

# EUROPEAN EMPLOYMENT LAW UPDATE

2018 EDITION



SHEPHERD+ WEDDERBURN

## INTRODUCTION

2017 has seen immense changes to employment law throughout Europe, and the coming year looks to bring more of the same. The 2018 edition of our annual Employment Law Update aims to assist organisations with a pan-European presence in keeping up to date with changes to legislation and best practice.

A total of 31 leading law firms across the continent have collaborated to create this guide, summarising recent amendments to labour laws across Europe and highlighting key anticipated reforms.

This year, a key theme is variety, with many jurisdictions making a number of incremental changes to their practices and procedures. Many countries are grappling with the 'gig economy' and how to protect individuals from being exploited by companies who try to avoid the

usual employee or worker protections. A common theme throughout is preparation for the General Data Protection Regulation in May 2018, which will have an enormous impact, particularly on Human Resources departments processing large quantities of employees' personal and sensitive data. We also continue to see increases to family leave provisions in many countries, and some further protection for whistleblowers has been introduced in a few jurisdictions.

Contact details for all of the contributor firms are provided within the guide, so please get in touch if you have any questions.

*This brochure contains a summary of general principles of law. It is not a substitute for specific legal advice, which should be sought in relation to any application of the subject matter of this brochure.*

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## AUSTRIA

### More legal certainty for self-employed persons

The aim of the new Act on Social Insurance Classification (*Sozialversicherungs-Zuordnungsgesetz*) is to provide for a greater degree of legal certainty regarding the re-classification of freelancers and self-employed persons as employees, which may lead to substantial liabilities for employers in the form of retroactive social security contributions and wage tax.

Since 1 July 2017, the classification as a freelancer, a self-employed person or an employee is determined upon commencement of the activity by the competent social insurance carriers. The decision is binding for both social security and tax authorities. Social insurance carriers may also deliver a binding decision upon request by the employer or the insured person.

In the event of a re-classification as an employee, any social insurance contributions rendered by the insured person are credited to the employer, thus reducing the employer's liability.

### New Collective Bargaining Agreement (CBA) for white-collar workers in trade

The regulations on minimum payment for white-collar workers in the trade sector have been reformed.

Generally, the minimum wages to which employees are entitled are determined

by their occupation group (based on their job position) and year of service (taking into account the employee's seniority with the employer as well as previous years of employment).

The new CBA provides for new occupation groups and new rules on how previous years of service are credited. A maximum of seven previous years of service will be taken into account under the new CBA.

Employers will need to transition employees into the new CBA by 1 December 2021 at the latest. The transition must be implemented by way of a plant agreement concluded with the works council or (in business units where no works council has been established) by information letter to the employees at least three months in advance. The transition may entail higher minimum wages for employees.

### Extended sickness pay and notice periods

Starting 1 July 2018, both white-collar and blue-collar workers with more than one year's service will be entitled to eight weeks of continued payment of their full remuneration in case of sickness. According to the current legal status, employees are entitled to six weeks of full payment during the first five years of service and eight weeks of full payment starting with the sixth year of service.

From 1 January 2021, blue-collar workers will be entitled to the same statutory notice

periods in the event of termination as white-collar workers. The statutory notice periods range from six weeks to five months, depending on the employee's seniority.

### Family leave bonus

The new Act on Family Leave Bonus (*Familienzeitbonusgesetz*) entered into force on 1 March 2017 and provides financial assistance for fathers who take unpaid leave from work in order to spend time with their new-born children.

The family time bonus amounts to EUR 22.60 per day and must be claimed before the competent sickness insurance carrier.

The prerequisite for receiving this payment is that there must be an agreement between employer and employee on the family leave, the duration of which may span 28 to 31 consecutive days. The leave must be taken within 91 days from the date of the child's birth and the bonus is only paid out once for each birth.

The duration of the leave may not be extended, prematurely terminated, postponed or divided into smaller time blocks.



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**D O R D A**

## BELGIUM

### Re-integration of employees affected by long-term illness

At the start of 2017, the Belgian legislator introduced a new 're-integration track', which is organised through an occupational physician and is aimed at leading employees with long-term illnesses to temporary or permanently adapted work or other types of work.

Such a re-integration track can be initiated either by: (i) the employee or his/her treating physician; (ii) the advising physician of the Health Insurance Fund (*mutuelle – ziekenfonds*), or (iii) the employer. The employer can only initiate the procedure after four months of work incapacity or if the employee gives the employer a medical certificate attesting to his/her permanent work incapacity.

Once the procedure is started, the occupational physician will make a re-integration assessment. If he/she decides that the employee is temporarily or permanently incapable of performing his/her current function but is able to perform adapted or other work, then the employer must draw up a re-integration plan, which the employee is free to accept or not.

The employer can decide not to draw up a re-integration plan if, in its opinion, it is technically or objectively not possible to draw up such a plan or if doing so cannot be reasonably expected. However, the employer must justify such a decision in a

written report that it must keep available for the social inspection service.

The re-integration track is crucial for a termination for 'medical force majeure', which is when the employer establishes the termination of the employment contract because the employee is permanently incapable of performing his/her job, meaning that the employer does not need to serve notice upon or pay an indemnity in lieu of notice to the employee. Such a termination will only be possible if the re-integration track above has been completed and re-integration appears not to be possible or has failed.

### New rules on 'practicable and flexible work'

A new milestone Act of 5 March 2017 on practicable and flexible work has modernised Belgian employment law.

Firstly, the Act has introduced new rules for working time, including a legal framework for flexitime (working with core time frames and flexible time frames within certain limits) and the option, with the employee's consent, of performing 100 extra overtime hours per employee per year without any need for justification (as opposed to the current system of overtime hours that can only be performed on the basis of a limited number of specific grounds).

Secondly, the stringent rules for part-time work have been simplified. Fixed part-time working schedules no longer need to be

included within the company's work rules and variable working schedules only have to be included in a condensed version. Moreover, the 'posting' of variable working schedules will no longer be required and can be replaced with an electronic notification to the employee.

Furthermore, the new Act provides for a legal framework for occasional teleworking in the case of force majeure or for personal reasons (e.g. a doctor's visit, an unannounced train strike, etc.) and simplified rules for obtaining an authorisation to constitute an 'employers' association' (with the aim of 'pooling' employees between the members of the association). Also, new rules on training have been introduced.

Finally, the Act sets out the principles of a new system of 'career savings', which is an option for employees to save time and to convert it into holidays at a later stage during their careers, but these rules still need to be further elaborated.



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## BOSNIA & HERZEGOVINA

### Enhanced 'whistleblowing' protection

The main development in employment law in the Republic of Srpska, Bosnia and Herzegovina has been enhanced whistleblowing protection.

On 15 June 2017, the National Assembly of the Republic of Srpska passed the Law on Protection of People who Report Corruption (the Law). The Law represents an expansion of the whistleblower protection to National Assembly level, since Bosnia and Herzegovina's Law on the Protection of Whistleblowers, which was adopted in 2014, applies only to employees working in public institutions at a State level.

For whistleblowers to be protected, there must be:

- a disclosure made in good faith; and
- a detrimental consequence caused by the act of corruption or the disclosure of such an act.

Internal protection is provided to a whistleblower who discloses the act of corruption within 30 days from when the whistleblower learned of the detrimental consequence, and no later than one year after suffering the detrimental consequence. The request for protection is submitted to the responsible person in the authority/company (the Responsible Person) – who is required to reach a decision concerning the request within 30 days after its submission.

External protection is provided to a person suffering a detrimental consequence who initiates legal proceedings within 30 days after the whistleblower learned of the detrimental consequence, but no later than one year after suffering the detrimental consequence. The individual is entitled to external protection even if no internal protection was requested. The whistleblower is permitted to initiate legal proceedings if the procedure of internal protection is not in progress.

### Obligations for employers

The employer, as a Responsible Person, is obliged to:

- enable and note any disclosure;
- protect the personal data and the anonymity of the whistleblower; and
- take action with respect to revealing, preventing, combating and punishing the act reported as corruption.

The employer is required to act immediately to remove any detrimental consequences for the whistleblower and provide for the protection of the whistleblower's rights, and to take the necessary actions in order to determine the disciplinary and material liability of the person who behaved in a corrupt manner.

If a whistleblower requests information on the measures and actions taken regarding the disclosure, the employer is obliged to provide such information within 15 days after

the request. In any event, a decision on or a notification of the result of the procedure must be communicated to the whistleblower within eight days of the completion of the procedure. The disclosure must be forwarded to the competent authority, if the act conducted is thought to have the characteristics of a criminal offence, and annual reports on the number and results of the disclosures need to be submitted to the Ministry of Justice.

An employer with 15 or more employees is required to adopt the 'instruction on the procedure of disclosing corruption and providing protection to persons reporting corruption'. The law prescribes fines to the Responsible Person for violating the obligations prescribed by the law, ranging from BAM 5,000 to 15,000 (approx. EUR 2,500 to 7,500).



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## CROATIA

The general source of employment law in Croatia is the Labour Act, which was introduced in August 2014. Since the Labour Act entered into force, case law and the Ministry of Labour and Pension System have offered us answers to many questions that have arisen in practice. During 2017 there were various amendments to the employment related laws. Therefore, we have provided below a general review of the most significant amendments.

