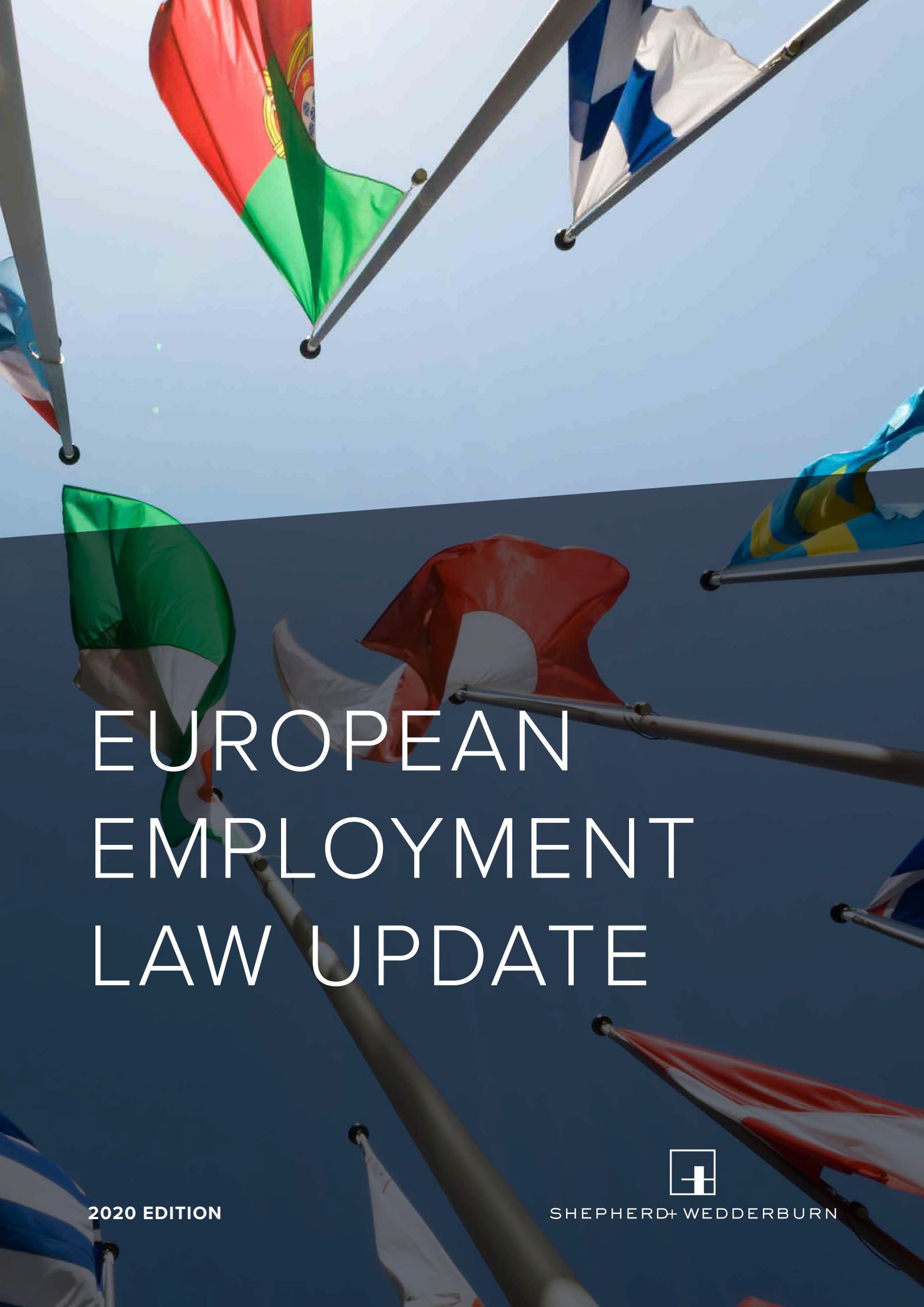

EUROPEAN EMPLOYMENT LAW UPDATE

2020 EDITION

SHEPHERD+ WEDDERBURN

INTRODUCTION

Our annual Employment Law Update aims to help organisations with a pan-European presence keep up-to-date with changes to legislation and best practice.

In the 2020 edition of our European Employment Law Update, we look at the most important legislative changes from 2019, focusing on those that are likely to affect businesses in the coming year. This guide compiles updates from 33 leading law firms and aims to assist organisations with a pan-European presence in keeping up-to-date with changes to legislation and best practice.

We continue to see jurisdictions across Europe dealing with a variety of employment law issues, from implementing changes in relation to discrete laws to managing political uncertainty, and introducing or preparing for more substantial changes to underlying labour law frameworks.

There are a number of similarities across the jurisdictions involved in the update. Regulation on the taxation of independent contractors has been introduced in both the UK and Russia. Another common theme is holiday entitlement including new acts in Denmark and Finland. Social security contributions were also a hot topic with Cyprus' Social Insurance Fund and Belgium's National Social Security Office strengthening their positions following a Supreme Court decision. We also see some positive progress on parental leave in Estonia, Ireland, the UK, and in Austria 'daddy month' has been introduced. In Romania, employees undergoing IVF now receive an additional, paid, three-day rest leave per year.

We do hope that you find the latest edition of the update useful. We have included contact details for all those who have contributed, so please feel free to contact any of our contributors if you have any questions or require further information.

Neil Maclean, Shepherd and Wedderburn LLP, Head of Employment

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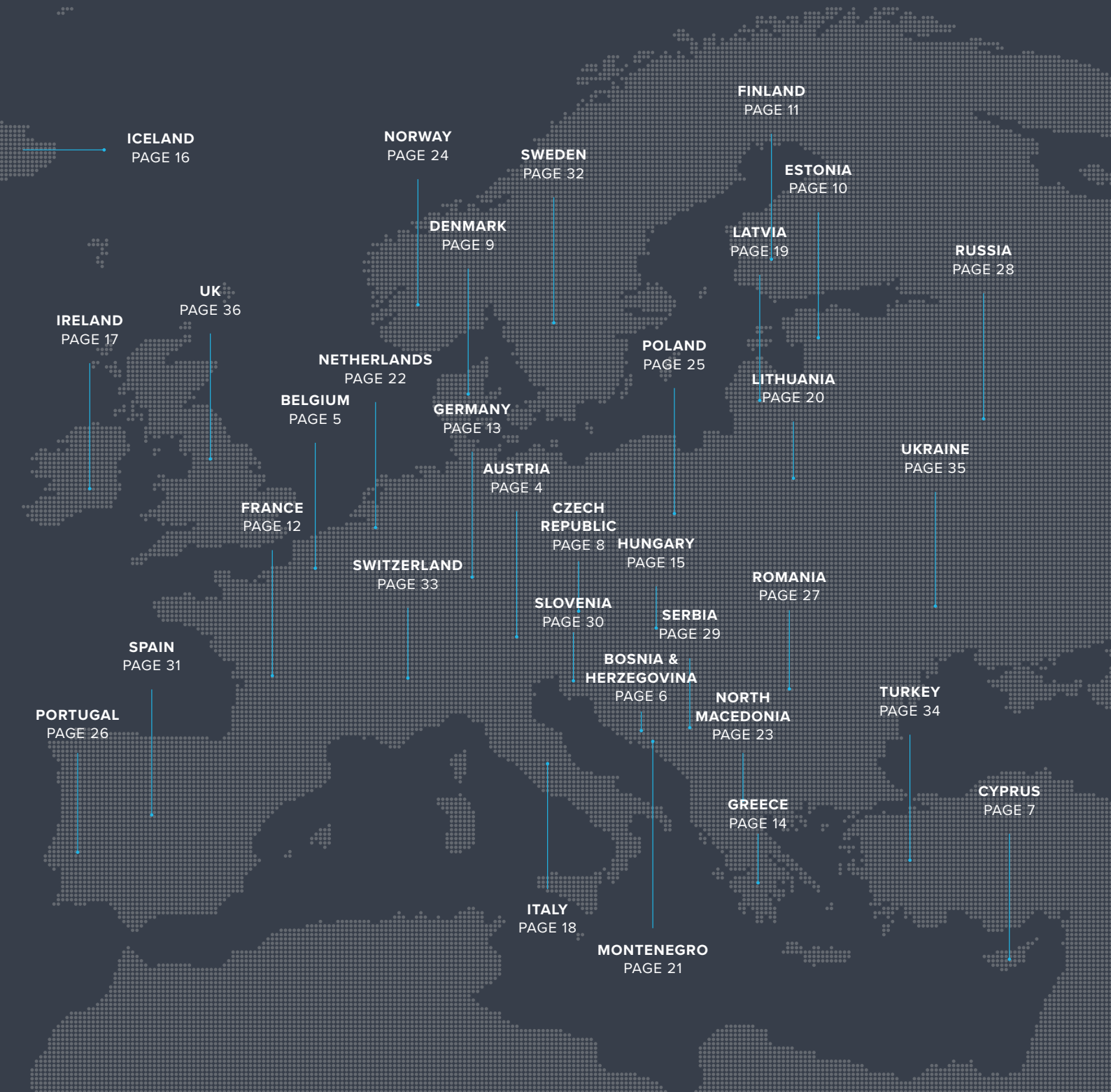
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AUSTRIA

Personal holiday

On 22 January 2019, the European Court of Justice ruled that the Austrian legislation under which Good Friday is a public holiday only for employees who are members of certain Christian churches, and consequently only these employees (if required to work on that public holiday) are entitled to additional payment, constitutes direct discrimination on the grounds of religion.

As a result of this ruling, the Austrian legislator created a personal holiday for all employees to prevent employers from being required to grant a paid public holiday on Good Friday to every employee.

Once per holiday year, employees can unilaterally determine one day that will be considered their personal holiday. In contrast to a regular holiday, while the employer can ask the employee not to take a particular day off, the employee is free to deny such a request, even if their presence at work would be necessary for operational reasons.

The introduction of the personal holiday did not lead to any increase in the statutory vacation entitlement of 25 days per year (rising to 30 days for employees with at least 25 years' service). Instead, it is deducted from an employee's existing holiday entitlement.

If, at the employer's request, the employee carries out work during their personal holiday, then the employee is entitled to be remunerated for the work they performed in addition to their regular (holiday) pay for that day. The employee is not, however, entitled to another personal holiday in the current holiday year. The day worked is not considered a holiday and has no effect on their remaining holiday entitlement.

Recognition of maternity/ paternity leave

On 1 August 2019, an amendment to the Maternity Protection Act came into force. The amendment states that maternity and paternity leave of up to 24 months per child will count towards their years of service for all employment claims where length of service is a factor.

Previously, periods of maternity and paternity leave had only been taken into account for the first child up to a maximum of 10 months and, moreover, only for certain entitlements, namely notice period, holiday entitlement and continued remuneration in the event of sick leave.

