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Geida D. Sanlate, Littler Editor

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Australia

New Paid Family and Domestic Violence Leave

New Legislation Enacted

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

Newly enacted Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 replaces the current entitlement in the National Employment Standards to five days of unpaid family and domestic violence leave in a 12-month period with an entitlement to ten days of paid leave for full-time, part-time, and casual employees.

The full leave entitlement will be available upfront and will not accumulate year to year if it is not used within the 12-month period. The leave will commence from: February 1, 2023, for employees of businesses with 15 or more employees, and August 1, 2023, for employees of businesses with less than 15 employees.

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 Becomes Law

New Legislation Enacted

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

The Australian Government has passed the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022, introducing numerous important changes, some of which are highlighted below.

First, it prohibits engaging employees on fixed term contracts spanning a period of two or more years (inclusive of extensions) or that may be extended more than once. It also introduced new enterprise bargaining terms. Additionally, it imposes prohibitions on pay secrecy terms in contracts of employment and creates new workplace rights allowing employees to discuss and disclose their remuneration and employment conditions and to not make a disclosure (including when asked by their co-workers). Further, it introduced a broad prohibition against sexual harassment in connection with work, which applies broadly to protect workers, prospective workers and persons conducting businesses or undertakings (including, for example, employees, trainees, apprentices, contractors and volunteers) and extends the protections against discrimination for breast feeding, gender identity and intersex status.

Moreover, it strengthens the right to request flexible working arrangements to assist eligible employees to negotiate workplace flexibilities, including implementing important mechanisms to support employees experiencing family and domestic violence and pregnant employees to access flexible work arrangements.

Austria

Suitability of Control Systems that Theoretically Affect Human Dignity

Precedential Decision by Judiciary or Regulatory Agency

Author: Michaela Gerlach, Partner – Gerlach Löscher | Littler

According to the Austrian Labor Constitution Act, the introduction of technical systems to control employees – as far as these affect human dignity – requires the consent of the works council. This rule applies even if the company owner lacks any intention to monitor, but the technical system would theoretically be suitable for this purpose.

In a recent decision, the owner of the company had an electronic locking system installed only on some, but not all, doors in the company. The Supreme Court ruled that the works council is not required to give its consent if a system is suitable for monitoring in the abstract, but its concrete technical design does not permit the creation of a movement profile, and is therefore actually not suitable for affecting human dignity. This is the first time the Supreme Court has commented on the concrete suitability of a control system that affects human dignity in the abstract.

No Protection Against Dismissal Without a Domestic Business?

Precedential Decision by Judiciary or Regulatory Agency

Author: Markus Löscher, Partner – Gerlach Löscher | Littler

Without a (domestic) business within the meaning of the Labor Constitution Act *(Arbeitsverfassungsgesetz)*, an employee working in Austria for an employer with the company registered abroad is not protected against dismissal under Austrian law. In a recently issued decision, the Vienna Higher Regional Court ruled that without the existence of a domestic business, the (only) employee of a German company working in Austria is just a "representative." Such a mere representative is therefore still integrated into the business of the foreign employer, so that there is no "domestic business." According to widespread legal opinion, the "domestic business" element is a requirement for protection against dismissal under the Labor Constitution Act.

The court has allowed an (ordinary) appeal to the Supreme Court on this legal question, so that a final decision is still pending.

Supreme Administrative Court Indicates Position on Controversial "Home Office" Permanent Establishment

Precedential Decision by Judiciary or Regulatory Agency

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

In Austria, the question of the creation of a permanent establishment (especially under the tax law) through home office activities has not been conclusively clarified. In general, practitioners and presumably also tax authorities assume that a certain power of disposal over the permanent establishment is required. The latest decision of the Supreme Administrative Court also points in this direction, stating that the "possibility of sharing a desk in the office premises of another taxpayer" is not sufficient "to affirm the power of disposal over a fixed place of business."

Against this background, it will be difficult to argue that companies located abroad, for example, establish a permanent establishment in Austria, as it is likely that there will only rarely be any further power of disposal over the private residence of its employees. It should be noted, however, that this is merely a rejection decision and that the specific facts of the case do not directly concern a home office.

Adjustment of Remuneration Limits for Effective Competition Clauses

Upcoming Deadline for Legal Compliance

Author: Paul Moosmann, Associate – Gerlach Löscher | Littler

By agreeing on a competition clause, employees can in particular be prevented from working for a competing company in the industry of their former employer for up to one year after termination of the employment relationship. In addition to other conditions, however, only those employees who earned more than a certain minimum salary in the last month of employment can be further bound.

For agreements concluded after December 29, 2015, this is based on 20 times the maximum daily social security contribution base; for 2023, this will be €3,900 gross without pro rata special (holiday) payments, taking into account the salary and the average of other irregular remuneration components such as overtime, bonuses or commissions.

Brazil

New Minimum Wage for 2023

New Order or Decree

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

On December 12, 2022, Executive Order # 1,143/2022 was published, establishing the new minimum wage in Brazil. Effective January 1, 2023, the monthly minimum wage is BRL 1,302.00; the daily minimum wage is BRL 43.40; and the hourly minimum wage is BRL 5.92. While this is the minimum wage currently in force, it may be increased in the next few days if the Bill on the 2023 Budgetary Law is ratified. Should this happen, a new Executive Order will be issued to establish the new monthly minimum wage, which is expected to increase to BRL 1,320.00.

Definition of Initial Term for the Start of Maternity Leave in Cases of Long-Term Hospital Stays

Precedential Decision by Judiciary or Regulatory Agency

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

On October 24, 2022, the Brazilian Supreme Court issued Direct Unconstitutionality Action # 6327, thereby ruling that in cases of long-term hospital stays of either the mother or the baby, the initial term of maternity leave (and the respective maternity salary) is the hospital discharge of the mother and/or the baby, whichever occurs last, with the extension of the benefit throughout the period should the period of hospitalization exceed two weeks.

Canada

Canada's Competition Act Will Soon Criminally Prohibit Wage-Fixing and No-Poaching Agreements Between Unaffiliated Employers

New Legislation Enacted

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

On June 23, 2022, Canada's Bill C-19, Budget Implementation Act, 2022, No. 1 received Royal Assent and amended Canada's Competition Act, which applies to all provincially and federally regulated businesses operating in Canada. These amendments include a new s. 45(1.1), which, when it comes into force on June 23, 2023, will prohibit employers from conspiring, agreeing or arranging to enter into "wage-fixing agreements" and "no-poach agreements" with another employer that is not affiliated with them.

Canada's Employment Insurance Sickness Benefits and Federal Medical Leave Extended

New Legislation Enacted

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

On December 18, 2022, Canada's Employment Insurance (EI) sickness benefits were extended permanently from 15 weeks to 26 weeks. To align with this change, on the same date, the maximum length of unpaid medical leave available to federally regulated private-sector employees was also increased from 17 to 27 weeks under the Canada Labor Code.

Ontario Court Finds Sexual Harassment Not an Independent Tort

Precedential Decision by Judiciary or Regulatory Agency

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

In *Incognito v. Skyservice Business Aviation Inc.*, 2022 ONSC 1795, Ontario's Superior Court of Justice found that sexual harassment is not an independent tort in Ontario capable of supporting an independent cause of action, and an employer cannot be found vicariously liable for the sexual harassment of one of its employees by another.

Ontario: Whether Wrongfully Dismissed Employee Met Obligation to Take Reasonable Steps to Mitigate Damage

Precedential Decision by Judiciary or Regulatory Agency

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

The Ontario Court of Appeal's decision in *Lake v. La Presse,* 2022 ONCA 742, clarifies principles relating to a wrongfully dismissed employee's obligation to take reasonable steps to mitigate their damages, including that the employee must not unreasonably delay the start of their job search; the employee is obliged to seek only "comparable employment" (*i.e.*, status, hours and remuneration); and if the employee applies for a position with a title more senior than their previous title, it should not be assumed that they are not taking reasonable steps to mitigate.

Ontario Court of Appeal Finds Reasonableness Reviews of Administrative Decisions Must Follow Vavilov Principles

Precedential Decision by Judiciary or Regulatory Agency

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

In the companion decisions, *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780 and *Enercare Home & Commercial Services Limited Partnership v. UNIFOR Local 975,* 2022 ONCA 779, the Ontario Court of Appeal found that when conducting reasonableness reviews of administrative decisions, including decisions of the Ontario Labor Relations Board, courts must follow the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

Colombia

New Tax Reform in Colombia

New Legislation Enacted

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

Law 2277 of 2022 adopts a Tax Reform in Colombia, which aims to increase the State's revenues and reinforce the fight against tax evasion. With regard to employment-related taxation, Article 2 of the Law modifies the exempt employment income. Specifically, the law establishes that 25% of employment payments will be tax-free, limited to 790 UVT (or tax unit value). Prior to Law 2277, the limitation was capped at 240 UVT.

Article 206 of the Tax Statute establishes that disability, old age, survivors', and occupational risk pensions are taxed only on the portion of the monthly payment that exceeds 1,000 UVT. With Law 2277, this benefit was extended to income derived from savings for old age and pensions obtained abroad or in multilateral organizations.

Modification of the Maximum Contribution Base for the General Social Security System

New Order or Decree

Author: Juliana Visbal, Associate – Godoy Córdoba | Littler

A new decree modifies Article 2.2.3.1.7 of Decree 1833 of 2016 relating to the maximum contribution base for the general social security system. Among other provisions, Decree 2322 of 2022 establishes that the maximum contribution base for the general social security system will be 45 minimum monthly salaries, as long as: i) the real growth of the Colombian economy is greater than 4% during the last three fiscal years, and ii) the fiscal spending on pensions is less than two percentage points of the GDP.