### Enhanced maternity and paternity benefits

On 1 July 2017, the Act on Amendments to the Act on Maternity and Paternity Benefits (Official Gazette 59/17) entered into force. The main goal of these amendments was to encourage demographic renewal and prevent emigration into other EU member states by increasing the amount of monetary benefits for maternity and parental allowances. The salary-based limit during the parental leave of employed and self-employed parents for the first six or eight months of parental leave has been increased from HRK 2,660.80 (approx. EUR 350), to HRK 3,991.20 (approx. EUR 530). For the remaining part of the parental leave (after the expiration of the first six or eight months of parental leave, or for twins, triplets and each subsequent child) the limit was increased from HRK 1,663 (approx. EUR 220) to HRK 2,328.20 (approx. EUR 308). In our opinion, this trend of increasing maternity and paternity benefits is bound to be continued in the future.

### Tax benefits for employees

At the beginning of 2017, a new tax reform was introduced in the Republic of Croatia with the most significant changes from the employment law perspective being related to taxation of salary.

The basic personal allowance was increased to HRK 3,800 (approx. EUR 500) for all taxpayers by amending the Income Tax Act. Before the tax reform, the basic personal allowance for pensioners was HRK 3,800 and for employees HRK 2,600 (approx. EUR 345). Furthermore, income tax rates of 25% and 40% have been reduced to 24% and 36%. In addition, tax bases have also been changed.

Going forward, tax will be calculated at a rate of 24% for monthly personal income of up to HRK 17,500 (approx. EUR 2,320). Income above this will be taxed at a rate of 36%. It should be noted that the foregoing tax reduction was welcomed by, among others, the institutions of the European Union and the MMF.

### Amendments to the Foreigners Act

In July 2017, significant amendments to the Foreigners Act were introduced in Croatian legislation. The amendments mainly relate to the implementation of relevant EU directives and aim to resolve unclear situations that have been arising in practice. The most important amendments relate to seasonal work and intra-company transfers of non-EU nationals. The law relating to intra-company transfers of non-EU nationals

has been amended in accordance with Directive 014/66/EU, while residence and work permits for seasonal employees have been prescribed in detail, taking into consideration the provisions of Directive 2014/36/EU.



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## CYPRUS

### Surrogacy and maternity leave

The Protection of Maternity of 1997 (L.100(I)/1997) was recently amended so as to include the concept of surrogacy.

Pursuant to the amending legislation (L.116(I)/2017) a female employee who uses a surrogate mother has the right to maternity leave for 18 consecutive weeks, provided that she provides her employer with:

- a court order declaring that she will have a child through a surrogate mother; and
- a medical certificate proving the pregnancy of the surrogate mother.

The surrogate mother is also entitled to maternity leave of 14 consecutive weeks.

Finally, the new legislation extended the prohibition on employment termination, so as to cover all female employees who are going to have a child through a surrogate mother.

### Surrogacy and maternity benefit

The Social Insurance law of 2010 (L. 59(I)/2010) was also recently amended with Law 115(I)/2017, so as to include the provision of maternity allowance (benefit) to surrogate mothers (for 14 consecutive weeks) and to female employees who intend to have children through surrogate mothers (for 18 consecutive weeks).

### Paternity leave

Pursuant to Law 117(I)/2017, which is effective from 1/8/2017, new fathers are entitled to paternity leave for two consecutive weeks if they fulfil certain conditions regarding their contributions to the Social Insurance Fund.

#### The right to paternity leave is granted to employees:

- whose wife gave birth to a child;
- who had a child through a surrogate mother; or
- who adopted a child.

Paternity leave can be taken within a period of 16 weeks from the date of birth provided that they have notified their employer two weeks prior to the commencement of their paternity leave.

Employers are not obligated to pay any wages to employees during the paternity leave. Employees on paternity leave are paid by the Social Insurance Fund and the relevant allowance is equal to 72% of the employee's insurable earnings over the previous year. This can be increased to 80%, 90% and 100% for one, two or three dependants respectively.



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## CZECH REPUBLIC

### Agency employment and employee privacy protection

Various changes were made this year to agency employment legislation governing employee privacy in the workplace (from 29 July 2017), conditions for employing people with disabilities (from 1 October 2017), and general regulation of labour intermediation provided by employment agencies.

Employment agencies are now required to prove their financial capacity to carry out the activities by means of providing a security deposit of CZK 500,000 (approx. EUR 19,500). Employment agency representatives may only work in the context of an employment relationship, at least 20 hours per week. Hiring labour to third parties without observing contract terms set out in labour intermediation regulations is deemed to be disguised agency employment.

In addition, the Labour Code is being supplemented by new obligations that aim to secure joint liability for agency employee contractors for the observance of regulations governing employer-employee relationships etc. The amendment also introduces new infractions relating to the violation of employee privacy in workplace (e.g. by surveillance), which may now be punished with high fines.

### Employee alcohol and substance misuse (Act No. 65/2017 Coll.)

This Act, which came into force on 31 May 2017, prohibits employees from consuming

alcoholic drinks or abusing addictive substances while performing activities that may be hazardous or harmful to their health, to the health of others or cause damage to the employer's property. The Act also governs procedures and authorities for indicative or professional examination if the employer has a reasonable suspicion that the employee is under the influence of alcohol or addictive substances, as well as regulating expenses for the relevant examinations.

### The increase of sickness insurance and further social security changes

The amendment of Act No. 589/1992 Coll., with effect from 1 January 2018, among other things, increases sickness insurance for employees on sick leave which lasts longer than 30 days. Employers have a duty to report to the Czech Social Security Administration about the creation of employee insurance or the basis for the calculation of sickness insurance.

### Paternity leave

From 1 January 2018, the amendment of the Act on Sickness Insurance introduces paternity leave to the sickness benefit scheme. The benefit will be provided to new fathers for a seven-day period in the six weeks following the birth. The amount of the benefit is 70% of the average daily assessment base, which is similar to the regime established for other sickness insurances benefits.

### Long-term care benefit

With effect from 1 June 2018, the amendment of the Act on Sickness Insurance introduces a new long-term care benefit. The benefit provides compensation (for up to 90 days) for the loss of the income to a person who cares for someone suffering from a serious health disorder (requiring hospitalisation for at least seven days and subsequent permanent care at home for at least 30 days). The benefit could be drawn by the policyholder (usually a family member), or a cohabitant of the sick person. The amount of the long-term care benefit is 60% of the assessment base. Where this happens, the employer must provide the employee with carer's leave.



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## DENMARK

### New Holiday Act

In order to meet the requirements of EU law, the Danish Holiday Committee has recently submitted a report to the Danish Government with a suggestion for a new Holiday Act, including a transition to concurrent holiday. If adopted, it is expected that the new Holiday Act will enter into force in September 2020.

### The current Holiday Act

Under the rules of the Danish Holiday Act currently in force, paid holiday is accrued during the calendar year and is to be taken in the subsequent holiday year, which runs from 1 May - 30 April. Consequently, pursuant to the current rules, new employees cannot take paid holiday during their first year of employment, and may wait as long as 16 months before they are entitled to take paid holiday.

### Submission of report to the Government

On 22 August 2017, the Danish Holiday Committee submitted a report to the Danish Government with a suggestion for a new Holiday Act that includes a transition from staggered holiday to holiday that can be taken as it is accrued. The number of paid holidays to be taken remains the same, i.e. 25 days each year.

Under the new holiday rules, employees will be entitled to both accrue and take paid holiday during the period 1 September until 31 August, with the possibility of extending

the period during which they can take the holiday for an additional four months.

### Transition period

The report includes a suggestion for a transition period to ensure that the implementation of the new Holiday Act will be as smooth as possible.

### Be prepared for the GDPR

The GDPR entails rules and obligations of which companies must be aware when doing business in the EU. The regulations aim to ensure the free movement of data between the EU member states and (at least in theory) to simplify doing business across borders in the EU.

Among the rules are the direct obligations, which impose specific requirements for companies processing personal data, both in regard to the legal grounds for processing as well as fulfilling the rights of the data subjects. Further, the regulation imposes the new obligation that employers must be able to demonstrate compliance and implement appropriate technical and organisational measures to ensure compliance.

The GDPR contains more than 50 derogations. Most important is the derogation to specify further requirements for processing of personal data in the context of employment, which appear in Article 88 of the GDPR.

The GDPR entails several key issues that are specifically relevant within HR. In general, HR data will often relate to all or several of the categories of personal data, including sensitive personal data, personal data relating to criminal convictions and offences, national ID and ordinary personal data, which means that various legal grounds will be relevant when processing the different categories of data.

Further, control measures must be necessary and proportionate, and personal data can only be retained for as long as is necessary to pursue a legitimate purpose. The GDPR repeats the rights of data subjects such as the right to be forgotten etc. One of the significant focus areas of the GDPR is that consent from employees may no longer be a valid ground for processing their personal data under the GDPR.



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## FINLAND

### Changes in employment legislation

Several amendments to the Employment Contracts Act and Occupational Health Care Act came into force on 1 January 2017.

The maximum length of a probationary period was extended from four to six months. In addition, the employer is now entitled to extend the probation if the employee has been absent from work during the period due to incapacity or family leave.

In addition, the employer's re-employment obligation (which obliges an employer to re-employ a previous employee if they are a registered job-seeker and the employer needs new employees for the same or similar work to that which the employee performed) after a termination on financial and production-related grounds was shortened from nine months to four months. However, if the employment relationship has lasted for at least 12 years, the re-employment period is six months.

