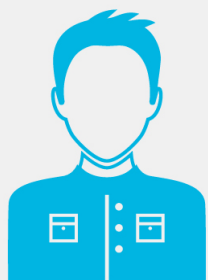
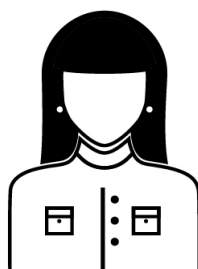
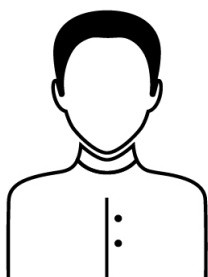




SHEPHERD+ WEDDERBURN

EUROPEAN EMPLOYMENT LAW UPDATE



2016 Edition

Contents

Belgium	4	Macedonia	14
Bosnia & Herzegovina	5	Montenegro	15
Croatia	6	Netherlands	16
Czech Republic	7	Poland	17
Denmark	8	Serbia	18
Finland	9	Slovenia	19
France	10	Sweden	20
Germany	11	Switzerland	21
Hungary	12	UK	22
Italy	13	Key Contacts	23

Introduction

An organisation's workforce is one of its most important assets. However, for organisations with a pan-European presence, keeping up to date with changes in legislation and best practice can seem like a never-ending task. This is particularly the case in the area of employment law, where change can be fast paced.

We have collaborated with a number of leading law firms across Europe to create this guide to European labour law changes. In it, we summarise recent changes to labour laws across Europe and highlight the key changes being introduced in 2016.

In a number of jurisdictions the current economic pressures and austerity measures continue to influence new employment legislation, including the introduction of additional protections for those working on temporary contracts, as well as social welfare reforms. The Guide also outlines key changes in some of the traditional areas of employment law, including holiday pay and discrimination.

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

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



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The right to strike

In Belgium we have seen a new series of strikes, arising from criticism of the economic cost-cutting measures. Numerous incidents, including two people dying due to the lack of timely medical assistance as a result of trade union-organised roadblocks, have relaunched the debate on the right to strike in Belgium. A profound modernisation of this right has become inevitable.

Belgian national legislation does not contain any legal provision that recognises the right to strike as such. However, the European Social Charter to which Belgium adheres sets out the basic principle that employees are entitled to take collective action. Therefore, the existence of the right to strike is recognised within the Belgian legal system.

The right to strike is not an absolute right and is always subject to a proportionality test. Moreover, this right can be limited in a democratic society when restrictions are legally set out. Such restrictions can be based on the protection of the rights and freedom of others, public order protection, national security, public health or good morals.

However, Belgian politicians seem to be having difficulty agreeing on how such modernisation can be achieved. There is a major discussion concerning the granting of legal personality to trade unions. Meanwhile, a draft bill proposes the right to work during a strike. This should make it easier to go to court if the right to work is curtailed.

Social elections

The social elections in Belgium take place between 9 and 22 May 2016.

During these elections, the employees' representatives are elected to the Committee for Prevention and Protection at Work in companies employing a minimum of 50 employees, and to the Works Council in companies with a minimum of 100 employees. As the election procedure takes 150 days, the procedure has already started for companies that name 9 May 2016 as their social election day. The first step for the employer is to provide specific information to its employees including:

- the definition of the technical business unit;
- the number of employees employed in the technical business unit at the relevant date;

- an indicative list of the functions of the executive personnel; and
- the date on which the dates for the elections will be announced.

Employers must also be aware of the so-called 'occult protection period'. During this period, employees who have presented or will present themselves as candidates for the social elections are protected against dismissal, even though the employer is not yet aware of their candidacy.

Employment of refugees: waiting period is shortened

Due to the current asylum crisis and the resulting increase in the number of asylum seekers, the Belgian Government has shortened the waiting period between the request for asylum and the access to the labour market from six to four months.

Currently, refugees apply for asylum and then have to wait (sometimes for a long time) for the Commissioner General for Refugees and Stateless Persons' decision to know whether or not they will be allowed to stay in Belgium.

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New Labour Law

The long-awaited Labour Law entered into force in the Federation of Bosnia and Herzegovina on 20 August 2015, changing the landscape for employers and employees in this entity. The Labour Law introduces mandatory changes to employment rulebooks, collective bargaining and employment agreements, along with prescribed timelines ranging from three to nine months within which employers are required to comply with the new requirements.

The Labour Law introduces the possibility of engaging a general manager and other managers via a management agreement, so as not to constitute an employment relationship between manager and employer. The maximum duration of fixed-term employment has been extended to three years (except in the case of a director's employment agreement, which may last for as long as the director's term of appointment).

The Labour Law introduces uniquely new provisions regulating discrimination and harassment at work, which allow the employee or job candidate to request protection from the employer. The new Labour Law also provides for the possibility of working from home and stipulates certain mandatory contractual elements to regulate such work.

Annual leave and hours of work

The minimum duration of annual vacation has been increased to 20 days, whilst the maximum weekly duration of overtime work has been decreased from ten to eight hours. Employers are under a new obligation to keep records on employees, including daily records of attendance and working hours.

Salary regulations

Significant amendments were also made to the provisions regulating salary, severance payments, and the statute of limitations for employment termination for breach of work duty. In terms of salary, a performance-based element has been added to the mandatory salary structure. This is a variable element, which should be paid if certain criteria set out under the collective agreement or employment rulebook are met. The maximum severance payment is now six average salaries of the employee. The subjective statute of limitations for terminating employment on the grounds of breach of work duty has been extended from 15 days to 60 days from the day the employer or employee becomes aware of the breach.

Employment rulebook

The obligation to enact an employment rulebook now exists only for employers with over 30 employees. Employers falling into this category must amend existing rulebooks to comply with the Labour Law by 20 February 2016. Employers with less than 30 employees may voluntarily choose to have a rulebook, in which case such rulebooks must comply with the Labour Law by 20 February 2016.

Employment agreements must be amended in line with the changes introduced by the Labour Law by 20 November 2015, unless the employer is in the process of amending its employment rulebook, in which case, the employment agreements must be amended within three months of the date of entry into force of the employer's new rulebook, but no later than 20 May 2016.

