; iii) obtaining an annual certificate of compliance from the National Council for Persons with Disabilities; and iv) getting a new recognition stamp issued by The Ministry of Labor and the National Council for Persons with Disabilities to certify the fulfillment of the laws for persons with disabilities.

New Increase of the Food Benefit

New Order or Decree

Author: Daniela Arevalo, Associate – Littler

The food benefit (*Cestaticket*) has been increased through Presidential Decree N° 4.805 published in Official Gazette N° 6.746, dated May 1, 2023. The Decree has increased the food benefit from VES 45.00 (approximately USD 1.80) to VES 1,000 per month (approximately USD 40 per month).

The Decree provides that the National Executive Power will adjust the monthly food benefit amounts set in the Decree, based on the exchange rate published by the Central Bank of Venezuela, in order to protect the value of the benefit and the purchasing power of workers. Further, the food benefit does not have a salary nature.

Tax Unit Increase

New Order or Decree

Author: Daniela Arevalo, Associate – Littler

The Tax Unit was increased by the Integrated National Service of Customs and Tax Administration (SENIAT) through Administrative Measure N° 2023/000031 published in Official Gazette N° 42.623, dated May 8, 2023. It was increased from VES 0.40 to VES 9 (currently approximately USD 0.32).

All Venezuelan labor laws have established the value of fines in Tax Units. As a result of the increase, all penalties are also increased. For example, the Law of the Socialist *Cestaticket* for Workers establishes that the employer's failure to grant this benefit will result in a fine between 10 tax units (VES 90, approximately USD 3.26) and 50 tax units (VES 450, approximately USD 16.33) per affected worker. In addition, the payment of a salary lower than the mandatory minimum wage will result in a fine between 120 Tax Units (VES 1,080, approximately USD 39.21) and 360 Tax Units (VES 3,240, approximately USD 117.64).

Bilateral Trade Agreement between Venezuela and Colombia

New Order or Decree

Author: Gabriela Arevalo, Associate – Littler

The Official Gazette No. 42,609, dated April 14, 2023, published Resolution DM No. 103, which contains the Partial Scope Agreement of a Commercial Nature No. 28, entered into between Venezuela and Colombia. The trade agreement's Administrative Commission reviewed and adopted the adjusted tariff levels, the inclusion and exclusion of products (within their corresponding appendices) and the specific Requirements of Origin (REOs). The REOs that had been negotiated prior to the trade agreement are now modified and include the REOs from the Agricultural Sector.

The purpose of this agreement is to guarantee economic and commercial development between both countries.

Vietnam

Increase of Statutory Pay Rate

New Order or Decree

Authors: Bernadette Fahy, Partner, and Tran Trong Binh, Of Counsel – APFL & Partners Legal Vietnam LLC

On May 14, 2023, the Vietnamese Government issued Decree No. 24/2023/ND-CP, which provides for an increase in the statutory pay rate from VND 1.49 million (about USD 63.30) per month to VND 1.8 million (about USD 76.50) per month effective on July 1, 2023.

The statutory pay rate is a basic metric used to calculate the amount for a number of employment benefits under Vietnamese law, including: (1) salaries, allowances, and other benefits for officials working at state authorities, public employees working in state-owned non-business organizations (such as state hospitals, universities etc.), employees in state-funded associations, officers and employees of the Vietnamese army and police service, and employees working at local authorities; (2) allowances provided by law such as one-time allowance for giving birth, allowance for heath recovery after sickness treatment after giving birth, allowances for working capacity reduction, and allowance for death due to occupational accidents, etc.; and (3) contribution amounts and benefits payable under regimes such as compulsory social insurance contribution, compulsory health insurance contribution, compulsory unemployment insurance contribution, and other relevant benefits.

New Regulations on Personal Data Protection

New Order or Decree

Authors: Bernadette Fahy, Partner, and Tran Trong Binh, Of Counsel – APFL & Partners Legal Vietnam LLC

Under Decree No. 13/2023/ND-CP, issued on April 17, 2023, personal data to be protected includes (i) basic personal data, consisting of any information that relates to the identification of the individual concerned and (ii) sensitive personal data, which is personal data associated with an individual's privacy that, when infringed, directly affects the legitimate rights and interests of such individual. The Decree will take effect on July 1, 2023. However, small and medium sized enterprises that do not directly engage in personal data processing business will have a two-year grace period, and therefore, will not have to comply with the provisions of the new Decree until July 1, 2025.

Under this decree, processors or controllers of personal data are subject to various requirements, including obtaining valid consent from the data owner, notifying the data owner about data processing, providing the data owner with the personal data upon request, following the process requirements applicable to special types of personal data, and complying with cross-border data transfer procedures. Data owners are granted a number of rights to ensure the protection of their personal data, including the right to be informed, the right to consent and withdraw consent, the right to access personal data, the right to remove data and limit the processing of data, the right to request data to be provided, the right to object, the right to complain, the right to make a claim and initiate legal proceedings, the right to claim for damages, and the right to self-defense.

This new regulation may significantly impact the employers' processing of any employee's personal data that is provided during their employment, including data collection, data storage, data disclosure and especially data transfer out of Vietnam which is quite common for foreign-invested enterprises.

New Templates for Service Agreements and Employment Contracts in Public Sector

New Regulation or Official Guidance

Authors: Bernadette Fahy, Partner, and Tran Trong Binh, Of Counsel – APFL & Partners Legal Vietnam LLC

On May 3, 2023, the Vietnamese Ministry of Internal Affairs issued Circular No. 05/2023/TT-BNV providing a template service agreement and a template employment contract for experts and support staff at state administrative agencies and state-owned non-business organizations. This Circular will take effect on June 20, 2023.

New Regime for Voluntary Social Insurance for Occupational Accidents in Respect of Non-Employment Workers

Proposed Bill or Initiative

Authors: Bernadette Fahy, Partner, and Tran Trong Binh, Of Counsel – APFL & Partners Legal Vietnam LLC

The Vietnamese Ministry of Labor, Invalids and Social Affairs is canvassing public opinion on a new draft decree introducing a voluntary social insurance regime covering occupational accidents for Vietnamese employees who are working without a labor contract. The workers who contribute to the voluntary social insurance scheme (Participating Employees) will be eligible to claim insurance benefits for occupational accidents subject to certain conditions. For instance, in order to qualify for benefits, (i) the employee's working capacity must decrease by at least 5% as a result of the occupational accident and (ii) the occupational accident cannot occur as a result of the employee's own deliberate or unlawful action, including the use of illegal drugs.

The Draft Decree proposes the following three insurance benefits which can be claimed by eligible Participating Employees: (1) professional assessment of the employee's decreased work capacity following an occupational accident, (2) a one-off allowance or a monthly allowance. and (3) an allowance to buy adapted equipment for use at home or for movement, and/or orthopedic devices depending on the type of injury or illness suffered by the employee in each case, and as determined by the relevant hospital or medical center.