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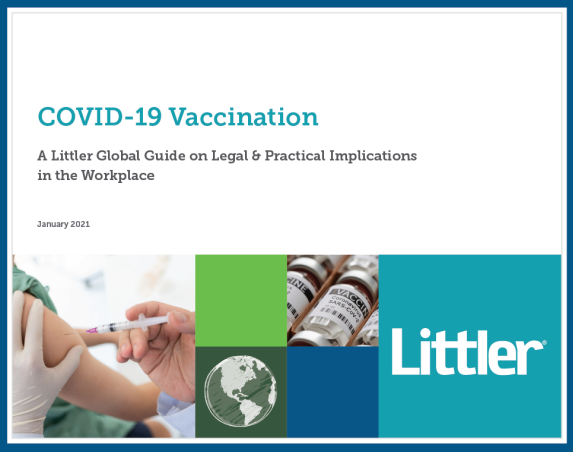

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Geida Sanlate, Littler Editor

Australia

Paid Parental Leave Qualifying Work Period Temporarily Extended

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler United States

The Australian government is introducing an alternative Paid Parental Leave work test period for a limited time. Usually, parents are required to have worked 10 of the 13 months prior to the birth or adoption of their child to qualify for the leave. However, the government is extending the qualification work period to 10 months out of the 20 months prior to births and adoptions that occur between March 22, 2020, and March 31, 2021. Employers should take note of the temporary change, which will apply to any employee taking a period of unpaid parental leave who is eligible for the government's paid parental leave entitlements.

Changes to Australia's Parental Leave

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler United States

Australia's National Employment Standards (NES) were updated in November 2020 to improve unpaid parental leave for parents, including for parents of stillborn babies, infant deaths and premature births. The key changes are two-fold: First, eligible employees can now take up to 30 days of flexible unpaid parental leave in the two years following birth or adoption. Leave can be taken as a single continuous period of one or more days; or separate periods of one or more days each. Note that these 30 days are to come out of the employee's entitlement to 12 months of unpaid parental leave.

Second, employees who have experienced the trauma of stillbirths, infant deaths and premature births will also now have access to improved unpaid parental leave entitlements. The entitlements are available to full time, part time and casual employees. Employers should review their parental leave policies to ensure they align with these changes.

Full Federal Court Decision on Entitlement to Leave During Lawful Stand Down

Precedential Decision by Judiciary or Regulatory Agency

Author: Naomi Seddon, Shareholder – Littler United States

Due to the pandemic, many employers have had to resort to employee stand downs (furloughs), raising questions as to how courts would interpret the stand down rules during this time. In December 2020, in a ruling, the full federal court clarified that employees can take annual leave, but there is no entitlement to paid personal/carers or compassionate leave during a lawful stand down period. Further, the court held that the stand down provisions provide "authority to an employer to be relieved of the requirement to make payments to employees during a period when the employees cannot usefully be employed."

The decision provides some good news for employers who are struggling to meet their payroll and other financial obligations at this time and confirms that while employees are able to access their annual leave entitlements during a period of lawful stand down, it is up to the employer to determine whether it would like to approve employee use of personal or compassionate leave during the stand down period.

New Eligibility Criteria for Employers and Employees Under the Victorian Portable Long Service Scheme

New Regulation or Official Guidance

Author: Naomi Seddon, Shareholder – Littler United States

Effective October 1, 2020, more employees working in the community service sector will need to be registered with the Victorian Portable Long Service Authority (Authority). The Long Service Benefits Portability Regulations 2020 (Vic) (New Regulations) expand (and clarify) which community services sector employers need to register for benefits under the Scheme.

Under the former regulations (which were in effect from November 20, 2019, to September 30, 2020), employers were obliged to register workers (and contribute the 1.65% levy) for employees whose predominant activity is the personal delivery of community services. Under the new regulations, the predominant activity test no longer applies, meaning that an employee's eligibility for the Portable Long Service Leave Scheme (Scheme) is determined by Award coverage. An employer in the "community services sector" with at least one eligible employee must register itself with the Authority and register each employee who is performing "community service work." Additional requirements apply.

Proposed Changes to Casual Employment in Australia

Proposed Bill or Initiative

Author: Naomi Seddon, Shareholder – Littler United States

In late 2020, the Australian Government proposed the Fair Work Amendment (Supporting Australia's Job and Economic Recovery) Bill 2020 (the Bill) which, if passed, will introduce various changes to casual employment, including an alteration of the definition of casual employees. The Bill aims to provide certainty by defining casual employment more clearly and proposes that where an offer of employment is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work, the relationship may be one of true casual employment.

Relevant factors as to whether a firm advanced commitment to work will exist include the ability to accept or reject work, whether the employee will work only as and when required and whether a casual loading is paid. This will be

assessed when entering into the agreement. The proposed changes also provide that employers will be able to offset any claim for annual leave, personal leave and redundancy pay against the casual loading that has been paid to a casual worker. We will provide further updates as the Bill progresses through Parliament.

Canada

Ontario: New Law Introduces COVID-19 Liability Protection with Exceptions

New Legislation Enacted

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

Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020 was enacted on November 20, 2020. Bill 218 prevents legal action from being brought against companies that make an honest effort to act in accordance with applicable public health guidance and any federal, provincial or municipal laws relating to COVID-19.

Supreme Court of Canada's Decision on Landmark Bonus Case

Precedential Decision by Judiciary or Regulatory Agency

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

On October 9, 2020, the Supreme Court of Canada (SCC) issued a decision in an employee's appeal of the Nova Scotia Court of Appeal's decision setting aside the damages awarded under an employee's long-term incentive plan following a constructive dismissal. The SCC decision clarifies the analysis for determining the entitlement to damages for a lost bonus in a wrongful dismissal case. It also puts employers on notice that (a) certain bonus language will not be viewed as unambiguously removing or limiting the employee's common law entitlement; and (b) if an employee sues for damages for mental distress and/or punitive damages for a breach of the duty to exercise good faith in the manner of dismissal, and the circumstances are appropriate, a court may declare that the employer breached the duty and award damages.

British Columbia: Court of Appeal Sets Aside Aggravated Damages Award in Wrongful Dismissal

Precedential Decision by Judiciary or Regulatory Agency

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

The British Columbia Court of Appeal recently overturned the trial court's decision to award aggravated damages to an individual whose job was terminated before his employment began because the manner of dismissal did not cause the requisite "mental distress." The court concluded the plaintiff's "feeling of strong dismay and anxiety for himself and family" was not beyond the "normal distress and hurt feelings" that employees generally experience following a dismissal, which are not compensable.

New Brunswick Appellate Court Finds in Favor of Employee in Wrongful Dismissal Action

Precedential Decision by Judiciary or Regulatory Agency

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

The New Brunswick Court of Appeal recently considered an employee's appeal of a decision dismissing his action for damages in lieu of reasonable notice upon his job termination without cause. A key issue was whether, after terminating the plaintiff's employment without cause, the employer could then claim the dismissal was for cause and therefore the employer had no obligation to provide common law reasonable notice. The court decided the employer could not do so.

Ontario Court: Termination Provisions That Can Possibly Violate ESA in the Future Are Unenforceable

Precedential Decision by Judiciary or Regulatory Agency

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

Ontario's Superior Court recently held that a termination provision in an employment contract that has even a remote possibility of violating the Employment Standards Act, 2000 (ESA) in the future is unenforceable. Therefore, a termination provision that purports to deny an employee employment standards they might potentially be entitled to in the future will raise issues of enforceability if challenged.

China

State Administration of Taxation Responds to Questions Related to Flexible Employment

New Regulation or Official Guidance

Author: Nancy Zhang, Special Counsel – Littler United States

The State Administration of Taxation makes it clear: the income that freelancers obtain from apps/platforms includes two major categories: (1) service income and (2) business income. "Service income" refers to freelancers' income relating to design, consulting, lectures, recording, video, performance, advertising and other services using apps/platforms. The income is a taxable item of "remuneration for labor services" and should be withheld by the entities or individuals who pay for such services. Concerning "business income," if freelancers set up individual businesses, or engage in production or business activities on the platform without any registered businesses, the income earned should be taxable as "business income."