Minimum Wage 2023

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

By order of this decree, the Government established that the minimum wage, as of January 1, 2023, will be COP $1,160,000 (approximately USD $240). The minimum wage was increased by 16%; therefore, as of January 1, 2023, the integral minimum wage will be COP $15,080,000 (approximately USD $3,114).

Transportation Subsidy in Colombia by 2023

New Order or Decree

Author: Juliana Ramos, Associate – Godoy Córdoba | Littler

By order of this decree, the Government established that, effective January 1, 2023, the transportation aid will be COP $140,606 (approximately USD $29). The transportation aid was increased by 20%.

Costa Rica

Regulation for CCSS Debt Forgiveness for Employers and Independent Workers

New Regulation or Official Guidance

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

Law 10,232, known as the "law authorizing the forgiveness of debt for the formalization and collection of social security contributions" and enacted in May 2022, established a period of one year to file requests for the forgiveness of debts before the Social Security Fund (CCSS for its acronym in Spanish). However, the law had not entered into force pending the publication of the regulations. With the publication of the regulations, the one-year period began on December 15, 2022, and will expire on December 15, 2023.

Minimum Salary Increase for 2023

Important Action by Regulatory Agency

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

On October 24, 2022, the National Salary Council (CNS, for its acronym in Spanish) agreed to increase the minimum wage for the private sector for 2023 by 6.62%. Additionally, the differentiated adjustments will be reflected as follows: For monthly domestic service, an additional 2.33%; for monthly semi-skilled workers, 0.39%; qualified workers by day, 0.39%; and for monthly specialized workers, 0.55%. Pursuant to the CNS agreements, the increase will take effect as of January 1, 2023.

Denmark

Supreme Court Rules on the Definition of Employees Vis-à-vis Consultants According to Tax Legislation

Precedential Decision by Judiciary or Regulatory Agency

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

On December 8, 2022, the Supreme Court of Denmark ruled in a dispute between a Dutch company and the Danish Ministry of Taxation regarding whether 101 divers were to be classified as employees or self-employed. The dispute concerned the company's obligation to withhold taxes in the payment the divers received during a period of work in Danish waters. The company argued that the divers should be regarded as self-employed, whereas the Ministry of Taxation argued that the divers should be regarded as employees.

The Danish Supreme Court ruled that, regardless of the wording in the employment contracts in question and industry standard practice, the divers should be regarded as employees, and thus that the employer was liable for not complying with tax legislation applicable to employees. The Supreme Court emphasized in the assessment, among other factors, the instruction and supervision performed by the company as well as the divers' limited financial risk in relation to the client. With this ruling, the Supreme Court marks that in order to ensure compliance with tax legislation, employers must exercise caution when classifying collaborative partners as self-employed, as the company's classification is secondary to practical circumstances.

Preliminary ECJ Ruling on Prohibition of Discrimination on Grounds of Age

Precedential Decision by Judiciary or Regulatory Agency

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

In Case C-587/20, decided on June 2, 2022, the European Court of Justice ruled that an age limit in a trade union's statutes regarding the possibility of running for the politically elected position of president in the trade union is within the scope of EU Directive 2000/78 on equal treatment in employment and occupation. Thus, an age limit set by the Danish Trade Union, HK, was considered incompliant with the Danish Non-Discrimination Act.

In earlier case law, the Danish Non-Discrimination Act, which transposes EU Directive 2000/78 in Denmark, has been interpreted to solely include employees. Following the preliminary decision of June 2, 2022, the Non-Discrimination Act may however be invoked by people performing any professional activity that constitutes livelihood. Hence, the rules of the Discrimination Act may now be invoked by a significantly wider group of people than before.

Denmark's Response to EU Directive on Minimum Wages

New Regulation or Official Guidance

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

The EU directive on minimum wages entered into force on November 14, 2022. In Denmark, there is no statutory minimum wage. The directive will maintain this current state of law. Thus, Denmark's obligation is to increase the coverage of collective bargaining agreements, and hereby set out minimum wages for more employees.

Denmark has put forward political opposition towards the directive, including voting against the directive's adoption. Furthermore, the acting Danish government, inaugurated December 2022, has included the aim to file an action for annulment of the directive in their governmental framework.

New Regulation on Earmarked Maternity Leave

New Regulation or Official Guidance

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

The bill on earmarked maternity leave entered into force on August 2, 2022. According to the act, each parent is entitled to 24 weeks of maternity/paternity leave upon the birth of the child. Within each of the parents' 24 weeks of maternity/paternity leave, nine weeks is "earmarked" leave. Thus, each parent may transfer a maximum of 13 weeks of maternity leave to the other parent. In addition to 24 weeks of maternity leave, the mother of the child is entitled to four weeks of pregnancy leave prior to the birth of the child.

The introduction of earmarked maternity leave entailed a shift in the state of Danish law, as the new model introduced a starting point of equality between parents regarding the distribution of leave.

New Draft Law Regarding Denmark's Transposition of the Directive (2019/1152) on Transparent and Predictable Working Conditions

Proposed Bill or Initiative

Author: Bo Enevold Uhrenfeldt, Partner – Littler | enevold

In August 2022, The Danish Government proposed a bill to replace the current Act on Employment Certificates with the proposed Act on Employment Certificates and Certain Working Conditions. The proposed bill entails a significant extension of the scope of the employer's obligation to inform employees of their employment conditions compared to the current state of the law, as the act modifies the scope requirement of employees' daily working time from eight to three hours. Furthermore, the bill introduces minimum standards for employment conditions.

The bill has not yet been adopted by the Danish Parliament. According to announcements given by the government, the Act on Employment Certificates and Certain Working Conditions is expected to enter into force during the summer of 2023.

Dominican Republic

Registration Process for Domestic Employers and their Domestic Workers Begins

New Order or Decree

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

Starting Monday, December 19, 2022, domestic employers must register their domestic workers on a specific government website. On the registration form, domestic employers must provide data related to the employment contract with the information required by the Ministry of Labor, as stipulated in Resolution 14-2022. With the registration of this information, a database will be generated that will allow the identification of the population that will be able to access the benefits contemplated in CNSS Resolution 551-08.

El Salvador

Increase in Fines for Violations of Labor Rights

New Legislation Enacted

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

Employers who violate the labor rights of their employees are subject to pay fines of up to 12 minimum wages in the applicable industry, commerce and services sector for each of the benefits that have been violated. The increase in fines for violations of labor rights is derived from a recent reform to article 627 of the Labor Code, approved on October 4, 2022. This reform will enter into force eight days after its publication in the Official Gazette.

Punitive Provisions of Law on the Inclusion of People with Disabilities, Postponed

New Legislation Enacted

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

The Law on the Inclusion of People with Disabilities was approved by legislative decree in 2020, to guarantee the full exercise of the rights of this population and their social, labor, and educational integration. However, the punitive parts of this new law has recently been extended to June 30, 2023 (it had originally been extended to January 2023).

Paid Holidays Approved

New Order or Decree

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

On December 20, 2022, the Legislative Assembly declared Monday, December 26, 2022, and Monday, January 2, 2023, as paid holidays for workers in the private and public sectors. This will allow the work of private sector employees to be recognized, given that these holidays fall on a Sunday.

Finland

Asthma Caused by Water Damage at the Workplace was Considered an Occupational Disease

Precedential Decision by Judiciary or Regulatory Agency

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

On November 28, 2022, the Supreme Court of Finland ruled that the employee's diagnosed asthma was likely mainly caused due to exposure to damp microbes at the workplace. Therefore, the employee was entitled to compensation on the basis of occupational disease.

Employer Obligation to Promote Work Stamina of Employees Aged 55 Years or Older

Proposed Bill or Initiative

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

On November 17, 2022, the Finnish government proposed clarifications to the Occupational Safety and Health Act (738/2002, as amended) to promote work stamina of people over 55 years old and decrease their early exit from working life. The amendments are scheduled to enter into force June 1, 2023.

According to the proposals, the employer's general obligation relating to occupational safety would be specified. The employer would be obliged to consider that personal conditions may necessitate individual health and safety measures. Additionally, the employer's obligation to identify and assess occupational hazards would be assessed by considering the physical stress factors relating to content of work, work organization and the sociality of the community. The aim is to prevent disabilities and improve the employees' possibilities to maintain their work capacity longer, as well as to identify the potential needs for individual safety measures.

Assessment to Distinguish Employment Vis-à-vis Self-Employment

Proposed Bill or Initiative

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

On October 13, 2022, the Finnish government proposed amendments to the provision stipulating the scope of application of the Employment Contracts Act (55/2001, as amended). The amendments are scheduled to enter into force July 1, 2023.

In accordance with the proposal, the existence of an employment relationship should be based on overall assessment in ambiguous and unclear situations. The overall assessment should be carried out if the nature of the legal relationship remains unclear after assessing the basic characteristics of employment relationship and by taking into account the conditions and circumstances under which the work is performed, the parties' intention as to the nature of the legal relationship, as well as other factors affecting the parties' factual positions. The aim of the proposal is to provide tools to distinguish self-employment and employment relationship, prevent misclassification of employment, as well as decrease insecurity relating thereto.

France

Modifications to Unemployment Insurance Scheme

New Legislation Enacted

Author: Guillaume Desmoulin, Partner – Littler France

Among other things, the Law on Emergency Measures Relating to the Functioning of the Labor Market to Achieve Full Employment seeks to modify the unemployment insurance scheme. Article 4 creates a presumption of resignation when an employee voluntarily abandons their job and fails to return to work after having been given notice to justify their absence and to return to their post within the period set by the employer. This period cannot be less than the minimum required by law. The objective is to fight against certain abuses where the employee terminates the employment relationship while retaining the benefit of unemployment insurance.