While these changes, aimed at creating a more flexible employment regime in the Federation of Bosnia & Herzegovina, were long awaited (such as engagement of managers via management agreements), in practice, obstacles to the implementation of such changes already exist. For instance, the Tax Authority does not have a proper mechanism to deregister a director, as a former 'employee' of a 'company' from the social contributions register because of an old decree which stipulates an obligation for directors to be employed and to pay social contributions like other employees. The relevant authorities or lawmakers will likely have to get involved in addressing these challenges in implementing the new Labour Law.



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As of the end of Summer 2014 when the new Labour Act was adopted, there have been no major employment updates in Croatian employment law. The Labour Act continues to be the main legal act governing employment relations in Croatia; however, some new rules based on the Labour Act and regulating specific employment areas have been adopted in 2015 through a legislative procedure.

Jobs forbidden to minors

New Rules on jobs forbidden to be performed by minors entered into force on 22 August 2015. The main purpose of these rules is to implement/transmit rules from the relevant EU directives regulating protection of young people at work into the Croatian law. Minors are allowed to be employed on the jobs with special working conditions if:

- they have finished vocational secondary education enabling them to perform such jobs;
- if they meet other relevant legal requirements; and
- if the capacity for performance of such jobs by minors is determined by preliminary medical examination.

Rules on the content and manner of keeping staff records

These Rules entered into force on 28 March 2015 and have provided certain formal changes, i.e. have imposed more formal obligations on employers, especially regarding the amount of personal data on employees and their working time, which needs to be kept in the relevant records. By amendments to the Rules on the content and manner of keeping staff records, which came into force on 19 September 2015, the employer is exempt from certain obligations, in particular regarding terms of keeping records on hours of the employee's daily and weekly rest, in cases where certain terms and conditions have been fulfilled.

Occupational Health and Safety Rules

Occupational Health and Safety Act is the main legal act governing occupational health and safety issues in Croatia. New rules, regulating specific aspects of occupational health and safety, have recently been adopted through a legislative procedure. The main purpose of the respective rules was also to implement/transmit the rules from the relevant EU directives regulating occupational health & safety issues into the Croatian law. The most notable changes relate to the Rules on occupational health and safety performance, with the rule which allows employers with up to 49 employees to outsource

performance of safety at work, rather than employ a special safety at work expert, has been restored.

Securing Employees' Claims in the event of bankruptcy of employer

Changes to the rules on protection of the material employment rights of employees in a bankruptcy situation mean that employees of a bankrupt employer (whose account has been blocked) will be entitled to three unpaid wages or salary compensation in the amount up to the amount of the minimum wage.

CZECH REPUBLIC



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'Kurzarbeit' in the Czech Republic

As of 1 October 2015, a 'partial unemployment contribution' was introduced into Czech labour law. The new instrument is based on the German model of 'Kurzarbeit' (short-time working).

Employers may apply for the contribution if the employer suffers a temporary drop in sales or if there is restricted demand for the employer's products or services, and also if work is disrupted due to forces of nature.

The contribution may be granted for as long as the obstacle exists but not for more than six months (an opportunity to re-apply exists). The state's contribution amounts to 20% of the average earnings of the employee but no more than 0.125% of the average salary in the national industry for the first through the third quarters of the previous calendar year. Today the maximum contribution would amount to approximately CZK 3,147 (approx. €166) per month. The balance due to the employee is paid by the employer. Prior consent from the Czech government is required for a particular contribution to be granted.

Higher minimum wage

The Labour Code imposes a minimum wage for every employee for his/her weekly work (40 hours per week). As of 1 January 2015, the minimum wage was raised from CZK 8,500 to CZK 9,200 (approx. €340) per month, and the hourly wage was raised from CZK 50.60 to CZK 55 (approx. €2). As of 1 January 2016, there will be another rise to CZK 9,900 (approx. €366) per month, and the minimum hourly wage will be raised to CZK 58.70 (approx. €2.10).

Compensation for work injuries and occupational diseases

As of 1 October 2015, the Labour Code includes provisions on how harm resulting from work injuries and occupational diseases is to be compensated. Following approval, a new governmental guideline will impose compensation for social disadvantages resulting from work injuries and occupational diseases – the value of one 'point', which evaluates the consequences of damage to health, will increase from CZK 120 (approx. €4.40) to CZK 250 (approx. €9.20). The 'point evaluation' of individual injuries and occupational diseases was also increased. The new rules allow the amount of compensation to be increased several times. This was not possible under the former rules.

Higher penalties for administrative offences

New labour-related administrative offences were introduced as of 1 January 2015. At the same time, penalties for some existing administrative offences were increased. For example, any violation of the permitted threshold for agreements for work (300 hours in a calendar year) is subject to a penalty of up to CZK 2,000,000 (approx. €74,000). Employers who fail to have copies of employment documents at the workplace are subject to a penalty up to CZK 500,000 (approx. €18,500). Moreover, the upper penalty limit of CZK 300,000 (approx. €11,000) for violating the statutory duties applicable when an employment agreement, agreement for work or work activity agreement is established, entered into, changed or terminated, has been increased to CZK 2,000,000 (e.g. if a termination notice fails to include the grounds for termination).



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New rules regarding restrictive covenants after 1 January 2016

A new bill on restrictive employment covenants has been adopted. Restrictive covenants concluded after 1 January 2016 will be subject to the new rules. We have listed some of the key changes below.

Non-competition clauses can now only be entered into with employees who hold a very special position of trust. Previously, it was only a requirement that the employee held a special position of trust.

For non-solicitation clauses, the changes have the effect that only customers with whom the employee has had commercial contact within the last 12 months can be comprised. Further, it is a requirement that the employee receives a list of the comprised customers in connection with the termination.

Furthermore, the length of a non-competition or a non-solicitation clause is maximized to 12 months after expiry of the employment. For combined clauses, the maximum enforcement period is 6 months.

The rules regarding compensation have also been amended. Clauses with an enforcement period up to 12 months or combined clauses with an enforcement period up to 6 months must be compensated with 60 per cent of the salary during the enforcement period. If either a non-competition or a non-solicitation clause with an enforcement period up to 6 months is agreed upon, the compensation is 40 per cent of the salary. If the employee finds another suitable job, the compensation will decrease to 24 or 16 per cent, respectively, as from the third month after expiry of the employment.

The act also entails that non-hire clauses can no longer be concluded, except in the case of a transfer of business and then only for a maximum period of 6 months.

