SHEPHERD+WEDDERBURN

EUROPEAN EMPLOYMENT LAW UPDATE

2017 Edition

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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 especially true in the area of employment law, where change can be fast paced. With Britain's impending exit from the European Union, and the consideration of more general questions about the EU's future direction, more changes are expected in the coming years.

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 amendments to labour laws across Europe and highlight the key reforms being introduced in 2017.

In a number of jurisdictions, a similar theme of changing employment legislation can be seen, as many countries have implemented recent EU Directives such as the directive on seconding employees abroad. Many countries have looked to increase protections for whistleblowers, update parental leave provisions, and make new attempts to help employees better balance their private and professional lives. The Guide also outlines key reforms in some of the traditional areas of employment law including increases to the minimum wage in several jurisdictions, and updates to the law on unfair and collective dismissal.

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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CONTENTS

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DORDA

Employees posted to Austria entitled to comparable wages

The new Act against the Dumping of Wage and Social Services (Lohn-und Sozialdumping-Bekämpfungsgesetz, LSD-BG) replaces the old regulations contained in the Employment Law Harmonisation Act with effect as of 1 January 2017.

The LSD-BG aims to ensure compliance with minimum standards of employment for both domestic employment, cross-border employee leasing, and posting of employees. 'Posting' describes the situation where one or more workers, for a limited period, carry out their work in the territory of a state different than the one in which they normally work. Posting differs from employee leasing (leasing describes the situation where an employee is integrated into an Austrian undertaking and is subject to its functional supervision and instructions).

There are several exemptions from the LSD-BG, namely short-term postings for various purposes such as:

- Business meetings.
- Seminars.
- Trade fairs and similar events.
- Conferences.

The exemptions apply in these situations as long as no further services may be provided by the posted employees.

According to the LSD-BG, employees who usually conduct their work in Austria but are employed with a foreign entity that is not subject to an Austrian collective bargaining agreement will still be entitled to the same minimum wage as comparable employees of comparable Austrian businesses. Similarly, foreign employees who are posted to Austria are entitled to the same minimum wage as Austrian employees of Austrian businesses for the entire duration of the posting.

The employer will need to notify Austrian public authorities of the posting in advance. Additionally, certain documents, such as the employment agreement, payslips, and records of working time will need to be available at the place of work.

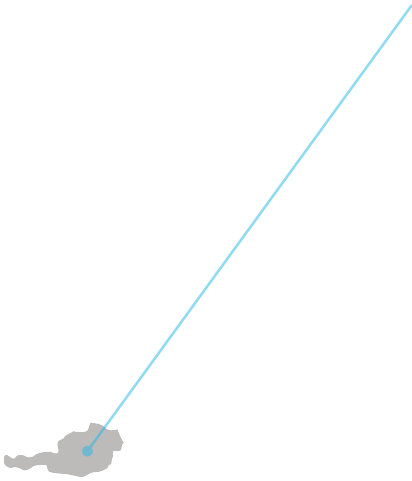
There are substantial civil penalties for employers who fail to meet the requirements of the LSD-BG regime.

Parental part-time

According to the Maternity Protection Act (Mutterschutzgesetz, MSchG) as well as the Paternity Leave Act (Väter-Karenzgesetz, VKG), parents are entitled to work part-time until the child's seventh birthday or until the child starts school, if the employee has been employed for at least three years and the business unit employs more than 20 employees. The purpose of this system is to reconcile family and working life for both parents.

The MSchG and the VKG were amended by several provisions related to parental part-time work. Most importantly, where parents request to work part-time, their working time must be reduced by at least 20%, but this is subject to a minimum working time of 12 hours per week. Furthermore, parents may now claim their right to parental leave at a later point in time, rather than immediately upon birth or after the partner's parental leave. Certain provisions of the MSchG concerning the prohibition on work for (expectant) mothers as well as termination protection are now applicable to freelance employees as well.

The Austrian Supreme Court also came to a significant decision pertaining to lump sum overtime arrangements, holding that the entitlement of employees to an agreed overtime lump sum is to be suspended during the period of parental part-time employment.



BELGIUM

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Social security contributions have been reduced

To enhance the competitiveness of the Belgian economy, there has been a reduction in the social security contributions paid by employers. Previously, these were approximately 35% for white-collar employees and around 40% for blue-collar employees (including sector contributions).

The so-called "Tax Shift Act" has, from 1 April 2016, reduced the basic rate to 30%, further dropping to 25% from 1 January 2018. On top of this basic rate, additional employer social security contributions and contributions that the employer must pay arising from sector level agreements remain due. Therefore, on average, the total rate of social security contributions that an employer must pay on its employees' salaries will be just over 30%. Employee contributions remain fixed at 13.07% of gross salary.

To encourage employers to hire personnel, Belgian law provides that they can benefit from 20 quarterly reductions in employer social security contributions for the first six hires. This so-called "target group reduction" had previously applied only to the first five employees. With respect to the first employee, if hired between 1 January 2016 and 31 December 2020, no normal employer social security contributions are due (for an indefinite period).

New rules on occupational pension schemes

On 1 January 2016, a new Act entered into force, reshaping the landscape of occupational pension schemes in Belgium. Amongst other things, this modified the return guarantee and linked payment of the pension capital to the taking up of the employee's legal pension.

The employer must guarantee a minimum return on certain contributions to the occupational pension plan, replacing the old return guarantee rates. A flexible interest rate has been introduced from 1 January 2016, which is linked to the ten-year bond return over the past 24 months and limited to a minimum interest rate of 1.75% and a maximum interest rate of 3.75%. For 2017, the return guarantee will be equal to the minimum of 1.75% (for both employer and employee contributions).

Another significant reform is that, from 1 January 2016, as a general rule the occupational pension capital can only be paid out when the employee actually takes up his/her legal pension (legal [early] retirement). However, if the Pension Scheme Rules so provide, the employee can also ask for this payment from the moment he/she meets the conditions to take up his/her legal (early) pension while continuing to work.

Payment of the occupational pension is now obligatory when the employee takes up his/her statutory pension.

Case-law update regarding manifestly unreasonable dismissal

Since 1 April 2014, employees engaged under an open-ended employment contract may claim damages, ranging from between three and 17 weeks' salary, if the dismissal is "manifestly unreasonable". A "manifestly unreasonable" dismissal is a dismissal:

- For reasons unrelated to the employee's capability or conduct, or to the operational requirements of the undertaking.
- That would never have been so decided by a normal and reasonable employer.

So far, few judgments have been delivered on these rules. In cases where the dismissal was considered to be justified, the courts highlighted that they were only permitted to undertake a "marginal check" of the grounds relied on by the employer. Only if the decision to dismiss would not have been taken by any other normal and reasonable employer placed in the same circumstances, would the dismissal be unjustified. In the cases where the dismissal was declared manifestly unreasonable, damages awarded were equal to eight or ten weeks' salary.