This amendment applies to all employees whose child was born on or after 1 August 2019.

Daddy Month

The Austrian Paternity Leave Act was also recently amended. Fathers are now legally entitled to one month off work following the birth of their child, if they are living in the same household as the mother.

Employees who take up their right to what is known colloquially as 'Daddy Month' enjoy special protection against dismissal. The protection begins with the employee's announcement or a later agreement, but at the earliest four months before the expected date of birth and ends four weeks after the end of their period of paternity leave.

During the Daddy Month the employer is not obliged to continue to pay the father. The father may, however, be entitled to state benefits under certain circumstances.

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BELGIUM

Social security contributions on share-related benefits granted by a foreign parent company

Until recently, the National Social Security Office (NSSO) accepted that if a foreign parent company attributed benefits (shares, restricted stock units (RSUs) etc.) directly to its Belgian subsidiary's employees without the costs being charged to the latter, or the latter serving as a 'point of contact' to which the Belgian employees could turn (i.e. if the Belgian employees could not claim the payment from their employer), then the shares or RSUs could be granted without having to pay social security contributions.

In September 2018, the NSSO caused a 'minor earthquake' by substantially broadening its interpretation of 'salary' subject to social security contributions. As a result, benefits in general, and shares and RSUs in particular, attributed by a 'third party' (e.g. a foreign parent company) to the employees of a Belgian (group) company will be subject to Belgian social security contributions, even if the grant took place without the Belgian company 'intervening' in any way.

This NSSO interpretation followed a Brussels Labour Court of Appeal (CoA) judgment in 2018 concerning commissions granted by a 'third party'. The CoA stated that since these commissions were granted "as the counterpart for the work performed", they were subject to social security contributions, despite the fact that the employee was not entitled to claim this remuneration directly from their employer.

In May 2019, the Supreme Court confirmed the CoA judgment. It is expected that the NSSO will use the Supreme Court's judgment to strengthen its position and will proceed with the levying of social security contributions on benefits granted by a parent company to a Belgian subsidiary's employees "as the counterpart for the work performed".

The 2020 social elections are on their way

Every four years, Belgian companies must hold employee elections to select the members of their Works Council and the Committee for Prevention and Protection at Work. The former applies to companies with at least 50 employees and the latter to companies with at least 100 employees.

The next elections will take place in May 2020. However, for employers, work started in mid-December 2019, the beginning of a 150-day procedure that precedes the election date and during which action is expected from employers on a regular basis.

With every social election the legislator introduces a number of new features. The most important ones for the 2020 elections are:

- the right to vote for temporary agency workers, subject to certain conditions;
- the election procedure will be further digitalised and made GDPR-compliant; and
- employees no longer have to attend a polling station as they can vote using a laptop or PC via a carrier connected to a secure network.

New outplacement scheme for medical force majeure

Until recently, workers who were dismissed could only claim outplacement support (the provision of assistance to redundant employees in finding new employment) if they were either entitled to a notice period of at least 30 weeks (general scheme) or if they were at least 45 years old with at least one year's service (special scheme). Recently, a third scheme has been added for employees whose employment ends due to medical force majeure, invoked by the employer.

It can be invoked without the employer needing to serve notice upon or pay an indemnity in lieu of notice to the employee if, after having followed a reintegration procedure, it has been established that the employee is permanently incapable of performing their job and reintegration appears impossible or has failed.

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BOSNIA AND HERZEGOVINA

Interpretation issues in the Federation of Bosnia and Herzegovina

There were no significant changes to labour regulations in Bosnia and Herzegovina in 2019. However, due to changes introduced in 2018 in the Federation of Bosnia and Herzegovina, a very important interpretation issue has arisen in practice relating to the procedure for protecting an employee's rights before the employer and the courts.

Before the amendments to the Labour Law were adopted in 2018, the original 2016 Labour Law dictated that an employee seeking court protection of their labour-related rights must first ask for this protection via a preliminary procedure held directly before the employer, within 30 days of learning of the alleged violation to their rights. The preliminary procedure could not last more than 30 days. Once the preliminary procedure had been finalised, the employee had 90 days to approach the court in a standard litigation procedure. The only exception to these procedural rules were financial claims from employees for which no preliminary procedure was prescribed and the employees were free to go directly to the court. Financial claims were limited to a three-year statute of limitation period. This procedure has been transcribed from the previous labour regulations in the Federation of Bosnia and Herzegovina. Therefore, the procedure was widely recognised in practice and without any significant issues.

The amendments in 2018 modified the relevant provisions describing the procedural requirements. Cases concerning the termination of employment fell under the exception to the preliminary procedure whereas financial claims were no longer exempt. At the same time, the statute of limitation period of three years for financial claims was not amended. Neither were the remaining deadlines; the 30-day maximum duration of the preliminary procedure and the 90-day deadline to initiate a court procedure.

The obvious questions that immediately arose, and which remain unanswered, are:

- is this amendment in direct contradiction to the three-year statute of limitations, since an employee can no longer request three years' worth of financial claims (e.g. three past holiday allowances) but instead has to initiate a preliminary procedure before the employer every 30 days only for the claims arising from this period;
- upon the enforcement of the amendments to the Labour Law, should the employee immediately notify the employer of all open claims and if so, would claims older than 30 days be eligible?;
- should the court apply one requirement for claims brought before the enforcement of the amendments to the Labour Law, and another requirement to claims raised after the enforcement of the amendments to the Labour Law? Or should the court continue proceedings in accordance with the procedures and premises from the 2016 Labour Law; and
- is it reasonable to expect employees to initiate a fresh litigation procedure every month to avoid losing a timely claim and is it reasonable to burden the courts with this number of procedures?

The amendments remain in force despite a number of legal practitioners bringing this issue to the attention of the Federal Ministry of Labour and Social Policy. The Municipality Court in Tuzla has deferred the question to the Supreme Court of the Federation of Bosnia and Herzegovina for a formal interpretation, which would set out the mandatory practice for all courts.

In November 2019 the Supreme Court of the Federation of Bosnia and Herzegovina initiated an appellate procedure before the Constitutional Court of the Federation of Bosnia and Herzegovina arguing that the Supreme Court does not consider the specific amendment to be in accordance with the Constitution of the Federation of Bosnia and Herzegovina.

It remains to be seen how the Constitutional Court will decide the outcome. If the appellate procedure does not result in the annulment of the amendment, it also remains to be seen how the Supreme Court will take its final stance on this issue.

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CYPRUS

General Healthcare System

A new universal general healthcare system entered into effect in 2019. It is financed by contributions payable by employers, employees/beneficiaries, and the state. The rate of contribution for employees is 5.2% of earnings, comprising 1.85% paid by the employer, 1.7% paid by the employee, and 1.65% paid by the state. From 1 March 2020, the rate of contribution for employees will increase to 10.25% of earnings, comprising 2.9% paid by the employer, 2.65% paid by the employee, and 4.7% by the state.

Social Insurance Fund

The rate of contribution for employees to the Social Insurance Fund increased on 1 January 2019 to 21.5% of 'insurable earnings' (i.e. income up to a maximum of €1.051 gross weekly income or €4.554 gross monthly income). The employer pays 8.3%; the employee 8.3%; and the state 4.9%.

Extended statutory protection of adoptive mothers from dismissal

The 2018 amendment to the Protection of Maternity Law extended the period during which pregnant women are protected from dismissal from three months to five months after the end of their maternity leave. Since 1 March 2019, this has been extended to cover adoptive mothers.

British workers in Cyprus after Brexit

In July 2019, the Right of Some Nationals of the United Kingdom and the Members of their Family to Move and Reside Freely in the Republic Law of 2019 was published in the Official Gazette of the Republic. The law is expected to come into effect on the date of the UK's formal withdrawal from the EU, but the Council of Ministers must determine the precise date.

In a no-deal scenario, UK nationals who have already exercised their lawful right to reside in Cyprus on the basis of EU free movement rules will have the right to reside permanently in the Republic of Cyprus under the following circumstances:

- where they have achieved five years' continuous residence;
- where a person retires, they have been working for 12 months in the Republic of Cyprus prior to retirement, and have had three years of continuous residence;
- where the person has stopped working because of a permanent disability, but has already achieved two years of continuous residence; or
- where an employee has completed three years of continuous employment and residence, and exercises employed or non-employed activity in another Member State, but maintains their place of residence in Cyprus and returns to it at least once a week.

For the calculation of the period(s) required for the right to permanent residence, the periods of legal residence or employment prior to, and after, the date of withdrawal of the UK from the EU are counted together.

Any UK nationals who do not exercise their right to reside in the Republic of Cyprus on the basis of EU free movement rules prior to the date of withdrawal shall, by default, be considered as third country nationals, and shall be subject to general immigration law provisions.

If a deal is reached there might be a transitional period during which UK nationals would be able to exercise such rights on the basis of EU free movement rules, even after withdrawal.

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CZECH REPUBLIC

Amendment to the Act on the Residence of Foreigners

The amendment to the Act on the Residence of Foreigners simplifies the rules for the entry and residence of students and scientists. It introduces long-term residency for university students who have completed their studies in the Czech Republic, and for researchers who complete their research activities to allow them to seek employment or start a business. They may reside in the Czech Republic for up to nine months.

The amendment also requires foreigners to attend adaptation-integration training upon their arrival in the Czech Republic. As of 2021, this requirement will apply to most newly-arrived foreigners who have long-term or permanent residence permits. An exemption will apply, for example, to foreigners residing in the territory of the Czech Republic under a long-term residence permit for the purpose of study; to internally transferred employees (under a transfer card); and to people aged under 15 and over 61.

A special work visa has also been introduced, which will be issued by the Ministry of the Interior for a period of up to one year, without an option to extend. The Government will decide, based on labour market demand, whether such visas will be granted and it will also determine the source countries, economic sectors, and volume of migration. This will enable the Government to be flexible in responding to the labour market situation. These visas will not be issued if there is sufficient Czech labour available in the labour market.

Moreover, the amendment grants the Government statutory authorisation to issue quotas for economic migration. The Government will be free to set transparent quotas for the collection of visa applications or to issue long-term residence permits for certain gainful purposes, which are to be further subdivided into categories corresponding to the qualitative definition of migration needs. In particular, there will be a visa of more than 90 days' duration for business purposes; a long-term residence permit for investment; and an employee card.

Other measures concern foreigners from countries outside the EU who come to the Czech Republic for work or family purposes. Another new aspect concerns the ability to terminate, via an accelerated procedure, the visa/permit of a foreigner who is a repeat offender, namely after a third conviction for an intentional crime. The termination of an individual's residence will no longer be reviewed in appeal proceedings. However, they will be able to apply directly to the administrative court, which will be obliged to make a determination within 90 days.

Most of the new rules took effect on 31 July 2019.