When an employee challenges the applicability of this presumption, within one month from the date of referral, the employment tribunal must determine whether the employee was wrongfully terminated. Article 2 also aims to deprive employees on fixed-term or temporary contracts of the benefit of unemployment insurance in the event that they refuse to accept an open-ended contract on two occasions. The employer will have to formulate the offer of a permanent contract in writing and inform the unemployment insurance of any refusal.

Travel Time for Mobile Employees May Constitute Actual Working Time

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

In a case brought before the French Court of Cassation, a mobile worker requested the payment of back pay for overtime corresponding to his travel time at the beginning and at the end of each day. During these trips, the employee was doing business calls. The time spent travelling between the employee's home and the place of work is normally not considered as actual compensable working time. An itinerant employee can only claim financial or other compensation when exceeding the normal travel time between the employee's home and the usual place of work.

In this case, however, the Court of Cassation considered the constraints to which the employees are actually subjected to determine whether travel time of itinerant workers constitutes actual working time. Considering that the itinerant employee had to be at the employer's disposal and comply with the employer's instructions without being able to pursue personal interests during the business trips, the French Court of Cassation held that this travel time was actual compensable working time and the employer was ordered to pay for overtime.

Employee Performing On-Call Duty Must Be Able to Go About his Personal Business

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

An on-call duty is a period during which an employee, without being at the place of work and without being at the permanent and immediate disposal of the employer, must be able to intervene in order to perform work for the

employer. Only the duration of this intervention is then considered as actual working time. In this matter, an employee was engaged in a car recovery service and was on call to intervene on a section of freeway. The employee requested that these periods of on-call duty be considered as actual working time. In support of this request, the employee claimed that the short time he had to be on site after a call from a user prevented him from going about his personal business between the various calls.

Referring to applicable case law (*i.e.*, ECJ March 9, 2021, C-344/19), the French Court of Cassation overruled the first decision because the first judges had not verified whether the employee had been subjected to constraints of such intensity that they had affected objectively and very significantly his ability to freely manage the time during which his professional services were not required and to go about his personal business. In the absence of such flexibility, the employee may claim that these periods are considered as actual working time.

Telecommuting Recommended by the Occupational Doctor as a Redeployment Measure

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Littler France

In a case brought before the Paris Court of Appeal, an administrative employee in a pharmacy challenged her dismissal for physical unfitness, claiming that her employer had failed in its obligation to redeploy her by not offering her a job she could perform from home in accordance with the recommendations of the occupational physician. Under French law, the obligation to redeploy following the recognition of physical unfitness by the occupational physician may require the implementation of measures such as transfers, adjustments, or transformations of the existing role. Among these measures, the French courts consider that home office constitutes a possible means of redeployment.

In this case, the employer argued that home office was not compatible with her duties and that the job of remote sales could not be performed from home since it involved the preparation of orders from the pharmacy. The Court of Appeal ruled that the employer must meet the burden to justify the precise steps the employer has taken to achieve the redeployment in compliance with the recommendations of the occupational doctor. In lack of evidence of a serious search for a new job, the dismissal is deemed as without cause.

Germany

Introduction of the Electronic Certificate of Incapacity for Work

New Legislation Enacted

Author: Johanna Müller-Foell, Associate – vangard | Littler

The electronic certificate of incapacity for work (eAU) has been introduced. Effective January 1, 2023, according to the revised version of Section 5 of the Continuation of Remuneration Act, employees with statutory health insurance are no longer required to submit a paper certificate of incapacity for work to their employer. They will only have to establish the existence and expected duration of the incapacity to work with a doctor and have a medical certificate handed over for evidentiary purposes, e.g., in the event of a failed electronic transmission. This does not apply to incapacity for work abroad or to privately insured employees and marginally employed persons in private households. Under these circumstances, employees are still required to submit a paper certificate of incapacity for work to their employer.

After the statutorily insured employee has notified the employer of the inability to work, employers must electronically retrieve the certificate of incapacity for work from the employee's health insurance.

Easier Access to Short-Time Allowance Extended Again

New Legislation Enacted

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

Short-time work is designed to offset some of the temporary earning losses and prevent job losses by enabling companies to continue to employ their employees even in the event of a loss of orders by using short-time work. If the legal requirements are fulfilled, the Federal Employment Agency pays the short-time work allowance to compensate in part for the loss of wages caused by a lack of work for a temporary period.

Until the end of June 2023, easier access to short-time allowance will remain in effect. The German Cabinet extended easier access to short-time work allowance introduced during the coronavirus pandemic for another six months, enabling companies to apply for short-time work as soon as 10% of their workforce is off work (instead of the prior threshold of one third). Furthermore, the accrual of minus hours is waived, and temporary workers remain eligible for short-time allowance.

Additional Details on the Employer's Obligation to Comprehensively Record Working Hours

Precedential Decision by Judiciary or Regulatory Agency

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

With its decision of September 13, 2022 (1 ABR 22/21), the Federal Labor Court already ruled that employers are obliged to record all working hours of employees. The reasons of the decision were published in December and provide more details on this obligation. Most importantly, as follows: Time recording must cover the start and end of working hours, break times and overtime. A specific form of time recording is not specified: Working time recording can be done electronically, but also manually (depending on the individual circumstances in the operation). Employers can delegate the duty to record working time to employees. Employers must ensure, however, that the system is actually and correctly applied (for example through regular spot checks). The obligation does not apply to the working time of executive employees.

The Federal Ministry of Labor and Social Affairs has announced its intention to propose the design of working time recording in the Working Time Act during the first quarter of 2023. With this in mind, employers should review existing time tracking and attendance systems or begin preparing to implement them.

Notification Obligation on Forfeiture of Statutory Vacation Entitlements

Precedential Decision by Judiciary or Regulatory Agency

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

With its decision of December 20, 2022 (9 AZR 245/19), the Federal Labor Court extended its case law on the forfeiture of statutory vacation entitlements. In accordance with European Union law, vacation entitlements only expire at the end of the calendar year or the permissible carryover period if the employer has explicitly informed employees about the forfeiture and asked them to take the vacation in time. Now, the Federal Labor Court has ruled that the notification obligation also applies in certain cases of illness.

Generally, vacation entitlements expire if the employee was prevented from taking their vacation for health reasons from the beginning of the vacation year until March 31 of the second calendar year following the vacation year. However, if the employee actually worked within the vacation year before being sick, the forfeiture of the vacation entitlement requires that the employer has enabled the employee to actually take their vacation in good time before the incapacity to work occurred (by notifying the employee accordingly). One way to comply with this obligation is for all employees to be informed, at regular intervals, of their remaining vacation entitlements and that they will expire if they are not taken by the end of the calendar year or the carryover period.

ECJ on Deviation of Equal Treatment Principle for Temporary Work Agencies

Precedential Decision by Judiciary or Regulatory Agency

Author: Dagmar Lessnau, LL.M., Partner – vangard | Littler

In December, the European Court of Justice ruled that temporary agencies can only deviate from the principle of equal treatment by applying working conditions governed by collective agreements that ensure "overall protection of temporary agency workers" (ref. no. C-311/21).

Generally, a collective agreement must provide for compensatory benefits if temporary agency workers receive a lower remuneration than comparable workers of the user undertaking. It is up to the parties concluding collective agreements for the temporary agency industry to ensure compliance with the "overall protection of temporary agency workers" standard. In the event that a temporary agency worker files a payment claim, German labor courts will be asked to decide whether an applicable collective agreement grants such overall protection of temporary agency workers in each individual case by comparing the work conditions at the sector level.

Guatemala

Paid Holidays Approved

New Order or Decree

Author: Randolf Castellanos, Partner – BDS, Member of Littler Global

Through Government Agreement 348-2022, the Ministry of Labor authorized and approved December 26, 2022, and January 2, 2023, as paid holidays for employees of the public sector.

New Daily Minimum Wage for 2023 Based on Economic Activities

New Order or Decree

Author: Randolf Castellanos, Partner – BDS, Member of Littler Global

Through Government Agreement 353-2022, the Guatemalan Government set the new daily minimum wage for 2023, based on different economic activities and regions. In district CE1, GTQ $101.05 for agricultural activities; GTQ $104.10 for nonagricultural activities; and GTQ $95.13 for export and maquila activities. In district CE2, GTQ $92.22 for agricultural activities; GTQ $101.18 for nonagricultural activities; and GTQ 92.47 for export and maquila activities.

Suspensions Due to COVID-19 Will Not Reduce the Right to Sick Leave Payment

Important Action by Regulatory Agency

Author: Randolf Castellanos, Partner – BDS, Member of Littler Global

Under Agreement 468 of the Board of Directors of the Guatemalan Institute for Social Security (IGSS, for its acronym in Spanish), an affiliate of the IGSS can receive a maximum of 39 weeks of subsidies for an illness, maternity, or accident. The recently concluded Agreement 1532 established that the subsidy payment period for work suspension due to COVID-19 illness does not count for purposes of the 39 weeks of economic subsidy to which an employee would be entitled when sick.

Honduras

End of the Mandatory Use of the Mask? National Congress Has the Last Word

Proposed Bill or Initiative

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

Recently, it was reported that the Ministry of Health of Honduras had decided to suspend the mandatory use of masks within the national territory, with the exception of health care centers, pharmacies and maquiladora companies. However, the Minister of Health, Dr. Jose Manuel Matheu commented that the Ministry of Health lacks the power to eliminate the use of the mask since this was decreed by a law enacted in 2020. Therefore, the end of the mandatory use of face masks can only be decreed by an act of Congress.