It is important that employers take note of the new rules when drafting new employment contracts and make sure to update template contracts in accordance with the new rules in order to ensure that the non-competition and non-solicitation clauses are enforceable.



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Occupational Accident Act comes into effect

The new Act came into force on 1 January 2016. The main purpose of the new Act is to meet the changed requirements of working life and to clarify the requirements for covering occupational accidents and diseases. According to the Act, an employee is covered by the statutory insurance when he or she is at the workplace including lunch and coffee breaks. Accidents occurring outside of work are covered by the insurance only when specifically mentioned in the Act.

Non-Discrimination legislation

The new Non-Discrimination Act came into force on 1 January 2015. The focus of the new legislation is on preventive protection. Certain obligations (e.g. equality plan and new rules concerning indemnification) will come into effect after a two-year transition period.

Employers are obliged to implement reasonable adjustments. Failing to fulfil this obligation is regarded as discrimination. Furthermore, all employers with at least 30 employees are required to prepare an equality plan. Additionally, the sphere of prohibition of discrimination has been extended. Thus, discriminating against an employee who is not himself disabled but, for example, whose child is disabled is now also considered to be discrimination.

Contrary to the previous legislation, the new Act does not include a maximum amount of indemnification for an employer's breach of obligations and the amount will be based on an overall assessment of the situation.

Government proposes significant change

The Finnish Government has proposed the following changes to the labour legislation:

- changing Epiphany and Ascension Day to unpaid days off;
- removing current entitlement to nine days' paid sick leave and making the first day unpaid, followed by eight days at 80% of salary;
- limiting the number of holidays to a maximum of six weeks of annual holiday;
- establishing a statutory right to holiday bonus (currently determined by collective bargaining agreements). Also, setting bonus amount at 30% (in practice, currently around 50%); and
- lowering private employers' social security contribution to 1.72% from 2017.

Additionally, the Government is proposing additional benefits for employees made redundant on financial and production related grounds and to distribute the costs relating to family leave with a lump sum compensation of €2,500. Further, the Government promotes increasing use of local agreements relating to wages, working hours, dismissal requirements and time banking.

The labour market organisations are expected to make counterproposals, so it is currently uncertain what changes will finally come into effect. The aim is that the changes will be implemented by June 2016.

Retirement age

New legislation on retirement schemes is currently under consideration. The new legislation is expected to come into force in 2017. Under the proposals, the general retirement age would be increased gradually from the current age of 63 to 65. Retirement age of employees who are born in or after 1965 would be adjusted to the change in life expectancy.

A new form of early pension is a *years-of-service* pension scheme that is intended for individuals who have reached the age of 63 and worked at least 38 years in physically hard work.

FRANCE



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In 2015, French legislative activity has been marked by the publication of important laws, including the law No. 2015-994 of August 17th, 2015, related to social dialogue and employment, called *Rebsamen* law.

Among its priority goals is the will to improve the effectiveness and the quality of the social dialogue within a company.

Employee representation

The establishment of employee representation in very small companies (less than 11 employees and under certain conditions), which has received much publicity in the media, is not the only important measure. It is necessary to also mention the adaptation of the staff representative bodies to reflect the diversity of companies: the sole delegation of the staff (the possibility for the staff representatives to constitute the staff representative delegation within the works council) has been extended to companies with less than 300 employees. This delegation will now also include the health and safety committee (CHSCT).

An agreement signed by the trade unions may, subject to compliance with certain conditions relating to the signing of the agreement, allow the grouping of the staff representative bodies (namely the staff representatives, the members of the works council and the members of the health and safety committee) in companies with more than 300 employees into a single representative body. The law allows for common meetings to be held where a question falls within the competence of several bodies (works council and health and safety committee, for example).

The law has also grouped together the themes of the compulsory annual consultation of the works council under three main headings and also gathered into three strands the themes of the compulsory annual and triennial collective bargaining. Under the new law, the employer and the trade union organisations will be able, under certain conditions of signature, to modify the pace of negotiations by extending the deadlines from one year to three years (for matters to be discussed under the compulsory annual consultation), and three years to five years (in respect of triennial collective bargaining), in order to allow more time for negotiation. However, this exception could be called into question at any time by the trade union organisations.

The respective competences of the works committees and the central work council are clarified and the law aims to reinforce a balanced representation of women and men in the staff representative bodies as well as a representation of the employees in the governing bodies.

At last, to facilitate the negotiation of collective agreement in the companies without trade union representatives, the law in relation to negotiation with or without the elected union delegates has been revised, in particular by allowing the employees entrusted with a mandate to represent staff to divide between them the time allowed during working hours to fulfil their mandates.

Among other measures, the operating rules of the health and safety committee have been modified. These are now identical to those of the works council concerning, in particular, the fixing of the agenda, the drafting of the works' rule book setting the operating rules of the health and safety committee, the period at the end of which the health and safety committee is supposed to have given its opinion.

GERMANY



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Never before has Germany experienced so many strikes as in these past three years. Railroad workers, medical doctors and pilots as well as nurses in childcare facilities have gone on strikes lasting for weeks, if not months. The German Parliament has passed an amendment to the German Act on Collective Bargaining Agreements that carefully tries to balance the powers between unions and employer associations.

German Act on Collective Bargaining Agreements

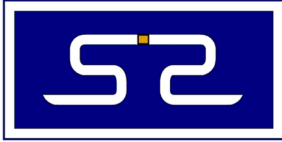
In 2010, the German Federal Labour Court had overturned a decade-long jurisprudence that upheld the principle that within an establishment of a company, there can be only one collective bargaining agreement in force. As a consequence of that decision, various collective bargaining agreements might be applicable within the same establishment of a company. The German government and parliament were afraid that this would cause a division within the workforce and a fragmentation in bargaining structures. Also, it was seen as a disadvantage that very small, but very powerful unions could become more active if they represent a specific part of the workforce that can lead very effective strikes and thereby exercise a huge bargaining power (e.g. pilots, train drivers etc.). The trade union of train drivers, for example, initiated several strikes in 2014 with the effect that thousands of travellers and commuters were affected because rail services in Germany were practically suspended for weeks.