Introducing the electronic sickness certificate

The amendment to the Sickness Insurance Act contains changes related to the introduction of a so-called e-Sickness Certificate. From 1 January 2020, doctors will be required to issue temporary employee sickness certificates, for both employers and social security authorities, via electronic means only. The amendment requires employers to send the documents necessary for calculating sickness benefits and information on the method of wage, salary or fee payment to the local social security authorities in electronic form.

The amendment also allows employers to request from the Czech social security authorities automatic 'proactive notifications' of an employee's temporary sickness, which should facilitate and accelerate checks on employees on temporary sick leave.

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DENMARK

Transitional year for the new Holiday Act began on 1 September 2019

The Danish Parliament passed a new Holiday Act that changes the present holiday entitlement scheme to a concept of concurrent holiday, effective from 1 September 2020. This means employees may only take holiday during the year in which the holiday is accrued, and will no longer be able to carry over holiday accrued in one year to the next.

On 1 September 2019, a year-long transitional or 'freezing' period was introduced to facilitate the transition to the new rules and to ensure that an overlap between the two schemes would not enable employees to take 10 weeks of holiday in one year.

All holiday accrued during the transitional period will be 'frozen'. This means that the holiday accrued during this period can neither be taken nor paid to the employees. The Employees' Fund for Residual Holiday Funds will oversee the administration of all holiday accrued during the transitional period. When the employee leaves the labour market, the fund will disburse the accrued amount to the employee with the addition of annual interest. During the transitional period, employees will be able to use any holidays that they have accrued in previous calendar years.

Amendment to the Danish Act on Equal Treatment

The Danish parliament has passed an amendment to the Act on Equal Treatment, which entered into force on 1 January 2019. The amendment entails that a free and informal tone in the workplace cannot serve as a significant argument when assessing if the prohibition against sexual harassment has been violated. Furthermore, the amendment has resulted in a higher level of compensation for breaches of the Act.

Secret audio recordings made by employees do not automatically constitute a breach of contract

The Supreme Court of Denmark has recently concluded that an employee's secret audio recording does not automatically constitute a breach of contract. The case concerned a customer consultant who had been summarily dismissed following a meeting at which the consultant had thrown a computer mouse and had audio recorded the meeting without the other participants' knowledge.

The Danish Supreme Court found that the summary dismissal could not be justified by the consultant throwing a computer mouse, as it had occurred during a heated debate, and it could not be established that the consultant had intended to hit anyone.

With respect to the secret audio recording, the Supreme Court stated that a balancing exercise had to be carried out between the employee, the employer and other affected persons. It should be emphasised whether the employee had a special reason to ensure proof of an infringement of their rights. In the specific circumstances, the Supreme Court found the summary dismissal to be unjustified.

Furthermore, the Supreme Court stated that, even though a secret audio recording does not in itself constitute a breach of the employment contract, the subsequent storing and use of the audio recording may, in the circumstances, constitute a breach.

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ESTONIA

Changed paternity leave rules

As of July 2020, fathers will be entitled to paid paternity leave of 30 days (increased from 10 days) and can use such leave (either consecutively or in separate parts) any time from the 30 days preceding the estimated date of birth until the child reaches three years of age.

Amendments to the Occupational Health and Safety Act

The Occupational Health and Safety Act went through considerable changes in 2019, with the aim of decreasing the administrative burden for employers and offering a legal framework better suited for the needs of employees as well as employers.

Employers no longer have to inform the Labour Inspectorate about the commencement of activities, changes in their activity licence or forming a working environment committee. A working environment committee, when formed, is no longer required to file regular activity reports to the Labour Inspectorate.

The Occupational Health and Safety Act has been supplemented by a regulation addressing psychosocial hazards in the working environment. Psychosocial hazard is defined as: risk of an accident or violence; unequal treatment; bullying and harassment at work; work not corresponding to the abilities of an employee; working alone for an extended period of time, monotonous work and other factors related to management; organisation of work; and working environment that may affect the mental or physical health of an employee. Employers are required to consider psychosocial hazards upon conducting the risk analysis of the working environment and must apply measures to prevent or reduce such risks.

Further amendments involve the rules applicable to health checks. The period for conducting a health check upon commencement of work has been extended from one to four months. In addition, employees who are unaffected by occupational hazards are no longer subjected to health checks by law.

Forming a working environment committee is no longer required in companies with fewer than 150 employees, unless the Labour Inspectorate requests this (due to specific risks present in the working environment).

The rules of investigation of minor occupational accidents have been slightly relaxed – such accidents no longer need to be reported to the Labour Inspectorate. However, accidents resulting in temporary incapacity for work, serious bodily injury, danger to life or death of the employee must still be thoroughly investigated and reported to the Labour Inspectorate.

The amended law also allows the employer to apply contractual penalties against employees for breach of occupational health and safety rules. Penalties must be agreed upon in writing, cannot exceed one month's salary and can be applied only if the employer has provided required occupational health and safety training to the employee.

Finally, penalties for failure to conform to the occupational health and safety regulations have increased significantly and non-compliant companies can now be fined up to €32,000, more that ten times higher than the earlier maximum fines.

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FINLAND

Working Hours Act

Comprehensive reform of the Finnish Working Hours Act came into force on 1 January 2020. The aim of the new Act is to update the legislation to meet the needs of modern working life. The most significant change is the possibility to agree a flexible working time arrangement. Employees working under this flexible working time arrangement will have the right to decide the timing and work location for at least 50% of their working time, whereas the employer will define the work duties and the targets thereof as well as the schedule for the work.

Furthermore, under the new Act, the provisions concerning the maximum amount of annual overtime will be replaced with a maximum amount of total working hours, including overtime. The employee's maximum overall working hours shall not exceed, on average, 48 hours per week in a period of four months. In addition, new provisions introduce more general flexibility and extend the possibility of companies without a collective bargaining agreement using working time banks.

Annual Holidays Act

Amendments to the Finnish Annual Holidays Act entered into force on 1 April 2019. The changes ensure the employee's right to four weeks' paid annual leave in cases of absence from work due to sickness or medical rehabilitation. The Act was updated to implement the minimum requirements laid down by the judgments of the Court of Justice of the European Union.

In addition, the period during which accrued annual leave must be granted as a holiday instead of replacing it with holiday compensation was extended. The aforementioned concerns situations where the annual leave has been postponed due to the employee's sickness or a comparable reason.

Employment Contracts Act and Unemployment Allowances Act

Amendments with regard to termination due to grounds arising from the employee or related to the employee's person (for example, breach or neglect of duties) entered into force in July 2019. Under the amended Finnish Employment Contract Act, when determining whether proper and weighty reasons for termination exist, the number of employees working for the employer is now specified explicitly as a factor that has to be taken into account in the overall assessment of the situation.

Furthermore, an employee's right to unemployment benefits under the Unemployment Allowances Act is now enhanced in situations where employment is terminated on grounds arising from the employee or related to the employee's person.

Act on the Protection of Privacy in Working Life

Due to the General Data Protection Regulation (GDPR), some amendments were made to the Finnish Act on the Protection of Privacy in Working Life. Amendments entered into force on 1 April 2019 relating to the retention of information on an employee's health. This information must be deleted immediately when legitimate grounds for processing cease to exist. The grounds and need for processing should be evaluated at least every five years.

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FRANCE

French labour law has been subject to several major reforms over the last five years, which have provided much-needed flexibility and security to French employment law.

The latest reforms brought by the Macron ordinances and the Loi PACTE have changed the landscape of social law and are the first step in a larger plan to reinvigorate the French economy and attract foreign investors.

The Macron reform entered into force in September 2017, and one of its major measures – the creation of the Social and Economic Committee (CSE) – became fully effective on 1 January 2020. Since that date, all French companies meeting the headcount requirements (i.e. at least 11 employees during 12 consecutive months) must implement a CSE.

New in 2019/2020: The Decree n°2019-787 dated 26 July 2019 entered into force on 1 November 2019 relating to unemployment insurance.

The measures contained in this Decree, and presented below, do not come into effect on the same dates. Most of them have been applicable since 1 November 2019, but others will only become effective in 2020 or 2021.

Conditions relating to unemployment insurance

The minimum working time required to receive unemployment benefits has increased from four months of work (over the last 28 months) to six months of work (over the last 24 months). This measure came into effect on 1 November 2019.

Calculation of unemployment benefit

The Government wishes to avoid situations in which job seekers earn more money during a period of unemployment. That is why the Decree provides for a new system to calculate unemployment benefits. From April 2020 the reference daily wage, based on which the amount of unemployment benefit is determined, will be calculated by taking into account the total number of days (both those worked and those not worked) from the first day of employment (previously it only accounted for the number of days worked).

Decrease of unemployment compensation for executive employees

This reform reduces the compensation of the most highly paid executive employees. Those receiving more than €4,500 euros gross per month will receive a 30% reduction to their allowance from the seventh month of compensation. However, this measure does not apply to unemployed individuals aged over 57 years old. These new rules came into force in November 2019.

Resignation

An employee who resigns is not entitled to unemployment indemnification (except in the case of 'legitimate resignations'). However, the French President Emmanuel Macron decided to encourage the mobility of employees who would like to change their profession or start their own business by providing them with a replacement income under certain conditions. To qualify, these employees must be fit for work, seeking employment, and have a professional reconversion project that requires training or have a plan to create or take over a company. The job seeker must take the necessary steps to complete their project, under the control of the unemployment agency. Finally, the employee must have worked in the same company for the last five years. This rule entered into force on 1 November 2019.

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JEANTET

GERMANY

New German Trade Secrets Act

On 26 April 2019, the German Trade Secrets Act came into effect, implementing the EU Directive on the Protection of Undisclosed Know-How and Business Information. The purpose of the new Act is to protect trade secrets from unlawful assumption, use and disclosure.

What is new?

Definition of a 'trade secret'

Information qualifies as a trade secret if:

- the information is not generally known or readily accessible and, therefore, has commercial value;
- it has been subject to reasonable measures to keep it secret; and
- there is a legitimate interest of confidentiality.

A commercial value can be presumed in cases where certain interests of the person lawfully controlling the information may be harmed by the unlawful assumption, use or disclosure of the information. Legitimate interests exist if the information concerns the respective person's scientific and technical potential, business or financial interests, strategic positions or ability to compete.

The requirement to take reasonable measures to preserve trade secrets is new. The requirement poses challenges for companies, as they will have to comply with the provision in order to protect sensitive information as a trade secret. Reasonableness can be determined by looking at factors such as: the value of the trade secret; the nature of the information; the value of this information to the company; and the size of the company.

Reverse engineering

The Act now allows the observation, examination, dismantling or testing of a product or object that has been made publicly available or which is in the legitimate possession of the person observing, examining, dismantling or testing the product.