BOSNIA AND HERZEGOVINA

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In 2016, employment legislation activity in Bosnia and Herzegovina has been marked by the publication of Labour Laws in both its entities, the Federation of Bosnia and Herzegovina (Federation of BIH) and the Republic of Srpska (RS).

The Labour Law of the Federation of BIH from 2015 (discussed in the 2016 edition of this publication), has been challenged on the grounds of constitutionality of its adoption procedure. In order to rectify the mistake in procedure, it has been, once again, formally adopted and published in 2016, without amendments.

New Labour Law in the RS

For the RS, the new Labour Law introduces significant changes in the overall relations between employer and employees, reflecting employers' requests to modernise the law and harmonise it with EU regulations. The main changes are as follows:

- Employers with more than 15 employees must have either collective bargaining agreements or Employment Rulebooks. If the employer rejects the trade union's initiative for a collective bargaining agreement or refuses to engage with the union, the employer cannot adopt an Employment Rulebook.
- Exceptions allowing fixed term employment exceeding 24 months are set as follows:
  - in case of longer absence of another employee – until his/her return,
  - in case of a specific project – until the project completion, but not longer than 60 months, and
  - with an unemployed person with less than five years until retirement – until retirement conditions are met.
- Minimum period of annual leave is increased from 18 to 20 working days.
- Maximum number of overtime hours per employee is set to four hours a day and ten hours a week. On a yearly basis, maximum overtime has been increased from 150 to 180 hours per calendar year, unless a collective agreement allows up to 230 hours.
- Verification of an employee's signature on a consensual termination agreement is now necessary for this agreement to become legally binding.
- The law provides a list of grounds for dismissal. As well as the grounds existing in the previous law, underperformance is now explicitly listed. To rely on this ground, an employer must first provide appropriate instructions for the employee on how to improve. If the employee continues to underperform upon the expiry of a reasonable improvement period, the employer may proceed with the employment termination.
- Opposite to the complex disciplinary proceedings under the previous law, before termination for breach of work duty or discipline, an employer is now obliged to deliver to the employee a written notice stating the grounds for termination, together with the facts and evidence and must allow a waiting period of eight days for the employee to respond.
- Under the new provisions on collective bargaining agreements, these agreements can now be concluded for a maximum period of three years.

Although these provisions aim to create more flexible solutions in employment relations and a more competitive labour market, the fact that no general collective agreements in the RS have yet been signed creates a lot difficulties and uncertainties in the implementation of the new Labour Law. Once the collective bargaining process between the social partners ends, we may become more aware of the overall effects of the new law on the employment market in the RS.

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The most recent changes to the Labour Act introduced in August 2014 have been more or less successfully implemented. No changes to the Labour Act were made this year, so we comment below on the implementation in practice in the most notable areas.

Redundancy termination – procedural issues

With respect to the procedural issues regarding redundancy termination, the minimisation of certain elements of the employers' (in practice) non-essential obligations e.g. abandoning the need to produce a Redundancy Plan as well as the limitation of the influence of state bodies on reorganisation procedures have jointly resulted in less burdensome and less time-consuming obligations on the employers.

The Labour Act has not yet resulted in any material changes to current practice in respect of termination procedure, but it has raised some issues following the introduction of a new termination reason: non-fulfilment during a trial period. This change has raised further issues about the treatment and necessity of providing detailed reasons on termination of that kind, giving rise to a certain degree of legal uncertainty.

Regulations on hours of work

Amendments made to the provisions regulating working hours and the schedule of working hours have opened up possibilities of a more flexible organisation of work processes; e.g. the introduction of "bank of hours" offers employers and employees the possibility of stepping out of the legal framework, resolving the issue of the increased working arrangement in a more flexible way, in accordance with business needs. In practice, this will allow parties to deal with an extended work week, regulating the total number of working hours during the period of uneven distribution of working time with no restrictions, as long as the total number of working hours (including overtime work) does not exceed the average of 45 hours a week within a four-month period (or six months, if so agreed under a collective bargaining agreement).

Employee representation

Although no changes were introduced to the Labour Act, some changes were made and practical issues raised in the field of influence and co-determination of employees in transnational bodies – more specifically in the light of the establishment of European Works Councils, and the procedure for the election of members to the Special Negotiation Body, in line with the application of the EWC Directive (Directive 2009/38/EC of the European Parliament and of the Council as of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees). Practical implementation of the procedures set by the Act on European Works Councils (Official Gazette 93/2014), and prescribed pursuant to the By-laws on the procedure in election of employees' representatives from Croatia to the Special Negotiating Body and the European Works Council (Official Gazette No. 89/15), have resulted in a significantly increased number of employers organising elections for employees' representatives.

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Notice of termination to absentees due to incapacity

The Termination of Employment Law was amended on 25 July 2016 in relation to provisions on absence due to incapacity. This followed the case of an employee who was dismissed upon her return to work, after an extended period of absence while receiving cancer treatment.

In response, the House of Representatives amended the relevant legal provisions regarding the notice of termination that must be given when employees are absent due to incapacity. In particular, pursuant to the amendment, if an employee is away from work on grounds of incapacity for up to 12 months, the employer may not give a notice of termination of employment at any time between the first day of absence until the last day of absence plus a period of time equal to a quarter of the total period of absence. In the past, the law only prohibited employers from giving such a notice for up to six months from the first day of absence.

End of special contributions of private sector employees, pensioners, and the self-employed

For the fiscal years between 2012 and 2016, a special contribution was automatically imposed where gross monthly earnings exceeded €2,500, as a means of quick tax collection in response to the Eurozone fiscal crisis. As of 1 January 2017, the special contributions have ended.

Amendment of the Social Insurance Law

The Social Insurance Law was amended on 2 December 2015, in relation to maternity allowance, to the effect that, in case of a childbirth that leads to the birth of more than one child, maternity allowance shall be paid to the mother for a period of 18 weeks plus four weeks for each additional child.

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Higher minimum wage

The Labour Code imposes a minimum wage for every employee for their weekly work (40 hours per week). As of 1 January 2016, the minimum wage was CZK 9,900 (approximately €366) per month and the minimum hourly wage CZK 58.70 (approximately €2.10). As of 1 January 2017, the minimum wage will be raised to CZK 11,000 (approximately €407) per month and the minimum hourly wage to CZK 66 (approximately €2.40) and shall apply to all employees.