The new initiative, implemented as statutory law, has reversed the position to what had previously been upheld by the labour courts, i.e. that within an establishment only one collective bargaining agreement of a specific trade union shall be applicable. If there are various trade unions that compete for the conclusion of collective bargaining agreements, only the collective bargaining agreement of that trade union which has the majority of members employed in that specific establishment shall apply.

This amendment to the German Act on Collective Bargaining Agreements, which is now in force, has raised concerns that this new statutory law severely obstructs the right to strike and to form coalitions. As the right to strike is a constitutional law, several trade unions have initiated proceedings at the German Federal Constitutional Court, with the aim that the German Federal Constitutional Court will declare that the new law is unconstitutional and invalid. Currently, the German Federal Constitutional Court has gathered factual information on how the striking actions have actually been influenced by the new law after it has been put into effect.

It cannot be denied that small trade unions that concentrate on a specific profession (like trade unions for pilots, train drivers, doctors, firefighters, etc.) and that have a very long history in Germany are severely impeded in their actions and might become irrelevant if larger trade unions also conclude their collective bargaining agreements for the specific professions that were represented in the past by the small trade unions. It might indeed be the case that the German Federal Constitutional Court will decide that the current statutory changes on the German Act of Collective Bargaining Agreements violate the trade union's constitutional rights.

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Main changes in 2015

The effective Labour Code entered into force in Hungary in 2012. The Labour Code introduced several important changes which resulted in increased flexibility in the labour market.

One of the most significant changes was the less formal approach adopted in respect of the termination of employments, which resulted in a decrease in the number of labour law disputes connected with the termination of employment. The Hungarian Supreme Court issued an evaluation of the court practice regarding the application of the rules in respect of cases connected with the termination of employment. This summary gives a good overview of the current state of court practice in this respect.

It's worth mentioning the judgment of the European Court of Justice (ECJ) dated September 10, 2015 regarding the calculation of working time. According to the judgment, the ECJ declared that in the case of workers who do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes 'working time'. This decision may trigger potential changes in the respective legal practice in Hungary too, therefore employers should act very carefully in connection with determining working schedules and working time for employees who regularly travel from home to different working places (e.g. to the premises of customers).

Expectations for 2016

In 2016, no radical changes in employment law are expected. Some amendments to the Labour Code are planned, however no proposal on the amendment of the Labour Code has yet been submitted to the Hungarian Parliament.

The Ministry of National Economy published its inspection plan for 2016 on labour safety and employment in November 2015. The safety inspection of particularly dangerous employment sectors will be the centre of attention in 2016, and will involve the construction, agriculture, manufacturing, mining, and healthcare industries. Pursuant to the published directive, the objective is to carry out labour safety inspections in as many places as possible where dangerous work equipment, technology, or substances are used.

The groups of employees in need of special protection will also be examined, including juvenile employees, pregnant mothers, mothers who have recently given birth, nursing mothers, elderly employees, employees with a changed working ability and physically handicapped employees.

Employment inspections will be focused on three main areas:

- rules on the salary of employees (March-April 2016);
- the orderliness of the employment relationship (June-July 2016) and working time;
- rest periods; and
- the registration of these (October-November 2016).

While also investigating unregistered employment, at least 80% of the inspections will be follow-up inspections examining performance. A fine between HUF 30,000 and HUF 20,000,000 (approx. €95 and €63,231) can be imposed for a failure to comply with the regulatory requirements.



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In 2015, the Italian Government enacted an important labour law reform called 'Jobs Act' mainly aimed at increasing employer flexibility and making risks connected to dismissals more assessable, both in terms of cost and time.

The reform, in particular, has an impact on termination rules of open-term employment contracts and collective dismissals, work-life balance, unemployment benefits, special type of contracts (e.g. fixed-term, part-time, supply and collaboration contracts) and employer's power to vary employment duties.

Termination and new hiring

The Jobs Act introduced, *inter alia*, a new set of sanctions for individual and collective dismissals regarding open-term employees who are hired on or after 7 March 2015. As a result, a dual regime will apply in respect of 'old' and 'new' open-term employees.

Under the new regime, the reinstatement protection is limited to cases where the dismissal is implemented verbally or on a discriminatory basis or the employee's alleged misbehaviour did not occur. On the contrary, with respect of employees hired before 7 March 2015, the reinstatement protection has a broader application (including some redundancy situations). In this respect, the dual regime may be particularly troubling in the collective dismissal scenario.

In order to encourage new hiring, the reform provides that, in respect of new employees hired under an open-term employment contract put in place by 31 December 2015, if certain circumstances are met, employers would enjoy special social security savings for a three-year period up to €8,060 per year. The above social security savings are expected to be extended, under different conditions, for open-term hiring implemented in 2016.

New rules for self-employment contracts

The Jobs Act is also aimed at reorganising several types of 'atypical' contracts and, among others, those for 'coordinated and continuous collaborations' and those based on specific projects (the so-called 'co.co.co' and 'co.co.pro' contracts respectively), which over the years have been very successful in the Italian labour market, and which have also been subject to abuse.

As of 1 January 2016 (and subject to some exceptions), the employment rules will apply to self-employment relationships where performance of work is exclusively personal, continuous and organised by the principal in relation to time and place of work.

Employer's power of variation of employment duties

The Jobs Act also allows employers to modify working duties provided that this does not trigger a change of employment level and category under a collective bargaining agreement. In the case of corporate reorganisation, employment status may be downgraded by one level without a change in salary.

Under the old regime, should an employee be assigned to higher duties for a period exceeding three consecutive months, the employee was entitled to be upgraded to the relevant level of employment, unless the assignment was due to the replacement of employees absent from work with the right to preserve their job post. The reform increased the above term by up to six months and recognised the employee's faculty to waive the aforesaid right to be assigned to the higher level. Moreover, further exceptions to the aforesaid employee's right may be established by collective bargaining agreements.

Finally, the Jobs Act introduced specific conditions under which individual agreements may be entered into in order to implement changes in the employment duties, level and category which may be detrimental to employees.

Unemployment benefits

The Jobs Act introduced new rules aimed at reorganising the system of the social benefits applicable in case of temporary lay-off (i.e. CIGO, CIGS, *Contratti di Solidarietà*) and of the unemployment benefits (i.e. NASPI). In particular, the reform introduced a progressive additional contribution for employers enjoying such benefits in order to discourage the use of the same.