Court classification

The Act provides for the possibility of a court classifying information as confidential. The parties of a litigation can apply for such a court order. The information then has to be treated as confidential during the entire duration of a trial and, generally, even after the trial. On the request of either party, the court can determine that only a limited number of people will be allowed to take part in such a trial.

What do trade secret holders have to do?

Companies should take measures to protect their sensitive information and to ensure this information can be considered a 'trade secret' within the scope of the Act. Therefore, companies should determine what their status quo is and trade secrets should be categorised in terms of importance. Measures of protection can be:

- technical measures;
- organisational measures; and
- legal measures.

The Trade Secrets Act constitutes a comprehensive body of regulations. Although the Act strengthens the protection of the trade secret holder, it also increases the requirements regulating the protection of trade secrets.

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HEUKING KÜHN LÜER WOJTEK

GREECE

Abolition of recently adopted legislative measures

Article 117 of Greek Law 4623/2019 abolished retroactively the following two legislative measures:

- Article 9 of Greek Law 4554/2018 (liability for third party contractors' employees) on the joint and several liability of an engaging entity for the compliance of its third party contractor's obligations towards the contractor's employees; and
- Article 48 of Greek Law 4611/2019 (valid ground for dismissal) that provided that an employee's dismissal should be upheld only if there was a valid reason for the termination of the employment agreement connected either with the employee's capacity or conduct, or with the operational requirements of the employer, as per the meaning of Article 24 of the Revised Social European Charter.

Changes to individual and collective labour agreements

Greek Law 4635/2019 introduced the following changes:

- a delay of salary payment beyond two months, or the transfer of the employee abroad shall be considered a unilateral change of the employment contract to the detriment of the employee;
- any part-time or rotational employment contract should be concluded in writing, and within eight days of its conclusion the competent labour authorities should be notified. Otherwise the individual shall be considered to be a full-time employee. Regarding overtime, the part-time employee shall be paid at a rate of 12% above the agreed wages for each additional working hour. The part-time employee is entitled to refuse the additional work in the usual way, which cannot exceed the full-time daily working hours of a comparable employee;
- for UK-based companies that have posted employees to Greece, or that will be posting employees post-Brexit, and until 31 December 2020, the Greek implementing provisions of Council Directives 96/71/EC and 2014/67/EU shall apply;
- the national, local and sectoral collective labour agreements may provide for special terms, or exclude from the application of specific terms, workers who are employed in social economy enterprises, non-profit legal entities and enterprises facing serious financial problems, such as companies in pre-bankruptcy, bankruptcy, or mediation or extra-judicial settlement or restructuring status;
- a company's collective labour agreement shall supersede the sectoral collective labour agreements in cases of enterprises in pre-bankruptcy or bankruptcy, or mediation or extra-judicial settlement or restructuring status, if the sectoral collective labour agreement does not provide for any exceptions. The national sectoral or professional collective labour agreement shall not supersede the corresponding local labour agreement;
- a General Registry of the Employees Trade Unions shall be set up in the Ministry of Labour and Social Affairs;
- decisions of the general assemblies and other management bodies of the employees' trade unions can be taken by electronic voting, on terms ensuring transparency and secrecy; and
- during resolution of collective labour disputes, unilateral recourse to arbitration, as a final and auxiliary dispute resolution means, is permitted where the collective dispute concerns:
  - enterprises of a public nature of welfare; or
  - the conclusion of a collective labour agreement, where the negotiations between the parties have failed definitively and its resolution is required for an existing reason of a general social or public interest related to the operation of the Greek economy.

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HUNGARY

Major changes to the Labour Code

The most important change to the Labour Code in 2019 was the introduction of the new, much disputed and controversial voluntary overtime rules, labelled the 'Slavery Act' by critics. The legislation increased the yearly cap on overtime from 250 to 400 hours per annum.

The new law was established to try and resolve the issue surrounding the lack of sufficient employee numbers in Hungary. It sparked nationwide protests and was reported in the foreign media.

What is the 'Slavery Act'?

Increased cap on overtime

As of 1 January 2019, in addition to the 250 hour limit on overtime for full-time workers, another maximum of 150 hours overtime may be ordered on the basis of an agreement between an employer and the employee. The number of overtime hours will be applied proportionately for part-time or fixed-term workers and where employment commences part way through a year.

The agreement between employers and employees on voluntary overtime must be evidenced by individual, written agreements. Employees have the right to terminate the agreement at the end of the calendar year.

Extension of working timeframe

Under Hungarian law, employers may define the working time of an employee in terms of the 'banking' of working time.

The new legislation raised the overtime banking period that may be agreed upon in a collective bargaining agreement from one to three years, when such a period is justified due to objective or technical reasons or reasons related to the work organisation.

In practice, it will be possible for an employer to only pay the employee for overtime worked in a single lump sum after three years.

Critics have argued that the increase in annual overtime to 400 hours combined with the increase of the reference period to 36 months (from 12 months), could have the greatest impact on the most vulnerable employees.

New rules on handling employees' personal data

As of April 2019, the Labour Code's general provisions on the processing of employee data was also amended in an effort to comply with the EU General Data Protection Regulation (GDPR). A new chapter set out rules and offered clarification on the handling of employee data and on the control and monitoring of employees. It also set out rules regarding the handling of employees' sensitive data, such as biometric and criminal data, and confirms that keeping copies of employee identification cards and other documents is prohibited. The new rules concur with earlier guidelines published by the Hungarian Data Protection Authority (NAIH).

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ICELAND

A new scheme for determination of salary for senior civil servants

Historically, a Salary Board has determined the salary level for certain civil servants and elected representatives, namely Members of Parliament, judges, prosecutors, ministers, permanent secretaries, ambassadors, the Governor of the Central Bank of Iceland and some other civil servants.

In February 2018, a working group appointed by the Government issued a report that compared various schemes used to determine the salaries for senior civil servants in different countries. The report proposed amendments in determining such salaries in Iceland. The working group found that decisions made by the Salary Board frequently caused division in Icelandic society. Therefore, the report concluded that the current arrangement was unsuccessful in achieving social cohesion.

The working group considered measures were necessary to prevent salary development being led by senior officials and elected representatives; to equalise salary development and subsequently lessen division caused by salary rulings, and to make the salaries for these positions more transparent and predictable.

To that end, the working group put forward seven proposals:

- it proposed that the salaries of senior civil servants and Members of Parliament should not be determined by the Salary Board or a similar body;
- the salaries for Members of Parliament, the President of Iceland and ministers should be determined by law. Additionally, the transparency of other occupational payments should be increased;
- the salaries of judges and the public prosecutor should be decided by law;
- all salaries decided by law will be reconsidered on 1 May every year;
- the redetermination should be based on the relative increase in salary averages as it appears in figures published by Statistics Iceland;
- to ensure the independence of the Central Bank and the Financial Supervisory Authority of Iceland (the FSA), which will be united from 2020, the Supervisory Board of the Central Bank and the Board of Directors of the FSA should decide the salaries of their senior executives; and
- others that were under the Salary Board's jurisdiction will negotiate their salaries or they will be decided by the Government Employees Act No. 70/1996.

The Salary Board has now been abolished. Currently, new legislation is being drafted in the Ministry of Finance and Economic Affairs. Pursuant to a temporary provision in Act No. 60/2018, until the new legislation has been passed, the salaries for positions previously under the Salary Board's jurisdiction will change according to relative increases to the salary average, as it appears in the figures published by Statistics Iceland.

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IRELAND

From an employment law perspective, 2019 has been dominated by a focus on work/life balance, ranging from key legislative developments from the perspective of family leave and gender pay gap reporting, to a landmark Supreme Court case that clarified the law when it comes to accommodating employees with a disability.

Parental leave

Against the backdrop of a proposed EU Directive on improving work/life balance, there have been a number of important legislative developments in Ireland focusing on family leave this year – including two Acts in relation to parental leave entitlements.

The Parental Leave (Amendment) Act 2019 increased the parental leave entitlement by an additional eight weeks (to a total of 26 weeks) and increased the eligible age of the child from eight to 12. From a practical perspective, the additional eight weeks' parental leave is to be implemented in two stages: an additional four weeks' parental leave from September 2019, followed by a second set of four weeks' parental leave from September 2020.

The Parent's Leave and Benefit Act 2019 introduced paid parent's leave for employees in Ireland for the first time. Subject to Pay Related Social Insurance (PRSI) contributions, as of November 2019, during the first year of a child's life both parents will have access to two weeks' paid parent's leave. This will be paid by the state. It will be up to individual employers to determine whether or not to 'top up' the state amount.

Gender pay gap (GPG) reporting

The much anticipated draft text of the Government's GPG Information Bill was published in April 2019 and is expected to come into law by the end of 2020.

The bill envisages that employers with more than 250 employees will be required to report and publish their GPG data. This threshold will ultimately drop to employers of more than 50 employees within three years.

The issue of GPG reporting is firmly on the Board agenda in terms of brand reputation, recruitment and retention of staff. Employers are advised to take a number of practical steps to prepare before the bill becomes law – including a 'dry run' audit to analyse and stress-test areas within the business that may be contributing to the existence of any GPG.

Reasonable accommodation

The Supreme Court weighed in on the long-running legal saga of Daly v Nano Nagle School to clarify the extent of an employer's duty to reasonably accommodate a disabled employee. Following last year's Court of Appeal decision, the Supreme Court appears to have imposed a more onerous burden on employers – requiring consideration of a redistribution of core duties as well as more tangential tasks associated with a role, but confirming that an employer does not need to create a new role.

While clarity on the extent of an employer's obligation to reasonably accommodate individuals with disabilities is welcomed, it may be difficult for an employer to draw a line between implementing appropriate measures and ultimately creating a new role. The issue to be addressed will be at what point the extent of an employer's duty tips the balance from the provision of reasonable accommodation to becoming a disproportionate burden. There is no one-size fits all approach and employers will need to approach each scenario on a case-by-case basis.

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ITALY

Digital Labour Platform work

On 3 September 2019, the Italian Government issued Law Decree 101/2019, with amendments by Law 128/2019 (the Riders' Law), through which:

- changes have been made to certain rules applicable to contracts for self-employed individuals carrying out activity on a continuous basis; and
- specific measures have been introduced in favour of individuals carrying out mainly food delivery activities in urban areas, using bicycles or motor vehicles, and whose activities are organised through digital platforms (the 'Riders').

Before the Riders' Law came into force, employment rules applied only to self-employed workers where:

- activities were personally and exclusively rendered by the self-employed individual on a continuous basis; and
- the activities were organised by the principal with respect to time and place of work.

The Riders' Law has partially changed such provision. The employment rules apply by operation of law if the activities are:

- mainly (and not exclusively) rendered by the self-employed individual on a personal and continuous basis; and
- organised by the principal (disregarding time and place of work).