Compensation for work injuries and occupational diseases

Not long after Governmental Regulation No. 276/2015 Coll. (in effect as of 26 October 2015) imposed new rules and policies applicable to labour-related compensation for pain and social disadvantages, unjust differences were revealed in relation to the point evaluation system for pain in certain types of health damage resulting from work injuries; for example, too many points were allotted to some rather minor injuries, such as falls without fractures which result only in bruises, haematoma, and swelling. An amendment to the Regulation took effect on 21 July 2016 and remedied this by reducing the points granted to the pain suffered as a result of certain types of injuries. The evaluation methodology applicable to social disadvantage for individual damage to health resulting from some occupational diseases was also adjusted.

Increased support for employers who provide protected jobs to disabled employees

Act No. 435/2004 Coll. applies to the support of Czech state grants intended to help employ people with disabilities. Employers can establish jobs (so-called "protected jobs") for which they can receive a subsidy from the state, provided that they comply with certain requirements. Additional cash support (a subsidy to cover wage costs) is granted if more than one-half of the particular employer's employees are disabled employees in protected jobs. An amendment effective as of 1 April 2016 increased the subsidies to such employers up to CZK 8,800 (approximately €325). The subsidy for employing health-disadvantaged people continues to amount to CZK 5,000 (approximately €185). Employers will then have the opportunity to apply for a greater increase of the subsidy in order to cover the higher costs resulting from employing disabled people, up to the amount of CZK 2,700 (approximately €100).

Amendment to Labour Inspection Act

In 2016, there were three amendments to the Labour Inspection Act (Act No. 251/2005 Coll.). One of the amendments introduced new work safety-related offences and administrative delinquencies, especially in relation to the construction industry, in response to a rising injury rate and, especially, the number of casualties at construction sites. For example, if the contracting party fails to have a work safety plan drafted before work at the site commences or fails to update it during the construction process, it is subject to penalties of up to CZK 400,000 (approximately €14,800). If the contractor fails to duly cooperate with a work safety coordinator, it is subject to penalties of up to CZK 1,000,000 (approximately €37,000).

DENMARK

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PLESNER

Repeal of the 70-year compulsory termination rule

The 70-year rule set forth in the the Danish Act on Prohibition against Discrimination in respect of Employment has been repealed to the effect that as of 1 January 2016, individual employment agreements should no longer provide for the automatic termination of the employment relationship due to the employee having reached the age of 70.

Provisions in employment contracts on automatic termination should have been deleted by 31 January 2016. If the employment contracts have still not been amended, there is a risk that the employer is in breach of the provisions of the Danish Act on Employment Contracts which, in the worst case, may entail payment of compensation.

Reintroducing tax-privileged equity compensation

Until November 2011, companies were able to pay employees share-based salaries with significant tax privileges (Section 7H). Section 7H was repealed as part of the Danish Finance Act for 2012, which meant that individual employee shares and call options for or subscription rights to shares granted as part of an employment have since then been taxed as ordinary salary income due at marginal rates of up to 56%.

However, on 12 May 2016, the Danish Parliament passed a bill to reintroduce a similar tax-privileged equity compensation (Section 7P).

Under Section 7P, the point of taxation is postponed until the shares are sold by the employee, at which point any realised gains will be taxed as share income (at a maximum of 42%). The company is free to decide whether all or only some of their employees will be offered the opportunity to acquire employee shares.

As was the case under the previous rules, the company which is giving the equity compensation will not have a right to deduct the equity compensation expense.

The new provision applies to agreements on equity compensation entered into on 1 July 2016 or later and to agreements amended after this date. However, certain conditions must be met for Section 7P to apply.

Radical amendments to the Danish Holiday Act expected

On 27 April 2015, the EU commission stated that the Danish Holiday Act was not in compliance with the EU Working Time Directive. The EU Commission found that the Danish Holiday Act, in regard to the disparity between the holiday qualifying year (1 January – 31 December) and the holiday year in which the holiday is taken (1 May – 30 April), is in conflict with the EU Working Time Directive.

The approach of the EU Commission has led to the appointment of a committee – consisting of representatives from the social parties of the labour market and the Ministry of Employment – for the purpose of updating the Holiday Act and aligning it with Denmark's international obligations.

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COBALT

Proposed New Act for Resolving Employment Disputes

Employment Disputes Committees (EDCs) are bodies which have existed in parallel to civil courts for a long time, aiming to be a quicker, cheaper, and less formal way of resolving employment disputes. Both employers and employees may file claims to the EDC. If a party to the dispute is not happy with the EDC decision, the same dispute can then be referred to civil court. The procedural rules have become outdated, and so the Ministry of Social Affairs has initiated a new bill aiming to ensure simple, speedy, cheap, and fair out-of-court settlements in employment related disputes.

The most important changes include:

- Procedural rules will be made more clear and specific (although remaining less complicated and formal than the civil court rules).
- EDCs will acquire powers to adjudicate on additional disputes related to employment, such as disputes concerning health and safety, and collective employment relations.
- EDCs will have an obligation to lead the parties to a compromise and will be able to approve settlements.
- Reviewing and processing time of applications will be extended from 30 days to 45 days.
- Existing upper limit of €10,000 on monetary claims will be removed.
- Monetary claims of up to €3,200 will be settled in written proceedings.
- Similar types of claims will be able to be aggregated.
- It will be specified that if the employee of an Estonian employer is based abroad, then any claims should be filed with the EDC in the location of the employer.
- With the consent of the EDC, parties will be able to agree to conduct proceedings in a language other than Estonian.
- Parties will be able to choose to use mediation rather than regular EDC proceedings.

The new law is supposed to come into force as of 1 July 2017; however the bill has not yet reached Parliament where it would have to pass three readings before final adoption.

Changes to limits on on-call hours for the IT sector

Another recent bill initiated by the Ministry of Social Affairs aims to offer more flexibility for the IT sector to use on-call hours for certain positions. On-call arrangements currently require the agreement of both the employer and the employee and are subject to extra compensation of one-tenth of the employee's salary. Due to the need to follow the mandatory limits on work and rest hours, the current maximum number of on-call hours is four hours per day. Such a limit has been difficult to adhere to especially by IT sector companies which are required to ensure the constant availability and functioning of important IT-systems.

The new bill proposes to remove the limitations on on-call hours for employees whose main task is to ensure operability of critical information and communication technology services and networks or ensuring of information security. This will be subject to the conditions that:

- It has been agreed in the employment contract or collective bargaining agreement.
- The overall duration of on-call hours does not exceed 130 hours per 28 calendar days.
- The longer on-call hours do not pose any health risks for the particular employee.

The amendment also introduces a higher compensation for on-call hours – one-fifth of the employee's salary.

The bill is in Parliament and the amendments are likely to be adopted within the first half of 2017.

FINLAND

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Finnish competitiveness pact concluded

The Finnish labour market organisations signed the Competitiveness Pact on 14 June 2016. The main aim of the Pact is to improve the competitiveness of Finnish businesses.