Another change has been that employers are now able to conclude fixed-term contracts without needing to justify their use with someone who has been unemployed for over a year.

The obligations of an employer employing at least 30 employees were tightened in relation to re-employment training and occupational healthcare towards employees with more than five years' service who are made redundant.

After these significant changes in 2017, no major reforms are expected to be introduced in 2018.

### Working Hours Act

A comprehensive reform of the Working Hours Act is currently under consideration and is expected to be submitted to the Finnish parliament during spring 2018.

### Posted Workers Act

An employers' notification obligation for posted workers entered into force on 1 September 2017. Companies posting employees to Finland must notify the Finnish Occupational Safety and Health authorities before the work begins, and the local Finnish contractor must ensure that this is done. The Act states in detail what information must be included in the notification. If this obligation is breached, the Act imposes a penalty of EUR 1,000–10,000 depending on the type, extent and recurrence of the negligence.

### Pension reform

The Finnish pension reform entered into force on 1 January 2017. The minimum general retirement age is rising gradually from 63 to 65 and the maximum from 68 to 70. As of 2030, the retirement age will be linked to life expectancy. The reform does not affect people already in retirement.

The reform also introduced two new pension types. A years-of-service pension is for employees aged 63 or over who have worked at least 38 years in duties

that require great mental or physical effort. Further, the previous part-time pension has been replaced by a partial early old-age pension that allows the employee to draw parts of their old-age pension before reaching the general retirement age, regardless of whether the employee continues, reduces or stops working. If retirement is postponed past the general retirement age, the employee's pension will grow by 0.4% for each deferred month.

### Collective bargaining

New collective bargaining agreements are currently being negotiated. Collective bargaining agreements for the leading Finnish export industries (paper, technology and chemicals) expired during the last quarter of 2017, triggering negotiation rounds. Several other business fields are expected to follow the salary increase levels accepted by these leading industries, all three of which have now reached agreements at least for blue collar employees.



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## FRANCE

During the last French presidential elections, Emmanuel Macron committed to review a large part of the French labour legislation, in order to reduce the burden on companies. For this reason, the Parliament voted for the Law of the 15 September 2017, to strengthen the social dialogue. Then, on 22 September 2017, the Government adopted several ordinances to implement this law.

In terms of collective bargaining, these ordinances modified the issues that could be negotiated within a company, based on the principle that the labour standards should be decided as close to the company in question as possible. For example, companies can now negotiate overtime and working time calculated as a lump sum of days (*forfait jours*). Similarly, the rules relating to collective bargaining agreements in the absence of union representatives, a situation which often arises in smaller companies, have been changed. It is now possible to negotiate with employee representatives, or even with an employee given authority by a union or, for very small companies, by holding a vote.

The ordinances also provide for a merger of the employee representative bodies (employee representatives *délégués du personnel*, works council *comité d'entreprise*, and health and safety committee *CHSCT*) into a single institution (the social and economic committee *le Comité social et économique*). This committee will even have the power to

negotiate collective agreements, if the social partners agree.

In the domain of working relations, a mandatory scale for damages in cases of unfair dismissal has been created. The amounts on the scale vary according to the length of service of the employee (with a cap of 20 months' pay for an employee with more than 30 years' service) and will be mandatory for judges, but will not be applicable in cases of discrimination or harassment.

In addition, a standard form of dismissal letter has been created for small companies, and the legal dismissal indemnity has been increased. From now on, it cannot be lower than a quarter of a month of salary per year's service for the first ten years and a third of a month of salary per year's service for the following. Naturally, it is still possible that a collective bargaining agreement could provide for higher sums, in which case that agreement will supersede this minimum.

There has also been an affirmation of a right to work from home, and modification of the rules regarding job termination by way of voluntary agreement. This agreement, based on the practice of the voluntary leave plans, will be submitted to the validation of the administration and will result in the collective mutual termination of the contracts of the employees involved. They will not be considered as dismissed.

Some changes regarding dismissals for economic grounds should also be noted. For instance, the extent of the redeployment obligation employer's will be limited to the national territory if the company belongs to a group of companies.

While some measures entered into force on 23 September 2017, several have been suspended until the publication of decrees of application, most of which have not yet been published. However, they should be published before 31 December 2017.



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## GERMANY

On 13 February 2017 the German Parliament passed the *Law to Promote Salary Transparency between Women and Men*.

Its main purpose is the removal of pay inequalities between women and men and the promotion of equal pay for equal work. Statistically, women are still not paid equally to men. In Germany, there is a general gender salary gap of up to 21%. The new legislation aims to decrease this gap from 21% to 10% by 2030. More transparency in wage structures and wage agreements will help to eliminate the causes of unequal pay between women and men.

### Prohibition of direct or indirect pay discrimination

Direct or indirect pay discrimination based on sex for the same or equal work is prohibited, meaning that any agreement that provides for this is legally void. This prohibition also includes collective agreements. The employee has the right to be treated as if the discrimination had not taken place (i.e. to receive a salary increase, including back pay).

### Individual right to information

Employees are entitled to request information from their employer which covers the comparison of salaries of employees (of the other sex) who hold similar positions in the company. This request can be repeated every two years by workers in establishments with more than 200 employees. The employee has to make the request to the works council or to the employer, if there is no works council

elected. The works council or the employer must determine equal positions from at least six other employees of the other sex.

### Duties to verify and evaluate remuneration structure

Private companies with more than 500 employees have to verify their remuneration structures and publish the results of their study.

It can be expected that these reporting obligations, as well as the right of employees to request that their employer discloses the level of salary of their colleagues, will in the long term indeed lead to greater transparency and a more coherent salary structure that will reduce discrimination and lead to equal pay.



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## GREECE

### Collective dismissals

Greek Law 1383/1987 on collective dismissals has been amended, so that administrative approvals are no longer required for the implementation of a collective dismissal scheme. The old administrative approval procedure has been replaced by a mere notification to the Supreme Council of Labour of the minutes of consultation with the employees' representatives, signed by both parties.

### The consultation period has also been extended to 30 days

If an agreement is reached, the collective redundancies can be effected in accordance with the terms of the agreement, after the expiry of a ten-day period from the date the minutes are filed.

If no agreement is reached, the Supreme Council must issue a decision, within ten days after the date of filing, on whether the obligations of the employer in respect of information, consultation and documentation filing were met. If the Supreme Council rules that the employer's obligations were met, then the collective redundancies can be effected after the expiry of a 20-day period from the issuance of the decision. If not, the Supreme Council shall extend the period of consultations or set a deadline for the employer to fulfil its obligations. If the Supreme Council then ascertains that the obligations were met, then the collective redundancies can be effected after 20 days from the issuance of the decision. In any case, the collective

dismissals can be made 60 days after the filing of the consultation minutes.

### Collective labour agreements

Until the end of the Economic Adjustment Program on 20 August 2018, any company collective labour agreements (concluded between a company and its employees' representatives) shall continue to supersede any sectoral collective labour agreements. The provisions for making a collective labour agreement which binds 51% of the employers in a sector or profession mandatory shall continue to be suspended until this date.

### Trade unions

The Greek Law on trade unions has been amended to provide that a member of a trade union can be dismissed if they have stolen from or embezzled their employer, or if they do not come to work for a period longer than five days without justification.

### Sanctions

The labour inspectors have been granted additional rights to directly impose administrative sanctions on employers who refuse access to their premises, refuse to provide requested information, or provide incomplete information.

The administrative and criminal sanctions in the case of grave or very grave violations of the employment legislation have become stricter. These include exclusion from participating in public contracts and

public procurements or in funding and aid schemes.

Also, where a violation entails direct or grave danger for employees' health and safety, the labour inspectors may temporarily suspend the operation of the company, until the situation is resolved. If the company, even after the temporary suspension of operation or other administrative sanctions, continues to systematically violate health and safety requirements, the labour inspectors may recommend the definite closure of the operation.

### Court procedures

Court procedure deadlines for the determination of a hearing date and the issuance of the court judgment (in cases of disputes regarding the nullity of a dismissal or the payment of due salaries) have been accelerated. Additionally, employees now have the right to issue a court order for payment in cases of unpaid salaries.



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## HUNGARY

### Changes to the Labour Code

In 2017, there were no major changes to the Labour Code. One of the most important changes is that a new public holiday (Good Friday) was introduced. After the change, there are now eleven public holidays in Hungary (including Good Friday).

Under a bill that is currently being discussed by the Hungarian Parliament, some labour safety and occupational health-related modifications to the Labour Code may be expected, which would be effective from 1 January 2018 if the bill is accepted by the Parliament. In addition to this, the definition of an employee representative would cover, besides the members of the works council, the shop steward and the employee representative on the supervisory board of a company, the representative of the trade union at the employer as defined by the Labour Code as well.

### Cooperative of pensioners

The Hungarian Parliament approved an act creating a new type of cooperative in 2017: the cooperative of pensioners. This will create a possibility for pensioners to return to the labour market. Cooperatives of pensioners may be established with the objective of providing employment for active elderly people, to reactivate them in the labour market and to improve their economic and social status. Other objectives of a cooperative of pensioners include providing a way to pass on the wealth of knowledge and experience the

members have gathered over the years to the generations to come.