Furthermore, the Riders' Law covers the provision of activities organised through digital platforms (defined as programs and procedures used, regardless of where the company is established, to organise delivery activities by setting the price of the goods and the performance of the delivery activity).

Notably, regardless of the above provision, under Italian Law self-employment relationships trigger the risk that (depending on the circumstances, e.g. how services are rendered or the degree of autonomy of the self-employed individual) if a de facto employment relationship is performed, the individual may claim employment status.

The Riders' Law introduced a specific section under Legislative Decree 81/2015, in order to set minimum standards of rights for the Riders:

- the Riders' agreements should be made in writing for the purpose of legal evidence. The Riders should be provided with any useful information for the protection of their interests, rights and safety;
- the criteria used to determine Riders' total wages can be fixed by national collective agreements, taking into account how the activities are performed and organised by the principal. If no such criteria are included in the national collective agreements, Riders wages may not be calculated on the basis of the number of deliveries made. The Riders should be paid a minimum hourly wage calculated on the basis of the minimum wage set out in the national collective agreements applied in similar or equivalent sectors;
- Riders should be paid an integrative minimum of 10% (set by the national collective agreements or, lacking these, by a ministerial decree) for deliveries conducted during night hours, holidays or in adverse weather conditions;
- the refusal of calls shall not trigger the exclusion from the digital platform through which their activities are organised nor reduce the number of hours worked by Riders;
- there should be mandatory insurance for accidents and professional diseases, and for health and safety provisions; and
- anti-discriminatory rules and provisions ensuring employee freedom and dignity apply to the Riders.

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LATVIA

Amendments to the Labour Act

With effect from 1 May 2019, Parliament adopted amendments to the Labour Act. The amendments state that if a general agreement is concluded in an industry that stipulates a material increase in the minimum wage or hourly rate established by the Government, at the rate of at least 50% above the minimum wage or the hourly rate, the amount of the additional payment for overtime work can be set at less than that prescribed by the general provisions of the Labour Act, while no less than at the rate of 50% of the hourly rate of the wage set forth for the employee, or the lump sum payment rates for the volume of work performed.

On 7 March 2019 amendments to the Labour Act were adopted by the Parliament with regard to employees' leave due to training with the National Guard or military training with the army reserve. These amendments came into effect on 4 April 2019.

Act on the Protection of Trade Secrets

The Act on the Protection of Trade Secrets came into effect on 1 April 2019. The purpose of the Act was to ensure more efficient protection of trade secrets. Protection of trade secrets is crucial, both during employment and after termination, because employees often possess sensitive information about a company.

The Act defines the notion of trade secrets, including when obtaining a trade secret is considered lawful. It also prescribes certain legal remedies in cases of unlawful acquisition, where use or disclosure of a trade secret is established. Such remedies include destruction or return of materials containing the trade secret, recall or withdrawal from circulation of the infringing goods; elimination of infringing elements from the infringing goods; destruction of infringing goods and publication of a judgment.

Amendments to the Labour Protection Act

Important amendments to the Labour Protection Act were adopted by Parliament on 3 October 2019 regarding employees working outside the office, otherwise known as 'remote working'.

Until now, it has been possible for employers and employees to agree a remote working arrangement. However, remote working was not defined by Latvian legislation. The adopted legislation now contains a definition of remote working, which describes remote working as "performing work that an employee might normally carry out at the bequest of the employer at another location outside the undertaking, including work performed using information and communication technologies". Remote working arrangements are still agreed between the employer and the employee.

The employer remains under an obligation to carry out a risk assessment of the working environment. However, the amendments state that the employee performing the remote work is obliged to collaborate with the employer in assessing the risks of the working environment. It is the individual's responsibility to inform their employer about any circumstance at the remote working location that might impact their health and safety.

In addition, when organising labour protection at the undertaking, employers will be able to use information technology solutions such as tailor-made electronic recording systems for the assessment of work environment risk or the training of employees. The employer must ensure that Government supervisory and monitoring agencies are able to access electronic documents related to labour protection.

These amendments will come into effect on 1 July 2020.

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LITHUANIA

Taxation of employment income

From 1 January 2019 social insurance contributions of the employee and employer were combined.

The employee (the insured person) pays social insurance contributions for pension, sickness, maternity and healthcare. The employee's general rate of social and health insurance contributions is between 19.5% and 22.5%. The general rate is comprised of:

- social security contributions of 12.52% (a ceiling of €136,344 per year applied in 2019, which will increase to circa €104,300 in 2020 – tax does not apply to the amount exceeding this threshold);
- health insurance contributions of 6.98%; and
- contributions to the second pillar pension fund of up to 3%, as chosen by the employee – the above ceiling applies in 2019 and 2020.

The employer (the insurer) is only liable to pay social insurance contributions for unemployment, accidents at work and occupational diseases. The employer's general rate of social insurance contributions is just 1.45% of an employee's gross salary (the above ceiling applies in 2019 and 2020).

Furthermore, new contribution rates for the Guarantee Fund and Long-Term Employment Fund were introduced. An employer has to pay contributions at the rate of 0.16% to both funds (the above ceiling applies in 2019 and 2020).

In addition, progressive rates of personal income tax (PIT) were introduced. The rate depends on the annual employment-related income received. A PIT rate of 20% is applicable to employment-related income not exceeding €136,344 per year in 2019, and this will increase to approximately €104,300 in 2020. A PIT rate of 27% is applicable to employment-related income exceeding these thresholds.

Whistleblower Protection Law

On 1 January 2019 the new Whistleblower Protection Law came into effect, finally addressing the lack of effective whistleblower protection. Its purpose is to clearly establish the rights and duties of whistleblowers, including the basis and forms of their legal protection, the means of protection available to them, and incentives and assistance so that they can report violations of law.

The new law forbids any negative action being taken against those who have reported a violation of law. Negative actions include: dismissal from work; being moved to a lower position or another workplace; use of intimidation; harassment; discrimination; limiting career opportunities; a reduction in salary; and passing negative information about the person to third parties. Whistleblowers are entitled to free legal assistance, rewards for valuable information, and are exempt from liability for their participation in unlawful activity.

Remuneration in job advertisements

From 27 July 2019 employers must provide information about the amount and/or the range of basic remuneration (whether hourly, monthly, or annual) offered to potential employees. The aim is to achieve transparency in the employee remuneration system.

This new requirement applies to all positions and to all forms of job advertisements including advertising portals, company websites and LinkedIn.

Public holidays

Parliament has expanded the list of public holidays by adding an additional day – 2 November – Commemoration of all the Faithful Departed (All Souls' Day). This change is effective from 1 January 2020.

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MONTENEGRO

The Parliament of Montenegro adopted a new Labour Law on 24 December 2019, which entered into force on 7 January 2020. The General Collective Agreement, which was previously declared to be in force until 30 June 2019, was amended and its application is extended until the end of 2020. Interesting changes have been introduced which are explored below.

The new Labour Law

During 2018 and 2019 significant steps were made regarding the adoption of the new Labour Law. Following a period of intense discussion, the final draft of the new law was finalised in the last quarter of 2019. Although it caused considerable controversy, the Government reported that it is fully harmonised with EU legislation. The changes effectuated under the new law are summarised below:

- there is an obligatory form for consensual termination of employment and the signatures have to be certified before a notary public;
- the new law introduces a four-year limitation period for claims arising from employment, instead of the existing 'no statute of limitations' rule;
- the maximum length of a temporary employment agreement has been extended from 24 to 36 months;
- it will no longer be possible for employees to sell unused annual leave;
- salaries have to be paid exclusively into bank accounts;
- employers will not be able to terminate the employment of temporary employees when the employee is pregnant – no matter what stage the pregnancy is at, and the employment must continue up to one year from the child's birth;
- the new law introduces 'distance working' as well as 'working from home'; and
- there are significant changes to the rules surrounding publishing job titles and disciplinary proceedings against an employee.

Non-working Sunday

In autumn 2019, the law on Domestic Trade introduced an obligatory non-working Sunday rule for employees working in retail – this has had a huge impact on society in general. Large shopping malls are now closed on Sundays, as are grocery stores and markets. The change was generally well received by the public.

Reduced contributions to health insurance

The Parliament of Montenegro adopted amendments to the law on Compulsory Social Security, which reduces an employer's health insurance contribution from 4.3% to 2.3% of gross earnings.

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NETHERLANDS

Reforms to Dutch employment law

On 1 January 2020 the Balanced Labour Market Act (Wet Arbeidsmarkt in Balans or WAB) came into force. The most important elements of the WAB are:

Introduction of a cumulative ground for dismissal

The introduction of a cumulative ground for dismissal, for use in cases where the facts and circumstances are not sufficient to substantiate one of the other grounds for dismissal. If the employment contract is terminated on this basis, the court may grant the employee additional compensation of up to half the statutory severance pay.

Changes to the statutory severance pay

Service after 10 years will be weighted the same as previous service years: at one third of a month's salary per year of service instead of half of a month's salary per year. Employees will start accruing the payment on the first day of employment instead of after two years. Furthermore, as of 1 April 2020, employers will be compensated for paying the statutory severance pay when they dismiss employees because of long-term illness (lasting at least two years).

Changes to rules around fixed-term contracts

Under the rules in place until 1 January 2020, no more than three consecutive fixed-term employment contracts can be agreed in a two-year period 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 into a permanent one.

Changes for payrolling employees

Employees who are permanently seconded, so-called 'payrolling employees', shall be entitled to – with the exception of pensions – the same terms and conditions of employment as the individuals employed by the legal entity to which the payrolling employees are seconded. In addition, payrolling employees will have the same dismissal protection as workers employed by the legal entity to which the payrolling employees are seconded.

Changes for on-call employees

An employee with an on-call contract no longer needs to comply with a call if:

- the number of working hours is not, or not clearly, laid down in their employment contract (which is the case in so-called zero-hour contracts); and
- the employee is given less than four days' notice of the start of the work. This term can be shorter than four days if set out in an applicable collective labour agreement (the minimum notice is one day).

If the employer cancels the assignment within this period, the employee is entitled to be paid for the hours the assignment would have entailed.

Social security premiums

Employers will pay a lower unemployment social security contribution for an employee with a permanent employment contract than for employees working on fixed-term contracts or on-call contracts.

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VANDOORNE

NORTH MACEDONIA

Internship Law

In May 2019 the Parliament of North Macedonia adopted a new Internship Law, which allows companies to hire interns outwith the educational process.

Any unemployed citizen of North Macedonia under the age of 34 years, who has completed primary education, qualifies for an internship position under the Internship Law. The internship can last between one and six months, and is limited to one internship with the same employer. Intern remuneration is dependent on the length of the internship. The number of interns that the employer can hire depends on the number of full-time employees in the company.

Government subsidises wage increase

The Government of North Macedonia will subsidise contributions for mandatory social insurance for increased wages on the basis of the newly adopted Law for Subsidising Contributions for Mandatory Social Insurance due to Wage Increase. This law is applicable from 1 November 2019 until 31 October 2022.