Guidance and Services for Sharing Employees

New Regulation or Official Guidance

Author: Nancy Zhang, Special Counsel – Littler United States

The Ministry of Human Resources and Social Security recently promulgated a Notice on the Guidance and Services for Sharing Employees. Among other things, the Notice provides that enterprises can form an agreement on the number of shared employees, working time, working location, working content, rest time, labor protection conditions, the standard, payment time and manner of the salary, hospitality arrangement, how to return the employees, and work-related injury liabilities.

Shanghai Municipality Issues Opinions on Exercising Discretion and Whistleblower Protection

New Regulation or Official Guidance

Author: Nancy Zhang, Special Counsel – Littler United States

The Shanghai Municipality recently issued Implementation Opinions on Strengthening and Standardizing Interim and Ex-post Supervision. Among other things, the Opinions address the enterprises' market practices, suggesting authorities prudently exercise discretion when imposing administrative punishment and expand the coverage of exemptions for minor violations. In terms of employment related matters, the Opinions promote establishing systems for whistleblowers to lodge internal complaints and to protect whistleblowers.

Guidelines on Further Regulating the Management of Labor Dispatch

New Regulation or Official Guidance

Author: Nancy Zhang, Special Counsel – Littler United States

The Guidelines, issued in November 2020, establish comprehensive regulations on controlling and managing labor dispatch. It requires strict access to obtain labor dispatch qualifications, reinforces the disqualification process, promotes the "Internet + Supervision" system, and establishes data sharing and management. It is expected that the labor dispatching regulations in Guangdong Province will be more stringent and standardized in the future.

Colombia

Financial Aid Program for Employers Extended to March 2021

New Legislation Enacted

Author: Juliana Visbal Restrepo, Associate - Godoy Córdoba | Littler

Law 2060 issued by the Congress on October 22, 2020, extended the period in which employers can apply to the Formal Employment Support Program to March 2021. Under the program, the government will pay a monetary aid to employers to support employment during the economic crisis caused by the pandemic. This monetary aid consists in paying 40% of the minimum monthly wage for each employee; employers in the hotel industry can receive up to 50% of the minimum monthly wage for each employee. To receive the aid, the employer must meet specific criteria, including not having previously received financial aid more than three times during the pandemic.

New Monthly Wage and Transportation Allowance for 2021

New Order or Decree

Author: Juliana Visbal Restrepo, Associate - Godoy Córdoba | Littler

Under Decree 1785 (issued on December 29, 2020), the minimum monthly wage will be CO $908,526, effective from January 1, 2021, through the end of the year. Additionally, under Decree 1786 (issued on December 29, 2020), the transportation allowance for 2021 will be CO $106,454. The obligation to pay transportation allowance will apply to every employee who earns two minimum wages or less. These decrees represent a salary increase of 3.5% over both the minimum monthly wage and the transportation allowance for 2020.

Public Health Emergency Extended, Implications for the Workplace

New Order or Decree

Author: Juliana Visbal Restrepo, Associate - Godoy Córdoba | Littler

On November 27, 2020, the Health Ministry extended the state of health emergency due to COVID-19, until February 28, 2021. During the state of emergency, employers are obligated to subsidize the connectivity of employees working from home; employees may apply for unemployment aid to compensate for reduction in their salary; and employers may send employees on vacation with a one-day notice. The extension of the state of emergency also impacts other measures that allow employers to have employees work from home without the implication of teleworking. These measures will be extended for as long as the health emergency persists, unless authorities indicate otherwise.

Finland

Posted Employees: Implementing the Amended Posted Workers Directive (EU) 2018/957

New Legislation Enacted

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

Finland has adopted the amended Posted Workers Directive (EU) 2018/957. The purpose of the amendments is to promote equal treatment of posted employees and competition between companies. First, the long-term posting requires equal treatment with national employees as regards terms of employment. Second, the employer must reimburse the travel, accommodation and meal costs to the posted employee in the country of employment. Third, the term "minimum salary" is changed to "salary", but this does not affect how the amount of the salary is determined. Last, the companies posting the employees to Finland must inform the Finnish industrial safety authority regardless of the duration of the posting.

Supreme Court Ruling on Compensation for Discrimination at Work

Precedential Decision by Judiciary or Regulatory Agency

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

On December 17, 2020, the Supreme Court of Finland ruled on a case relating to employee's right to compensation for suffering when the employer was also ordered to pay compensation for unjustified termination of employment, as well as remuneration for the prohibited discrimination. The employer was deemed to have terminated the employment due to the employee's illness during the probation period.

The compensation for unjustified termination includes compensation for both material and nonmaterial damage. The Supreme Court ruled that the total compensation for unjustified termination of employment and the amount of the nonmaterial part of the compensation, as well as the remuneration shall be considered when assessing employee's right to compensation for suffering. The Supreme Court rejected the claim for separate compensation for suffering as it ruled that the insult against the employee had been fully compensated by the nonmaterial compensation and remuneration for discrimination.

Post-termination Noncompetition Agreements: Obligation to Pay Compensation

Proposed Bill or Initiative

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

The Finnish government has introduced a bill to amend the Employment Contracts Act (55/2001, as amended) relating to post-termination noncompetition agreements. The obligation to pay compensation would be extended to all post-termination noncompetition agreements and the compensation would be 40 – 60 % of employee's regular salary throughout the noncompetition period, depending on the duration of the noncompete period. The employer would also have a unilateral right to terminate the noncompetition agreement, but not after the notice of termination has been given. The amendments are planned to be effective as of January 1, 2022.

Self-employed Couriers Are Considered Employees

Important Action by Regulatory Agency

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

On October 5, 2020, the Finnish Labour Council issued two statements, declaring that the self-employed couriers of two major courier service platform companies are in fact employed by the companies and covered under the mandatory provisions of the Employments Contracts Act. The Labour Council stated that the characteristics of an employment relationship were met, such that the Working Hours Act should be applied to their work.

The statement included rather surprising conclusions, considering that the couriers are in a highly independent position and are, for example, entitled to decide when, where and how much they work and are also entitled to decline any work offers as they please and even work for companies competing with each other. Although, the statements are not legally binding, they are typically considered by courts.

COVID-19: Expiration of Temporary Amendments

Trend

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

All temporary amendments made to the employment legislation – such as shortening the cooperation consultations period from 14 to five days – that were implemented on April 1, 2020, expired on December 31, 2020. The amendments aimed to help businesses to adjust to changes in demand for labor, caused by the COVID-19 pandemic.

France

Extension of Paternity Leave for Fathers

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

At the birth of a child, French fathers can benefit from a birth leave paid by the employer as well as a paternity leave paid by the social security system. Until now, these leaves were not always taken by employees. On December 14, 2020, the government enacted a law to compel employees to enjoy these leaves and extend their duration from 11 to 25 days. Accordingly, it is mandatory for fathers to take three days of birth leave as of the next working day from the child's birth. A period of paternity leave of four days in a row must be taken, just after this first leave. During this period of seven days, it is forbidden for employers to make employees work, so that taking the leave is now compulsory. Employees can benefit from a second paternity leave for a duration of 21 days, extended to 28 days in case of multiple births. Employees will be able to split this leave in several parts.

A New Definition of the Co-employment Concept

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

The concept of co-employment involves searching for the actual decision maker in a group of companies, to hold the decision maker responsible for the consequences flowing from such decisions. When a court finds that co-employment exists in a case, then the parent company is considered as a co-employer who is responsible for the obligations resulting from the decisions made towards employees of the subsidiary.