The labour market organisations will implement the Competitiveness Pact by negotiating new collective bargaining agreements containing, for example, the following provisions:

- No collective salary increases for the next year.
- An extension to annual working time by 24 hours (without increasing the salaries accordingly).
- Training opportunities promoting employment for employees made redundant.
- An entitlement to occupational health care for six months after the obligation to work has ended when employees are made redundant.
- A reduction to the employers' share of social security contributions.

Changes in the Job Alternation Leave Act

The amended Job Alternation Leave Act came into force on 1 January 2016. Following the amendments, an employee is required to have an employment period of at least 20 years (previously 16 years) in order to be entitled to job alternation leave and the maximum duration of the job alternation leave has been reduced to 180 calendar days (previously 360 calendar days). In addition, the total of the job alternation allowance was amended so that the full amount for all employees is currently 70% of the unemployment allowance they would be entitled to if they were unemployed (previously, employees with long work careers were entitled to higher job alternation allowance). Additionally, it is not possible to divide the job alternation leave into periods anymore.

Changes in the Annual Holidays Act

The amended Annual Holidays Act came into force on 1 April 2016. Annual holiday now accumulates for up to 156 days (i.e. six months) during a period of family leave. Previously, annual holiday accumulated during the entire family leave. The aim of the amendment is to reduce public costs relating to family leave.

Additionally, an employee's right to postpone his/her annual holiday due to incapacity for work has been restricted. According to the new Act, an employee is entitled to postpone holiday days that exceed six holiday days, if the employee has become incapacitated for work due to childbirth, illness, or accident during his/her annual holiday. The restriction applies only to annual holiday exceeding 24 holiday days.

Changes in employment legislation

Amendments to the Employment Contracts Act are currently under consideration. The main purpose of the amendments is to increase the rate of employment. New legislation is expected to come into force in January 2017.

Under the proposals, the maximum length of the trial period would be extended from four months to six months. In addition, the employer would be entitled to extend the trial period in the case of employee absence during the trial period due to incapacity or family leave.

In addition, the period during which the obligation to re-hire employees would apply is to be shortened from nine months to four months. However, if the employment relationship lasted for 12 years, the re-hire period would be six months.

Additionally, it will be possible to enter into a fixed-term employment contract with a long-term unemployed person without a justified reason for a maximum period of one year.

Retirement Age

Retirement reform is expected to come into effect in 2017. It is anticipated that the general retirement age will be increased gradually from the current age of 63 to 65. The retirement age of employees born in or after 1965 will be adjusted to take into account the change in life expectancy.

A new form of early pension is a years-of-service pension scheme 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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The major change in French employment law this year has been the introduction of the Act of 8 August 2016, also known as the Labour Law. The bill was subject to various protests and challenges, so the government enacted a procedure to shorten the parliamentary debates period and get the legislation passed.

Key provisions

The new Act contains provisions including:

- Prioritisation of company-wide agreements over branch agreements, especially in respect of working time.
- Simplification of the rules of review for collective agreements.
- Consolidated definition of dismissal for economic reasons.
- New system to evaluate the health of the employees, as well as their unfitness.

The most important feature is the generalisation of company-wide majority agreements, which will gradually enter into force over time.

In order to avoid deadlock situations, if an agreement has been signed by the employer and by trade unions representing less than 50% of employees, the agreement can be validated by a vote held among company employees.

These new rules apply from 1 January 2017 for agreements relative to working time, rests, and holidays, and as of 1 September 2019 for all other types.

The right to disconnection

From 1 January 2017, annual negotiation regarding "professional equality and life quality" will also refer to how employees can exercise the right to disconnection. The idea is that the employee should not always be connected to their employer by mobile, tablet, or laptop.

Rules relating to executives

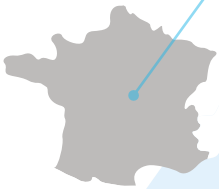
The Labour Law also sets out guidelines for executives who are subject to a specific working time based on a fixed number of working days per year. The new legislation adheres to the conditions of validity that the French Supreme Court laid down in several decisions dating from 2011. In addition to rules regarding the right to disconnection, the Law deals with:

- Method of evaluation and regular monitoring by the employer of the employees' workload.
- Method by which the employer and the employee communicate periodically about workload to ensure balance between professional and personal lives.
- Employee remuneration.
- Organisation of work within the company.

More importantly, if a company-wide agreement is not aligned with the legal and case-law provisions concerning the specific working time for the executives, employers will still be able to validly conclude individual agreements of working time based on a fixed number of days per year, provided they:

- Establish a checklist document with the number and the date of days or half-days worked.
- Ensure that workload is compatible with the respect of daily and weekly rest periods.
- Organise an annual review with the employee to raise the topic of the employee's workload (which must be reasonable), their work organisation, the balance between their professional activity and private life, and their remuneration. This review will effectively bridge the gap between the agreements.

This new provision will secure the employer's position on this issue by avoiding future litigation launched by executives claiming that they are entitled to payment for additional hours due to the fact that the company-wide agreement is not compliant.



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HEUKING KÜHN LÜER WOJTEK

On 21 October 2016 the German Parliament passed a bill that involves several changes to and amendments of the German Temporary Employment Act (AÜG), which take effect on 1 April 2017. Due to the number of amendments, only the three main changes introduced by the new legislation are outlined below.

Maximum period of assignment

There will be a maximum period of assignment of 18 months for each employee with regard to the same client (the host business). Previous assignments to the same client – regardless of whether the respective employers are identical – have to be included when calculating the maximum permissible period of assignment, unless the period between the assignments exceeds three months.

Collective bargaining parties – to which the clients but not the temporary employment agencies and their employer's association belong – may deviate from this maximum period of assignment by concluding their own collective bargaining agreements. Businesses of clients that fall under the scope of such collective bargaining agreements but are not bound by them may also extend the maximum assignment period by shop agreements with the works council. A reference in the employment contract to the respective collective bargaining agreement will not suffice. However, in the case of companies not subject to collective bargaining agreements, the permissible assignment period may only be extended to a maximum of 24 months, unless the collective bargaining parties explicitly allow an extension by shop agreement that exceeds 24 months.

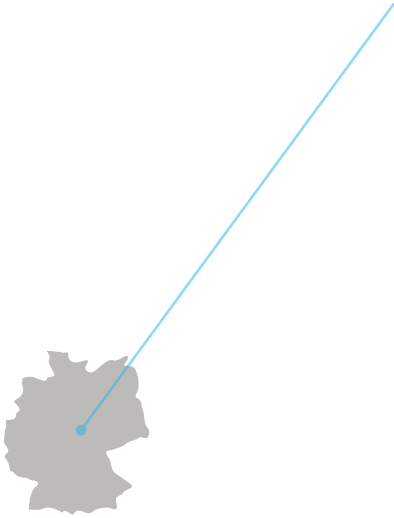
Equal pay after 9/15 months

According to the Equal Pay principle, the employee is entitled to the same remuneration as comparable employees of the client, unless there is an applicable collective bargaining agreement that provides for lower wages. With the new legislation, the possibility of deviation from the Equal Pay principle by collective bargaining agreements will be restricted to a period of no more than nine months of assignment. Previous assignments to the same client – regardless of whether the respective employers are identical – have to be taken into account. The nine-month period may be extended up to 15 months by the collective bargaining parties, provided that the collective bargaining agreement foresees a progressive remuneration adjustment that begins no later than six weeks after the commencement of the assignment.