Contributional subsidising may be used by employers and self-employed people who hold active taxpayer status for the calculation and payment of contributions, and who do not have outstanding liabilities on the basis of gross wages. The law excludes some employers from this measure, such as employers that already use other wage subsidy measures and employers that have been granted financial support for new employees.

The highest subsidised amount is for a net wage increase of up to MKD 6,000 (approximately €100) per month per insured person, and the lowest amount is for a net wage increase of MKD 600 (approximately €10) per month per insured person.

Increased minimum wage

A new minimum wage has been passed in North Macedonia, continuing the growth trend witnessed in previous years. As of December 2019, the minimum wage is MKD 14,500 (approximately €235) per week.

New law on Personal Income Tax

The new law on Personal Income Tax ('PIT Law'), introduced on 1 January 2019, abandons the 'flat' tax rate of 10% and introduces progressive taxation. In addition to a tax rate of 10%, the new PIT Law envisages a rate of 18% applicable to different types of labour-related income and an increased flat rate of 15%, instead of 10%, for various types of capital-related income.

Progressive taxation applies to labour-related income (such as wages and pensions), whereas the 10% rate applies to income up to tax bases of MKD 90,000 (approximately €1,460) monthly or MKD 1,080,000 (approximately €17,560) annually. Income exceeding these amounts will be taxed at a rate of 18%.

The Government of North Macedonia proposed an amendment to the PIT Law, which will effectively put the progressive taxation on hold from 1 January 2020 until 31 December 2022. The proposed amendment is currently proceeding through Parliament.

New Labour Law announced

The Government of North Macedonia announced the development of a new Labour Law, which will introduce important changes predominantly focusing on alignment with EU labour legislation. The draft Labour Law is currently being negotiated by relevant stakeholders. Expectations are that it will be adopted in 2020.

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NORWAY

New regulations regarding permanent employment

New regulations relating to permanent and temporary employment came into force on 1 January 2020. The Working Environment Act, Section 14.9, now defines 'permanent employment' as continuous and indefinite employment, where the employee is given protection against termination of employment and has work security.

The purpose of the regulation is to limit the use of employees hired from temporary agencies, where the employee does not have a guaranteed salary. With the new regulations the employee will be guaranteed a particular monthly salary and the role must coincide with the expected workload that the employer anticipates at the time of taking on the individual. The criteria of predictability may be fulfilled by a specific percentage, an average of expected working hours or a shift plan.

Whistleblowing and #metoo

On 11 June 2019 the Parliament decided that all the provisions in the Working Environment Act Chapter 2A, regarding the right to notify censurable conditions at the undertaking, should be adjusted. The changes primarily make the provisions more accessible and easier to understand. The changes also strengthen the protection of employees making the notification of the censurable conditions. In addition, a new amendment was included in the Equality and Discrimination Act in June, establishing a low threshold to have #metoo cases tried before the Discrimination Committee. Both of these new regulations came into force on 1 January 2020.

Supreme Court decisions on termination of employment

The Supreme Court of Norway concluded in March 2019 that when downsizing, the decision ultimately depends on a total assessment of pre-set criteria. Several employees claimed that their redundancy terminations were invalid and sued their employer, Skanska. Skanska was bound by a collective agreement, which stated that when downsizing, length of service could be deviated from if there are fair grounds for doing so. The employees won the case and kept their jobs. The Supreme Court stated that companies can emphasise criteria such as competence and skill, and stated that such criteria can contribute to the survival of the business or at least strengthen the prospects. However, the principle of length of service has a particularly strong weight in companies bound by collective agreements, and in this particular case there were not fair grounds for deviating from it.

In October the Supreme Court decided on another case regarding the importance of length of service. The main question before the court was whether the selection pool the employer had applied was objectively justified. Following an overall assessment, the court's conclusion was that the number of employees and the composition of the positions included in the selection pool resulted in the relevance of length of service being substantially weakened. The Supreme Court concluded that the termination of employment was invalid. The judgment also shows that the offer of another suitable position does not make up for unreasonable selection criteria or a pool that is not objectively justified.

Both of the decisions are particularly important for employers bound by a collective agreement. Employers not bound by a collective bargaining agreement have additional leeway in the process.

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POLAND

Discrimination and mobbing

Since September 2019 it is easier for employees to invoke provisions on discrimination in disputes involving unequal treatment. The new legal environment means that any unequal treatment of employees constitutes discrimination and all criteria will be valid. The amendments also extended the scope of employees entitled to seek compensation for mobbing (long term, repeated mistreatment, including harassment and threats) at work. The pursuit of compensation is no longer dependent on the employee terminating employment first.

Changes to the civil procedure that affect proceedings involving employees

A major change in the Civil Procedure Code has also amended proceedings that are held with the participation of employees. Since 7 November 2019, at an employee's request, courts of first instance, in their judgement, are able to oblige (among others) the employer to retain the employee until the final conclusion of the proceedings involving that employee.

Minimum wage

In 2020 the Polish national minimum wage will be PLN 2,600 gross per month (€610) for individuals working under employment contracts, and PLN 17 gross per hour (€4) for employees engaged under civil law contracts. This is an increase of 15.6% on the minimum wage in 2019.

Certificate of employment

Due to changes introduced by the General Data Protection Regulation (GDPR), since 29 June 2019 a new template must be used for certificates of employment, which no longer includes the employee's parents' names.

In addition, further amendments to certificates include:

- a longer period during which an employee may apply to the employer for a correction of a certificate of employment (from seven to 14 days);
- clarification that the certificate of employment must be issued on the last day of employment;
- clarification that the penalty ranging from PLN 1,000 to PLN 30,000 (from €234 to €7,042) may be imposed for failure to issue a certificate of employment within the time limit (not for the sole 'failure to issue a certificate', as it was previously); and
- the abolition of the employer's obligation to specify in instructions to an employee the appropriate labour court to which the employee may file a lawsuit for correcting a certificate of employment.

Ending income tax contributions for young people

Since 1 August 2019, young people (aged under 26 years) are exempt from paying personal income tax on gross annual earnings up to PLN 85,528 (€20,240). Until the end of 2019, receiving gross remuneration, without any income tax contributions deducted, was conditional on submitting a declaration stating an individual's intent to take advantage of this benefit. From 2020 these declarations will no longer be required as the remuneration will be automatically paid gross.

Employee Capital Plans (PPK)

Employee Capital Plans (PPK) is a regulated general savings program that aims to encourage individuals to save in order to have financial security once they reach 60 years of age. PPK was introduced in the largest entities (employing more than 250 people) from July 2019. In the following years, the obligation to establish PPK will be extended. In 2021 it will cover the smallest employers (fewer than 20 people) and the public sector.

Employee Pension Schemes

An amendment has introduced new definitions and an electronic form of communication between (potential) participants and employers. There are also new regulations concerning employee pension companies and wider obligations on employers in providing information to current and potential pension scheme participants.

Ban on Sunday shopping

A partial ban on Sunday shopping has come into force in 2020 in accordance with the Sunday Trade Restrictions Act. The number of Sundays that shops are allowed to stay open will decrease from 15 in 2019 to seven in 2020. The trading ban has been gradually phased in since its introduction in 2018.

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PORTUGAL

Amendment of the legal framework on term employment and agency work

Recent changes to the Portuguese Labour Code have severely limited term employment. The measures enacted include the following:

- the maximum duration of unfixed term contracts has been reduced from six to four years;
- the maximum duration of fixed term contracts has been reduced from three to two years;
- while fixed term contracts can be extended three times, the duration of such extensions cannot exceed the initial duration of the contract;
- employers can no longer only hire candidates seeking their first job or long-term unemployed workers;
- only companies with fewer than 250 employees can engage in fixed-term recruitment on the basis that they are launching new activities;
- companies that make excessive use of fixed-term recruitment have to pay additional social security contributions. The additional contribution may be set at a maximum of 2% of the total sum of wages;
- the trial period applicable to permanent employment contracts for candidates looking for their first job and long-term unemployed jobseekers has been extended to 180 days;
- the duration of very short term contracts has been extended from 35 to 70 days per year. The restriction preventing the use of this type of contract outwith tourism or agricultural activities has been eliminated. It is now possible to use it in any activities that are characterised by an irregular production cycle.

The legal framework for agency work has also been amended to:

- introduce a maximum of six extensions when using agency work agreements;
- eliminate the minimum duration of such contracts that excluded the applicability of the user company's collective bargaining agreement (CBA) to temporary workers, meaning agency workers will be covered by the CBA from day one;
- impose a duty on the employer to provide the temporary worker with information concerning the grounds that justify the execution of the agency work agreements; and
- introduce a mandate that if an agency working agreement breaches legal requirements the worker will be deemed a permanent employee of the user company.

Another relevant amendment to the Labour Code prevents an employer establishing a 'bank of hours' by individual agreement with an employee. A 'bank of hours' is a mechanism provided in Portuguese Law under which an employee may work up to two additional hours per day. These hours do not qualify as overtime work. An employee can choose to be compesated with either: rest, payment in lieu (under the standard hourly rate) or an increase in the number of holidays. Going forward, this will only be possible if at least 65% of the workforce approves it (limited to a maximum period of four years), or if provided in the relevant CBA.

In addition to the above amendments, the Portuguese Labour Code also saw the following changes introduced:

- strengthening of Parental Rights;
- introduction of additional duties and liabilities for the employer regarding harassment in the workplace; and
- limits placed on a non-affiliated employee's ability to choose the CBA applicable to their employment relationship.

Forthcoming legislation

In 2020 it is expected that the Government will introduce new legislation implementing additional social security contributions for companies that report an excessive use of fixed term employment in their industry sector.

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ROMANIA

Increased gross minimum base salary

From 1 January 2019 the minimum monthly gross salary increased to RON 2,080 (€440) for an average full-time employee and RON 2,350 (€490) for employees who have one year's service in the field in which they have graduated, working in positions that require higher education qualifications. In the construction industry, the current minimum monthly gross salary for a full-time employee is RON 3.000 (€630). From 1 January 2020 a further increase has been implemented, resulting in RON 2.230 (€470) for an average full-time employee. The other specific amounts remained unchanged for 2020 as the long-term intention is to equalise the three differentiated salaries.

Daily workers

An employee may not perform daily worker activities for more than 120 days during a calendar year, irrespective of the number of companies for which they have worked. There are certain sectors where daily workers can work for a maximum of 180 days during a calendar year (e.g. the wine sector and in agriculture).

A company cannot employ a daily worker for more than 25 consecutive days. Should this be the case, a fixed-term employment contract shall be signed by both parties.

Under the new legislation, daily workers benefit from insurance under the public pension system (except for those in the public health system and in the insurance system for accidents at work and occupational diseases). They are also registered in the special Electronic Register of Daily Workers, established under the new legislation.