This means that, besides student cooperatives, cooperatives of pensioners will also be on the market. It is expected that, in certain cases, consortia of student cooperatives and cooperatives of pensioners may offer their labour forces jointly to employers.

### New Civil Procedural Act from 1 January 2018

The New Civil Procedural Act will enter into force on 1 January 2018. This will also affect the procedural rules of employment-related disputes. There are some changes to the current procedural rules, mainly in favour of employees. Such changes include, among others, the following:

- Changes to the rules for determining the competent labour court. Employees may initiate the legal dispute in front of the labour court that is competent based on the residence or temporary address of the employee or according to the employee's place of work (e.g. if the employee has a new position at a new employer, a legal dispute against his/her former employer may be initiated in accordance with the employee's new place of work; it is irrelevant where the former employer's permanent establishment was).
- The burden of proof regarding (i) the content of the collective agreement,

internal policies, instructions and other documents, (ii) the accuracy of the calculations regarding the claimed amounts if the claimed amount is disputed, and (iii) in case of a dispute regarding the remuneration, the payment of the respective remuneration, shall now be borne by the employer.

### Changes regarding data protection rules in 2018

The new general data protection regulation of the EU (Regulation 2016/679) will be applicable from 25 May 2018. This will, of course, affect all employers processing the personal data of their employees. Employers must take the necessary steps to comply with the new data protection requirements before 25 May 2018.



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## IRELAND

### Gig economy

Given the pace of developments in technology, new models of working relationships continue to evolve. Employers find themselves having to adapt to facilitate novel ways of working and the boundaries of this have yet to be established. To date, we have not had a seminal judgment on the issue of gig status (where individuals are engaged on an ad hoc basis for gig business). However, the concept of the gig economy is a 'live' issue for many employers. It is likely just a matter of time before we see an Irish decision in this area.

Priority drafting of legislation for those on low/insecure hours has been directed by the Government. The Employment Equality (Miscellaneous Provisions) Bill is expected by the end of 2017. Low-hours contracts are often used by employers to deal with seasonality in their business. Whilst they are an attractive proposition for some workers, for the vast majority they result in financial insecurity and uncertainty. The new proposals are designed to ensure that the law is fit for the modern workplace.

### Bullying

The Irish Supreme Court issued an important decision on workplace bullying in *Ruffley v The Board of Management of St. Anne's School* [2017] IESC 33. This has brought much needed clarity to the law in this area and provides a degree of comfort for employers in relation to managing employees. The threshold that

must be met in order to succeed in a personal injury claim arising out of alleged workplace bullying is now quite high. The decision also clarifies that a breach of fair procedures by an employer in the course of an internal HR process does not, in and of itself, constitute bullying of the employee, the subject of that process. Provided they continue to adopt a fair and reasonable approach when managing employees, sticking closely to their internal processes and affording employees fair procedures, they may proceed with the management of employees' conduct and performance with confidence.

### Investigations and fair procedures

In the case of *Lyons v Longford Westmeath Training and Education Board* [2017] IEHC 272 the court held that where the outcome of an investigation is potential dismissal or an adverse impact on an employee's reputation the employee has the right to cross-examine the individual accusing him/her of wrongdoing and the right to legal representation during the process.

This was followed by two further High Court decisions on this point in the cases of *EG v The Society of Actuaries Ireland* [2017] IEHC 392 and *NM v Limerick and Claire Education and Training Board*. The latter decisions are a welcome development from an employer's perspective. They clarify that not all internal investigations automatically give rise to courtroom-esque entitlements and that employers should be striving for fairness, not perfection, in

conducting such investigations. The recent decisions have to some extent recalibrated fair procedures during investigations back to what employers were familiar with prior to the Lyons case.



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Law no. 81 enacted on June 13, 2017 (Jobs Act Autonomi), provided for the extension of certain protection rights to self-employed people and the introduction of a first set of rules governing 'smart working'.

## Protection for self-employed people

The new provisions are aimed at preventing certain commercial practices that give rise to an excessive contractual imbalance in favor of the client. Clauses reserving the client's right to unilaterally change contractual terms or (in case of professional service performed "on a continuous basis") to terminate the contract without proper notice, as well as clauses by means of which the parties agree terms of payment longer than 60 days from the date of receipt of invoice or payment request, are now unlawful. Moreover, it is unlawful for a client to refuse to enter into the contract in writing. As a consequence, such clauses or behaviours are deemed null and void and trigger the self-employed person's right to damages.

The Jobs Act Autonomi has also introduced rules on inventions and relevant economic consequences. It confirmed a general principle whereby, unless the invention falls under the scope of the contract and it is expressly remunerated, the self-employed person is deemed the owner of the intellectual property rights arising from an invention made during the course of providing the services. Additional provisions concerning, among other things, parental

leave and unemployment benefits for self-employed people are also included.

In addition, Jobs Act Autonomi introduced provisions in relation to the competence of the Labour Court in deciding cases involving self-employed people under certain circumstances.

## Smart Working

The Jobs Act Autonomi introduced rules on 'Smart Working' for the first time.

Smart Working is not a new type of employment contract, but a different way of working unrelated to specific locations and working time regulations, save for the need to comply with the daily and weekly working time limits set forth by law and collective agreements. Such a scheme is mainly relevant to employees providing, in whole or in part, services that do not require physical presence in the company, or special equipment.

The law requires that a Smart Working arrangement be agreed in writing. The agreement can be on an open or fixed term basis. Depending on the term, different termination rules will apply. The agreement must govern:

- the actual performance of the working activity outside the company premises, in connection with the instructions by the employer and the use by the employee of IT equipment;

- the rest times and the technical and organisational measures ensuring that the employee logs off from IT connection during those times; and
- the exercise of the employer's control over the working activity carried out outside the company premises and the relevant disciplinary power.

Remuneration and benefits of the smart worker must be equivalent to those granted to the employees performing the same duties at the company premises. Health and safety requirements should also be met; and the employer must communicate, at least annually, to the worker and to health and safety representative, the risks related to smart working.



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## LATVIA

On 16 August 2017, amendments to the Labour Code came into effect, which introduce several improvements in the legal framework governing employment.

### Restrictions on rights of the employee

The amendments to the Code specify that compensation for non-competition clauses shall be paid after termination of the employment relationship. The non-competition obligation is subsequently extended also to non-solicitation of customers and employees of the former employer.

Additionally, the employer will be able to withdraw from a non-competition agreement during the notice period following receipt of the employee's notice of termination.

These modifications expand the employer's right to restrict rights of the employee to perform a side job by preventing the employee not only from entering into an employment contract with other employers but also from entering into any other contract governed by the civil law for performance of work.

### Changes in the legal framework governing overtime work

Instead of an additional payment for overtime work, it will be possible to reach an agreement on paid rest time in lieu. The employer and the employee are entitled to agree on adding the paid rest to annual paid leave.

If the employment relationship is terminated before the granted paid rest time is used, the employee will be eligible to receive the additional payment for overtime work.

### Reimbursement of expenses on vocational training

The legislator has eliminated the current legislative gap in the Labour Code, meaning that, where an employer ends an employee's employment due to the employee's behaviour, the employer will have the right to request that the employee reimburse expenses for vocational training and qualification improvement measures (sub-paragraphs 1-5 of paragraph one of Article 101 and paragraph five of Article 101 of the Labour Code).

### Extra leave

The new amendments stipulate that paid extra leave for the current year should be granted and used before the annual paid leave of the following year. Cash payment in lieu of the extra leave is allowed only upon terminating the employment relationship, if the annual paid extra leave has not been used.

### Changes concerning termination of the employment relationship

The employer will be able to give notice of termination of an employment contract to an employee while the employee is suspended from work.

The employer's notice of termination by reason of employee incapability due

to a health condition, which is verified by a physician's opinion, will come into effect immediately, and not, as is the case currently, in 10 days.

### Breaks during work

If an employee is prohibited from leaving the workplace during the break, the break shall be included in the working hours.

### The employer's right to join general agreements concluded in the industry or in the territory

Employers, groups of employers, employer organisations, and associations will have a right to join a collective bargaining agreement previously concluded in the industry or territory. If the employer secedes from the employer organisation or association after joining the collective bargaining agreement, the respective collective bargaining agreement shall still be binding on the employer.



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## MACEDONIA

The key employment law change in 2017 in the Republic of Macedonia has been the Amendments to the Law on Minimum Salary (Minimum Salary Law)

The amendments were introduced in late September 2017. The new Macedonian Government had previously campaigned on the matter and the new amendments increase the minimum monthly salary to the net amount of MKD 12,000.00 (approx. EUR 195.26) from MKD 10,080.00 (approx. EUR 163.79). The average monthly pay for workers working less than full time is calculated on a basis of hours worked, discounting overtime. The specifics of the mechanism are outlined below:

### Standardised work results (SWRs)

Article 2 of the Minimum Salary Law, which defines minimum salary as “the lowest monthly amount of basic salary which the employer is obliged to pay to the employee for work done during full-time hours, if standardised work results are achieved”, is now expanded with the introduction of subsections specifying how SWRs are determined. SWRs must be achievable for at least 80% of the workforce, and the employer is obliged to issue a confirmation each month that this is the case.