Prohibition of concealed temporary employment

Concealed temporary employment will be prohibited, meaning that any agreement between employer and client must explicitly state that the assignment of employees under the agreement constitutes personnel leasing. Before the assignment, the individual employee must be named under reference to the respective agreement between the client and the temporary employment agency.

The contract between employer and the respective employee will be considered invalid if the employee leasing agreement with the client does not contain such a declaration. In this case, an employment relationship between the assigned employee and the client is deemed to exist unless the employee expressly declares that he/she wishes to adhere to the employment contract with the employer.



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Changes in the Labor Code

Some important changes regarding the provisions of the Labor Code (Act I of 2012) have been accepted in 2016. One of the most significant changes, from the employers' point of view, is that an amendment to the Labor Code has made it possible for employers to withdraw a notice of termination in writing within 15 days if the employee informs the employer about her pregnancy or in regards to receiving treatment related to a human reproduction procedure after the giving of the notice. With this new possibility of withdrawing a termination notice, employers may avoid the consequences of the unlawful termination of protected employees.

Provisions of Directive 2014/67/EU have also been implemented into the Labor Code in respect to the rules concerning the posting of workers within the framework of the provision of services, especially in connection with the administrative requirements, control measures, and the subcontracting liability.

Employment of students

Significant changes regarding the employment of students in full-time education entered into force as of 1 September 2016. Students of school cooperative groups could previously fulfill the requirement of personal involvement under an employment relationship. However, according to the new rules, in the future such relationships will not be regarded as employment but as special legal relationships, with only some specific rules of the Labor Code applicable. One new feature particularly of note is that one day of paid holiday shall be provided to students for each 13 days of work. This was necessary to ensure compliance with EU rules regarding paid holidays. This may cause an 8-10% cost increase for those who use the services of school cooperative groups.

Employees' representative for occupational safety

The Labor Safety Act was also the subject of amendments in 2016. Employers should note that an employee representative for occupational safety must be elected for all employers with at least 20 employees. (This threshold was 50 employees before the modification.) The provision of the conditions for the election and the conducting of the election will be the responsibility of the employer. This means that the election of an employee representative for occupational safety has become an obligation for a larger number of employers. According to the Labor Safety Act, the election must be held at employers where no employee representative for occupational safety has been elected, by 8 July 2017, i.e. six months after the new legislation comes into force.

The amendment of the Labor Safety Act also introduced an administrative penalty that can be imposed upon a natural person who, within the framework of organised employment, among others, breaches the regulations relating to healthier and safer workplaces; fails to comply with the obligation of the registration, investigation, documentation, and reporting of an accident at work in due time; fails to comply with the obligation of data disclosure regarding cases of occupational disease or harmful exposure; or prevents the employee representative for occupational safety from effectively exercising his/her rights. The maximum amount of the penalty is HUF 500,000 (approximately €1,555); however it may be imposed repeatedly.

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Paternity leave

The Paternity Leave and Benefits Act 2016 commenced on 1 September 2016 and provides long awaited statutory leave and benefit for fathers. Up until now Ireland had been one of the few member states without some form of leave for fathers. The Act provides that a "relevant parent" will be entitled to two continuous weeks' state paid leave in respect of births or adoptions from September 2016. Payment will be at the rate of €230 per week. This is the same as the current rate of maternity benefit. Similar to maternity leave, employers can top up paternity benefit if they wish but are under no obligation to do so.

Compulsory retirement

The Employment Equality (Miscellaneous Provisions) Act 2015 (which came into force at the beginning of 2016) continues to allow employers to set compulsory retirement ages; however, they must now be objectively justified by a legitimate aim and the means of achieving that aim must be proportionate and necessary. The new Act brings the Irish legislation in line with the Grounding EU Directive and case law from the Court of Justice of the European Union as well as case law emanating from Irish courts and tribunals. One further consequence of the Act is that if fixed term contracts are offered post retirement the employer will have to demonstrate evidence of objective justification for the termination of employment at that point of expiry of the fixed term contract.

Industrial relations

The industrial relations landscape in Ireland has been particularly active in 2016, with major industrial action having been either taken or proposed by transport workers, teachers, and members of Ireland's Gardaí (Irish police). Continued unrest is expected both in the transport sector and the lower paid private sector as the trade unions escalate their campaigns for pay reform after what is characterised as years of austerity (resulting from the financial crisis) disproportionately affecting lower paid workers. There has also been an increase in applications under the Industrial Relations (Amendment) Act 2015 which provides a mechanism whereby employers who choose not to engage in collective bargaining can be brought before the Labour Court. The Labour Court can make a binding determination in relation to pay and terms and conditions of employment for the workers involved. These Labour Court referrals require employers to benchmark their employees' terms and conditions of employment against industry standards and can be quite costly to defend.

Spent convictions

The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 changes what individuals have to reveal about themselves to employers. An individual is now not obliged to disclose certain criminal convictions which date back seven years or more to a future or current employer. The Act ensures that only certain convictions arising from minor offences can become "spent". The Act brings Ireland into line with the practice in other Member States of the EU – Ireland was the only EU country without some form of legislation allowing convictions to become "spent". The Act is premised on the concept of "forgive and forget" allowing past offenders to move on with their lives and not be tarnished by a previous offence. Certain offences will never become "spent" however, such as a conviction for a sexual offence or an offence resulting in a prison sentence of greater than 12 months.

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Tax benefits in connection with variable salary amounts and welfare plans have been introduced by the 2016 Financial Act as well as confirmed and extended by the 2017 Financial Act. Furthermore, in 2016 new rules on transnational secondments to Italy came into force. Monitoring of employees is currently among the topics of great interest for employers, following the new provisions introduced by the 2015 Jobs Act.

Fiscal benefits and welfare plans

The 2016 Financial Act (Law no. 208/2015) applied a favourable tax regime, within certain limits, to amounts paid as variable bonuses connected to the achievement of productivity, efficiency, quality, and innovation targets, or as profit sharing. The 2016 Financial Act also provided for measures aimed at boosting and extending the range of benefits eligible for income tax relief as well as promoting the role of collective bargaining agreements at company level in the definition and regulation of tailored welfare schemes. The 2017 Financial Act confirmed, and in certain cases extended, the measures/tax relief introduced by the 2016 Financial Act.