Holidays for Public Sector

Important Action by Regulatory Agency

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

On December 19, the Secretary of State in the Offices of the Interior, Justice and Decentralization (SEGOB, for its acronym in Spanish) officially declared that December 26, 2022, and January 2, 2023, are public holidays. The measure will apply to the entire public sector, as well as to all Central Government dependencies and decentralized institutions.

Hungary

Paternal and Parental Holiday for Employees

New Legislation Enacted

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

The paternal holiday the father employees were already entitled to in case of a birth of a child is extended from five working days to 10 working days. The father is also entitled to such paternal holiday if he adopts a child. Such holiday can be required by the employee within two months as from the date of birth or the date when the authority's decision on adoption became final and enforceable. For the first five working days, the employee is entitled to full salary, while for the second five working days the employee is entitled to 40% of his salary.

The paternal holiday is to be granted in line with the employee's request, but maximum in two parts. The employees (both the mother and the father) are also entitled to another new type of paid holiday until their child is three years old, namely the parental holiday, which is 44 working days long and is paid with only 10% of the salary, which amount is decreased with the amounts of other types of state child benefits paid to the employee. The employee has to be employed by the employer for at least one year to be entitled to the parental holiday. The paternal holiday has no such condition.

New Grounds for Unilateral Change of Working Conditions by the Parent Employees

New Legislation Enacted

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

The employee having a child of maximum eight years old is entitled to request a) change of the place of work, b) change of the working time schedule, c) remote working (home office working), or d) part-time working. The employee has to justify such request in writing and designate the commencement date of the change. The employer has to answer in writing within 15 days and if the request is refused, the refusal has to be justified clearly. If the request

is unanswered or refused unlawfully, the employee can challenge it at the court, and if the employer cannot prove the reality of the cause referred to as the ground of refusal, the court must approve the employee's request of change of working conditions.

India

Hyderabad, Telangana: Conditions for Engaging Female Employees in Night Shifts

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Vikram Shroff, Partner and Head of Employment – Nishith Desai Associates

The Telangana state government has issued a notification dated October 13, 2022, permitting establishments in Telangana (which includes Hyderabad City) to allow female employees to work in night shifts between 8:30 PM and 6 AM, subject to certain conditions which *inter alia* include: (i) obtaining consent of female employees in writing for working in night shifts; (ii) engaging female employees in night shift on a rotation basis with engagement of at least five female employees during night shift; (iii) providing free of cost transport facilities (with GPS for tracking) from the residence of the female employee to the workplace and back, complying with prescribed safety standards; (iv) ensuring prescribed safety and security measures such as the provision of shelter, restrooms, lunch rooms, night crèches, and ladies' toilets, adequate protection from *inter alia* sexual harassment; and (v) posting adequate number of security guards during the night shift.

The notification prohibits engagement of female employees in night shifts during the period of 16 weeks before and after her childbirth (of which at least eight weeks shall be before the expected childbirth), and any additional period specified in a medical certificate as may be necessary for the health of the female employee or her child.

Amendment to Special Economic Zones Rules, 2006

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Vikram Shroff, Partner and Head of Employment – Nishith Desai Associates

The (Indian) Ministry of Commerce has issued a notification dated December 8, 2022 (SEZ Fifth Amendment) amending the Special Economic Zones Rules, 2006 (SEZ Rules), substituting the erstwhile rule 43A of the SEZ Rules. The revised rule 43A permits the Special Economic Zones (SEZ) employers to allow employees of IT/ITeS units in SEZs to work remotely from outside the SEZ facility for work from home or from any place outside the SEZ until December 31, 2023, without any minimum number requirements.

The SEZ unit permitting its employees to work remotely will need to intimate to the SEZ Development Commissioner (DC) through an email on or before the date on which the facility to WFH or from any place outside the SEZ is permitted. Where the SEZ unit has permitted its employees to work remotely before the date of commencement of the SEZ Fifth Amendment, it will need to intimate the same to the DC through an email by January 31, 2023. The SEZ units will inter alia need to maintain in the unit the lists of employees who had been permitted to work remotely and shall submit it for verification of the DC when required.

Proposed Introduction of the Digital Personal Data Protection Bill, 2022

New Legislation Enacted

Authors: Sayantani Saha, Associate, and Vikram Shroff, Partner and Head of Employment – Nishith Desai Associates

The (Indian) Ministry of Electronics and Information Technology has published the Digital Personal Data Protection Bill, 2022 (Proposed Data Privacy Law) on November 18, 2022, for public consultation. If enacted, the Proposed Data Privacy Law will apply to processing of digital personal data in India where the personal data is (i) collected from the data principal online, and (ii) collected offline and subsequently digitized.

The Proposed Data Privacy Law is also designed to apply to processing of personal data outside India in connection with profiling, activity or offering of goods or services to data principals located within the territory of India, and accordingly, the Proposed Data Privacy Law is likely to apply to foreign entities as well. Unlike the current legal framework that provides protection to only certain kinds of sensitive personal data or information, the Proposed Data Privacy Law includes a wide definition of personal data to include any data about an individual who is identifiable by or in relation to such data, with lack of clarity on the necessary level of identification. If notified, the Proposed Data Privacy Law is likely to impose additional obligations upon employers in terms of collection of personal data of employees.

Supreme Court Judgment on Employees' Pension Scheme, 1995

New Order or Decree

Authors: Sayantani Saha, Associate, and Vikram Shroff, Partner and Head of Employment – Nishith Desai Associates

A three-judge bench of the Supreme Court of India in its recent judgment dated November 4, 2022, in *The Employees Provident Fund Organisation & Anr. v. Sunil Kumar B. and Ors.* (C.A. No.-008143-008144 / 2022) upheld the Employees' Pension Scheme, 1995 as amended through a notification dated August 22, 2014 (EPS) which inter alia provides that: (i) Maximum pensionable salary for calculating pension under EPS can be capped at INR 15,000 (approx. USD 185) for employees who were members of the EPS prior to September 1, 2014, and continue to remain so thereafter; (ii) Employees who earn monthly salary exceeding INR 15,000 and were not members of the EPS prior to September 1, 2014, will not be eligible to become members of the EPS; and (iii) Employees who were members of EPS as on September 1, 2014, and continued to remain members, can make contributions to EPS on a salary higher than INR 15,000, based on a one-time common declaration submitted by the employer and the employee.

The judgment also makes the provisions of the EPS that required employees contributing on their salaries exceeding INR 15,000 to pay additional administrative charges as ultra vires, although this portion of the judgment will become effective after six months from the date of the judgment.

State of Maharashtra (Mumbai) Introduces Bill to Decriminalize Offenses under Certain Labor Laws

Proposed Bill or Initiative

Authors: Sayantani Saha, Associate, and Vikram Shroff, Partner and Head of Employment – Nishith Desai Associates

The state of Maharashtra (covering cities like Mumbai and Pune) has introduced a bill to decriminalize offenses under certain state labor laws The bill proposes to remove the penalty of imprisonment for non-compliances with provisions of the applicable statutes and replaces it with monetary penalties. Included in this bill are the Maharashtra Industrial Relations Act, 1947, Maharashtra Labor Welfare Fund Act, 1981, Maharashtra Workmen's Minimum House Rent Allowance Act, 1983 and Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981.

The bill also provides for compounding of offenses under the amended labor statutes. The bill is in pursuance of the Indian government's attempt to enhance ease of doing business in India and similar steps have been adopted in other Indian states such as Assam and Madhya Pradesh and the proposed new labor codes in India. If enacted, the bill will provide relief to employers from the risk of imprisonment owing to default under the state labor laws proposed to be amended by the bill.

Ireland

The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022

New Legislation Enacted

Authors: Niall Pelly, Partner and Head of Employment, and Alison Finn, Senior Associate – GQ | Littler

On December 1, 2022, the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 (the Act) came into effect. The Act introduced new requirements for employers regarding the distribution of electronic tips and gratuities, including the requirement to provide relevant employees with a policy on electronic tips and gratuities within five days of commencing employment. The Act applies to a number of sectors including tourism, hospitality, beauty and hair services, gaming, bookmakers, and transport services such as those provided by taxi or minibus.

Government Publishes Revised Work Life Balance and Miscellaneous Provisions Bill 2022

Proposed Bill or Initiative

Authors: Niall Pelly, Partner and Head of Employment, and Alison Finn, Senior Associate – GQ | Littler

In November 2022, the Government announced the integration of the Right to Request Remote Working into the Work Life Balance and Miscellaneous Provisions Bill 2022 (the Bill). The Bill is currently at an advanced stage of the legislative process, and it is expected that it will be passed into law in the coming months.

As part of key changes proposed in the Bill, employees who have six months' continuous service with their employer will have a legal right to request to work remotely. Employers will be required to either approve or deny the request within four weeks of receipt. This can be extended to eight weeks in certain circumstances. Employers are required to consider both parties' needs and the guidance that will be set out in a Code of Practice (once this is published) when responding to a request. Where an application is refused, an employer must inform the employee of the grounds for refusal in writing. Further, those with certain caring responsibilities will have a legal right to request flexible working arrangements. Additionally, the bill provides for paid domestic violence leave of up to five days' paid leave in any period of 12 consecutive months.

Government Publishes Employment Permits Bill 2022

Proposed Bill or Initiative

Authors: Niall Pelly, Partner and Head of Employment, and Alison Finn, Senior Associate – GQ | Littler

In October 2022, the Government published the Employment Permits Bill 2022, which among other provisions proposes: (i) The introduction of a new seasonal employment permit to cater for short term and recurrent employment situations in appropriate sectors; (ii) Modernization of the labor market needs test requirement; and (iii) Additional conditions for the grant of an employment permit – such as training or accommodation support for migrant workers in some circumstances or making innovation or upskilling a condition of grant – where this may decrease future reliance on economic migration.