Achieving SWRs is a condition for receiving the minimum pay. This has caused quite an uproar in sectors where most of the employees earning minimum salary are found (textile, leather, shoe and the mining industry) and where SWRs will be most

influential. The amendments state that the employer will determine SWRs in cooperation with the employees. However, workers’ unions fear that the law is unclear on what the role of employees will be, and show SWRs will be agreed. There is also concern that this will allow employers to circumvent paying the increased minimum salary by setting unachievable SWR thresholds.

### Financial assistance to employers

A new addition provides for financial assistance for the payment of minimum salaries, paid for from the budget of the Republic of Macedonia. This assistance is provided if certain conditions are met, including:

- the employer is not relieved from the payment of compulsory contributions;
- no bankruptcy or liquidation procedures have been initiated;
- the employer has reported a loss, or net gain after taxation in the amount of less than 10% of total expenditures; and
- the employer has paid all salaries, compulsory social insurance contributions and taxes.

The employer that receives financial assistance is obliged to keep the employee for a period of one year after the period for which they received financial assistance has ended. If the employer does not uphold this requirement (provided that the termination

of the employment agreement is due to the employer), it must return all the financial assistance it received 30 days after such a termination.

### Misdemeanour provisions

Some misdemeanour provisions were also introduced. These provide that an employer may receive a fine of EUR 4,000.00 to EUR 6,000.00 if the employer does not determine SWRs or confirm what the SWRs are, or does not pay the minimal salary or contributions.



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## MONTENEGRO

As has been the case for the past couple of years, Montenegrin employment and labour legislation did not change significantly in 2017. However, it is notable that the Government of Montenegro prepared its first draft of the new Employment Law. Additionally, one of the major acts governing employee rights, the General Collective Bargaining Agreement, is still in effect and will last until June 2018. Finally, the Energy Branch collective agreement was adopted.

### Draft of the new Employment Law

On 4 August 2017, the Government announced the first draft of the new Employment Law, and invited all interested parties to participate in a 40-day public discussion. The Government reported that the adoption of the new law comes from the desire for further harmonisation with the EU acquis envisaged by the Action Plan for Negotiation Chapter 19 (related to Montenegro's accession to EU) and ILO conventions and recommendations.

Some of the most important goals of the proposed law are the suppression of the grey economy and finding the instruments for the legal battle against it. Additionally, this draft extends the protection of workers during periods of parental leave and imports certain changes in the employment procedure (in order to speed up and facilitate the procedure). One of the major changes is the re-introduction of the prescription of claims arising from employment – claims must be brought

within four years (the current law provides that those claims never prescribe if incurred since 2008).

However, the draft has been criticised by the non-governmental sector and Montenegrin Agency for the Prevention of Corruption (which has already filed 14 complaints about the draft). The main issues are that the draft enables employers to manipulate employment contracts and avoid the obligation to make temporary employees permanent (which the draft provides that the employer has to do after three years of temporary employment). Moreover, there are concerns that employment agencies may also manipulate and misuse their authority, as they have unlimited authorisation to conclude and terminate employment of up to 59 days. Finally, the employer may request the reconsideration of sick leave, which, according to the critics, also jeopardises the rights of the employees. The employer is entitled to seek a review of the justifiability of an employee's sickness, which may be interpreted as an interference in the work of other state bodies (medical institutions which issue certificates on sickness and recommendations for sick leave), inferring that those bodies made a mistake or misused their rights.

### Energy Branch Collective Agreement

On 12 November 2016, the Branch Collective Agreement for the Energy

Sector entered into force and will be valid indefinitely.

It will apply to all employees and employers whose activity is in the energy sector (regulated by the Law of Energy), while some of the provisions will be further detailed through employers' collective agreements and individual employment contracts.

The Agreement regulates salary issues, the responsibilities of employees, the protection of work, redundancy rights, and other issues of importance to this sector.



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## NETHERLANDS

### Pre-pack business sales

On 22 June 2017, the European Court of Justice rendered its judgment in the Dutch Smallsteps (previously Estro) case. In 2014 Smallsteps bought 243 of the 380 Estro's childcare locations in the Netherlands. On 5 July 2014, the day Estro Group was declared bankrupt, a pre-packaged sale agreement was signed between the bankruptcy trustee and Smallsteps. Smallsteps then offered some 2,600 of the 3,600 staff a new employment contract. The rest of the staff were dismissed by the trustee. The ECJ ruled that this pre-pack (*flitsfaillissement*) qualifies as a transfer of undertaking. The court found that the pre-pack was aimed at continuation of (part of) Estro's business and not the liquidation of the business. The employees involved are therefore protected under the European transfer of undertakings Directive. This matter was referred back to the Dutch court for reconsideration, including considering if honouring employees' claims will go against the principle of legal certainty.

### Proposed reforms to Dutch employment law

On 11 October 2017, the newly formed Dutch government published its plans for the next four years in the Coalition Agreement (*Regeerakkoord*). The most important proposals are:

- The ground for cumulative dismissal: the ground for a cumulative dismissal has been introduced. This will be used for use in cases where the facts and circumstances are not sufficient to substantiate one of the other dismissal grounds. If the employment contract is terminated based on this new ground for dismissal, the court may grant the employee an additional compensation of up to half the statutory severance pay.
- Amendments to statutory severance pay: service after ten years will be weighted the same as prior service years at one third of monthly salary per year instead of half of monthly salary per year. Employees will start accruing the payment on the first day of employment instead of after two years.
- Changes to rules around fixed-term contracts: under the current rules, no more than three consecutive fixed-term employment contracts can be agreed in two years before the employment converts into a permanent contract, unless the employment is interrupted for a period of six months or more. This two-year period will be extended so fixed-term contracts can be agreed for a maximum period of three years before the contract converts.
- Changes to rules on probationary periods: if an employer offers a permanent contract for the first time, a probationary period can be agreed for a maximum of five months (rather than the current two). For contracts lasting two years or longer, a probationary period of a maximum of three months may be agreed instead of a maximum of two months.
- Changes to sick-pay for small companies: companies employing up to 25 employees will be required to continue salary payments only during the first 52 weeks instead of 104 weeks.
- Extension of paternity leave: current paternity leave entitles partners to two days' leave on full wage after childbirth, which should be taken within four weeks. As of 1 January 2019, this will be extended to five days. The plan is that partners will receive additional paid paternity leave of five weeks from 1 July 2020, to be taken within the first six months after childbirth.
- Taxation of independent contractors: the existing legislation on wage tax and social security when hiring independent contractors is expected to be abolished, and new legislation introduced to determine, on the basis of the hourly rate and the duration of the agreement, whether a work relationship qualifies as an employment agreement or an independent contractor agreement.



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## NORWAY

### Restrictive covenants

On 1 January 2017, new regulations regarding restrictive covenants in employment relationships entered into force. For agreements entered into after 1 January 2016, the regulation has been in force since 1 January 2016.

Restrictive covenants are regulated in a new Chapter 14 A in the Working Environment Act (WEA). The new regulations set forth strict requirements in order to invoke restrictive covenants. The main points of the new regulations are:

#### a. Non-competition

- Maximum length of one year from cessation of the employment.
- The employer must have a particular need for protection against competition.
- The employee must be paid compensation equal to 100% of the total compensation (salary etc.) up to eight times the Basic Amount and at least 70% of the compensation above that (the Basic Amount is set by the National Insurance and is currently NOK 93,634 – approx. EUR 9,750 – per year). The compensation may be limited to 12 times the Basic Amount.

#### b. Non-solicitation of customers

- Maximum length of one year from cessation of the employment.

- Limited to customers the employee has had the responsibility for or contact with in the last year.

#### c. Non-poaching of employees

- Prohibition against non-poaching clauses between the employer and other undertakings.
- Exemption in case of transfer of undertakings on certain terms.
- Non-poaching clauses between the employer and the employee are not regulated.

The CEO may be exempted from the new regulations by waiving his/her protection against severance pay.

The new regulations in the WEA set forth strict notification procedures when invoking the non-competition and non-solicitation obligations.

### Whistleblowing

The whistleblowing regulations have been amended with effect from 1 July 2017. The regulations have been separated into a new chapter in the WEA.

Under the new regulations, there is a requirement for all enterprises with more than five employees to have written steps for internal notification. These include:

- encouragement to notify of any 'censurable conditions';

- procedure for notification; and
- procedure for receipt, processing and following-up of notifications.

The steps shall be prepared in cooperation with the employees and the employee representatives. The steps must be in writing and be easily accessible for all employees.

Any public authority receiving notifications must keep confidential the whistleblower's identity and other information identifying the whistleblower.

The whistleblowing protection is extended to include hired-in workers.

### Legal initiatives

At the government's initiative, an expert group is reviewing the whistleblowing regulations. The group shall consider whether there is a need for further amendments in order to strengthen employees' whistleblower protections under Norwegian law. The group will present a final report to the government on 1 March 2018.

The government has also initiated amendments to the regulations in the WEA regarding permanent employment, temporary employment and hires from temporary staff recruitment agencies, in order to strengthen the employment protection for temporary employees and hired-in personnel. A hearing was concluded 29 September 2017.



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## POLAND

2017 was an eventful year for laws in Poland, including employment law. More changes are expected in future, but certain changes have already been enacted. The key changes are described below.