In a decision dated November 25, 2020, the French High Court confirmed the conditions of a co-employment situation, defining it as the permanent interference of the parent company within the company's social and economic management, as well as the subsidiary's total loss of autonomy. This loss of autonomy is a key element, which is evident when the subsidiary lacks the power to make economic and social decisions. With these new criteria, the High Court provides a very precise frame to the co-employment concept.

Transfer of Criminal Liability from Acquired Company to Acquiring Entity

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

Until now, the French High Court considered the dissolution of a legal entity exactly like the death of a physical person. The disappearance of an acquired company after an acquisition would lead to the lapse of all and any criminal

lawsuit against this entity. The criminal rule providing that a person can only be liable for his/her own actions was an obstacle for sentencing the acquiring company.

In a decision dated November 25, 2020, the High Court of Justice disputed this approach, so that there is now a specific rule for companies whose business is still running within the acquiring entity, after acquisition. Such principle authorizes, under some conditions, the transfer of the criminal liability from the acquired company to the acquiring company. However, this transfer of criminal liability applies only to mergers and acquisitions falling within the scope of the EU Directive related to the merger of limited companies and to operations finalized after the date of the ruling. However, when the acquisition was made to avoid criminal liability, then such operation is considered a fraud and subject to the regular rules of transfer of liability, regardless whether the transaction was a merger or an acquisition.

Admissibility of Illegal Evidence to Justify a Disciplinary Sanction

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

In this matter, an employee was dismissed for having sent an email to a customer using the identity of other customers. The employer discovered this fact by searching within its IT system and tracking the sender's IP address. The employee challenged this dismissal, and objected to the use of the evidence, claiming that the employer obtained it unlawfully. The employee argued that the use of log files and IP addresses should have been declared before the French Data Protection Authority (CNIL).

The French High Court ruled in his favor, finding that IP addresses must be considered private data that cannot be processed nor used without a prior declaration to the local CNIL. However, the French High Court held that the evidence does not need to be rejected, even though it was obtained illegally. In litigation, judges must assess whether the invasion to employee's privacy by using such evidence can be justified in light of the employer's right to present evidence in its defense.

Germany

Government Resolution on Wearing Masks in Office Spaces

New Order or Decree

Author: Fritz Pieper, Senior Associate - vangard | Littler

The government agreed on a resolution on new measures including the obligation to wear masks in office spaces that are highly frequented by employees or the public (e.g., corridors and restrooms) to tackle the coronavirus pandemic. As the competence of implementing measures regarding the prevention of infectious diseases is assigned to the federal states, the government cannot implement the measure itself. However, many federal states have implemented this recommendation by making it compulsory. The mask mandate does not apply to the direct place of work (e.g., desks). Employers are encouraged to inform their employees of this resolution.

Federal Labor Court Finds Crowd Workers are Employees

Precedential Decision by Judiciary or Regulatory Agency

Author: Franka Schlemm, Associate - vangard | Littler

The Federal Labor Court decided on the question whether a "crowd worker" can be classified as an employee. Crowd workers undertake minor tasks for companies. In this case, the company and crowd worker agreed on a framework agreement upon which the crowd worker acquired the task assigned by the company. The court emphasized that in this work relationship, the company exercised control through a rather strict framework, which dictated the work, time, place and tasks. The court argued that because of this amount of control, the work was an employment

relationship. The company made it possible for crowd workers to earn higher wages by enabling them to accomplish multiple tasks at the same time, and in this way created incentives for workers to take over as many tasks as possible.

Exemption for British Citizens from Duty to Apply for Visa

New Regulation or Official Guidance

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

Changes were made to the Employment Ordinance (Beschäftigungsverordnung) and the Residence Ordinance (Aufenthaltsverordnung) to include British citizens within the group of those foreign citizens who can travel to and work in Germany without having to apply for a visa after the transition period ends on December 31, 2021. Even though the UK has left the European Union, British nationals will be able to continue working in any occupation without the need for a certain qualification, as of January 1, 2021. The same procedure applies for citizens of other countries, such as the U.S., Japan and Canada. However, such citizens will still need to apply for a residence permit, though they will be able to do so when already residing in Germany.

Maximum Period of Receiving Short-Time Work Allowance Extended

New Regulation or Official Guidance

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

The Federal Ministry of Labor and Social Affairs extended the maximum period for receiving the statutory short time work allowance to up to 24 months. According to section 1 of the Ordinance on the Maximum Time Period for Short Time Work Allowances, the entitlement expires December 31, 2021. The Ministry agreed on the extended periods due to the COVID-19 pandemic, to enable employers to cope with the impact to their business resulting from not being able to terminate employment relationships. The changes were necessary, as the pandemic has had a more devastating effect than originally expected when the maximum period for the allowance was prolonged in April 2020.

Statutory Minimum Wages Increased

New Regulation or Official Guidance

Author: Dagmar Lessnau, Senior Associate - vangard | Littler

An agreement has been reached to increase the statutory minimum wage in phases. Following the recommendation of the minimum wages commission, the government published a new ordinance on the applicable statutory minimum wages. According to section 1, the minimum wage per hour will amount to EUR 9.50 as of January 1, 2021; EUR 9.60 as of July 1, 2021; EUR 9.82 as of January 1, 2022; and EUR 10.45 as of July 1, 2022. The ordinance is effective as of January 1, 2021.

India

State of Karnataka Amends Law Allowing Women to Work Night Shift in Commercial Establishments

New Legislation Enacted

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate - Nishith Desai Associates

On October 19, 2020, the Karnataka government amended the Karnataka Shops and Commercial Establishments Act, 1961 (KSCEA) through the Karnataka Shops and Establishments (Amendment) Act, 2020 to include provisions relating to allowing women to work night shift. The amendment replaces the erstwhile provision of the KSCEA that generally prohibited employment of women in the night in commercial establishments, except in cases where a specific approval was sought from the state government.

The amendment allows employment of women in night shift by all commercial establishments without the requirement of seeking specific approval from the state government, subject to certain conditions including, among others, (a) written consent of the woman employee, (b) provision of transport facilities, (c) deployment of adequate number of security guards in the establishment and in the transport vehicle during night shift, and (d) bearing cost of crèche facility, etc.

Draft Central Rules to the Newly Enacted Labor Codes Released for Public Comments

Proposed Bill or Initiative

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate - Nishith Desai Associates

After the enactment of the labor codes, the Ministry of Labor and Employment has released draft rules to the codes for public comments, namely, the Industrial Relation (Central) Rules, 2020, the Code on Social Security (Central) Rules, 2020 and the Occupational Safety, Health and Working Conditions (Central) Rules, 2020 on October 29, 2020, November 13, 2020, and November 19, 2020, respectively. The government had earlier released the draft rules to the Code on Wages, 2019, namely the Code on Wages (Central) Rules 2020 on July 7, 2020.

Rules are typically issued under an enactment to provide for procedural aspects relating to the law. Although the government intends to implement all four labor codes by April 2021, each of the codes will need to have corresponding rules finalized and notified after comments are received from the stakeholders. Additionally, labor being a subject of concurrent list of the Indian constitution, state governments are also likely to notify separate rules for implementation of the codes. Recently, one of the states, Madhya Pradesh, became the first state in India to frame and introduce its state-specific rules to the Code on Wages.

Draft Model Standing Orders for Manufacturing and Service Sector Establishments Released for Public Comments

Proposed Bill or Initiative

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate - Nishith Desai Associates

On December 31, 2020, the Ministry of Labor and Employment released draft Model Standing Orders for manufacturing and service sector establishments for public comments. These have been issued under the powers conferred to the central government by the provisions of Industrial Relations Code, 2020. Standing orders typically contain rules that govern terms and conditions of employment, including work hours, leave and holidays, wage period etc. As per the Industrial Relations Code, 2020, the provisions of Chapter IV relating to standing orders are applicable to every industrial establishment that employs at least 300 workers on any day in the preceding 12 months. The draft Model Standing Orders have introduced some new provisions including those relating to work from home and flexibility in shift working.