The reform – which has also simplified the trade union procedures for applying for temporary lay-off – will be completely effective by 1 January 2017.



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The Macedonian employment law has recently undergone several amendments, including termination of mandatory payment of contributions for social and health insurance, and amendments to employees' annual leave bonus (regress). Amendments to the country's minimum wage regulation have also been proposed. The new Law on Misdemeanours, enacted in 2015, is broad in scope and has had an impact on all Macedonian laws, including employment related legislation.

Termination of the obligation for mandatory payment of contributions for health and social insurance

As of 1 August 2015, service contracts, authorship contracts and all other contracts from which natural persons generate income by performing physical and/or intellectual services (Non-Employee Services Contracts) are no longer subject to mandatory social and health insurance contributions (Mandatory Contributions), but are subject to a flat personal income tax rate of 10%. The only exceptions are:

- managers of limited liability companies; and
- executive members of Boards of Directors and members of Managing Boards in joint stock companies, if such individuals are not employed in the respective company, where the obligation still applies.

These changes almost entirely repeal the current Mandatory Contribution payment system.

Labour Law and Collective Bargaining Agreement in the private sector

The Labour Law has been subject to several amendments mainly with respect to misdemeanour procedures conducted within an employer, as well as other amendments related to compensation paid to employees.

Law on Misdemeanours triggered amendments to the Labour Law

In July 2015 the Labour Law was harmonised with the new Law on Misdemeanours, which prescribes a new method for calculating fines imposed on legal entities. This method of calculation takes into consideration the offender's revenue, the number of employees and previous behaviour as relevant in determining the amount of the fine. Previously, misdemeanours were subject to predetermined monetary fines, or ranges of fines, which were often considered to be unfair to small and medium-sized enterprises which were fined on the same basis as large corporations. Following harmonisation, employers are

now subject to fines determined on a case-by-case basis in accordance with the above criteria.

General Collective Bargaining Agreement in the private sector

As of 2014, the Federation of Trade Unions and the Organisation of Employers of Macedonia agreed on the obligation for payment of an annual leave bonus to every employee in the private sector who has been working in a respective company for more than six months in the ongoing calendar year. This bonus is at least 40% of the national average net monthly salary.

In July 2015, both parties' representatives agreed to an exception to this obligation for companies facing financial difficulty. Employers in financial difficulty will now be able to negotiate and agree with their trade unions on a lower rate of the annual leave bonus than that prescribed by the General Collective Bargaining Agreement for the Private Sector.

Proposed amendments to law on minimum salary

New amendments to the national minimum monthly net salary are in the process of being adopted before the Macedonian Assembly. The currently proposed amendments, if adopted, would increase the national minimum wage from MKD 10,080 to MKD 11,000 (approx. €163 and €178).



Branch Collective Bargaining Agreements

Montenegrin employment and labour regulation did not undergo any significant changes in 2015. Certain changes were introduced, however, in the area of industry Branch Collective Bargaining Agreements, as follows:

CBA for Banks

The Branch Collective Bargaining Agreement for Banks, other Financial Institutions and Insurance Companies (CBA for Banks) ceased to be valid and applicable with effect from 3 August 2015.

By way of background, the CBA for Banks was unilaterally repealed by the Union of Employers of Montenegro in February 2015, with a six-month notice period. However, since a new branch collective agreement was not concluded in the meantime, the existing CBA for Banks ceased to be valid in August.

As a consequence, all obligations provided for in the CBA for Banks are no longer in force. For example, the CBA for Banks obliged employers working in this sector to pay a higher redundancy payment amounting to a minimum of 24 net salaries of the employee. Also, the same amount of 24 net salaries was set as the mandatory incentive severance payment in the case of employment termination on the basis of mutual agreement between the parties, which discouraged the termination of employment agreements in this sector in practice.

Banking sector employers are now free to enter into mutual termination agreements with much lower incentive severance payments, and Montenegro has witnessed numerous employment terminations with lower severance packages being provided.

CBA for Telecommunications

A new Branch Collective Bargaining Agreement for Telecommunications (CBA for Telecommunications) was enacted on 30 September 2015. It is applicable to all employers in Montenegro who work in the field of telecommunications (cable, wireless, satellite etc.) for the next three years.

It provides for certain additional incentives for employees in comparison to the Labour Law and the General Collective Bargaining Agreement for Montenegro, as follows:

- increased number of days of annual leave and paid leave;
- basic salary determined on the basis of a 30% higher base for calculation than the base set at the state level;

- additional salary increase rates for overtime work and on-call time; and
- severance payments for redundancy equal to 60% of the average monthly salary paid in the last six months to the employee (or on the branch level, if more favourable), per each year of employment with the current employer.

Also, the new CBA for Telecommunications has a new list of breaches of work obligations which may trigger employment termination, as well as a separate list of additional reasons for termination (e.g. breach of non-compete clauses, misuse of company property, misuse of sick leave, inappropriate behaviour, etc.).

Employers were given a six-month deadline within which to harmonise their internal Collective Bargaining Agreements with the new CBA for Telecommunications.

Considering these changes, employers working in the banking and insurance and telecommunications sectors in Montenegro will need to perform a thorough review of their internal enactments and practices in order to ensure compliance with these new regulations.

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Payroll tax liabilities when hiring independent contractors

Under current Dutch tax law, independent contractors can apply for a Declaration of Independent Contractor Status (*Verklaring arbeidsrelatie, VAR*). If they provide such declaration to their client, the client may assume that the contractor is not an employee for tax purposes and will not need to withhold payroll taxes from payments to the contractor and cannot be held liable for payment of such taxes. The VAR declaration will be abolished. Under a new and stricter regime, which we expect to come into force on 1 April 2016, no payroll taxes need to be withheld by the client if:

- the contract between the contractor and the client is based on a template contract published by the Dutch Tax Authority; or
- the contract drafted by the contractor and the client was 'preapproved' by the Dutch Tax Authority and (in both situations) the contractor and the client strictly act in accordance with the contract terms.