### Minimum pay for contractors

From 1 January 2017, there has been a minimum hourly rate for individuals performing a commission or providing services, with no possibility of them waiving or transferring their right to remuneration. Payment of anything lower than the minimum rate is punishable by a fine. The minimum hourly rate will be increased slightly each year, from PLN 13 (approx. 3.10 EUR) in 2017 to PLN 13.70 (approx. 3.26 EUR) in 2018.

### More time to appeal against dismissal

From 1 January 2017, employees have 21 days (previously seven or 14) to appeal to a labour court against the termination of their employment.

### Protection for women who are pregnant or breast feeding

1 May 2017 saw the entry into force of a new list of tasks that are burdensome, dangerous or harmful to pregnant or breast feeding women and are thus prohibited.

### Tightening of rules for hiring temporary workers

From 1 June 2017, employers must keep registers of temporary workers whom they hire and provide temping agencies with more information. The new provisions

increase the liability for failing to comply with the temporary work regulations with fines of as much as PLN 100,000 (approx. 23,830 EUR).

### ZUS has a new power

From 13 June 2017, the Social Insurance Institution (ZUS) may determine, through one administrative decision (previously two separate decisions were needed), the actual remitter of social security contributions when payments have been remitted by unauthorised entities to an insured individual's account.

### More protection within insolvency

On 5 September 2017, employees gained fuller protection of their claims if their employer becomes insolvent, as well as financial assistance to those laid off and any applicable benefits arising from employment. An important change is that the payment of advances for future employee benefits is allowed from the date of the actual (and not formal) cessation of an employer's business. Also, family members who work together in the running of a business by one of them are now deemed employees and benefit from this protection.

### Pre-retirement protection

On 1 October 2017, the retirement age in Poland was reduced to 60 for women and 65 for men. Current and former employees who enjoy or would have enjoyed protection on 1 October 2017 will be entitled to it now for the entire period until reaching retirement. Those not entitled, but reaching

retirement age before 1 October 2021 enjoy pre-retirement protection of employment for four years from 1 October 2017.

### Foreigners' seasonal and short-term work

From 1 January 2018, it will be easier to obtain permits for seasonal work for citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine as the work legalisation procedure in such cases is simplified.



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## PORTUGAL

### FORTHCOMING LEGISLATION

Amendment of the legal rules on the transfer of undertakings or business establishments

The Portuguese Parliament is currently debating the Draft Law designed to amend the legal framework on the transfer of undertakings. The amendments envisage increasing workers' guarantees and the transparency of such transfer processes.

This Draft Law seeks to clarify the concept of an 'economic unit' and to avoid contradicting decisions, depending on the sector or the case-by-case evaluation conducted. It also seeks to expand the joint liability of the transferor for labour credits, to introduce an information duty to labour authorities with supervisory powers, and to deal with administrative offences related to the breach of these obligations. The aim of such measures is to avoid fraudulent conduct by certain companies and to safeguard the professional status of impacted workers.

### Professional disconnection

Another expected forthcoming change to labour law is the introduction of a professional disconnection right. The draft law expressly provides for a duty of non-communication with the worker during his/her rest periods.

The aim is to ensure that the use of digital tools in the employment relationship does not impede the worker's right to enjoy

rests periods, even though exceptional cases are contemplated. Specific rules may be provided in collective bargaining agreements.

### RECENT CHANGES Harassment at work

The Labour Code has been recently amended to incorporate specific measures on harassment prevention.

Highlights include:

- the right to compensation for pecuniary and non-pecuniary damage, whenever harassment occurs;
- the introduction of specific provisions to ensure the protection of the victim and witnesses in harassment proceedings;
- the obligation to adopt a code of good conduct in companies with seven or more employees, to prevent and combat harassment at work; and
- the obligation to start disciplinary proceedings whenever the employer becomes aware of alleged harassment situations.

In addition, it is now expressly provided that the employer is also liable for the damages in respect of illness directly caused by the harassment.

### Undeclared subordinate work

Since 2013, there has been a special judicial procedure to determine the existence of

an employment agreement, which was created to limit the misuse of independent contractor agreements in order to avoid giving workers employment status. This special legal regime has been recently amended to encompass not only false independent contractors, but also to cover other situations of undeclared work, such as false internships or false volunteering.

Finally, if the worker is dismissed before the final court ruling is issued, the law now provides for an interim measure to suspend the dismissal pending the ruling, increasing the rights of such workers.



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## ROMANIA

### Increased minimum gross base salary

From 1 January 2018, the minimum monthly gross base salary guaranteed for payment for full-time workers was increased to RON 1,900 (approx. EUR 408).

### Posting of workers in the framework of the provision of transnational services

In March 2017 Law no. 16/2017 was adopted, which transposed the provisions of European Directives 96/71/EC and 2014/67/EU. Under the new provisions, the Labour Inspectorate is entitled to perform evaluations of all factual elements that characterise a transnational posting (such as analysis of the main activity for which the company is authorised and the object of the services agreement etc.), to determine if such a posting is genuine or not.

### Support for apprenticeships and internships

Employers concluding apprenticeship contracts or internship contracts will receive, upon request, a monthly amount of RON 1,125 (approx. EUR 242) or RON 1,350 (approx. EUR 290) respectively, for the entire period of the respective apprenticeship or internship contract, from the unemployment insurance budget.

### Capped indemnity for childcare leave

The amount of the monthly childcare leave payment is 85% of the average monthly income earned in the last 12 months prior

to the child's birth and has been capped at RON 8,500 (approx. EUR 1,828).

### Increased sanctions for undeclared work

The Labour Code has been amended, providing for a definition of 'undeclared work' and a new obligation to conclude and register any employment contracts or amendments to these contracts prior to the employment or amendment coming into effect. The amendments provide for a stricter evidence of work to be kept by employers, including keeping copies of the employment contracts at the workplace and keeping track of the daily work schedule of each employee. Criminal liability has been removed for employers who do not conclude employment agreements in writing for more than five employees, while the amendments to the Code provide for higher fines in the case of persons working without having signed individual employment agreements, part-time employees working overtime etc.

### The fiscal revolution and temporary additional collective negotiation obligation

As of 1 January 2018, the obligation to make certain social security contributions will be moved from the employer to the employees. The employee's gross base salary will be affected since the fiscal charges applicable to it have been increased and therefore, their net income will decrease significantly. While this piece of legislation has caused employers to consider an increase in the

employees' gross base salaries, future legislative measure may mean that any amendments of the gross base salary must be made only with the employee's express agreement.

Within this context, the government has issued a new piece of legislation, obliging all employers to initiate collective negotiations in order to enforce the amendments introduced to the Fiscal Code. However, the signing of such a collective labour agreement is not mandatory under Romanian law.



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## RUSSIA

### Less stringent rules for micro-enterprises

Starting from 1 January 2017, micro-enterprises (legal entities with an average of fewer than 15 employees and annual earnings of less than 120 million Roubles (approx. EUR 1.7 million), quite often start-ups) are not obliged to implement the full set of mandatory HR policies. As long as they maintain the status of a microenterprise, they are allowed not to adopt Internal Labour Regulations (main workplace policy of an entity), Compensations and Benefits Policy and some other policies required by the law.

### Sick leave digitalisation

Starting from 1 July 2017, instead of a hard copy document, employees may be provided (subject to their consent in writing) with a sick leave certificate in a digital form. However, in order to do this, the employer and medical institution have to be registered a special electronic information system of the Social Insurance Fund of Russia.

### Training on civil defence

Starting from 2 May 2017, organisations have been obliged to provide employees with Civil Defence Instructions within one month from the date of their hiring. Specifically, the organisation has to plan and organise training about this topic aka inform new employees about the evacuation procedure, forms of notification about the danger, etc. Moreover, it is necessary to

arrange ongoing training for employees (16 hours per year).

### Part-time work arrangements

Starting from 29 June 2017, part-time work may include both a part-time working day (shift) and working only certain days of the week including split working days. No such opportunity existed before – employees had to choose between only working certain days of the week, or else working for limited hours each day.

Certain categories of employee are entitled to request any mix of part-time working arrangements for as long as they hold the relevant status. For example, this includes pregnant women or women on childcare leave until the child reaches the age of three.

### Open-ended working day restrictions

Starting from 29 June 2017, open-ended working days can be set out to employees working part-time only if the employee works more than eight hours per day.

### Migration law

Due to the 2018 FIFA World Cup that will be held in Russia, all foreign citizens who arrive in Volgograd, Ekaterinburg, Kazan, Kaliningrad, Moscow, Nizhny Novgorod, Samara, St. Petersburg, Saransk and Sochi during the period from 25 May to 25 July 2018 will be obliged to register for migration within one day of crossing the Russian border. All foreign citizens who arrive

for a temporary stay are included in this requirement. It is possible to register for migration only in the territorial units of the Ministry of Internal Affairs via the hosting party.



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## SERBIA

There were no significant changes to Serbian employment and labour legislation in 2017. The main changes relate to the recent introduction of a new minimum salary at state level, and the anticipated staff leasing regulation that will be adopted in the near future.

### New minimum salary

A new minimum salary has just been agreed upon on at state level between the representatives of the Government of the Republic of Serbia, representative trade unions at the state level and the Serbian Association of Employers. The new minimum salary is set to RSD 143.00 net per working hour (approx. EUR 1.17) and it will come into force from 1 January 2018.

All employers need to abide by this new amount and cannot pay employees a basic salary below this legal minimum.