Value tickets

The newly adopted methodological norms on the granting of value tickets (vouchers offered to employees for discounted meals, holidays, or entrance to the theatre, cinema, etc.) contain provisions on the validity of tickets. Employers are also obliged to include relevant clauses in the internal regulation (or in the negotiated collective labour agreements).

Additional rest leave days

Employees undergoing an in vitro fertilisation procedure (IVF) now receive an additional, paid, three-day rest leave per annum, which is granted as follows: one day at the time of egg retrieval and two days starting with the date of the embryo-transfer.

News on harassment and equal treatment between women and men

Methodological norms have been adopted setting out certain obligations in order to prevent, combat and eliminate any discrimination based on gender, and to ensure equal opportunities and treatment between women and men. Companies must:

- have a clear internal policy to eliminate tolerance of harassment in the workplace, containing anti-harassment measures; and
- draft an internal procedure with respect to rules for informing competent public authorities about non-compliance with the legislation in this field.

Employers are obliged to keep employees informed of their rights in this area by any possible means of communication (such as programs and/or concrete actions).

The period in which women can opt to continue working until the age of 65

The standard retirement age in Romania is currently 65 years for men and 61 years and two months for women. However, within 30 calendar days (previously 60 days) prior to the fulfilment of the standard age conditions and minimum contributory period for retirement, female employees can opt to carry on working until they are 65.

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RUSSIA

Visa-free entrance to Russia for 2020 UEFA European Football Championship Fan ID owners

Due to the forthcoming 2020 UEFA European Football Championship being hosted in Russia, foreign nationals who have a Fan ID will be able to enter the country without a visa from 30 May 2020 to 3 July 2020. Such foreign nationals are not required to obtain a visa in order to visit Russia for tourist purposes during the aforementioned period established by law.

New regulations regarding residence permits

Since 1 November 2019 certain categories of individuals have been able to obtain a Russian permanent residence permit for an indefinite period. Previously, a permanent residence permit was issued for five years only, with the option to extend if necessary.

The list of individuals who can obtain a Russian permanent residence permit, according to a simplified procedure, has also been expanded.

New rules regarding severance payments

In 2020 new rules are expected to come into force to provide severance payments to employees who are dismissed when a company goes into liquidation. The new regulation is aimed at providing additional protection for this demographic of employees and will offer two options of payment structure: either a lump-sum payment at the date of dismissal or several installments within two months of the dismissal date. The amount of severance payment prescribed by law remains unchanged.

Introduction of a tax for self-employed persons

In 2019 a pilot project on the taxation of 'self-employed' individuals (those who do not have an employer and do not hire other individuals under labour contracts) was launched in Moscow, Moscow Region, Kaluga Region and Tatarstan.

The Federal Tax Service has already warned employers against re-hiring individuals as self-employed in order to maximise tax and social security contributions. If the Federal Tax Service discovers an employer has unlawfully re-hired individuals as self-employed persons, the company may face additional taxes and fees, and it may be held administratively liable.

New litigation rules

In 2019 amendments to procedural legislation came into effect, which directly affect the procedure for handling labour disputes. In accordance with the new rules, only lawyers and individuals with legal-related higher education qualifications or a law degree can be representatives in court.

The changes establish new cassation revision rules. The amendment implies a shortened limitation period of three months instead of six, in addition to all claims being directly considered by the court presidium. Previously, only selected cassation claims could reach the presidium due to different procedures of case revision.

HR digitalisation

In 2020 the plan is to replace paper labour books (statutory human resources documents recording an employee's years of service) with electronic versions.

Employees who would like to retain a paper labour book may request this from their employer during 2020. For all new hires who will start a job in 2021, information about work periods will be recorded in electronic form only.

New minimum wage

The minimum wage is expected to increase by 7.5% in 2020. Employers cannot pay employees a basic salary below this legal minimum.

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SERBIA

In 2019 legislation in Serbia underwent various changes to provide regulatory frameworks to existing and widely practiced engagement mechanisms, which were previously lacking clear regulations or legal recognition.

Law on personal income tax amended

A so-called 'independence test' has been introduced. The purpose of the test is to establish whether independent contractors are indeed independent from the parties engaging their services, or whether they are being contracted via entrepreneurial mechanisms solely to take advantage of a more favourable tax treatment. As part of the test, nine comprehensive criteria are applied to each factual situation (e.g. does the contractor perform works at the principal's premises? Do they use the principal's equipment? Do they receive 70% or more of their annual income from one principal or their affiliate? And is the professional training they receive organised by the principal?). The aim is that, from a tax perspective, independent contractors and 'classic' employees will eventually be in a similar tax position.

The amendments also introduce an incentive in 2020 for principals who are entering into employment agreements (which includes an obligation to pay applicable social contributions) with independent entrepreneurs. Such principals will be partially excluded from the obligation to pay regular 70% salary tax and social contributions for newly-engaged employees, which would be effective until the end of 2022, with the sums they are required to pay gradually decreasing year-on-year.

It remains to be seen whether such tax regulations will encourage employment authorities to apply the criteria to their own inspections as well.

New law on staff leasing

The long-awaited law on staff leasing has been adopted and remains restrictive; it limits the number of staff leased to a maximum of 10% of an employer's total workforce. It also stipulates other specific thresholds for companies employing fewer than 50 workers. These limitations apply to fixed-term employees only.

Fixed-term employees may be leased for a maximum period of 24 months. If this deadline is exceeded, regulations of indefinite-term employment will apply. Employers may lease workers for more than 24 months only where they are entitled by employment regulations to enter into a longer fixed-term employment contract (e.g. to work on a specific project or to replace an absent employee).

Regarding indefinite-term employees, a new law entitles these individuals to remuneration during gaps between periods of leased employment, which cannot amount to less than the statutory minimum wage in Serbia, as well as to severance pay if they are made redundant.

Overall, the new laws on employment regulations leave no room for discriminatory treatment of leased employees. We anticipate that the new employment regulations will pave the way for proper interpretation and foresee that regulated staff leasing will have a positive impact on the employment market.

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SLOVENIA

The Slovenian employment and labour legislature did not introduce any significant changes in 2019. However, during 2019 some employment-related laws were amended. We also anticipate some modifications to labour regulations in early 2020.

Labour Market Regulation Act

An amendment to the Labour Market Regulation Act, which entered into force on 27 December 2019, will raise the minimum unemployment benefit (from €350 to €530.19 gross), while also extending the insurance period required for the payment of the benefit from nine to 10 months in the last 24 months. In order to accelerate the activation for older unemployed people, the law specifically modifies the conditions for determining their benefit. However, unemployment benefit cannot be claimed by insured individuals who qualify for occupational and old-age retirement. A retired person will be entitled to work up to 90 hours a month for a maximum of three months in a calendar year. The annual number of hours of both temporary and intermittent work remains unchanged (i.e. 720 hours).

Pension and Disability Insurance Act

On 1 January 2020, extensive amendments to the Pension and Disability Insurance Act came into force, aiming to provide improved social security for retired people, while increasing work activity among older employees through soft measures. The amendment offers an increase in the pension-rating base, to provide for 40 years of retirement, from the current 57.25% to 63.5% over six years. This percentage rate is already applicable for women, yet it would have decreased without the amendment. For both men and women, the pension-rating base has also increased for 15 years of the insured period, from 26% to 29.5%. Furthermore, the pension will increase by 1.36% per child for up to three children.

Favourable treatment of vacation allowance

Recent amendments to the Personal Income Tax Act relieve taxes for vacation allowance. The payment of the vacation allowance is free of personal income tax and social security contributions up to 100% of the average monthly salary in Slovenia.

Introduction of an electronic sick leave form

An electronic version of the 'justified restraint from work form' will gradually replace the current paper form. Consequently, employers will be required to submit their employee's temporary work restraint electronically via an online system from 1 February 2020 (employees will no longer be obliged to supply employers with a paper form).

Increase of student workers' hourly wage

In accordance with the adopted amendment of the Fiscal Balance Act, as of 1 January 2020 the minimum hourly wage for student workers increased from €4.89 gross (€4.13 net) to €5.40 gross (€4.56 net).

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SPAIN

There have been substantial changes in Spanish labour and employment legislation during 2019, the most significant of which include:

- Royal Decree 6/2019 of 1 March 2019, has established a new right for employees to request an adjustment to their working hours based on family needs (commonly known as 'working schedule at will'). This adjustment, which has been inserted in Article 34.8 of the Spanish Workers' Statute, can involve either the duration or the distribution of working schedules (e.g. it expressly includes schemes for requesting remote working). The Article also states that the adjustment request must be reasonable and proportionate to the employee's needs and to the company's organisation and production. The Collective Bargain Agreement will establish the terms under which this right could be exercised. In its absence, within a maximum of 30 days, both the employee and the company must follow a negotiation process to assess the working schedule request. Once this process has ended, the company should either accept the employee's request, reject it (arguing the proper objective reasons for doing so), or propose other alternatives in order to meet the employee's needs.
- Royal Decree 8/2019 of 8 March 2019, has stated the obligation for all companies to keep a daily record of the working hours rendered by their employees (regardless of whether they work overtime or not). This Royal Decree provided for a transitional period of two months following its approval to set and approve a recording system to keep a daily record. These systems should be established by the Collective Bargain Agreement, by a company policy, or negotiated with the workers' representatives (e.g. agreeing a policy that regulates the main principles of the recording system and the situations in which the employee must record working time). Failure to implement these mandatory tracking systems is punishable with a fine.
- A new Personal Data Protection Law was passed on 5 December 2018. This law regulates certain aspects of employees' use of IT resources (e.g. company email, computers, messaging, etc.) within the scope of the employment relationship. Subsequently, the law has introduced new rights and entitlements for employees. In particular, it expressly states:
  - the employee's right to privacy in the use of those digital devices that are provided by companies;
  - their right to "digital disconnection" (with a view to ensuring that employees do not work during their rest time); and
  - the employee's right to privacy in relation to the company's use of video-surveillance or geolocation devices.

Although the practical steps required to underpin these rights are not clearly defined by law, they have several practical implications for companies that are currently being analysed and measured. In this regard, companies will be obliged to establish specific policies defining the alternatives to ensure disconnection training and awareness measures for employees.

Looking ahead to 2020, following the General Election on 10 November 2019, the Socialist and Podemos parties have announced a coalition government pre-agreement, which mentions several labour issues, including retirement pensions, a new Equal Treatment Labour Law and the fight against the precariousness in the labour market.