Italy

COVID-19: Short-time Work Measures Extended

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

In December 2020, the government enacted new Law no. 178/2020, which among other things extended the short-time work programs that had been implemented in March 2020 as part of several COVID-19 measures. The short-time work programs allow employers to reduce employees' working hours down to zero hours per week while compensating employees up to 80% for the loss of salary (with a cap of approx. EUR 1,100 monthly) through the Italian Social Security Authority (INPS). The new law extended the short-time work program for an additional 12 weeks.

The program known as "CIGO" is available from January 1 to March 31, 2021; "CIGD" and "FIS" are available until June 30, 2021. The 12 weeks may apply to short time work periods that occur, even partially, after January 1, 2021.

As an alternative to short-time work programs, the new Law no. 178/2020 allows employers to claim exemptions from payment of mandatory social security contributions for employees. The exemption is available for a maximum of eight weeks and will expire on March 31, 2021. Employees subject to this measure can still earn their full social contribution payments from INPS.

COVID-19: Ban on Individual and Collective Dismissals

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

At the start of the pandemic, the government enacted a dismissal ban that applied from March 17, 2020, to August 17, 2020. The ban covered individual and collective dismissals due to economic reasons. In August, the government enacted Decree no. 104/2020, extending the dismissal ban, except that it made it conditioned on the use of short-time work programs. Specifically, the dismissal moratorium applied until the employer was able to benefit from the 18 weeks of the short-time work programs or from the social contribution exemption. With the enactment of new Law no. 178/2020 in December 2020, the dismissal ban was extended until March 31, 2021, except to be eligible, the use of short time work programs or social contribution exemption is no longer required.

COVID-19: Fixed-Term Contracts

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

To jumpstart business activities and help recover from the COVID-19 pandemic, the government enacted an extension on rules regarding fixed-term contracts. Article 1, paragraph 279 of the new Law no. 178/2020 allows employers to renew or extend fixed-term employment contracts, even in the absence of the mandatory "causes" that would otherwise apply in these cases. Such option will be available until March 31, 2021, and the extensions can be for one time only and for a maximum of 12 months, without prejudice to the maximum total duration of 24 months.

Amendments to the "Expansions Contract" Program

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

In December 2020, the government enacted Law no. 147/2020. Among other things, this law lowered the threshold for companies to avail themselves of the "expansions contract" measure. Under art. 1, paragraph 349 of the law, the measure is available to employers with at least 250 employees. Under the "expansions contract" program, companies can access a series of measures to simplify and reduce labor costs, including: (i) short time work program (CIGS), with a reduction in working hours of up to 30%, to encourage new hiring processes; and (ii) early retirement options for employees who are no more than five years away from retirement age. For companies with more than 1,000 employees who hire at least one person for every three exits, the reduction in charges is extended by 12 months, in addition to the 24 months already envisaged.

Palermo Court Judgement on "Delivery Riders"

Precedential Decision by Judiciary or Regulatory Agency

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

On November 20, 2020, the Court of Palermo's labor section ruled on the qualification of the employment relationship of a delivery company rider. In ruling the dismissal to be unlawful, the court ordered the company to

reinstate the employee. This is an important judgment as the judge relied on an interpretation of Article 2094 of the Italian Civil Code, viewed within the context of the digital revolution. In fact, the court noted that the delivery technological platform enables work organization processes that are based on hierarchical dependence, subjecting the employee to management, control and disciplinary powers, elements that are typical of a subordinate employee.

Malaysia

Industrial Relations (Amendment) Act 2020

New Legislation Enacted

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

Various provisions of the Industrial Relations (Amendment) Act 2020 (IRA 2020) became effective on January 1, 2021. Some of the key changes that became effective relate to when representations for dismissal without just cause can be referred to the Industrial Court; appointment to represent a party during conciliation; appeals of awards by the Industrial Court; procedures to follow when a workman who has lodged a representation under s.20 of IRA 1967 passes away; interest rate of payment of awards; penalties for violations of the IRA; authority to determine competency and/or recognition of a trade union; punishment for picketing, illegal strikes, and lockouts; among other changes.

Various important provisions are still scheduled to come into force, including those relating to claims for recognition, prohibition of industrial action pending recognition, collective bargaining, the Minister's power to make regulations; and the First Schedule (list of essential services) of the Industrial Relations Act 1967 (IRA 1967). The insertion of new sections 12A and 12B on the sole bargaining rights has also not come into force.

Enactment of the COVID-19 Act

New Legislation Enacted

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19 Act) was gazetted on October 23, 2020, and will be in effect for two years. The COVID-19 Act, designed to mitigate the impact of the pandemic, introduced various temporary measures, including modifying relevant provisions in various Acts of Parliament, which include, amongst others, the Industrial Relations Act 1967 and the Private Employment Agencies Act 1981.

COVID-19 Orders and SOPs

Precedential Decision by Judiciary or Regulatory Agency

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

The government has extended the preventative measures that it has implemented in response to COVID-19. In December (the time of this writing), the Conditional Movement Control Order (CMCO) had been extended in Selangor, Kuala Lumpur and Sabah to January 14, 2021; the Recovery Conditional Movement Order (RMCO) was extended throughout the country to March 31, 2021. All businesses open for operations must comply with all relevant and sector-specific SOPs issued by the National Security Council (NSC) and other authorities, which are regularly updated. The CMCO, RMCO and SOPs are available on the NSC website.

New Requirement on Hiring of Expatriates

New Regulation or Official Guidance

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

On October 26, 2020, the Ministry of Human Resources announced that companies that intend to hire new expatriates are now required to advertise job vacancies via the MYFutureJobs Portal for a period of no less than 30 days. Only companies that are unable to find suitable local candidates after the 30-day period may proceed with their application to hire expatriates. If qualified local job seekers apply for the vacancy, the company must consider their applications.

If the company is unsuccessful in recruiting local candidates, MYFutureJobs will then issue a certificate with a recommendation by the Department of Labor on the hiring of an expatriate to fill the job vacancy. The company may proceed with the relevant projection or work pass application only after it receives the certificate from MYFutureJobs, and must upload the certificate, together with the relevant applications, on the Expatriate Services Division (ESD) portal.

Amendments to the Occupational Safety and Health Act 1994 (OSHA)

Proposed Bill or Initiative

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

The "OSHA Bill", known as the Amendments to the Occupational Safety and Health Act 1994, seeks to widen the reach of the Act "to all places of work throughout Malaysia." The bill defines "place of work" as any "premises where persons work", and "premises" as "any land, building."

If approved, employers/principals will be required to ensure the safety and health of virtually any person rendering services, as well as conduct and implement risk assessments at the place of work. The new law would also increase penalties for noncompliance and corporate officers may be held jointly or severally liable. Additionally, the employee would have the right to refuse to work if he/she reasonable believes that imminent danger exists under the circumstances.

Mexico

Mexico Increases the General Minimum Wage

New Legislation Enacted

Author: Monica Schiaffino, Shareholder - Littler Mexico

On December 16, 2020, the National Minimum Wage Commission (CONASAMI for its acronym in Spanish) announced that Mexico's minimum wage would increase to $141.70 Mexican pesos per day, effective January 1, 2021. It appears the new minimum wage was determined by adding $10.46 Mexican pesos through the so-called Independent Recovery Amount (MIR) and applying a 6% percentage increase. The MIR is a fixed peso amount intended to maintain the purchasing power of the minimum wage. Therefore, the minimum wage in force for 2021 implies a global increase of 15%.

The CONASAMI also agreed to increase the minimum wage for the Free Economic Zone of the Northern Border to $213.39 Mexican pesos per day, effective January 1, 2021, representing a 15% increase.