Secondment of employees to Italy

With the enactment of Legislative Decree no. 136/2016 and implementation of the Directive 2014/67/EC, new regulations apply to the secondment of employees in the EU. These new provisions apply to companies established in an EU Member State that seconds to Italy one or more employees, within the framework of a service agreement, to another company (even within the same corporate group) or business unit, provided that an employment relationship continues to be in place with the seconded employee. The legislation also applies to temporary workers staffed by external agencies established in a Member State that send their workers to a user company with a registered office or a business unit in Italy. In addition, the Labour Inspections Authority has confirmed via a circular dated 9 January 2017 that the new provisions will also apply, with certain limits, to non-EU companies seconding employees to Italy.

According to the new rules, the seconded employees must be granted the same terms and conditions of employment that apply to employees carrying out similar working activities in the place where the secondment is performed. Furthermore, new obligations in terms of advance communication as well as increased powers of inspection to the competent labour authorities to verify whether the secondment is genuine have been introduced. In the case of unlawful secondment, the seconded employee will be deemed to be employed by the host company which, along with the seconding company, will be subject to serious administrative sanctions.

Monitoring of employees

The Jobs Act amended Article 4 of the Italian Workers' Statute (Law no. 300/70) with the aim of balancing a greater use of technology at workplace with the employees' rights not to be controlled when carrying out their duties. The new provisions contain, among others, new rules governing the procedures to be followed to obtain the authorisation needed – in the absence of an agreement with the internal works councils – to install video surveillance systems and other devices potentially able to monitor the working activity. In any case such monitoring shall be permissable only for reasons related to the employer's organisation and production, safety at work or the protection of the employer's assets.

The above authorisations are not required in the case of devices "used by the employee to carry out their activity/duties" as well as to devices "used to register the employees' access and presence". This is a significant step in liberalising the use of technology in the workplace. Its application in relation to the criteria applicable in deciding whether a device is used by the employee to perform his/her work remains, however a controversial point. During 2016 some preliminary guidelines were published on this point by the administrative/regulatory authorities (including the Labour Inspections Authority/Data Protection Authority) but more clarity is expected through case law.

Advance information and privacy law requirements are to be met to enable the employer to use the collected information for any purposes related to the employment relationship.

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Collective Bargaining Energy Agreement

The Collective Bargaining Energy Agreement entered into force as of November 2016. The Agreement aims to implement international labour standards and standardise working conditions across all of the branches of the energy sector, as well as to provide a framework of rights for employees. Some of the specifics of the Agreement include upgraded health and safety measures, following the example set by European law; shortened working hours for employees under dangerous or harmful conditions that might be specific to the sector (noise, vibrations, radiation, harmful gases, as well as dangers from use of tools, electricity, explosions etc.); more detailed provisions on forced administrative leave; and annual leave recourse provisions.

Accession to Geneva Conventions

The Government of the Republic of Macedonia adopted a decision for Macedonia to accede to the:

- Geneva Night Work Convention of 1990.
- Geneva Labour Statistics Convention of 1985.
- Geneva Rural Workers' Organisations Convention of 1975.

Law on Whistleblowers' Protection

The Law on Whistleblowers' Protection (the Law) came into force in March 2016. The Law regulates protected whistleblowing, the rights of whistleblowers, and the actions and obligations of the institutions or legal entities related to the protected whistleblowing.

The categories of protected whistleblowers include people who are working for the institution or entity/person to whom they are disclosing the information, as well as volunteers, interns, or any person otherwise engaged within the institution or entity in question.

The Law introduces three types of protected whistleblowing:

- Internal whistleblowing, where the whistleblower reports inside the institution or entity where they suspect that unlawful or illegal activity has been or might be committed.
- External whistleblowing, where the whistleblower makes a report to competent state institutions.
- Public whistleblowing, where the information is made publically available by the whistleblower.

The Law provides for the protection of public whistleblowing, as well as protection of the whistleblower's personal data and identity. These provisions apply generally when the whistleblower has given information in accordance with the sequences of whistleblowing set out in the Law (internal, external and finally – public), though the whistleblower may make the information publicly available if related directly to a punishable act endangering their life or the life of a close person, the well-being of the general public, public security, the environment etc. The whistleblower's personal data is, as a general rule, protected in accordance with the law on personal data protection.

Initial reports regarding the implementation of the Law suggest that even though the Law came into force in October 2015, and has been implemented since March 2016, institutionalised mechanisms have in practice rarely been implemented, with most institutions and entities failing to appoint responsible persons for receiving information from whistleblowers, or to enact rulebooks for protected internal whistleblowing, as prescribed by the Law.

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The Montenegrin employment and labour legislative did not introduce any significant changes in 2016. However, it is notable that the General Collective Bargaining Agreement, concluded in 2014, was extended to remain in place until June 2018. Certain changes were introduced in the Branch Collective Agreement for the Construction and Building Materials Industry and in the Branch Collective Agreement for Education. The Law on Foreigners, which regulates employment and residency procedures of non-residents in Montenegro, also underwent some changes.

General Collective Bargaining Agreement

The Montenegrin General Collective Bargaining Agreement (GCBA) came into force on 30 March 2014, as a result of bargaining among the representatives of the Government, representative trade unions and the Employers' Union of Montenegro. The GCBA was initially valid for 2 years, and applied to all employers in Montenegro.

On 27 June 2016, the Government, and trade unions, the Confederation of Trade Unions and the Union of Free Trade Unions of Montenegro confirmed the GCBA and extended its validity until 30 June 2018.

On a related note, the Montenegrin Labour Law provides for high-level regulation of a number of entitlements (such as the length of paid leave, amount of salary compensation and salary increase, the conduct of disciplinary proceedings etc.), leaving the detailed regulation to collective agreements (general collective agreement, branch collective agreements) and/or employment agreements.

Branch Collective Agreement for the Construction and Building Materials Industry

Amendments to this Agreement were signed on 22 January 2016, by the Trade Union, the Representative Union of Construction, and the Building Materials Industry. Notable amendments provide that the employee is entitled to paid paternity leave in the case of childbirth, lasting five working days, which is longer than paid leave provided under the General Collective Bargaining Agreement which provides for three working days of paid leave. Additionally, the employer is obliged to pay severance to employees upon retirement in the amount of four times the minimum net wages in Montenegro. The previous amount was 2.5 times net wages in Montenegro.

Law on foreigners

Amendments removed the provisions found in Articles 64 and 66 of this law, which employers had objected to.

The disputed Article 64 outlined the limit for issuing temporary residence and work permits for the seasonal employment of foreigners. Article 66 related to the confirmation by the Montenegrin Employment Agency, necessary for the employment of foreigners, which proves that there are no registered unemployed workers in Montenegro qualified to work on jobs for which foreigners apply.