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SWEDEN

New rules regulating a prolonged right to work

According to the rules stipulated under the Swedish Employment Protection Act (Sw. Lagen om anställningsskydd), an employee's entitlement to protection decreases after they have reached a certain age. Up to 31 December 2019, this implied that an employer could, regardless of reason, terminate the employment of an employee reaching the age of 67 years by the end of the month by giving the employee at least one month's notice. If the employer failed to give notice within this time-frame, the employment would continue as normal entailing, inter alia, an obligation for the employer to prove an objective ground for termination of employment. After reaching the relevant age an employee is not entitled to more than one month's notice period and is not covered by certain rights, such as a preferential right to re-employment.

Certain amendments to these established laws and rules have now been implemented as part of the Swedish Government's work in extending the average working lives of its citizens as part of changes to the country's pension system.

From 1 January 2020, the age from which employment protection is decreased will be raised to 68 years. From 2023 this will increase to 69 years, and from 2026 the age will increase further.

Further changes to employee protection rules came into force on 1 January 2020. For example, an employer may give notice of termination to an employee who has reached the relevant age at any time without having to prove an objective ground for termination.

Suggested amendments regarding rules for posted workers

There is currently ongoing discussion regarding possible amendments to the Swedish Posting of Workers Act (Sw. Utstationeringslagen). Certain amendments have been proposed to further increase the protection for posted workers operating in Sweden. Such amendments would, for example, imply that trade unions could use industrial action to enforce wage demands following the level stipulated in an applicable collective bargaining agreement (and not only the statutory minimum wage).

Employers posting employees for a longer period (i.e. more than 12 or 18 months) shall also be required to apply additional statutory terms and conditions of employment for posted workers which are applicable for equivalent workers in Sweden. For longer postings, where industrial action is concerned, trade unions will be able to enforce demands for terms of employment where there is an applicable Swedish collective bargaining agreement.

The amendments are expected to come into force from 30 July 2020.

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SWITZERLAND

The revised Gender Equality Act will enter into force in Switzerland on 1 July 2020. It obliges employers with more than 100 employees to conduct an internal wage equality analysis, to have this reviewed by an external body and then confirm the results in writing.

Employers obliged to carry out analysis

Employers with over 100 employees are obliged to analyse their wage equality for the year in question. For the purposes of the report all employed persons, excluding apprentices, are recorded as 'full' employees regardless of part-time working arrangements.

Employers are exempt from conducting the analysis if:

- they are already subject to a wage equality analysis in a public procurement or subsidy procedure, provided that the reference month is no more than four years ago; or
- a report has proven that they respect wage equality (subject to conditions).

The analysis

The analysis can be conducted by either the employer or appointed third parties, provided the method of reporting is both scientifically and legally compliant. The Swiss Federal Government offers a free tool (Logib) for employers to conduct the standard statistical procedure.

For the report, all paid wages (consisting of both basic and social wage components), and personal and job-related characteristics of all employees must be recorded for the reference month. Personal and job-related characteristics include: education; age; qualifications; experience; duties; and benefits. Differences between women's and men's wages for work of equal value are considered wage inequalities if they cannot be objectively rationalised. The standard statistical procedure allows for a difference in wage of up to 5%.

The first analysis must be conducted no later than 30 June 2021 and repeated every four years. If initial findings reveal that the employer respects wage equality then they will be exempt from further wage equality analysis.

Review of analysis

The analysis is subject to the Swiss Code of Obligations and must be reviewed by an independent body. Only accredited auditors, employee representatives according to the Participation Act and organisations which, according to their status, promote equality between women and men or safeguard the interests of employees (trade unions) and have existed for at least two years, are authorised to review an analysis.

The independent body must review the analysis to establish formal compliance rather than material assessment. The details of the review (e.g. scope, requirement, procedure etc.) are only stipulated for accredited auditors and must be determined on an individual basis by agreement with the other bodies.

Accredited auditors must report their results within one year of conducting the analysis and by 30 June 2022 at the latest.

Information about the results

The employer is obliged to inform their employees of the results of the report in writing within one year. The results must also be published to shareholders of listed companies as part of their annual financial statement.

Soft sanctions

Wage inequalities do not directly impose legal sanctions. However, those employers who do find wage inequalities in their reporting must repeat the analysis until equality is achieved. Furthermore, employers operating with wage inequalities risk wage discrimination claims and damage to their reputation.

Recommendation

Employers that will likely have to conduct the analysis should start collecting the required data and may also wish to proactively prepare and conduct a trial analysis.

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TURKEY

The major changes within the Turkish employment legislation during the year 2019 are as follows:

Turkish Private Pension System (Individual Pension Savings)/January 2019

An amendment to the regulation of Individual Pension Systems was published in the Official Gazette on 27 December 2018. It made some new arrangements to the mandatory Turkish private pension enrolment of employees.

Firstly, employees under 18 years of age (young and/or child workers) are now included in the scope of the system. The system previously included only those in the 18-45 age range.

Newly established employers with at least five employees have to make an automatic Individual Pension System (BES) contribution at the beginning of the following year. As per the new rules, employees who exit the system using the right of withdrawal, after being automatically enrolled in the system, shall be automatically re-enrolled in the system after three years. This will be a one-off application and shall be implemented according to the principles announced by the Ministry.

Income Tax General Communique March 2019

Income Tax General Communique Number 306, published in the Official Gazette dated 15 March 2019 and numbered 30715, entered into force on the same date. Articles 10 to 15 of the Income Tax General Communiqué stated the conditions under which deductions under mutual termination agreements made before 27 March 2018 should be returned to the tax authorities and indicated the procedures of application to the Tax Offices. For further information tax advisors should be consulted.

Determination of the Date for Termination at Mediation/March 2019

Since October 2017 to bring a lawsuit for labour receivables or reemployment, parties must have gone through mediation. Pursuant to the Social Security Institution's Circular that was published on Official Gazette dated 28 February 2019, where an employer and employee cannot agree on the re-employment of the employee during the mediation process, the termination will become effective and the termination date will remain the same. Furthermore, the dismissal date will remain unchanged.

Severance Pay Ceiling/July 2019

The amount of severance pay for each full year of employment is limited with the severance pay ceiling valid at the moment of termination. The severance pay ceiling is determined according to the annual rates announced for the period between January and June and between July and December. The ceiling amount for severance pay may not be higher than the maximum retirement bonus to be paid to the highest ranking civil officer, subject to the Civil Servants Law, for one year of service. As of 1 July 2019 the ceiling is TL 6,379.86 (€1,007.48).

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UKRAINE

Changes to labour law inspection procedure regarding protection of disabled employees

On 5 June 2019 the Cabinet of Ministers of Ukraine adopted Regulation No. 466, which changed the governmental office authorised to oversee compliance with legal requirements for the protection of disabled employees (the Inspection Procedure Regulation). Under the old legal regime this authority was vested with the Fund for Social Protection of Disabled Individuals. Under the new Inspection Procedure Regulation, this authority is passed to the State Labour Service of Ukraine. As a result, the labour service now has a broad range of areas of supervision and control, including identification of undocumented labour and compliance with labour law requirements, such as compliance with the labour protection rules. Notably, the Inspection Procedure Regulation deals only with the competence to check compliance with the legal requirements for the protection of disabled employees. Under Ukrainian law, all employers with more than eight employees must comply with the quota regarding the employment of disabled individuals. Companies with fewer than 25 employees must employ one disabled person. For companies with more than 25 employees, the mandatory disabled employee quota is 4% of the average number of employees during the respective calendar year. The Inspection Procedure Regulation provides for overseeing compliance with the above noted quota and deals with issues of control over registration with, and timely reporting to, the Fund for Social Protection of Disabled Individuals. The Inspection Procedure Regulation introduced the following rules regarding the protection of disabled employees:

- The Labour Service may conduct both scheduled and unscheduled inspections. Scheduled inspections are to be conducted according to an annual inspection plan and employers should be notified at least 10 days prior to the inspection. Unscheduled inspections may be conducted without any preliminary notification based on existing legal grounds, e.g. complaints from an employee or disabled person, or untimely reporting. However, such inspections may not exceed a total of 15-30 days per year depending on the company size.
- An employer may prohibit the inspectors' access to the company's premises based on specific legal grounds, such as deficiencies in the documents authorising the inspectors to conduct such an inspection or failure of the Labour Service to approve and/or make public templates of inspection documents templates.
- Upon completion of an inspection, the inspectors are required to issue final reports specifying whether an employer complies with the relevant employment quota for disabled individuals.
- There is a specific list of documents that may be checked by the inspectors, including a schedule of positions and salaries, employment agreements and employment orders issued with regard to disabled employees. Inspectors cannot request documents for review that are not listed here.

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UK

Brexit

Brexit was pushed back in 2019, and we anticipate that European migration to the UK workforce will continue to decrease. The UK government continues to promise to make no changes to the rights of EU workers already in the UK. However, these workers must submit an application under the EU Settled Status Scheme or face being in the UK illegally. Following the result of the General Election on 11 December 2019, the Conservative Party has a majority government and we anticipate that Brexit will go ahead at the end of January 2020. The impact that this will have on UK employment law remains to be seen, as much of the European Law in force in the UK is 'gold plated', with domestic legislation going further than EU law requires. For example, the minimum holiday entitlement for full-time workers in the UK is 28 days, compared to the 20 days mandated by the EU.

Tax changes for independent contractors

In the UK, where an individual is acting like an employee of a business, but has formed their own limited company (personal service company/PSC) to provide services to the business, the PSC should operate PAYE on payments made to the individual, as well as paying employers' NICs. The aim is to remove tax advantages for consultants providing services via a PSC who are not truly in business on their own account. From April 2020, the responsibility for determining employment status and paying payroll taxes will shift to the end client (i.e. the company engaging the contractor). There are exemptions for small businesses that meet certain criteria, and the rules will not apply where an individual would legitimately be self-employed if the client engaged them directly. Businesses should audit arrangements with contractors to determine whether the rules apply, and prepare payroll for the impact of the new rules.

Parental Leave

In two discrimination cases that were heard together in 2019, the Court of Appeal found that it was lawful for employers to enhance maternity pay but to offer only statutory shared parental pay for fathers/partners. We expect that the decision will be appealed to the Supreme Court, so many employers are adopting a 'wait and see' approach before making changes to their family leave policies. Public opinion is moving towards more balanced parenting and offering equivalent enhancements could contribute to resolving the gender pay gap. Moreover, the Government is consulting on potentially wide ranging changes to the UK's various family leave regimes.

Restrictive Covenants

In 2019 the Supreme Court (SC) considered the use of restrictive covenants for the first time in 100 years. The SC examined the use of the words 'interested in', within a non-compete restriction, finding that this prevented a former employee from holding even a minor shareholding in a competing business. The breadth of this covenant rendered it void as an unreasonable restraint of trade. The SC went on to look at the scope of the restrictive covenant doctrine in order to determine the correct test for severance. It was held that otherwise unenforceable covenants can be amended by 'blue pencilling' (deleting) certain words (in this case, 'interested in') to render the covenant enforceable.

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