Mexico's President Introduces Proposed Subcontracting Reform with Important Implications for the Business Community

Proposed Bill or Initiative

Authors: Monica Schiaffino, Shareholder and Rogelio Alanis Robles, Associate - Littler Mexico

On November 12, 2020, Mexico's President Andrés Manuel López Obrador announced in a press conference that he is officially introducing an initiative to Congress to reform subcontracting. If approved, the proposal would modify various laws, including the Federal Labor Law (LFT), the Social Security Law, the Law of the Institute of the National Housing Fund for Workers, the Federal Fiscal Code (CFF), the Income Tax Law and the Value Added Tax Law. This bill will have to pass the legislative process before it is published in the Federation's *Official Gazette*. With Morena, the President's political party, having a majority in both chambers of Congress, however, it is likely that the initiative will pass through without much opposition or amendments.

Among other proposed changes, the proposed bill expressly prohibits subcontracting, defined as the practice of providing or making available workers for the benefit of another person or legal entity. To adopt this new definition, articles 15-A to 15-D of the LFT—which have been regulating subcontracting since the reform of December 2012—would be repealed. Further, a contractor would be allowed to provide services or perform specialized works that are not part of the corporate purpose (or core business) or the economic activities of the beneficiary (customer) only if it is duly authorized as a provider of specialized services by the Ministry of Labor and Social Welfare (STPS). Moreover, the beneficiary would be held jointly and severally liable for any of the contractor's violations under the labor, social security, or tax laws.

Netherlands

Raise of Statutory Minimum Wage

New Legislation Enacted

Author: Dennis Veldhuizen, Partner – Clint | Littler

Every year the Dutch statutory minimum wage is redefined in January and July. As of January 1, 2021, the statutory minimum wage is raised from EUR 1,680 to EUR 1684.80 (gross). The minimum wages per week and day are adjusted accordingly.

Supreme Court on Standard for Qualification of Employment Contract

Precedential Decision by Judiciary or Regulatory Agency

Author: Dennis Veldhuizen, Partner – Clint | Littler

On November 6, 2020, the Dutch Supreme Court issued a ruling clarifying the relevant criteria to determine whether a contract qualifies as an employment contract. Since the Groen/Schoevers ruling of the Supreme Court in 1997, it was assumed that the rights and obligations agreed upon by the parties, as well as their intention while agreeing, were the relevant criteria. However, the Supreme Court has now clarified that the intention of parties plays no role in this qualification process. Whether a contract qualifies as an employment contract should be based solely on the rights and obligations agreed upon by the parties. Whether the parties originally had the intention to enter into an employment contract or not is relevant only for clarifying the rights and obligations that exist between parties.

COVID-19 "Now" Financial Support Measures to Compensate for Loss of Turnover

New Regulation or Official Guidance

Author: Dennis Veldhuizen, Partner – Clint | Littler

As part of financial support measures for companies who suffer revenue losses due to COVID-19, the government set up the Temporary Emergency Fund Bridging Employment (in Dutch: NOW). Under this measure, companies that lost at least 20 percent of revenues can get a maximum of 80 percent of their wage costs compensated by the government. The government extended NOW for the third time as of October 2020 for nine months, until July 2021, to raise the required minimum loss to 30 percent and to cut back the compensation per phase of three months. However, since COVID is still very present, tightening the measure is postponed; up to and including at least March 2021 the threshold will remain at 20% revenue-loss and the maximum compensation will remain 80 percent of wage costs. Applications for the first phase of the third NOW closed on December 28, 2020, but the application period for the second phase (covering January, February and March 2021) will open on February 15, 2021.

Legislative Proposal for Nine Weeks of Paid Parental Leave

Proposed Bill or Initiative

Author: Dennis Veldhuizen, Partner – Clint | Littler

The Dutch Minister of Social Affairs and Employment submitted a bill to introduce nine weeks of paid parental leave, to comply with EU Directive 2019/1158 regarding the work-life balance for parents and carers. Currently, Dutch law offers parents the possibility to take unpaid parental leave of 26 weeks, in case of full-time work, before the child reaches the age of 8. The bill proposes to introduce a statutory right to nine (of the 26) weeks of parental leave in the first year after birth of the child against 50% of the salary. The bill still has to be adopted by the House of Representatives and the Upper House; implementation is expected in August 2022.

Dutch Government's Review of Untaxed Payment of Fixed Travel Allowances for Teleworkers

Important Action by Regulatory Agency

Author: Dennis Veldhuizen, Partner – Clint | Littler

Travel allowances paid by employers to employees are untaxed up to € 0.19 per kilometer and many employers pay this in the form of a fixed monthly travel allowance. In 2020, many employees started working from home instead of travelling to work. As part of financial government measures, the tax authority allowed employers to continue untaxed payment of fixed travel allowances to their employees – provided that they were already paid before March 13, 2020 – although employees did not actually incur these costs. This will be allowed until at least February 1, 2021. In January 2021, the government will announce how fixed travel allowances for teleworkers will be treated by the tax authority as of February and beyond.

Norway

New Ruling on Principle of Equal Treatment for Hired Workers

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The Supreme Court recently ruled on whether hired personnel pursuant to the equal treatment rule under section 14-12 of the Working Environment Act were entitled to a company bonus on an equal footing with permanent employees and apprentices in the company in which they were hired. The Supreme Court's decision stipulates that hired employees will be entitled to a bonus from the staffing company on an equal footing with the employees. This also applies in a case of bonus schemes at group and company level that are not directly linked to the individual employee's work effort.

Employer's Duty of Care When Sexual Harassment by Customers

Precedential Decision by Judiciary or Regulatory Agency

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

In a recent decision, the Supreme Court ruled that a female employee at a mechanical repair yard had been sexually harassed by two of the company's customers. Both customers were liable to the employee for damages for noneconomic loss. At the appellate level, the employer was found liable for damages due to the lack of compliance with its duty of care and duty to take action. Both judgments clarify the threshold for the kind of acts that may constitute sexual harassment.

Temporary Regulations Regarding Lay-off and Unemployment Benefits

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

Due to the COVID-19 outbreak, the government has enacted a number of temporary measures relating to layoffs, extending the maximum allowed temporary layoff period from 26 weeks to 52 weeks within an 18-month period, starting November 1, 2020. During the 52 weeks, the employee will be entitled to the following salary and unemployment benefits: 10 days of salary from the employer (employer period I); 30 weeks of unemployment benefits, five days of salary from the employer (employer period II); 19 weeks of unemployment benefits. The temporary regulations apply from November 1, 2020 to July 1, 2021.

New Pension Rules

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

Concerning pension account for employees with defined contribution pensions, starting January 1, 2021, employees are no longer required to have at least 12 months of employment to obtain a pension when the employee leaves the company. Accordingly, deposit pensions accrue as of the first day, regardless of the duration of the employment.

Proposal to Increase Age limit to 72 Years for Norwegian State Employees

Proposed Bill or Initiative

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

The government proposes to increase the general age limit for state employees, from 70 to 72 years. This proposal was submitted for review, with a February 28, 2021, deadline for comments.

Peru

New Law Covering Domestic Workers

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

The newly enacted Act 31047 establishes new provisions on domestic workers, including enhancement of benefits and bonuses, and amends the legislation in respect to compensation for services, vacations, and the recognition of full compensation for work on holidays. Additionally, domestic workers now are entitled to earn the minimum wage and have written employment contracts. The contracts must be submitted to the Ministry of Labor. Significantly, under this new law, the termination of domestic workers must comply with the same rules that apply to other employment contracts. This means they cannot be dismissed without a just cause, and they are entitled to monetary compensation or their reinstatement when dismissed without just cause. The act entered into effect on October 1, 2020.

Measures to Recover Formal Jobs and Extension of Remote Work

New Order or Decree

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

Emergency Decree 127-2020, published on November 1, 2020, sets forth a series of measures for the recovery of formal jobs in the private sector. It provides subsidies for qualifying employers that can establish that they have hired new employees within the last few months. It also allows employers to rehire permanent employees who had been dismissed. Additionally, it extends the term for which employers can implement remote work, until July 31, 2021. Further, it amplifies certain obligations for employers that are using remote work, such as the right of digital disconnection that all employees have during resting periods.