Gender Pay Gap Reporting – December Deadline

Upcoming Deadline for Legal Compliance

Authors: Niall Pelly, Partner and Head of Employment, and Alison Finn, Senior Associate – GQ | Littler

Employers with 250 or more employees on the June 2022 snapshot date were required to publish their gender pay gap reports over the course of December 2022, based on the June "snapshot" date they selected. In compiling their first report in-scope employers were required to publish information about the following:

- The mean and median gap in hourly pay between male and female employees
- The mean and median gap in hourly pay of part-time male and female employees

- The mean and median gap in hourly pay between male and female employees on temporary contracts
- The mean and median gap in bonus pay between male and female employees
- The percentage of male and female employees who received bonus pay;
- The percentage of male and female employees who received benefits in kind
- The percentage of male and female employees in each quartile pay band

Critically, such employers were also required to publish reasons for any differences and measures being taken (or proposed to be taken) to eliminate or reduce those differences. While the reporting obligation initially only applied to organizations with 250 or more employees, this will reduce to 150 or more employees after two years, and 50 or more employee after three years.

Italy

National Collective Bargaining Agreement for Trade Sector (ConfCommercio): Wage Increases and One-off Bonuses

New Legislation Enacted

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

On December 12, 2022, the renewal of the National Collective Bargaining Agreement (NCBA) for the trade sector *(ConfCommercio)* was signed by the trade unions of employers and employees. The renewal provides that employees in force as of that date who worked in the 2020-2022 period will be granted: (i) a one-off amount of EUR 350 gross at contractual level IV classification, spread over the other classification levels, to be paid in two installments; and (ii) an amount of EUR 30 gross per month at level IV classification, spread over the other classification levels as of April 1, 2023, as an advance on future contractual increases. The amounts paid at the company level by way of future contractual increases may be absorbed in accordance with the provisions of the NCBA.

The one-off allowance will be paid pro rata in relation to the months of seniority accrued during the 2020-2022. Periods of military service, unpaid leave of absence, and all periods in which no payment is due will not be considered for seniority purposes. Both payments will also be recognized, on a prorated basis, to personnel hired with the part-time contract.

Parental Leaves: Latest News

New Legislation Enacted

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

The Budge Law 2023 (Law No. 197/2022), which was published in the Official Journal on December 29, 2022, amended the parental leave law. Namely, for employees who terminate their maternity leave or, alternatively, paternity leave after December 31, 2022, the amount of the allowance for parental leave is increased from 30% to 80% of the salary for a maximum duration of one month until the child's sixth birthday. The increase is granted alternatively to the mother or to the father.

Hiring Incentives for 2023

New Legislation Enacted

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

The Budge Law 2023 (Law No. 197/2022), introduced a number of incentives for hiring employees in 2023, which are subject to the authorization of the European Commission. When hiring recipients of the so-called "citizenship income" *(reddito di cittadinanza, i.e.,* an income support measure) with an open-ended employment contract (and also

when converting fixed-term contracts into open-ended contracts), a 100% exemption from the total social security contributions will be recognized for a maximum period of 12 months, with the exclusion of the contributions due to INAIL (National Insurance Agency against accidents at work), up to a maximum limit of EUR 8,000.00 on an annual basis, prorated on a monthly basis. (This exemption is an alternative to the one provided for in Article 8 of Decree-Law No. 4 of January 28, 2019.)

For new open-ended hires (or stabilization of fixed-term contracts) of persons under 36 years of age, a total exemption from social security contributions of up to EUR 8,000 on an annual basis, spread over a monthly basis, excluding premiums and contributions due to INAIL, will be granted for a maximum period of 36 months (or 48 months when hirings in a head office or production unit located in the regions of Abruzzo, Molise, Campania, Basilicata, Sicily, Puglia, Calabria and Sardinia). When hiring disadvantaged female employees, there will be an exemption of 100% of the social security contributions for the employer and up to a maximum amount of EUR 8,000 on an annual basis, adjusted and applied on a monthly basis. The duration varies depending on the duration of the employment contract, being equal to 12 months in the case of hiring with a fixed-term contract and 18 months in the case of hiring or conversion to an open-ended contract.

Smart Working Regime: Updates

New Legislation Enacted

Authors: Carlo Majer, Partner, and Silvia Locantore, Associate – Littler Italy

The Budget Law 2023 (Law No. 197/2022) extended the right for vulnerable employees (*i.e.*, employees who suffer from chronic illnesses that impair their immune system) and employees with a certification of "severe disability" to perform their work activities through smart working (*i.e.*, a form of remote work) until March 31, 2023. Such a possibility has not been extended to parents with children below the age of 14, who previously were entitled to it.

Moreover, from January 1, 2023, an individual agreement between the employer and the employee will be required to perform work under a smart working regime. The employer should send a communication within five days from the beginning of the work performance under a smart working regime.

Early Retirement Rules: Updates

New Legislation Enacted

Authors: Carlo Majer, Partner, and Silvia Locantore, Associate – Littler Italy

According to the Budget Law 2023 (Law No. 197/2022), in 2023 early retirement will be possible under one of the following regimes. Under "Quota 103", employees must have the following requirements: (i) age of 62 years; and (ii) 41 years of social security contributions accrued. In this case, it will not be possible for the employee to perform any work until the employee meets the requirements for old-age retirement as provided for by the law, unless the employee performs work as an occasional independent contractor (*i.e.*, within the income limit of EUR 5,000 gross per year).

Under the "APE Sociale," employees who meet specific criteria (such as being 63 years old and unemployed, a caregiver, or having a reduced work capacity) can retire early if doing so before December 31, 2023. Under the *"Opzione Donna,"* the related pension regime has been modified and extended. Female employees who accrued 35 years of social security contributions by December 31, 2022, and are at least 60 years old can request early retirement if meeting specific requirements (such as being a caregiver, disabled with invalidity greater or equal to 74%, dismissed employee, or employed by a company which, due to a difficult situation, engaged in negotiations with the authorities to mitigate the impact of their crisis).

Kingdom of Saudi Arabia

Amendments of the Regulation of Visit Visa for Tourism

New Order or Decree

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

Ministerial Decision No. 7036/1444 sets out the various requirements and conditions for applying for a single or multiple entry tourist visa.

Malaysia

Employment (Amendment) Act 2021 Coming into Force on January 1, 2023

New Legislation Enacted

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

The Employment (Amendment) Act 2021, which was passed on March 30, 2022, becomes effective on January 1, 2023.

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

Increase in Minimum Wage for Employers with Less than Five Employees Deferred

New Legislation Enacted

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

The Minister of Human Resources has announced that implementation of the increase in minimum wages of employees from RM1,200 to RM1,500 per month for employers who employ less than five employees has been deferred from January 1, 2023 to July 1, 2023. The increase in monthly wages of employees from RM1,200 to RM1,500 for employers who (i) employ five or more employees, or (ii) carry out a professional activity classified under the Malaysia Standard Classification of Occupations (MASCO) regardless of the number of employees employed, had been implemented since May 1, 2022.

The amendments to give effect to the abovementioned deferment are set out in the Minimum Wages (Amendment) (No.2) Order 2022 that was published on the official gazette on December 28, 2022.

Test for Vicarious Liability Where Employees Commit Intentional Wrong

Precedential Decision by Judiciary or Regulatory Agency

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

The test for vicarious liability in Malaysia is the "close connection" test following the decision of *GMP Kaisar Security (M) Sdn Bhd v Mohamad Amirul Amin Bin Mohamed Amir* [2022] MLJU 2661, in which the Federal Court (apex court) has laid down four common denominators underpinning the scope of vicarious liability where an employee had committed an intentional wrong: (i) The intentional wrong is committed in the course of employment; (ii) there must be a connection between the wrongful act and the nature of the employment; (iii) the nature of the employment is such that the public at large are exposed to the risk of physical or proprietary harm; and (iv) the risk is created by the employer by virtue of the features of the business.

Netherlands

House of Representatives Adopts Bill for Protection of Whistleblowers

Proposed Bill or Initiative

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

On December 20, 2022, the Dutch House of Representatives adopted the Protection of Whistleblowers bill, through which the EU Whistleblowers Directive will be implemented. The bill adds breaches of EU law to the scope of the internal reporting procedures and introduces more procedural rules for internal reporting procedures. Furthermore, reporters no longer have to report internally first in order to fall within the scope of the protection measures for whistleblowers. The Dutch Senate still has to adopt the bill before it can actually enter into force.

Dutch Supreme Court Applies Strict Interpretation to Notification Obligation Employers

Precedential Decision by Judiciary or Regulatory Agency

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

Employees with temporary employment contracts have to be notified by the employer one month prior to the end-date of the contract about whether the contract will be extended and, if so, under which conditions. This notification must be done in writing. If the employer fails to comply with this obligation, the employee is entitled to a compensation of one month's salary or, in case of failure to comply timely, a pro rata compensation. In October 2022, the Supreme Court ruled that this compensation is always owed in case of failure to comply, even when the employee was notified orally and did not suffer any disadvantage due to the fact that the notification was not done in writing.