This new amount overrides the previously valid minimum salary that was in force since January 2017, in the amount of RSD 130.00 net per working hour (approx. EUR 1.06).

### Law on staff leasing

The concept of staff leasing is currently not regulated in the Serbian employment legislation, though this manner of engagement is present in local business practice and has grown over recent years. The need for formal regulation of this issue arises also from the fact that Serbia ratified the International Labour Organisation Convention No. 181 on Private Employment

Agencies in 2013, which necessitates the production of national rules that introduce and frame the concept of staff leasing in line with ILO guidelines.

In light of this, the Ministry of Labour announced some time ago the enactment of a separate law that would regulate staff leasing through local employment agencies. A special work group, which includes representatives from the Ministry of Labour, trade unions, representatives of employers and local employment agencies, has been organised to prepare the first draft of this regulation. The work group has been engaged on this draft for more than a year, and it is expected that it's work will be finalised soon, after which their proposal of the future law should be released for public discussion before it is presented to the Parliament for final adoption.

It is expected that this new law will focus on guaranteeing the same level of employment rights to persons engaged via staff leasing as those provided to regular employees within the company in which they perform their work, all in line with the European standards of equal pay and equal treatment. Also, this law should regulate in detail the mutual relations between the company that uses staff leasing services, the employment agency and the leased worker, so that the rights and obligations of all participants towards each other in this tripartite relationship are sufficiently clear.

We anticipate that this law, once adopted, will greatly contribute to legal certainty and predictability in the local business market.



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## SLOVAKIA

### Extension of collective bargaining agreement of higher degrees

On 1 September 2017 a change to the law on collective bargaining was adopted which introduced an instrument of 'representative' parts of collective bargaining agreements of higher degrees (CBA-HD).

The CBA-HD are collective bargaining agreements concluded between a group of employers in certain sectors and representative trade unions of employees in this sector (currently there are 17 such agreements). Previously, they were binding only on the employers who signed them. However, the new change means that a request either by the trade unions or by both parties to the CBA-HD can be made to the Ministry of Labour, Family and Social Affairs to declare the CBA-HD or its parts binding for all employers in the respective sector without their express consent by declaring it 'representative'.

The process of declaration by the Ministry of Labour, Family and Social Affairs is rather long. Employers who have not signed the CBA-HD have only five days from the start of the process (published in the publicly available Commercial Journal), to present any response to the declaration and its reasoning. The final declaration on 'representation' (i.e. extension) will be published in the Codex of Statutes of the Slovak Republic (the Codex). The CBA-HD will be binding for all employers in the relevant sector from the date of publication in the Codex, and so it is crucial

for employers to follow the process and check the Commercial Journal and Codex regularly.

This is the second attempt of the Slovak Government to introduce generally binding collective bargaining agreements. The first one was ruled unconstitutional by the Constitutional Court of the Slovak Republic. Therefore, the actual impact of the change is unclear.

### Employment of Foreigners

On 1 May 2017 changes to the law on foreigners' stay in the Slovak Republic and also to the law regulating their employment were adopted. These introduced several instruments to simplify the employment and registration process for stay of certain categories of employees who are non-Slovak citizens.

The changes aim to simplify the process for multinational groups of companies and intra-group employee transfers, as well as for seasonal employees. The new rules are strict and provide several requirements and limitations for each category and thus each individual case should be reviewed separately.

### Increase of Minimum Wage

From 1 January 2018 the minimum gross wage will be EUR 480 per month or EUR 2.76 per hour (in the case of hourly paid employees). This amount is set for a regular 40-hour work week and for jobs of level 1 difficulty.

For comparison, the minimum gross wage in 2017 has been EUR 435 per month or EUR 2.50 per hour.

### Expected changes in 2018

The Slovak Parliament was provided with a draft law on further changes to the Labour Code. Under the draft law, new mandatory preferential wage rates for work on Saturdays and Sundays are to be introduced, while the already included mandatory preferential wage rates for work at night should be increased. As the draft law is only in the early stages of adoption, and several draft amendments have been introduced, the final structure of the preferential wage rates is still to be discussed.

The Slovak Government presented its intention to introduce a mandatory preferential wage rate for work on Saturdays and Sundays earlier this year and so it is very likely that it will happen.



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## SLOVENIA

The Slovenian employment and labor legislature did not introduce significant changes in 2017. However, certain amendments were made to the Labor Market Regulation Act and Labor Inspection Act and the new Class Action Act was adopted, introducing collective lawsuits and settlements for the first time.

### Amendments to the Labour Market Regulation Act

The main purpose of the amendments introduced in October 2017 to the Labour Market Regulation Act is to speed up the return to work of unemployed persons. Employees are now obliged to register in the unemployed persons register during their notice period (and not only after its expiration). Moreover, incentives for employing recipients of unemployment allowance who have secondary education were also introduced, together with the establishment of a register of student employment.

### Amendments to the Labour Inspection Act

The amendments introduced in October 2017 provide for a higher competence of the Labour Inspectorate when it establishes that the elements of an employment relationship exist between a particular employer and its employee without there being an employment contract. In such cases, the Inspectorate is now able to impose an obligation on the employer to put an employment contract in place. Moreover, the Inspectorate can also impose

a prohibition on performing business if an employer fails to pay its employees correctly and on time.

### Adoption of a new Class Action Act

The new mechanism of class action will provide for injured parties, both natural and legal persons, to file a compensation claim where there has been mass harm. Besides a collective action for compensation, the law also provides for the possibility of filing a collective action for the cessation of illegal behaviour, as well as the procedure of collective settlement in case of mass harm events.

The law regulates procedures for collective redress in cases when the infringer breached consumers' or workers' rights, as well as rights arising from the prohibition on the restriction of competition, or rights from the financial instruments market, and in cases of damage caused by environmental accidents.

The aim of the new law is to provide for easier enforcement of the right to compensation for injured individuals and legal persons, while companies that breach individuals' rights can also be prohibited from carrying out illegal behaviour in the future. The law also provides safeguards against abusing such court procedures by regulating the procedure, based on which the court will – after a preliminary assessment of the admissibility and the completeness of the action – first assess whether the requirements for approval of

the action exist. Only after that will the court proceed with deciding on the outcome of the claim.



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Although it has not been a year characterized by major legislative developments, the truth is that, over the past year, the Spanish Government has enacted some laws in the labour and social security field that have affected employment relationships in a variety of ways.

**Expansion of paternity leave to four weeks (Law 9/2009, of 6 October 2009)**

This measure, which expanded paternity leave due to birth, adoption or fostering from 15 days to four weeks, was included in Law 9/2009, of 6 October 2009, but had been suspended until 1 January 2017.

**Amendment of regulations governing the posting of workers in the framework of the provision of transnational services (Legislative Royal Decree 7/2017)**

Legislative Royal Decree 7/2017 applies to companies established in states that are members of the EU or EEA that temporarily post their workers to Spain in the framework of the provision of transnational services, excluding merchant navy companies' seagoing personnel, and has amended the formerly applicable law.

The most notable changes consist of:

- an obligation to give notice of the posting by electronic means before it is implemented;
- including specific details in the notice (identifying an individual or legal

entity as a liaison with the Spanish authorities and an individual who acts as a representative of the workers of the company providing the services); and

- an obligation to hold and safeguard documentation for consultation by the authorities (contracts, wages, timesheets and others).

**Extension of the Employment Activation Plan (Royal Decree 7/2017)**

The Employment Activation Plan has been extended to 1 May 2018. This Plan aims to decrease levels of long-term unemployment by helping people who have difficulty accessing the labour market to improve their employability. It defines the active employment policy services and programs to be carried out by the State as a whole and by Regional Governments under the framework of their authority in this respect, as well as the indicators to be used to evaluate the degree of achievement.

**Inclusion in the basis for computation of severance pay of the amount paid by the company for life and health insurance (Supreme Court judgment of 3 May 2017)**

Previously, the view was that life and health insurance policies were discretionary benefits improving on the protection afforded by the social security system and were not included when calculating severance pay. With this new ruling, they are treated as a benefit in kind and are

therefore included in the computation basis for severance pay.

**No obligation to record daily working hours (Supreme Court judgments of 23 March and 20 April 2017).**

The Supreme Court has concluded that there is no obligation for companies to record daily working hours and that they are only required to record overtime working hours.

**Workers' prior consent not required to place video recording cameras in workplace (Supreme Court judgment of 31 January 2017)**

The Supreme Court considers it sufficient to give workers general notice (by placing a sign in the workplace) of the existence of cameras in the workplace, with no need to obtain specific consent from them.

The court also held that the measure adopted by the company was adequate, suitable, proportionate and justified and, therefore, the disciplinary dismissal was valid.



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## SWEDEN

### New legislation regarding public procurement

As of 1 June 2017, new rules entered into force in Swedish public procurement legislation implying that labour-law conditions shall be required in certain public procurements. More specifically, the new rules stipulate that the contract awarding authority shall, if necessary, require the contractor and its subcontractors to provide certain minimum levels of salary, holiday and working hours to its employees. These levels shall follow the minimum levels prescribed for in the central collective bargaining agreement applicable for such work and shall be applied in relation to the employees performing work under the contract. However, there is no requirement that the contractors or the subcontractors actually enter into or become bound by a collective bargaining agreement. Whether it is necessary for the contracting awarding authority to require such minimum levels shall be determined by an overall assessment of all relevant circumstances in each individual procurement. The purpose of these new rules is to prevent public contracts being performed by employees with unfair employment conditions and to minimise the risk of distortion of competition by social dumping.