When assessing a contract drafted by the contractor and the client itself – which will take approximately six weeks – the Tax Authority will verify if the contractor is sufficiently independent and does not qualify as an employee for tax purposes. The Tax Authority has guaranteed that all contracts drafted by the contractor and the client which are submitted before 1 February 2016 will be assessed and responded to before 1 April 2016. Contractors and their clients will have until 1 January 2017 to bring the manner in which they work in practice in line with an approved contract. The Tax Authority will only start to enforce the new rules after 1 January 2017. In case of non-compliance findings the Tax Authority can with retroactive effect claim taxes which were incorrectly not withheld. Fines can be imposed too.

Stricter enforcement of data protection rules

On 1 January 2016, two important changes in Dutch data protection law came into force. Data processors will be required to notify the Dutch Data Protection Authority and on some occasions to notify the data subjects concerned in the event of a personal data security breach that leads to (a significant chance of) adverse consequences for the protection of personal data. As of the same date, administrative fines can be imposed in the event of a breach of the main rules under the Dutch Data Protection Act. These fines can amount up to € 820,000 or 10% of the annual turnover in the case of a legal entity. Employers can be data controllers so they should make sure that they meet the Dutch data protection rules regarding

the processing of personal data of their employees, particularly if data are stored in, transferred to or accessible from locations outside the EEA.

Whistleblowing

The House for Whistleblowers Act (*Wet Huis voor klokkenluiders*), introduces rules on whistleblowing in The Netherlands. The Act introduces an independent governmental body (*zelfstandig bestuursorgaan*) called the House for Whistleblowers, which will investigate wrongdoings at the request of whistleblowers and will advise whistleblowers as to their position and possible actions. The Act introduces an obligation for companies having at least 50 employees to have a whistleblowing scheme in place, and provides whistleblowers protection against detrimental treatment by their employers. An important feature of the new act is that global companies having engaged a third party organisation for its whistleblowing services, such as in the case of a whistleblowing hotline, will have to enter into a data processing agreement with such third party organisation. If no such agreement is in place this can under the new rules lead to administrative fines of up to €810,000 or 10% of the annual turnover in case of a legal entity.



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Whistleblowing regulations

The law on Macro-prudential Oversight of the Financial System and Crisis Management in the Financial System came into force on 1 November 2015. It implements EU directive 2013/36/EU and introduces whistleblowing into the Polish legal system. The amended regulations concern banks as well as brokerages. From now on, those institutions will have to incorporate procedures on reporting infringements of law or binding procedures and ethical standards to a particular board member, or in special cases, to the supervisory board. Employees who report infringements will be protected against repressive measures, discrimination or other unjust treatment.

Minimum wage for work

A new minimum wage of PLN 1,850 (approx. €434) applies from 1 January 2016.

Social insurance

Until 31 December 2015 an entrepreneur who concluded several mandate contracts was allowed to pay social insurance contribution only in respect of one contract. As of 1 January 2016, an entrepreneur is obliged to pay a social insurance contribution for contracts, up to the level of the minimum wage (PLN 1,850).

More rights for working parents

From January 2016, new Labour Code provisions will introduce various types of parenthood leave. Additional maternity leave will be abolished, but parental leave will be extended to 32 weeks (for a single child). If the employee chooses to combine parental leave with working leave, then the employee's leave will be proportionally extended up to 64 weeks (for a single child). The employee will also be able to elect to use up to 16 weeks of parental leave at a later date up to the end of the calendar year in which the child reaches six years of age.

Digital medical certificates

From 1 January 2016, digital medical certificates will replace paper based certificates. The employer will be able to download the digital certificates via an online profile, without having to wait for hard copy originals from the employee as has been the case until now. Employers have until the end of 2015 to set up profile information in an IT system provided free of charge by the Social Insurance Institution (ZUS). The law also provides for a transitional period until the end of 2017 during which it will be possible to continue to obtain medical certificates in their current form.

Limitations on definite-term contracts

As of 22 February 2016, a maximum limit of 33 months for definite-term contracts will apply, irrespective of breaks between such subsequent contracts. Also, an employee may hold a maximum of three definite fixed-term contracts with a firm. If the total period of employment under definite-term contracts exceeds 33 months, or if the parties conclude more than three of these contracts, the employment contract would immediately convert to indefinite-term. Currently, the law does not provide any maximum period for which a definite-term employment contract may be concluded.

Unification of termination notice periods

From 22 February 2016 termination notice periods of two weeks, one month and three months will apply to all types of employment contracts depending on an employee's length of service. Also, from 22 February 2016 employers are entitled by law to release employees from work during the notice period, while employees would retain the right to receive remuneration.

Withdrawal of specific task contracts

The Polish Labour Code currently in force envisages the following types of employment contracts:

- indefinite-term contract;
- definite-term contract;
- contract to perform a specific task;
- contract to substitute an absent employee; and
- probationary period employment contract.

The specific-task employment contract will be withdrawn from 22 February 2016.



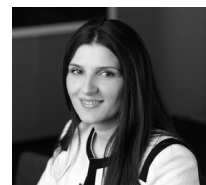
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A law on the Protection of Whistleblowers has been applicable since 5 June 2015. This is the first step to ensuring that individuals who report suspicions of corruption are effectively protected in Serbia. The National Strategy for Combating Corruption and its supporting Action Plan necessitated the enactment of this type of legislation in order to complete the anti-corruption legal framework in the country.

Whistleblowing

The law defines a 'whistleblower' as a natural person who performs an act of whistleblowing (i.e. disclosing information on: a violation of regulations; a violation of human rights; acts by a public authority contrary to their entrusted purpose, etc.) in relation to a professional engagement or recruitment process, the use of services of state or other bodies, holders of positions within a public authority or public services, business cooperation and ownership rights over a business entity.

Aside from whistleblowers, the law also protects individuals who are connected to whistleblowers or who are mistakenly believed to be a whistleblower and who suffer detrimental consequences as a result.

The law guarantees protection to whistleblowers provided that:

- the whistleblowing disclosure is made to an employer, an authorised body or publicly available source, and in a manner prescribed by law;
- the relevant information is disclosed within a one-year period from when the information subject to whistleblowing was learned, but no later than ten years from the date the action was executed; and
- a person with average knowledge and experience similar to the whistleblower's would have believed the truthfulness of the information, based on the data available at the time the act of whistleblowing occurred.

Based on the above, the law provides for three different types of whistleblowing:

1. internal whistleblowing, a disclosure of relevant information to the employer;
2. external whistleblowing, disclosure of information to the competent state authority (e.g. the Anti-corruption Agency etc.); and
3. public whistleblowing, disclosure of information to the media, or other source of information generally available to the public.