Initiative to Better Regulate "Working with" and Self-Employment

Proposed Bill or Initiative

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

On December 16, 2022, the Dutch Minister of Employment and Social Affairs published a letter in which she outlined plans to better regulate working with and as a self-employed person. One of these measures is to further clarify the statutory term "working under supervision," which has shown to be the most important element to distinguish employees from self-employed persons. In deciding whether a worker works under supervision, the degree of independent entrepreneurship and organizational embedding of the worker was attributed increased importance in case law. The Minister now plans to publish a bill before the summer of 2023 through which the importance of organizational embedding and independent entrepreneurship for identifying supervision can be codified.

Norway

Full-time Position as the Main Rule

New Legislation Enacted

Authors: Ole Kristian Olsby, Partner, and Lise Gran, Senior Attorney-at-Law – Homble Olsby | Littler

Effective January 1, 2023, full-time employment becomes the main rule. If a company wants to use part-time employment, they must document in writing the need for such and make such documentation available to the employee representatives. The company must also discuss the need for the relevant part-time employment with the employee representatives.

From the same date, both permanent and temporary part-time employees have a preferential right to increase their position before their employer can employ others or use hired temporary agency workers for new positions, extra

shifts, etc. This preferential right can be limited to specific areas of the company in discussions and agreement with the employee representatives.

Limitation on Ability to Hire in Temporary Agency Workers

New Legislation Enacted

Authors: Ole Kristian Olsby, Partner, and Lise Gran, Senior Attorney-at-Law – Homble Olsby | Littler

As of April 1, 2023, the situations where a company can hire temporary agency workers will be reduced. Today, a company can hire in temporary agency workers in certain situation, one of the main ones being if they can demonstrate that the work these workers would perform is of a temporary nature. As of April 1, this possibility is removed and companies who can demonstrate such need have to use (direct) temporary employments instead. In practice, the removal means that temporary agency workers can only be hired in as substitutes for others who are on leave (sick leave, parental leave, etc.).

There are two exceptions from this. The exceptions concern the temporary hiring in of (i) health personnel in the health sector, as well as (ii) persons with specialist qualifications who will provide advice and consultancy services to a clearly limited project.

Prohibition on Hiring Temporary Agency Workers on Certain Construction Sites

New Legislation Enacted

Author: Ole Kristian Olsby, Partner, and Lise Gran, Senior Attorney-at-Law – Homble Olsby | Littler

Effective April 1, 2023, the hiring in of temporary agency workers at construction sites in the Norwegian capital and surrounding areas (Oslo and Viken county authorities) will be prohibited. Transitional arrangements apply for the following: (i) Contracts regarding the hiring of temporary agency workers that are in force on April 1, 2023; (ii) assignment contracts entered into under the assumption that hiring in can be used as part of the assignment; and (iii) binding offers submitted before April 1, 2023.

For these situations, the prohibition will enter into force effective July 1, 2023.

Further Rights for Posted Workers

New Legislation Enacted

Authors: Ole Kristian Olsby, Partner, and Lise Gran, Senior Attorney-at-Law – Homble Olsby | Littler

Today, certain work and pay conditions in the Norwegian employment legislation applies for posted workers when they work in Norway. From January 1, 2023, additional work and pay conditions from the Norwegian employment legislation apply for workers who are posted to Norway for more than 12 months. Certain exceptions apply if the posting initially is intended to last for less than 12 months but is later extended up to a total of 18 months.

Panama

December 20 Has Been Declared a Mandatory Rest Day

New Legislation Enacted

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

December 20 became a mandatory rest day in Panama, pursuant to Law No. 291 of March 31, 2022, which declared it as a day of national mourning. As such, December 20 should be treated as a mandatory rest day with regards to year 2022 and thereafter, pursuant to Article 46 of the Labor Code. The foregoing implies that, like any mandatory rest day, if a worker works on that day, they must be paid with a 150% surcharge over the ordinary shift, that is, two and a

half times (adding the ordinary shift and the surcharge), and should be given a day off as compensation. If the day of compensatory rest is not granted, an additional 50% surcharge must be paid on the ordinary day.

Peru

Family Allowance Law Modified

New Legislation Enacted

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

Law 31600 published on November 3, 2022, modified Law 25129 that regulates the obligation to grant a family allowance to employees of the private sector whose remunerations are not regulated by collective bargaining, when they have one or more children under the age of 18. The law was modified to add the provision that this benefit applies also to employees with children of over 18 years old with severe disability, duly certified, unless they receive the noncontributory pension for severe disability.

New Bereavement Leave

New Legislation Enacted

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

On November 5, 2022, Law 31602 was published. This law established a bereavement leave of five calendar days for private sector employees whose family member passed away. This applies for the passing of the employee's spouse, parent, child or sibling.

Limits to Compensation of Pandemic-Related Leaves of Absence

New Legislation Enacted

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

Law 31632 published on December 1, 2022, places various limits to the compensation for pandemic-related leaves of absence. Through previous emergency decrees, employers that were not able to implement remote work were required to grant a paid leave subject to be compensated at a later time. The new law limits the manner and time to pay for the nonworked hours, determining that the hours accrued can be compensated only through overtime work or unused vacation time. The law also sets December 2023 as the time limit for the compensation and restricts the discounts that can be made from any social benefits settlement once the employment relationship has ended.

Draft Regulation of the Teleworking Law

New Regulation or Official Guidance

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

Together with the publication of Ministerial Resolution 347-2022-TR on December 22, 2022, a draft regulation for teleworking was published. This draft regulation sets forth a few main points to consider that vary from the current regulation, namely regarding the parties' rights and obligations, work equipment supplies and compensations, occupational health and safety, among others. Although the official publication has not yet been issued and is subject to be modified, the draft provides a look of the main aspects of teleworking that the government seeks to regulate.

Spain

Recognition of Female Social Service for Partial Retirement

New Legislation Enacted

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

Article 215 of Social Security Law has been amended to recognize the period of mandatory female social service as having the same effects as those already recognized for mandatory male military service and the substitute social benefit for access to partial retirement. Therefore, as from November 26, 2022, the time of female social service will be computed, with a limit of one year, for the purpose of accrediting the contribution period required for access to partial retirement.

Legal Framework for Digital Nomads

New Legislation Enacted

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

Law 28/2022 of December 21, 2022, allows international foreign teleworkers to carry out in Spain a work or professional activity at a distance for companies located outside the national territory, through the exclusive use of computer, telematic and telecommunication means and systems. This option is aimed at qualified professionals who can prove that they are graduates or postgraduates from universities, business schools or professional training of recognized prestige, or can prove a minimum of three years' professional experience in their current functions. In addition, they must meet a series of requirements, such as the existence of a real and continuous activity for at least one year of the company or group of companies with which the worker has an employment or professional relationship, that the employment or professional relationship can be performed remotely, etc.

The mentioned law also provides novelties for undergraduate and graduate students and those who carry out professional internships in Spain.

Special Tax Regime for Inpatriates

New Legislation Enacted

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

Law 28/2022 of December 21, 2022, has extended the scope of application of the regime for inpatriates, which allows individuals who acquire their tax residence in Spain to be taxed during the year of the change of residence and the following five tax periods for the non-resident income tax (fixed rate of 24% up to 600,000 euros). Thus, employees who have a visa for international teleworking and the administrators of an emerging company, among others, are allowed to be subject to this regime.

In order to benefit from this regime, the posted worker cannot have been resident in Spain during the five previous tax periods (previously ten years).

Maternity Leave in Single-Parent Families

Precedential Decision by Judiciary or Regulatory Agency

Author: Sonia Cortés, Partner – Abdón Pedrajas | Littler

The Superior Court of Justice of Catalonia has confirmed that a single-parent mother can enjoy the extension of maternity leave up to 32 weeks, equating it to that which would be given to the two members of the family in case of a two-parent family. The finality of this ruling will depend on the decision of the Supreme Court.

Sweden

Dismissal of an Employee who Refused to Wear Face Mask at the Workplace

Precedential Decision by Judiciary or Regulatory Agency

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

The Swedish Labor Court recently ruled in a case (AD 2022 no. 50) where a company engaged in the storage and distribution of pharmaceuticals introduced a mandatory requirement for employees to wear face masks during the COVID-19 pandemic. The employee claimed that wearing a face mask made him feel unwell and would cause health problems, referring to a medical certificate. The company tried to be accommodating by offering the employee to work as much as possible in a special area of the warehouse where face masks were not a requirement, but the employee was found on several occasions in another part of the warehouse without wearing a face mask. The employee made it clear to the employer that he did not intend to wear a face mask and was subsequently absent from work for periods. As a result of the employee's actions, he was dismissed from his employment. The employee claimed that there had been an agreement that he did not have to wear a face mask, but it was not proven that such an agreement existed.

According to the Swedish Labor Court, it is within the employer's management discretion to determine which equipment employees should wear at the workplace. In some cases, refusal to obey an order is justified; for example, an employee does not have to obey an order if it puts the employee in danger of life or health. However, the court did not consider that there was evidence to prove any health risk, as the medical certificate appeared to be based entirely on the employee's own statements. The court therefore concluded that the employee had been obliged to obey the order. The assessment considered the fact that the requirement for face masks was made during a pandemic to reduce the spread of a public disease, which had been clearly explained to the employee. In such circumstances, the fact that the employee was repeatedly on the premises without wearing a face mask and unlawfully absent from work, despite the company having shown due consideration and made the necessary adjustments, was considered a serious breach of the employment contract. Thus, the court ruled that there were legal grounds for the dismissal.

Employee or Temporary Agency Worker?

Precedential Decision by Judiciary or Regulatory Agency

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

In a recent case (AD 2022 no. 45) before the Swedish Labor Court, a moped delivery person entered into a framework agreement with a temporary employment agency to deliver services on an as-needed basis in accordance with the instructions provided by the agency or the agency's clients. The delivery person performed work for one of such clients, a food delivery service company (the client company). After the client company suspended the delivery person from the app through which he received his work shifts, the delivery person argued that he had been dismissed from his employment with the client company. The company argued that the delivery person was not employed by it but was instead employed by the temporary employment agency and hired out to the company.