### New rules regarding posting of workers in Sweden

As of 1 June 2017, new rules entered into force in the Swedish Posting of Workers Act (1999:678). The new rules increase the

possibilities for Swedish trade unions to conclude collective bargaining agreements with companies posting employees in Sweden. They also implement certain provisions of the Enforcement Directive 2014/67/EU.

According to the new rules, Swedish trade unions may bring industrial actions against a posting employer in order to conclude such an agreement, even if the posting employer can prove that the posted workers are entitled to salary and other terms corresponding to the minimum conditions regulated in an applicable central collective bargaining agreement. Further, a posting employer is obliged, upon request by a Swedish trade union, to appoint a representative who is authorised to negotiate and enter into a collective bargaining agreement on behalf of the posting employer. The new rules also entitle posted workers who are not members of a Swedish trade union to certain terms and conditions regulated in any collective bargaining agreement entered into by the posting employer.

Moreover, a posting employer may not take action against a posted worker who has commenced legal or administrative actions in order to uphold his/her rights following from the act or a collective bargaining agreement. An employer who acts in breach of this prohibition may be liable to pay damages.

Finally, these new rules also involve an obligation for trade unions and employers' organisations to register a contact person or a contact function with the Swedish Work Environment Authority. The purpose of such contact person/function is to inform posting employers about the work and employment conditions that may be required by a trade union through industrial action, and to be available to answer general questions about the Swedish legislation regarding posted workers.



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## TURKEY

The major changes in Turkish employment legislation during 2017 were (i) the enactment of the new Labor Courts Law numbered 7036 (New Labour Courts Law) and (ii) the new Regulation on Employee Inventions, Inventions in High Education Institutions and Inventions Realized in Projects with Public Support dated 29 October 2017 (Employee Inventions Regulation).

### The new Labour Courts Law

The major novelty of the New Labour Courts Law is the obligation to apply for mediation before an employee initiates a lawsuit for reinstatement of employment, or for any compensation arising from law, employment agreement or collective labor agreements, which shall apply from 1 January 2018.

With the new Labour Courts Law, the decisions of the court of cassation will be final and binding in cases based on invalidity of termination or reinstatement of employment, and it will not be possible to continue the appeal process before the Court of Appeals.

Additionally, the time of prescription for the initiation of a lawsuit for the collection of unpaid annual leave, severance payment, payment in lieu of notice, bad faith compensation due to termination of employment and compensation claims for the termination of employment in breach of equality principles, is decreased from 10 years to five years.

### Employee Inventions Regulation

Under the Employee Inventions Regulation, once an employee invents something in the course of their employment, they must notify the employer in writing, without any delay. The employer will then be required to register such notification. If the employee fails to make such notification, then they will be obliged to compensate any damages the employer incurs in relation to this invention. If the employee makes an application to the Turkish Patent and Trademark Institute for the registration of their patent without notifying the employer, the employer will have the right to initiate a lawsuit claiming its ownership of the respective patent and/or to request the transfer of the patent under its name.

Where the employee makes a notification, upon receipt the employer shall notify the employee whether or not it would like to acquire a full or partial rights to the invention.

If the employer requests full rights, all rights arising from the invention shall pass to the employer in return for a fee requested by the employee. Furthermore, the employer shall also pay the employee, within two months, an encouragement bonus which cannot be less than the minimum statutory salary (net TL 1,404 in 2017).

If the employer requests partial rights, the employer will acquire the right to use the invention by paying a fee to the employee.

In determining the fee to be paid to the employee, the economic value of the invention, the role of the employee within the operation and the contribution of the workplace to the invention shall be taken into consideration. If the parties cannot come to an agreement within two months, the issue shall be resolved by arbitration.



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## Reform of Pension Legislation

On 3 October 2017, the Ukrainian Parliament adopted amendments to the Law of Ukraine on Mandatory State Pension Insurance.

The amendments extended the pension qualifying period, which must be earned by the person as employee, or otherwise according to the law, to be eligible to receive social security payments. Starting from 1 January 2018, the person is eligible to receive a pension if such person's qualifying period is 25 years, which will be extended annually by one year reaching 35 years in 2028. Retirement age remains 60 years.

If the person's pension qualifying period is not sufficient under the general rule, the person may still be eligible to receive a pension under a special transitional rule.

## Changes in laws on immigration and employment to promote foreign investment

On 27 September 2017, the Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Elimination of Barriers to Attracting of Foreign Investments No. 2058-VIII of 23 May 2017 (the Investments Law) became effective.

The Investments Law introduces certain amendments that aim to streamline immigration procedures for foreign investors, as well as simplifying the receipt of work permits for employment of foreign citizens and stateless persons.

The most important amendments to the Law of Ukraine on Legal Status of Foreign Citizens and Stateless Persons made by the Investments law include that it:

- allows a foreigner or a stateless person to obtain a temporary residence permit if the applicant qualifies as a foreign investor. For this purpose, the Investments Law views a foreigner or a stateless person as a foreign investor if (i) he/she is a founder and/or participant and/or beneficial owner (controller) of a Ukrainian legal entity, based on the information from the Ukrainian legal entity register; and (ii) the amount of the participation interest contributed to the charter capital of such a legal entity that the foreign investor holds or controls equals to at least EUR 100,000; and
- provides for a longer validity period of residence permits for foreign investors (two years) and for persons who obtain a residence permit based on a work permit (up to three years depending on the grounds for issuance of the work permit, instead of the previous general term of one year).

The most important amendments to the Law of Ukraine on Employment of Population made by the Investments Law are that it:

- abolishes the general approach, which has made issuance of a work permit possible only if there are no qualified workers in Ukraine (or its region) to

perform relevant work or if there is sufficient justification for employment of a foreigner or a stateless person; and

- provides for a longer validity period of up to three years (instead of a general term of one year) for work permits for certain categories of foreign employees (high-paid, creative, IT professionals and others).



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### Removal of tribunal fees

One of the major developments in UK employment law in the last year has been the ruling by the Supreme Court in July 2017 that the employment tribunal fee regime was unlawful. The court held that the level of the fees was such that they constituted a barrier to justice, effectively pricing people out of the justice system. As a result, those who have paid fees since 2013 are entitled to a refund, which extends both to employees who brought claims and to employers who were ordered to pay an employee's tribunal fees as part of a judgment made against them. Not covered are sums paid under settlement agreements which were partially attributable to the tribunal fees.

Going forward, we understand that the Government may re-introduce fees at a later date, in a way that is more proportionate and at a lower level than the 2013-2017 regime; however, no firm plans to do so have yet been announced. In the meantime, many tribunals are seeing a strong rise in the number of claims being brought, which is also leading to delays in hearings taking place.

### Worker status and the gig economy

Despite a Government review into the question of worker or employee status, it seems that we are no further forward in having clarity related to when individuals undertaking gig economy jobs are entitled to worker or employee protection. There have been several cases considering this issue this year, and while the Central Arbitration Committee found that Deliveroo riders were not workers because they

were able to have a substitute undertake a delivery for them, Uber lost its appeal of an employment tribunal's decision that its drivers were workers and entitled to be paid the national minimum wage for so long as they are logged into the app and in the territory in which they are authorised to work. It is expected that Uber will appeal again, so there will be further developments to come. In the meantime, companies operating in these types of area should be careful that their contracts reflect the reality of the situation and, where individuals are not engaged under a worker contract, be wary of potential changes in future that may increase employment protections due to these people.

### 'Week's pay'

One seemingly small but potentially significant development this year has been a ruling of the Employment Appeal Tribunal that employer pension contributions must be included in weekly pay calculations, affecting payments such as minimum statutory notice pay, statutory redundancy pay, and unfair dismissal compensation where an employee's salary falls under the statutory cap. This increases compensation payable to departing employees, especially where an employer is making significant contributions to a defined benefit pension scheme.

### Gender pay gap reporting

As reported in last year's edition of the Guide, from April 2017 UK employers with over 250 employees have had to produce and publish gender pay gap reports giving details of any pay or bonus disparities

between men and women in their workforce. Employers to whom the regulations apply have until April 2018 to upload their first report to the Government website, and will then have to do this annually going forward. There has been a slow start to the uploading of the reports to date, and it is thought that businesses with larger gaps may be delaying until competitors have uploaded their statistics.

### Brexit

We do not have a definitive picture of what the UK legal landscape will look like post-Brexit. Existing EU laws are going to be maintained upon Brexit, with changes only being made as desired by the government of the day. The UK already frequently goes beyond the minimum standards required by the EU and there is currently no indication that any employment laws are due to be changed. However, some aspects of EU employment law are at odds with business opinion in the UK, so in time we may see changes in areas such as holiday pay, the right to uncapped compensation in discrimination claims and some industrial relations provisions.

The immigration position post-Brexit remains unclear. Any change to the law could impact on free movement so we will need to wait to see what is finally agreed between the UK and the EU. This is of most significance to employers who rely heavily on a workforce exercising rights to free movement (particularly seasonal workers) and for businesses who have a number of individuals that regularly travel between the EU nations for work.



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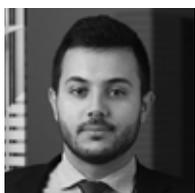
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