Extension of State of Emergency and Related Measures

New Order or Decree

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On November 27, 2020, Supreme Decree 031-2020-SA extended the Sanitary Emergency that was set to end on December 6, for 90 calendar days (i.e., until March 6, 2021). Other measures connected with the declaration of Sanitary Emergency are extended, as well, including: (i) the mandate to implement remote work for people in risk groups (e.g., based on age or medical reasons); (ii) the requirement to grant paid leave to employees who are unable to work due to the nature of the job; (iii) the possibility to modify work schedules to protect the safety and health of employees; (iv) allowing employees to access employment facilities when employees' family is part of a risk group; and (v) various measures on workplace health and safety obligations relative to taking medical occupational exams, Safety and Health Committees, mandatory trainings, among others.

New Guidelines for COVID-19 Protocols for the Workplace

New Regulation or Official Guidance

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On November 29, 2020, the Ministry of Health issued Ministerial Resolution 972-2020-MINSA, establishing guidelines for COVID-19 Biosecurity Plan for the Workplace, which employers must perform for all in-person operations. Although it repeals the previous resolution on the matter (i.e., Ministerial Resolution 448-2020-MINSA), the majority of the content is the same. Among the changes are new definitions for concepts, such as "medium risk" and "low risk" jobs. Additionally, the new resolution amends the protocol for taking employees' temperature, COVID-19 testing, and physical distancing (which is now one meter).

Directive on Verification of Arbitrary Dismissal

New Regulation or Official Guidance

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On November 20, 2020, the National Superintendence of Labor Inspection (Sunafil) published a resolution, approving Directive 003-2020-SUNAFIL on the verification of arbitrary dismissal. Under the Directive, requests for verification of dismissal may be submitted in person or online; both methods are deemed equally valid. Note, during an inspection, the authorities are primarily focused on verifying the circumstances underlying a claim of arbitrary dismissal. An inspector who concludes that a dismissal was arbitrary will issue an Arbitrary Dismissal Verification Finding. Former employees claiming an arbitrary dismissal and seeking severance or reinstatement may subsequently use such findings of fact.

Philippines

Amendment of the Labor Code on Suspension of Employment Relationship

New Order or Decree

Authors: Emerico O. de Guzman, Managing Partner and Rhett D. Gaerlan, Associate - Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On October 23, 2020, the Department of Labor and Employment (DOLE) issued Department Order No. 215, series of 2020, amending Rule I, Section 12 of the Omnibus Rules Implementing the Labor Code, on the suspension of the employer-employee relationship, originally for a period not exceeding six months. With the issuance of Department Order No. 215, the employer and the employees (through the union, if any, or with the assistance of the DOLE) shall meet in good faith for the purpose of extending the suspension of employment for a period not exceeding six months. Ten days prior to the effectivity thereof, the employer shall report to the DOLE the extension of suspension of employment. The employees shall not lose employment if they find alternative employment during the extended suspension of employment, except in cases of voluntary resignation.

Should retrenchment be necessary before or after the expiration of the extension of suspension of employment, the affected employee/s shall be entitled to separation pay as prescribed by the Labor Code; provided, that the retrenched employees shall have priority in rehiring if they indicate their desire to resume their work not later than one (1) month from the resumption of operations. By mutual agreement of the employer and the employees, the latter may be recalled to work or retrenched subject to the requirement of notice and separation pay, any time before the expiration of the extension of suspension of employment.

Guidelines on Payment of Deferred Holiday Pay

New Regulation or Official Guidance

Authors: Emerico O. de Guzman, Managing Partner and Rhett D. Gaerlan, Associate - Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On November 25, 2020, the Department of Labor and Employment (DOLE) issued Labor Advisory No. 31, series of 2020, in relation to the payment of deferred holiday pay pursuant to various Labor Advisories. The Advisory applies to all employers in the private sector that deferred payment of holiday pay based on the national emergency relating to COVID-19. In particular, the employers who were allowed to defer payment of the holiday pay of their employees are required to pay all covered employees equivalent to 100% of their daily wage on or before December 31, 2020.

Guidelines for Processing Personal Data for COVID-19 Contact Tracing

New Regulation or Official Guidance

Authors: Emerico O. de Guzman, Managing Partner and Rhett D. Gaerlan, Associate - Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On October 23 and November 26, 2020, the National Privacy Commission issued Advisory Nos. 2020-03 and 2020-03-A on the guidelines for workplaces and establishments processing personal data contained in COVID-19 health declaration and contact tracing forms. Establishments shall collect personal data only for COVID-19 prevention and control and shall be limited to the following: (a) Employee Health Declaration Form; (b) Visitor Contact Tracing Form; and (c) Customer Information and Health Checklist. Establishments must provide a privacy notice to employees, clients, and visitors, informing them of the details of the processing of their personal data for COVID-19 prevention and control.

Repurposing the personal data collected for direct marketing, profiling, or any other use or purpose, whether commercial or noncommercial is prohibited. Personal data and other information may be collected manually through

paper-based forms or electronically through digital or online forms subject to the implementation of reasonable and appropriate safeguards in the processing thereof. Moreover, personal data collected shall be retained only for as long as necessary for the fulfillment of the purpose/s for which such personal data was obtained.

Financial Assistance and Cash-for-Work Program for Displaced Workers in the Tourism Sector

New Regulation or Official Guidance

Authors: Emerico O. de Guzman, Managing Partner and Rhett D. Gaerlan, Associate - Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On December 7, 2020, the Department of Labor and Employment (DOLE) and Department of Tourism (DOT) jointly issued Advisory No. 1, series of 2020, on the implementation of a financial assistance and cash-for-work program (for a short-term period, granted in accordance with the TUPAD Program of the DOLE) for displaced workers in the tourism sector. Affected establishments under the tourism sector in DOT-Accredited Primary and Secondary Tourism Enterprises, including those that implemented Flexible Work Arrangements (FWAs) or Alternative Work Schemes (AWS) that resulted in a decrease or loss of regular income or wages for its employees for the duration of the community quarantine, may apply for their workers' financial assistance. Community-Based Tourism Organizations and local Government Unit (LGU)-licensed Primary and Secondary Tourism Enterprises that have implemented permanent or temporary closure, retrenchment, and FWAs/AWS may likewise apply for their employees' financial assistance.

Philippines: Entry Requirements for Foreign Nationals with Residences in the Philippines

New Regulation or Official Guidance

Authors: Emerico O. de Guzman, Managing Partner and Rhett D. Gaerlan, Associate - Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On December 17, 2020, the Inter-Agency Task Force issued a new Resolution on the re-entry of foreign nationals with valid and existing visas under Section 9(e) and 9(g) of Commonwealth Act No. 613, as amended. Those who leave starting December 17, 2020, may be allowed entry into the Philippines subject to the following conditions: (a) they have valid and existing visas on the date of arrival; (b) with prebooked quarantine facility; (c) with prebooked COVID-19 testing at a laboratory operating at the airport; and (d) subject to the maximum capacity of inbound passengers at the port and date of entry. It should be noted, however, that the foregoing is without prejudice to immigration laws, rules, and regulations such that the Commissioner of Immigration shall have the exclusive prerogative to decide on waiver or recall of exclusion orders for the aforementioned foreign nationals.

Portugal

New Special Measures Aiming to Mitigate Spread of COVID-19

New Legislation Enacted

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

Resolution of the Council of Ministers No. 92-A/2020 extends the declaration of public emergency due to COVID-19 to the entire Portuguese territory. Among other things, the resolution creates exceptions allowing the employer or the employee to implement remote work regime unilaterally (without mutual agreement of the parties). Further, Decree-

Law no. 94-A/2020 of 3 November introduced some amendments to the exceptional and temporary measures relating to the COVID-19 pandemic.