While Articles 64 and 66 had legal force, employers contested that these Articles caused a high number of difficulties in the employment of foreigners, especially in the tourism sector. Therefore, the Montenegrin Government decided to approve employers' requests to delete these provisions, which ensures easier employment of foreigners.

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Key Developments from 2016

Changes in the assessment of payroll tax liability for independent contractors

Until recently, independent contractors could, under Dutch tax law, apply for a Declaration of Independent Contractor Status (Verklaring arbeidsrelatie, VAR), meaning the client could assume that the contractor did not qualify as an employee for tax purposes and that no payroll taxes needed to be deducted from payments to the contractor. In such cases, the Tax Authority could not hold the client liable for payment of these taxes.

From 1 May 2016, a stricter regime was introduced, under which clients only do not need to deduct payroll taxes if:

i. The contract between the contractor and the client is based on a template contract published by the Dutch Tax Authority; or

ii. The contract drafted by the contractor and the client was 'preapproved' by the Dutch Tax Authority, provided that (in both situations) the contractor and the client strictly act in accordance with the contract terms.

In any other case, payroll taxes will be due. Penalties for non-compliance include interest and a penalty of up to 100% of the payroll taxes which have incorrectly not been deducted.

Until 1 January 2018 a transitional period is in place. Before this date, independent contractors and clients are to bring their contracts and practices in line with the amended legislation. During this period, the tax authorities will not enforce the new legislation as long as parties act in good faith. Following criticism of the policy, the Dutch government has recently announced that it intends to amend the legislation to make it more flexible in practice. We are still awaiting the proposal from Dutch government in this respect.

Key Developments for 2017

Intended change to statutory transition fee in cases of business related dismissals

Under the new dismissal rules, which came into force on 1 July 2015, an employee who has been employed for at least 24 months and whose employment contract is terminated or not extended at the employer's initiative, is in principle entitled to a statutory severance payment, called the transition fee. Parties to a collective labour agreement may agree on a similar arrangement as long as the value of total compensation to which the employee is entitled is at least at the same level as the statutory transition fee to which the employee would have been entitled. The Dutch Minister of Social Affairs has recently proposed to drop the requirement that the alternative arrangement is at the same level as the statutory transition fee for dismissals for business related reasons. This is good news for employers as this would mean that those who have entered into a collective agreement would have fewer costs in cases of business related dismissals. These changes are scheduled to enter into force on 1 January 2018.

Intended change to statutory transition fee in case of long-term illness

Under Dutch law, employees who are ill enjoy dismissal protection for a period of two years of illness. During the same period they are entitled to continuation of at least 70% of their salary. Contractual provisions in employment contracts granting employees more than 70% are common. Since 1 July 2015, employers are required to pay employees who are ill a statutory transition fee if they are dismissed after the two-year period. Following protests from employers, the Dutch Minister of Social Affairs has proposed that employers be repaid the statutory transition fee paid to employees who are ill for two years or more out of a government fund. In order to pay for this measure, the nationwide social security contributions for employers will be increased. These new rules are scheduled to enter into force on 1 January 2018.

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Withdrawal of the specific-task contract

The specific-task employment contract was withdrawn on 22 February 2016.

Unification of termination notice periods

Since 22 February 2016, notice periods for a fixed-term employment contract have been made equal to the notice periods for an indefinite-term employment contract and therefore last two weeks, one month, or three months, depending on the employee's length of service.

Limitations on fixed-term contracts

Under the new rules, a period of employment under a fixed-term employment contract, as well as the total of periods of employment under fixed-term employment contracts concluded between the same employer and employee, may not exceed 33 months, regardless of intervals between successive contracts. In addition, an employer may conclude no more than three fixed-term employment contracts with any one employee.

The scope of people unable to work in arduous working conditions narrowed

According to the European Commission, the previous law, prohibiting the employment of women in arduous working conditions, was an obstacle in ensuring gender equality. After the amendment, it only applies to women who are pregnant or breastfeeding.

Written confirmation of the type of contract and required working conditions

On 1 September 2016, an amendment to the Labour Code came into effect requiring that an employee must receive a written confirmation specifying the parties, the type of contract, and the working conditions; and that the workplace regulations must be communicated to the employee before admitting that person to work. Failure to confirm the employment contract concluded with the employee in writing before admitting that person to work will constitute an offence punishable by a fine of from PLN 1,000 up to PLN 30,000 (approximately €6,758).

Minimum wage for work

A new minimum wage of PLN 2,000 (approximately €464) per month applies from 1 January 2017.

Minimum wage for contracts of mandate

Contracts of mandate are agreements to perform certain work within a specified period, in exchange for fixed remuneration. From 1 January 2017, the minimum hourly wage for workers on a contract of mandate will be PLN 12 (approximately €2.80). The current bill would make it impossible to waive the right to remuneration at the current minimum rate. The parties to an agreement would have to agree a method for determining the number of hours taken in performing a commission or providing services in a contract; and if the contract was not concluded in written, electronic or documentary form, the principal would have to confirm, in one of those forms, the arrangements for confirming the number of hours taken in performing a commission or providing services. Otherwise, the contractor would be able to submit, in the form chosen from the above three and in the period up to the payment of remuneration, the number of hours spent on performing the contract.

Change of the laws on seconded workers

The Act on Posting Workers in the Framework of the Provision of Services came into effect on 18 June 2016. The Act implements EU legislation and provides rules for posting workers to the territory of Poland and their protection, as well as monitoring compliance and cooperating with appropriate authorities of other member states. The Act imposes a number of duties on employers, mostly in relation to the State Labour Inspectorate, which has been granted enhanced inspection powers.

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National minimum wage

Following years of the bailout programme, the national minimum wage was increased in 2016 to €530 per month for full-time workers. It is expected that it will be further increased to €557 by 2017, €580 by 2018 and €600 by 2019.

Reinstatement of bank holidays

During the bailout programme, four bank holidays were suspended. In 2016, these bank holidays were fully reinstated. Portuguese workers now have the right to enjoy 14 bank holidays in addition to the 22 business days of holidays.

Measures against forced work

The government introduced new legislation extending the liability for employment credits and pecuniary fines applicable in the context of employment-related administrative offence proceedings, to companies that use agency work and/or benefit from services rendered by third parties where such services are rendered in its premises.

Misconstrued employment internships

Some companies have been using internships to mask what is, in reality, an employment relationship. New legislation aiming to prevent such false employment relationships will be enacted in 2017. The Public Prosecutor's office will bring legal proceedings against companies seeking to ensure a judicial declaration of the misclassification of said internships and the recognition of the existence of employment contracts.