Obligations for employers

Every employer is obliged to inform, in writing, all employees of their rights under this law, and (if the employer has more than ten employees) to adopt internal whistleblowing procedures. An employer is specifically prohibited from taking detrimental action against a whistleblower, actively or by omission (e.g. regarding employment, working conditions, salary, transfer, termination of employment, etc.).

As a general rule, it is also illegal for whistleblowers to publicly disclose information before notifying their employer or the competent state authority, save in exceptional cases – if there is imminent danger to life, public health, security or the environment, or if the destruction of evidence is imminent.

In cases where individual whistleblowers experience repressive measures, the law gives them the right to request protection from the court (including the adoption of a temporary injunction). Legal action can be taken within six months from the date the individual learned of the employer's damaging actions and, at the latest, within three years of the date the damaging action occurred. The law prescribes fines for violations ranging from RSD 50,000 - 500,000 (approx. €410 - 4,100).

This is the first time whistleblowing has been regulated by Serbian law. Therefore, the impact that the law will have in practice remains unclear.



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Ongoing reform of Slovenian Labour Law continued with the adoption of the Employment, Self-employment and Work of Foreigners' Act, which came into force on 1 September 2015.

Foreign workers

Slovenian Labour Law, as applicable to foreigners working in Slovenia, had to be amended in light of the new provisions of the Act. As a result of these changes, a single application procedure now applies to obtain a permit for third-country nationals to reside and work in the territory of Slovenia as well as a common set of rights for third-country workers legally residing in Slovenia.

The new procedure enables all foreigners (except for those falling into specifically exempt categories), who do not have an express right to freely access the labour market, to apply for a single permit for residency and employment, self-employment or labour in Slovenia. This so-called 'one stop-shop procedure', simplifies the realisation of the free access to the labour market principle. The application for a single permit must be filed with the territorially competent administrative unit, and the Employment Service then issues the relevant consent, provided that the conditions for granting the consent are met. Based on the issued consent, and during the term of its validity, the foreigner can perform work:

- based on a civil law contract;
- based on an employment contract with one or several employees; or
- as a self-employed person.

The Act outlines the specific conditions that must be met in order to obtain the consent of the Employment Service including conditions related to the foreigners' education, previous work status in Slovenia, as well specific conditions, imposed on the employer in case employee status is sought. The latter includes new prerequisites, such as:

- a general rule on full-time employment of a foreign employee;
- absence of a winding-up or bankruptcy of the employer;
- employers' fulfilment of all tax obligations; and
- absence of suitable unemployed persons. (This final condition is not absolute, given that the Ministry of Labour may dispose of this condition in specific cases).

The single permit procedure applies to requests for the EU Blue Card for highly qualified foreign employees, which was enacted in the previous 2011 Act.

Single working permits

In addition, the Act introduces other categories of foreign workers, including seasonal workers (i.e. workers who will work in Slovenia for no more than 90 days, on a seasonal work permit). If workers engage in seasonal work lasting more than 90 days, an application for a single permit must be submitted.

If a foreigner intends to be self-employed, a simplified procedure applies. No consent of the Employment Service is required and a foreigner may be self-employed after one year of uninterrupted legal residence in Slovenia.

When a single permit is first acquired, its validity is tied to the period for which an agreement had been concluded. Nevertheless, the validity of the first single permit is limited to a maximum of one year. Single permits may be prolonged for an additional two years, however the application procedures must be completed again. The single permit is issued in the practical form of a card.

While these changes were introduced to more efficiently control legality of residence and employment of foreigners in Slovenia, the Act provides for higher penalties in case of breaches of the imposed obligations, such as failure to obtain the necessary consent, engagement in work outside the scope of the consent, as well as other infringements of the Act. The employer may face penalties in amounts ranging from €3,000 to €30,000, while an employer legally engaged in the supply of temporary agency work may face penalties of up to €75,000, depending on the severity of the breach.



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Non-compete clauses

Employers may impose non-compete clauses on employees in Sweden, but such clauses are generally viewed restrictively.

The Confederation of Swedish Enterprise and an association of unions for salaried employees, PTK, has entered into a new agreement on the use of non-compete clauses in employment agreements. The agreement will become normative and set the standard for the entire labour market. The agreement is, however, mainly a codification on what is already the current practice in this field.

Including a non-compete clause in an employment agreement must be subject to thorough consideration with respect to the necessity of such a clause in the particular case. The following preconditions must be met if a non-compete clause is to be considered enforceable:

- the employer's business involves trade secrets;
- there is a risk that the employer will suffer damages if the trade secrets are disclosed; and
- the employee has access to the trade secrets and is, through his or her education and/or experience, able to make use of them in a competing business.

The term of a non-compete clause shall normally not exceed 18 months. The employer must compensate the employee during this term if the employee, as a result of the restriction, is unable to take up new employment or otherwise engage in a business within his/her field and therefore receives a lower salary. In order for the non-compete clause to be enforceable, the agreed compensation shall amount to 60% of the employee's former salary.

An employee in breach of a non-compete clause may be liable for liquidated damages to the former employer. Normally, the amount in liquidated damages may be set to a maximum of six months' salary. However, the employer may be entitled to further compensation if damage can be shown.

Social security contributions: young employees

The current government has decided to restore the social security contributions for employees under the age of 26. The previous government lowered these contributions for young employees from the standard 31.42% to 15.49% in order to reduce youth unemployment. The increase has been gradual and the social security contributions are expected to be fully restored to 31.42% by the end of 2015.

Inadequate accessibility as a new form of discrimination

Inadequate accessibility for employees with a disability has been introduced as a new form of discrimination in the Discrimination Act. Inadequate accessibility is when an employer fails to take such accommodating measures that would put an employee with a disability in a comparable situation to other employees without disabilities. Circumstances such as the size of the employer and the duration of the employment will determine to what extent accommodating measures must be taken.

Fixed term employment

Currently, employers in Sweden are at liberty to engage employees on so-called general fixed-term contracts. They may also hire temporary substitutes as replacements for employees on leave. However, such contracts are automatically converted into employment for an indefinite term when the employee's aggregated period of employment – either under a 'general' fixed-term employment or as a temporary substitute – exceeds two years during a five-year period.