COVID-19: Implementation of Mitigation Measures

New Legislation Enacted

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

In line with the declaration of the state of emergency, the government implemented various measures to mitigate the spread of COVID-19. Among others, a measure restricts travel on public roads from 11:00 p.m. to 5:00 a.m. on weekdays and 1:00 p.m. to 5:00 a.m. on weekends (with various exceptions) in 121 municipalities.

Another measure allows the noninvasive taking of body temperature before entering a workplace, facility, health establishment or other structure. Access may be denied to those refusing to submit to the temperature testing or whose body temperature is 38 degree Celsius (100.4 F) or above. A worker who is unable to enter the workplace due to high body temperature will have a justified absence. Persons undergoing body temperature checks have a right to individual data protection and privacy. Other measures include the possibility of requiring diagnostic tests for COVID-19, among others.

Increase of Work Accident Pensions

New Legislation Enacted

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

Ordinance no. 278/2020, of December 4, increases the work accident pensions by 0.7% for 2020. Such increase is retroactive to January 1, 2020, onwards.

Posting of Workers in the Framework of Provision of Services

New Legislation Enacted

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

Decree Law 101-E/2020, of December 7, which entered into force on December 8, 2020, transposed into national law EU Directive (EU) 2018/957 of the European Parliament and of the Council of June 28, 2018, regarding posting of workers in the framework of the provision of services in the European Union. Important amendments were introduced in regard to the posting of workers in Portuguese territory and to the posting of workers to another Member-State by service providers established in Portugal.

Saudi Arabia

Initiative to Improve Contractual Relationship

Important Action by Regulatory Agency

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

The Ministry of Human Resources and Social Development (MHRSD) has launched an initiative to improve contractual relationships. As part of the initiative, MHRSD proposes three main objectives. Concerning contractual arrangements, the MHRSD proposes to abolish the requirement for employees to obtain existing employer's approval to transfer to a new employer. Under the changes to the Exit and Re-Entry Visas program, foreign national employees will no longer require permission from their Saudi employer to exit and re-enter the country, employers will be notified electronically on departure. Lastly, concerning final exit visas, foreign national employees will no longer require their employer's

consent to obtain a final exit visa to leave the country after termination of their employment. The employer will be notified electronically, and the employee will absorb any consequences pertaining to terminating the contractual relationship. The reforms are due to come into effect on March 14, 2021.

Spain

New Decree Establishes Requirement for Gender Equality Plans

New Order or Decree

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate - Abdón Pedrajas | Littler

Royal Decree 901/2020, issued on October 13, 2020, established new gender equality measures, including the requirement to conduct a pay audit and set up a committee to monitor compliance with the plan. The "Equality Plan Decree" is effective as of January 14, 2021. Companies that already meet the thresholds must initiate the procedure for negotiating their plans by setting up the negotiation committee within three months and must have an equality plan negotiated, approved and submitted for registration by March 14, 2022.

Companies that already have an equality plan in effect must adapt their equality plans within the period provided for their revision and, in any case, by January 14, 2022, at the latest, after negotiating with the employees' representatives. The equality plan must include a pay audit. Failure to comply with the obligations in terms of having an equality plan will be subject to fines up to € 187,515 and other administrative sanctions such as loss of public benefits and bonuses for a period ranging from six months to two years.

New Decree Establishes Gender Pay Transparency Requirements

New Order or Decree

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate - Abdón Pedrajas | Littler

New Royal Decree 902/2020 on Equality Pay for Women and Men, issued on October 13, 2020, enters into force on April 14, 2021, with phased implementation deadlines, based on workforce size. Among other things, all companies regardless of the number of employees must have a salary record of the entire workforce, including management and senior positions. This record will include the average and median of base salaries, complementary salary and extraordinary payments for one calendar year period, broken down by gender and professional group, professional category, level, job position or any other applicable classification system. The employees' representative must be consulted before the register is drawn up. Employees can have access to those records through their employees' representatives.

Those companies that are obligated to have an equality plan must also have a pay audit, which will be part of the equality plan. Thus, this audit will have the same duration as the equality plan unless otherwise provided. This audit requires the employer to carry out an assessment of the company's remuneration by evaluating the job positions and provide an action plan to correct any pay gap. Furthermore, if the audit shows that the average or the median of the total workforce remuneration of one gender is higher than the other (by at least 25% higher), the salary record must include an objective justification based on evidence that this disparity is not due to gender-related reasons.

Extension of the State of Alarm

New Order or Decree

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate - Abdón Pedrajas | Littler

Royal Decree 956/2020 of November 3 extended the State of Alarm to contain the pandemic until May 9, 2021. The State of Alarm also imposes a range of restrictive measures such as (i) limiting mobility at night; (ii) restricting entry and exit to and from regional communities, and (iii) limiting the number of people at meetings in public and private places.

Eligibility for a Bonus When Employment Relationship Ends Before Accrual Period

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate - Abdón Pedrajas | Littler

On October 22, 2020, Spain's Supreme Court issued a judgment interpreting when an employee can be eligible for a bonus when the objectives are met, but the employment relationship is terminated before the accrual period. The Court ruled that an employee's voluntary leave/resignation without express provision in the employment contract of the pro-rata of the bonus means that the requirement of loyalty and permanence for its accrual is not met. Thus, that any employee leaving the company before the accrual period of the bonus will not be entitled to it. If the worker meets the permanence requirement and fulfills the objectives, the employer has no discretion and the employee would receive the bonus. However, if the relationship is terminated for reasons beyond the employee's control (i.e. death, retirement, permanent disability and/or objective dismissal, both rendered justified and unfair), the employee will be entitled to the bonus.

Thresholds for Collective Redundancies

Precedential Decision by Judiciary or Regulatory Agency

Authors: Sonia Cortés García, Partner and Ariadna Arriola Cabello, Associate - Abdón Pedrajas | Littler

Under the ECJ Decision C-300/19 - *Marclean Technologies, S. L. U.*, dated November 11, 2020, a Member State legislation (such as the Spanish Workers' Statute) providing a different threshold would hinder the application of the Directive 98/59/EC of July 20, 1998, on the approximation of the Laws of the Member States relating to collective redundancies if such new thresholds would hinder the consultation obligations that would have otherwise been applicable according to the Directive. The ECJ ruled that for the thresholds set in Spain to be in line with those set by the Directive when individual dismissals would have been considered "collective redundancies," the reference period to take into account is any period of 30 or 90 consecutive days during which the individual dismissal took place (both before and after) and during which the greatest number of dismissals were made by the employer for one or more reasons not attributable to an employee's decision.

Sweden

Termination of an Employee with Disabilities Due to Personal Reasons

Precedential Decision by Judiciary or Regulatory Agency

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

On November 18, 2020, the Labor Court ruled in a case where an employer had terminated an employee due to personal reasons, based on the employee's severe problems of poor performance and lack of cooperation. These issues were connected with the employee's diagnosed disabilities (dyslexia and autism). The court held that cooperation issues can be just cause for termination only if they are very severe, and even in such cases termination should be considered only as a final resort (i.e., when all other measures taken have proved unsuccessful). The court also held that in case of issues to cooperate or poor performance due to a disability, the employer has the duty to take measures to enable the employee to remain in employment.

In this case, the employee's performance had for many years been less than half of what was normally expected for the position and she also had severe cooperation problems. Further, the employer had taken extensive measures to support the employee and she had rejected many of the measures. The court found that the issues could not be solved through any additional measure. Thus, there had been just cause for termination due to personal reasons.

COVID-19 Measures

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

On December 28, 2020, the government proposed a temporary pandemic law that gives the government the power to enact binding measures for the control of transmission. Based on this temporary law, the government proposed two ordinances, with one seeking to regulate specific restrictions to prevent the spread of COVID-19 (e.g., restrictions on gathering in public places and at public and private events, gyms, sports facilities, swimming pools, malls, stores, etc.). The other ordinance regulates the right to close malls and department stores if deemed necessary. The proposed ordinances are subject to Parliament's approval.