The Swedish Labor Court stated that the overall assessment usually made to determine whether a person is an employee or a contractor cannot be applied directly in respect of hiring-out of workers. The client company and the temporary employment agency had concluded a service agreement which stated that the agency would enter into employment contracts with persons who would be provided to the client and that the agency would have employer responsibility for those persons. There was no agreement between the company and the delivery person. Taking this into account, the court found that the agency had entered into an employment contract with the delivery person for the purpose of hiring him out to the client company to work under the client company's control and direction, entirely in accordance with the service agreement. The court therefore ruled that there had been a hiring out of an employee under the Agency Work Act (2012:854), *i.e.*, that the delivery person was a temporary agency worker and that the client company had not dismissed him.

Switzerland

New Adoption Leave

New Legislation Enacted

Author: Ueli Sommer, Partner – Littler LEL

As of January 1, 2023, employees who intend to adopt a child are granted two weeks of paid leave once the child starts to live with them in Switzerland (which is typically before the adoption is effected from a legal perspective). The salary during this time is 80% of the salary but capped at CHF 220 per day. Couples are only entitled to one such paid leave.

United Arab Emirates

Unemployment Scheme Came Into Effect January 1, 2023

New Legislation Enacted

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

On January 1, 2023, the UAE's unemployment insurance came into effect. The social security program will provide compensation to private and public sector employees in the mainland, both Emiratis and foreign nationals, in the event of unemployment. Under the Unemployment scheme, employees are eligible to 60% of their previous earned basic salary (max. Dh20,000) for a maximum of three months following an involuntary loss of employment.

The participation in the unemployment insurance scheme is mandatory and employees must register themselves by June 30, 2023, to avoid fines. Employees are further obliged to cover the contribution for the social security program themselves.

New Regulatory Decisions

New Order or Decree

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

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

Additionally, Decision No. 13957/1444 was issued on the Application of the Provisions of the Implementing Regulation for Levying Zakat. This decision revolves around the implementation of ZATCA Ministerial Decision No. 2216, which regulates the disclosure and submissions from entities. This Cabinet Decision provides a list of rules and regulations for entities to follow.

Further, Decision No. 231/1444 on Setting a General Rule on How to Treat Employees and Workers in the Sectors Targeted for Transformation was issued. The decision revolves around the entities that were subject to the general rule on how to treat employees and workers in sectors targeted for privatization, and the entities that are not subject to privatization, and the entities that are subject to the privatization but have not yet implemented the changes as per cabinet decision No. 616 to issue a new organizational structure.

Ministry of Human Resources and Social Development Procedural Guide for Transferring Recruitment of Employees

New Regulation or Official Guidance

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

The guide sets out the process for terminating and transferring the employment of employees who have been reported as absent from work and terminated.

Removing Three Year Cap on Limited-Term Contracts

Upcoming Deadline for Legal Compliance

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

Federal Decree-Law No. (14) of 2022 amended the new UAE Labor Law that came into force in February 2022 and removed the three-year cap on limited-term contracts. Following the concern of both employees and employers that the significant limitation in the duration of employment contracts may complicate to attract and retain talent, the government reacted and removed the cap only seven months after the implementation of such.

Even though the new arrangement reflects more closely unlimited employment contracts, as they could have been concluded prior to the new labor law, the restriction on limited-term contracts remains. Therefore, all employees must be transitioned onto limited-term employment contracts before February 2023.

Failure to Meet the Emiratization Percentage Subject to Fines

Upcoming Deadline for Legal Compliance

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

From the beginning of this new year 2023, mainland companies in the private sector failing to reach the Emiratization percentage will be subject to fines of Dh 6,000 per month per quota position not filled correctly by an Emirati. Companies exceeding 50 skilled employees are required to increase their headcount of Emirati employees by 2% per year, until a final headcount of 10% Emirati employees is met in 2026.

In order to further boost the integration of UAE nationals into the private and banking sectors, the UAE government announced additional expansion of the salary support to Emiratis under the UAE national Salary Support Scheme. Such financial support depends on the actual offered or earned base salary as well as the university degree or diplomas the Emirati holds.

United Kingdom

Employment Relations (Flexible Working) Bill

Proposed Bill or Initiative

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

On October 28, 2022, the Employment Relations (Flexible Working) Bill (the Bill) progressed further in the legislative process and gained government support. It will require further votes before becoming law. Under current law, qualifying employees are granted the right to request flexible working and there are limitations on this right.

The Bill proposes to (1) introduce a requirement for employers to consult with the employee before rejecting their flexible working request; (2) allow an employee to make two requests for flexible working in any 12-month period (rather than the current one request); (3) reduces the decision period within which an employer is required to consider the employee's request from three months to two months; and (4) removes the requirement that the employee must explain in their request what effect the change would have on the employer and how that might be dealt with. The Bill does not introduce a day one right for employees to request flexible working, but this may follow in subsequent legislation.

Protection from Redundancy (Pregnancy and Family Leave) Bill

Proposed Bill or Initiative

Authors: Oliver Moreton, Associate, and Raoul Parekh, Partner – GQ | Littler

The Protection from Redundancy (Pregnancy and Family Leave) Bill progressed further in the legislative process and gained government support. It will require further votes before becoming law.

At present, before dismissing an employee who is on maternity leave, adoption leave or shared parental leave for redundancy, employers are required to offer the employee a suitable alternative role (if one exists). The Bill proposes new powers to extend the protection to pregnant employees (or those whose pregnancy has recently ended), and employees who have returned to work following a period of maternity, adoption, or shared parental leave. If passed into law, further Regulations will provide the detail of the protection.

Carer's Leave Bill

Proposed Bill or Initiative

Authors: Jessica Lim, Associate, and Raoul Parekh, Partner – GQ | Littler

On October 21, 2022, the Carer's Leave Bill (the Bill) gained government support. It will require further votes before becoming law. The Bill introduces a statutory leave entitlement for employees of one week of unpaid leave per year to provide or arrange care for a dependent with a "long-term care need." This will be a day one right for employees.

As currently drafted, dependents will be considered to have a long-term care need where they require care due to (1) an illness or injury (whether physical or mental) that requires or is likely to require care for more than three months; (2) a disability; or (3) a reason connected with old age. Employees will also be able to take carer's leave flexibly to accommodate their specific caring responsibilities and will not be required to provide evidence to their employer about who the leave will be used for, or how it will be used. Employees taking carer's leave will also be entitled to protection from dismissal or any detriment as a result of taking time off, in a similar way to employees taking other types of family related leave. If passed into law, further Regulations will provide the detail of the leave entitlement.

Transport Strikes (Minimum Service Levels) Bill

Proposed Bill or Initiative

Authors: Beth Thomas, Associate, and Raoul Parekh, Partner – GQ | Littler

The UK Government has launched the Transport Strikes (Minimum Service Levels) Bill (the Bill). The Bill has not yet been voted on. It has also been rumored that the Bill may be amended to extend to other sectors. The Bill is designed to ensure a certain level of transport services will be required to run during transport strikes by imposing minimum service levels.

If passed as currently drafted, the Bill will enable the implementation of minimum service levels for certain specified transport services (to be defined in separate legislation) during periods of strike action by amending s.219 of the Trade Union and Labor Relations (Consolidation) Act 1992. This amendment will mean that trade unions will no longer be immune from liability for industrial action if they fail to take reasonable steps to ensure that required persons do not participate in strike action, for the purpose of meeting minimum service levels.

Proposed Bill Would Expand Employee Protections from Workplace Sexual Harassment and Harassment by Third Parties

Proposed Bill or Initiative

Authors: Ben Smith, Associate, and Raoul Parekh, Partner – GQ | Littler

The Worker Protection (Amendment of Equality Act 2010) Bill (the Bill) is currently being considered by Parliament, with further stages of consideration required before it becomes law. The Bill as proposed would expand employee

protections from workplace harassment in two ways. First, the Bill would allow employees to bring a claim against their employer for workplace harassment by third parties (including but not limited to customers or clients). Employers would be liable unless they were able to prove that they took all reasonable steps to prevent the harassment taking place. This would cover harassment because of any of the nine protected characteristics in UK discrimination law.

Harassment by third parties was previously partially covered by UK law until October 2013. The Bill would mark a return to this old law, but also goes further as it does not require the employer to have prior knowledge of previous acts of harassment by a third party to become liable. Second, the Bill would create a new positive obligation on UK employers to take all reasonable steps to prevent sexual harassment of employees in the workplace. This does not create a new claim for employees but would be enforced by the UK's Equality and Human Rights Commission. Also, the Bill provides that if a Tribunal found that an employee had been harassed and this duty had not been complied with, any compensation award could be increased by up to 25%.

United States

Employment Law Update 2023: New Compliance Obligations for the New Year

New Legislation Enacted

Authors: Bruce J. Sarchet, Shareholder, and Joy C. Rosenquist, Special Counsel – Littler

While many states, cities and counties seem to be willing to pass employment laws and regulations at any time, the first day of a new year is still the number one day for new employment laws to take effect. 2023 will be no exception.

Littler Workplace Policy Institute (WPI) has been tracking a host of new employment laws as they have been debated over the past few months and published a summary of some of the notable compliance obligations employers will soon be facing. As in the past, this article is not intended to be an exhaustive discussion of every single new employment and labor law. The article focuses on laws of "general application," although a few industry-specific laws are mentioned. We also cover most large jurisdictions, but not all, and we do not discuss the host of new minimum wage laws, which are just around the corner. This Littler Insight, entitled "Employment Law Update 2023: New Compliance Obligations for the New Year" was published on November 2, 2022, on Littler.com.