Since permanent employment historically has been the norm in Sweden, the fact that employers may hire on fixed-term contracts in order to avoid the employment protection afforded to permanent employees has been politically controversial. Concerns have also been raised regarding whether the possibility for employers in Sweden to hire employees alternately on general fixed-term contracts and as temporary substitutes in order to avoid the two-year rule referred to above is in line with the EU Directive on fixed-term work.

As a consequence, the Swedish government has now proposed limitations on hiring employees on fixed-term contracts for longer periods of time. The changes are proposed to enter into force on 1 May 2016.

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New timekeeping regulations

Swiss law provides for a very strict obligation on companies to maintain detailed timekeeping records (including start and end time of the working day and break times of more than 30 minutes) in respect of almost all of their employees. Exempt only is the top level of management, e.g. the board of directors and the highest level of management (e.g. CEO, CFO, COO, management board).

A huge disparity has evolved over the last few years between this obligation and the reality of day-to-day operations in many businesses. Many companies, particularly in the service industry, have not complied. However, after an attempt to change the rules failed, the authorities started to enforce the outdated regime. Many companies have been forced to implement the rules and some have been subject to criminal proceedings for failure to comply, including some high-profile employers (e.g. a large investment bank, and one of the largest newspapers).

After lengthy negotiations with social partners, the Swiss Federal Council enacted two new articles which are supposed to simplify the time recording obligation. These came into force on 1 January 2016. According to these two articles, employees who meet certain requirements will no longer be required to record their hours or, if still required to do so, they can keep track of these in a simplified form. However, in order to make use of the two new articles, companies must meet certain requirements.

First, to get a full exemption, employers need to enter into a collective bargaining agreement with the relevant labour unions in a particular industry. Further, a full exemption will only be possible for employees with a salary of more than CHF 120,000 (approx. €110,000). In addition, the employees need to give their consent individually and, despite their consent, have the right to opt in to the time recording regime if they think it is better for them.

A simplified time recording system (only recording hours worked per day) is available as well. However, this also requires an agreement with employee representatives.

We do not expect that many companies will make use of the full exemption in the services industry because this would allow the labour unions to strengthen their position in an industry which so far is not very unionised. However, many companies are likely to make use of the simplified time recording regime.



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Legislation changes

Modern Slavery Act

The Modern Slavery Act 2015, which came into force on 29 October 2015, requires commercial organisations operating in the UK with a global annual turnover of over £36m (approx. €49.5m) to publish a statement setting out what it does to alleviate slavery and human trafficking in its business and its supply chain. The new law will therefore apply to large international corporate groups, even if the UK part of the business is not substantial. This new requirement will apply to financial years ending on or after 31 March 2016.

Gender pay-gap reporting

Earlier this year, the UK Government announced plans to introduce new legislation requiring UK companies to publish gender pay-gap information. The new regulations will apply to private and voluntary sector companies employing 250+ employees. Consultation on this issue closed in September 2015 and we await the Government's response and draft regulations. It is intended that the new legislation will apply from March 2016.

Trade Union Bill

The Trade Union Bill 2015 will make a number of amendments to existing employment legislation in relation to industrial action. Changes under the Bill will include:

- new thresholds on industrial action ballots (50% must vote; 40% must vote in favour);
- ballot papers to give clear information about strike proposals;
- notice of strike action increased from seven to 14 days;
- four-month 'expiry date' on ballot result; and
- obligation to inform police of pickets and to appoint a picket supervisor.

Shared parental leave for grandparents?

In April 2015, a new system of shared parental leave was introduced in the UK, allowing mothers to share up to 50 weeks maternity leave (and 37 weeks maternity pay) with their partner. The UK Government has now announced that they are considering extending access to the shared parental leave regime to working grandparents. The plans are not yet clear, and consultation on the details is due to commence in the first part of 2016.

National Living Wage

The National Living Wage (NLW) is due to come into force in April 2016. It will apply to those aged 25 and over, and will be set at the initial rate of £7.20 (approx. €9.89) per hour. The National Minimum Wage (NMW) will continue to apply as before, with the NLW acting as a 'top up' for those aged 25+. A package of compliance measures have also been announced including doubled penalties for non-payment (now 200% of arrears); a new dedicated team who will pursue and prosecute serious cases of deliberate underpayment; and director disqualification for up to 15 years.

Case law update

The 'Woolworths case': collective redundancies

The Court of Justice of the European Union has given its judgment on the meaning of 'establishment' for the purposes of deciding whether collective redundancy consultation obligations are triggered or not. The Court confirmed that 'establishment' should be interpreted narrowly to mean the individual establishment in which an employee works. It explained that where an employer's business comprises several entities, the relevant 'establishment' is the entity where the worker is assigned to carry out their duties. In the Woolworths case, this would be the individual store. In other cases, the exact meaning of 'establishment' will still turn on its own facts but the case provides a strong indication that multiple sites would not need to be taken into account when considering if collective consultation requirements are triggered.

Holiday pay

In *Bear Scotland Ltd v Fulton*, it was confirmed that non-guaranteed overtime must be included in holiday pay if it is paid regularly. This decision was followed in another UK case (*Lock v British Gas Trading*) regarding commission payments, where it was held that commission payments – where they are paid regularly – must be included in holiday pay. The Lock decision on commission payments has now been appealed on the basis that non-guaranteed overtime and commission are different concepts, so the court were wrong to follow the Bear Scotland decision. In the meantime, hundreds of holiday pay claims in the UK remain on hold as we await clarity on the issue.

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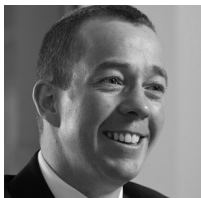
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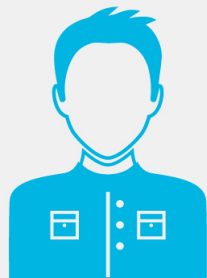
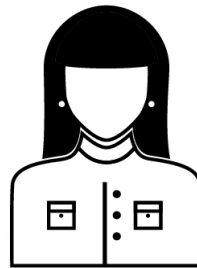
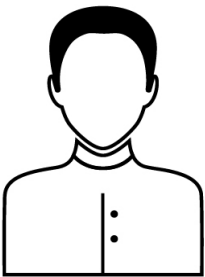
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