Bill on Modernization of the Swedish Labor Law

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner – Törngren Magnell & Partners Advokatfirma KB

As we previously reported, on June 1, 2020, a special investigator presented its inquiry on a bill to modernize the Swedish labor law. (For a summary of such proposals, see GGQ's report, dated July 23, 2020). The objective was to enact legislation based on the inquiry, unless the parties of the labor market worked out an agreement that would replace the bill. The parties reached an agreement on December 4, 2020, which will form the basis for the new legislation. The government has announced that the legislative work has begun, to enact new legislation that would enter into force before November 2022.

Switzerland

Amendment to Swiss Labor Act Clarifies Definition of Working Time

New Legislation Enacted

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

On November 1, 2020, the revised Ordinance 1 to the Swiss Labor Act (the Ordinance) entered into force. Among other amendments, the Ordinance regulates working time in connection with cross-border business trips. Specifically, it now clearly states that the time spent by the employee on Swiss territory for the outward and return journey is working time, whereas the time usually spent to commute from the employee's home to the place of work does not qualify as working time, and the respective amount may thus be deducted from travel time. Due to the limited applicability of Swiss legislation outside of Swiss territory, the time spent by an employee on foreign territory (e.g., air travel, transfer, hotel) is not part of the regulation and the parties may conclude an individual agreement in this regard. For employers it is, therefore, recommended to amend working time / staff regulations accordingly.

Federal Supreme Court Rules on Extent of Employee's Right to Request Information Under the FDPA

Precedential Decision by Judiciary or Regulatory Agency

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

On November 18, 2020, the Swiss Federal Supreme Court clarified its previous case law on information requests of individuals under the Federal Data Protection Act (FDPA). Under article 8 of the FDPA, any person may request information from the owner of a data file as to whether data concerning them is being processed. In employment matters, the information usually is provided with handing out a copy of the personnel file to the employee.

The recent decision of the Supreme Court has clarified that the individual may be exercising his or her right to information in breach of data protection law if the sole purpose of the information request is to clarify litigation

prospects or to obtain evidence to prepare a court dispute (so called fishing expedition). As such, requests in accordance with the decision of the Federal Supreme Court now may be considered as an abuse of rights. Several respective requests of employees are expected to be rejected in the future.

United States

Federal Court Issues Nationwide Injunction of Executive Order on Diversity and Inclusion Training

Precedential Decision by Judiciary or Regulatory Agency

Authors: Jim Paretti and David Goldstein, Shareholders – Littler United States

On December 22, 2020, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction banning the enforcement of Executive Order 13950, which seeks to prohibit purported "stereotyping" and "scapegoating" based on race and sex in workplace trainings provided by federal government contractors, or by recipients of federal grants. In its ruling, the court held that Section 4 of the executive order, which applies to workplace training programs conducted by federal contractors, and Section 5 of the order, which applies to recipients of federal grants, likely violate the First Amendment to the U.S. Constitution, insofar as they are an impermissible government restriction on free speech, and the Due Process Clause of the Constitution, because they are impermissibly vague and do not provide clear notice of what is and what is not permissible expression.

The court held that in light of the plaintiffs' (several nonprofit community organizations serving the LGBT community) likelihood of success on the merits of their claims, as well as the irreparable harm that would result from enforcement of the order, that preliminary injunctive relief on a nationwide basis was warranted.

DOL Confirms It Will Comply with New Court Order on Wage Rates

Precedential Decision by Judiciary or Regulatory Agency

Authors: Jorge Lopez, Shareholder and Elizabeth Whiting, Associate – Littler United States

The U.S. Department of Labor has announced that it plans to comply with a new U.S. district court order ruling that the agency violated the Administrative Procedure Act by failing to engage in the proper rule-making process for a new interim final rule (IFR) that implemented significant and immediate increases in prevailing wage rates for skilled foreign workers. The court order, issued December 1, 2020, is effective nationwide and sets aside the IFR in its entirety, which had raised wage rates precipitously (tripling minimum wage rates for certain locations and occupations). In response, the DOL confirmed that it will comply with the court order and will issue revised wage rates (at pre-October 8, 2020, levels) to replace the 10/8/2020-6/30/2021 wage source year data improperly implemented under the IFR.

EEOC Issues Guidance on COVID-19 Vaccination Policies

New Regulation or Official Guidance

Authors: Jim Paretti, Barry Hartstein, Nancy Delogu, and Devjani Mishra, Shareholders – Littler United States

On December 16, 2020, the U.S. Equal Employment Opportunity Commission issued much-anticipated guidance to employers considering COVID-19 vaccination programs for their employees as to their obligations under federal civil rights laws, particularly if the employer plans to require its employees to be vaccinated. While it will likely be months before a vaccine is available to the vast majority of Americans, the guidance does shed some light on how the EEOC views questions relating to vaccination under the laws within its jurisdiction. Equally important, as we obtain new information about vaccine efficacy and longevity, distribution, and vaccination plans, it is likely the EEOC and other federal agencies will issue additional guidance, or revise guidance to reflect the most current information available.

Given this uncertainty and extended timeline, it may be premature for many private-sector employers to commit to any particular "vaccination/return-to-work" policy immediately. Employers may also wish to consider whether encouraging or recommending employees be vaccinated, rather than mandating vaccination, is a viable and/or preferable alternative.

CDC Issues New Quarantine Period Guidance

New Regulation or Official Guidance

Authors: Kurt Rose, Associate and Karen Charlson, Shareholder – Littler United States

Since March 2020, the U.S. Centers for Disease Control and Prevention (CDC) has recommended—and many, if not all, localities have required—that individuals exposed to someone with COVID-19 self-quarantine for 14 days from the date of exposure. On December 2, 2020, the CDC issued its much-anticipated updated guidance suggesting that, depending on "local circumstances and resources," individuals may be able to exit self-quarantine sooner than 14 days.

The CDC still recommends a quarantine period of 14 days; however, it has now provided two "acceptable alternatives" that may shorten quarantine: (i) Quarantine can end after day 10 without the need for testing, as long as the individual did not report symptoms during the 10-day period; (ii) Quarantine can end after day 7 if the individual obtained a negative diagnostic COVID-19 test result within 48 hours of day 7, and the individual did not report symptoms during the 7-day period. The CDC added the testing requirement to the 7-day self-quarantine period in an effort to drive down the transmission percentage. According to the data, the addition of the test within 48 hours of day 7 reduced the median transmission percentage from 10.7% to 4%.

CDC Modifies Guidance for Critical Infrastructure Employers

New Regulation or Official Guidance

Authors: Kurt Rose, Associate and Karen Charlson, Shareholder – Littler United States

On November 16, 2020, the CDC modified its guidance for "critical infrastructure" employers on whether they can permit asymptomatic workers to continue to work after exposure to an individual with a suspected or confirmed case of COVID-19. Since the onset of the pandemic, the CDC has recommended and many, if not all, localities have required, that employees exposed to someone with COVID-19 must remain away from work (i.e., self-quarantine) for 14 days from the exposure. Some employers of "critical infrastructure workers," however, have had a partial exemption to the self-quarantine requirement.

Under the critical infrastructure worker exemption, employees who have been exposed to the virus can continue to work, provided the worker remains asymptomatic and employers implement specific mitigation precautions, outlined by the CDC, which include: (i) Encourage employees to screen for symptoms prior to reporting to work; (ii) symptom screen employees, including temperature checks, upon their arrival at work; (iii) regularly monitor employees for symptoms while at work; (iv) require employees to wear face coverings while at work; (v) as job duties permit, require employees to maintain social distance while at work; and (vi) routinely clean and disinfect the areas accessed by employees.