Congress Expands Protections for Pregnant Employees and Employees Who Are Nursing

New Legislation Enacted

Authors: Mark T. Phillis, Shareholder, and Jessica L. Craft, Associate – Littler

On December 22, 2022, the 117th Congress passed with bipartisan support an omnibus spending bill, which includes two measures that expand rights for pregnant and nursing workers: the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act).

Pregnant Workers Fairness Act: Modeled after the Americans with Disabilities Act (ADA), the PWFA expands the protections for pregnant employees and applicants by requiring employers with 15 or more employees to make reasonable accommodations to known limitations related to pregnancy, childbirth, or related medical conditions. Employers must do so by engaging in an interactive process with a qualified employee or applicant covered by the PWFA to determine a reasonable accommodation, provided it does not impose an undue hardship on the employer. Additionally, an employer may not require an employee covered by the PWFA to take paid or unpaid leave if another reasonable accommodation is available. The PWFA also protects employees covered by the PWFA from retaliation, coercion, intimidation, threats, or interference if they request or receive a reasonable accommodation.

PUMP Act: The PUMP Act expands workplace protections for lactating employees by requiring employers to provide all employees who are nursing with reasonable time and private space to express breast milk. The PUMP Act expands upon a 2010 amendment to the Fair Labor Standards Act (FLSA), which required employers to provide lactating

employees who are nonexempt under the FLSA with reasonable break time and a private location (other than a bathroom) to express milk for one year following the birth of a child. This newly passed law expands this right to cover all employees covered by the FLSA, both exempt and nonexempt.

New Law Curtails the Use of Non-Disclosure and Non-Disparagement Clauses Involving Sexual Assault and Harassment Claims

New Legislation Enacted

Authors: Elizabeth A. Lalik, Shareholder, and Lauren M. Bridenbaugh, Associate – Littler

The Speak Out Act, a new law enacted on December 7, 2022, renders unenforceable nondisclosure and nondisparagement clauses related to allegations of sexual assault and/or sexual harassment and that are entered into "before the dispute arises." The use of the phrase "before the dispute arises" is critical: prior versions of this bill provided that a nondisclosure or nondisparagement agreement would be unenforceable if the agreement was entered into "before a lawsuit is filed." The change in language suggests that Congress was mindful of the concern expressed by many that the earlier version would have disincentivized an employer from resolving any complaint raised quickly and effectively, before a "lawsuit" was filed, because it would be unable to bargain for nondisclosure or nondisparagement clauses as a means of resolving the complaint (in the harassment context, this is particularly noteworthy, insofar as under federal civil rights laws and many state law analogues, an individual must first file a charge with an administrative agency, and it may be years before a "lawsuit" is filed).

Under the language of the law as enacted, it appears clear that once an allegation of sexual assault and/or sexual harassment is made, a dispute has arisen. Therefore, employers likely can continue to include enforceable nondisclosure and nondisparagement clauses in agreements resolving allegations of sexual harassment (or, in the more egregious cases, sexual assault). In light of the new law, however, an employer will not be able to enforce blanket nondisclosure and/or nondisparagement provisions in a sexual harassment or sexual assault situation, if the provision was entered into prior to an allegation of sexual harassment or sexual assault having been being made. This seems in line with the intent of the bill, which was understood to be aimed at preventing "Me Too" scenarios where alleged victims of sexual harassment or assault were limited in their ability to come forward publicly with their allegations.

After the Ball Drops, Wages Rise: Minimum Wage, Tipped and Exempt Employee Pay Increases on January 1, 2023

New Legislation Enacted

Authors: Sebastian Chilco, Knowledge Management Counsel, and Paul R. Piccigallo, Shareholder – Littler

Minimum wage laws can affect businesses of all sizes, whether operating nationwide, in multiple jurisdictions, or only in one state, county, or city. To help manage this challenge, Littler summarized scheduled state – and local-level wage increases that will occur on January 1, 2023 (or on New Year's Eve). Employers can use this information to determine the minimum amount they must pay nonexempt, tipped, and certain exempt employees. Before we chart out these rates, we briefly highlight some notable wage and hour developments that have occurred since our mid-year article, including minimum wage related ballot measures from the November 8, 2022, election.

Pending or future legislation, or ballot measures, might change rates that will apply in 2023, so we recommend employers monitor these developments and consult with counsel to confirm rates did not change since publication. Review the full list of scheduled wage increases in the Littler Insight, entitled "After the Ball Drops, Wages Rise: Minimum Wage, Tipped and Exempt Employee Pay Increases on January 1, 2023" published on November 17, 2022, on Littler.com.

Department of Labor and IRS Intensify Cooperation on Worker Misclassification

New Regulation or Official Guidance

Authors: Miguel A. Lopez, Associate, and William Hays Weissman, Shareholder – Littler

On December 14, 2022, the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) signed and published a Memorandum of Understanding for Employment Tax Referrals (the MOU). The MOU establishes a system for referrals from the DOL's Wage & Hour Division (WHD) to the Small Business/Self Employed Specialty Employment Tax unit (SB/SE). The stated goal is: "To share information between the SB/SE and WHD to assist in the identification of emerging and ongoing employment tax compliance issues related to misclassification,"1 but its practical effect is to streamline the process for investigating and penalizing businesses that allegedly misclassify their employees as independent contractors. This is the latest memorandum of understanding between federal agencies focusing on perceived widespread worker misclassification in the labor market.2 Businesses should take this coordinated focus on worker classification as an opportunity to assess their workers' classifications and mitigate the risk of tax penalties resulting from misclassification.

The MOU makes clear that the IRS will target businesses that lack a good-faith basis for worker misclassification, and which are thus more likely to be on the hook for substantial penalties. For example, the decision tree for referrals to the IRS begins with this statement: "At this time, the IRS does not want referrals that do not involve a determination of worker status." Further criteria for referral to the IRS include that the business is still operating and its "annual dollar volume of sales" exceeds $500,000. The "annual dollar volume of sales" of a business (or an establishment, where applicable) is defined as the gross receipts from all sales of goods or services by the business (or establishment) during a 12-month period.5 Assuming those criteria are met, the decision tree classifies as a "Tier 1 IRS referral" those business that would not qualify for protection under Section 530 of the Revenue Act of 1978.

Venezuela

Ban Against Dismissal Renewed

New Order or Decree

Author: Daniela Arevalo, Associate – Littler

Presidential Decree N° 4.753, published in the Official Gazette N° 6.723 on December 20, 2022, renewed the ban against dismissal *(Inamovilidad Laboral)* from January 1, 2023, through December 31, 2024. This measure aims to protect employees from unjustified dismissals with exception of managerial employees, as well as seasonal or casual workers. Therefore, employers may dismiss protected employees only with just cause and previous approval from the Labor Inspectorate. The previous Decree was set to be valid for two years, 2020-2022, and expired on December 28, 2022.

Payment of Labor Benefits in Dollars

Precedential Decision by Judiciary or Regulatory Agency

Author: Daniel Jaime, Associate – Littler

On November 15, 2022, the Supreme Court of Justice confirmed a decision of the Court of Appeals, which stated that a quarterly cash-dollar bonus is part of the employee´s salary. However, the Court of Appeals condemned the payment of the dollar bonus in local currency. In Venezuela, the practice of paying bonuses or labor benefits in dollars is increasingly common since the devaluation of the local currency has forced employers to pay all or part of the compensation in dollars. This situation has led the Labor Courts to decide lawsuits claiming payments in dollars with more frequency.

The Supreme Court of Justice, however, has created the possibility for courts to order employers to pay in dollars, when this has been the currency agreed upon for the payment with the employee. Otherwise, if there is no such agreement and even if the company has made payments in dollars, the employer might satisfy its labor obligations by rendering the equivalent in local currency at the reference rate published by the Central Bank on the date of payment.

National Assembly Approves Special Law for Agricultural Workers

Proposed Bill or Initiative

Author: Gabriela Arevalo, Associate – Littler

On November 8, 2022, the National Assembly (AN, for its acronym in Spanish) approved the Special Bill for Agricultural Workers, which will vindicate agriculture and the social process of work as a fundamental element for the development of the nation. The law consists of five chapters and 18 titles and the purpose is to recognize agricultural workers who provide personal service in the agricultural production, excluding employers, owners and those assigned to lots of land where they work.

Likewise, its objective is to regulate the existing relationship between the workers who provide a personal service in the agricultural production and the employers. The next step will be carried out by the Mixed Commission, which consists of the permanent commissions of Economy, Finance, National Development and Comprehensive Social Development, to prepare the report for the second discussion and carry out the public consultation with all the sectors involved in the development of the law.

Chevron Will Resume Operations in Venezuela

Trend

Author: Daniela Arevalo, Associate – Littler

The Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury authorized the company Chevron Corporation to resume operations in Venezuela. The Second Partial Agreement on December 2, 2023, was signed by the National Government and the opposition sector that integrates the Unitary Platform "U" in Mexico.

Following this announcement and in accordance with United States government policy, the OFAC issued Venezuela General License (GL) 41, which authorizes Chevron Corporation to resume limited operations for the extraction of natural resources in Venezuela. This license in relevant part indicates that U.S. persons are authorized to provide goods and services for certain activities, as specified in GL 41 and that non-U.S. persons generally do not run the risk of incurring U.S. sanctions. The U.S. government also welcomes the progress in the dialogue between the National Government and the opposition sector.

This agreement is expected to create new jobs in this sector.