It was also announced that, in the context of these proceedings, companies would not be entitled to terminate the internships or to settle with the workers in question.

Fixed-term employment: limitations on hiring

It is expected that the government will enact new legislation in 2017 concerning fixed-term hiring. The purpose of these measures is to limit fixed-term hiring, in particular when hiring long-term unemployed workers and workers looking for their first job.

In addition, the government will also have the possibility of increasing the employer's social security contribution for companies that do use fixed-term employment contracts.

Collective bargaining

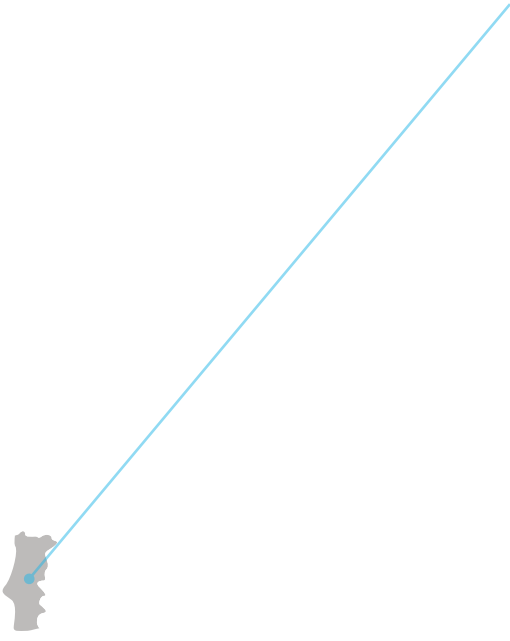
The government has announced its intention to limit the possibility of employment bargaining agreements lapsing. This will reverse the legislative changes enacted during the bailout programme which led to the termination of more than 40 collective bargaining agreements.

The new legislation is expected to come into force in 2017.

Bank of hours schemes

Portugal has in recent years implemented the possibility of the use of "bank of hours" schemes. These were particularly important to companies as they have enabled a significant reduction in overtime work costs.

The government has now announced its intention to prohibit introducing such schemes by way of individual agreements with employees. In addition there is also an intention to introduce limitations on the possibility of providing for bank of hours schemes in collective bargaining agreements.



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A·L·R·U·D 25 YEARS
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Legislation changes

In October 2016, significant changes in Russian labour legislation came into force. Mandatory deadlines for salary payments were set out. Now, salary must be paid by employers each half-month not later than the 15th day after the end of the period for which the salary is due. Further, the interest rate for a delay in salary payment has been increased. Administrative responsibility for non-payment or underpayment of salary at a fixed time or for establishment of salary at a rate less than the Statutory Minimum Wage Index was also increased.

The term of legal recourse for the settlement of an individual employment dispute about non-payment or underpayment of salary and other employee's entitlements was increased to up to one year (previously, the term was three months). Employees are now also allowed to file a court claim at their place of residence.

Migration law

There was a significant change in the migration law with the abolition of the major institution regulating migration issues. The Federal Migration Service (FMS). Its functions were transferred to the Russian Federation Interior Ministry, and since the transfer took place there has been a personnel reduction in the FMS and certain delays in executing regular procedures.

Prohibition on leasing of personnel

Since 1 January 2016 leasing personnel has been generally prohibited. Leasing personnel is defined as work, performed by an employee (an "assigned employee") at the direction, on behalf, and under the control of an entity (or individual – the "host company") which is not the formal employer of the assigned employee. A new type of contract was introduced into the Russian legislation: a contract on provision of personnel. This contract may be concluded only by private employment agencies or, in strictly defined cases, by legal entities, including foreign ones (for example, for the provision of personnel between affiliated legal entities and legal entities which are parties to a shareholders' agreement). Private employment agencies, which have the right to provide personnel, must obtain state accreditation. In addition, there is an exhaustive list of grounds based on which employment agencies may provide personnel (for example, to replace temporarily absent employees retaining their workplace in accordance with the labour legislation).

Legislation on intra-group secondments is underway but until it is adopted, intra-group secondments are generally prohibited.

Professional standards

Professional Standards (Statutory Job Descriptions) came into force from 1 July 2016. Professional standards set out the requirements for an employee to hold a position, and set out a defined job title, description of job functions, and requirements for essential knowledge, education, and skills. Generally, they are non-regulatory and are used for example in recruitment procedures and personnel certification. However, some employers are now legally required to apply the professional standards. For example, joint stock companies and insurance companies have to apply the professional standard of an accountant for education and work experience – when employees are hired to jobs that require the provision of certain statutory benefits.

Higher minimum wage

Under the Russian law, there is a federal minimum wage, which is applicable to all employers across Russia. From 1 July 2016, the minimum wage was increased from 6,204 RUR (approximately €96) to 7,500 RUR (approximately €115). As of 1 July 2017, there will be another rise to 7,800 RUR (approximately €120).

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New minimum salary

A new minimum salary amount has been adopted at the state level of RSD 130.00 net per working hour (approximately €1.04 net). The new minimum amount will be in force as of 1 January 2017 and will last until 31 December 2017.

All employers need to abide by the new amount and cannot provide employees a basic salary that is below this legal minimum.

This new amount overrides the previously valid minimum salary that was in force for the two previous years, of RSD 121.00 net per working hour (approximately €0.90 net).

New branch collective bargaining agreements adopted

Recently, several new branch collective bargaining agreements (CBAs) for different industry groups have been adopted:

- CBA for Agriculture, Food, Tobacco and Water Management.
- CBA for Construction and Construction Materials Industry.
- CBA for Chemistry and Non-Metal Industry.

The CBA for Agriculture, Food, Tobacco and Water Management is, for the time being, applicable only to the signatory parties i.e. only to those employers that are members of the Union of Employers of Serbia.

As for the other two CBAs, their transitory provisions note that these agreements will apply only after the Government enacts a decision on extended applicability of such CBAs to all employers within the respective industry.

It still remains to be seen whether or not the Government will actually render such a decision on any of the above CBAs.

New Law on Conditions for Secondment of Employees Abroad

The new Law on Conditions for Secondment of Employees Abroad and their Protection (the Law) is applicable in Serbia as of 13 January 2016.

The Law regulates the secondment of employees abroad in a more modern manner compared to the previous law. The previous law, adopted back in 1998, envisaged a complicated administrative procedure before the competent ministry when seconding employees abroad, which included an obligation of employers to inform the ministry of planned secondment at least 30 days in advance, by submitting a set of required documents.

The main characteristic of the new Law is its more relaxed administrative procedure. Employers are now obliged to notify the ministry of secondments at least one day before the secondment, by submitting only one document – a filled-in notification form. Employers are also obliged to submit a certificate from the Central Registry of Social Insurance, as proof of change of insurance grounds for seconded employees, within seven days following the secondment.

Other important provisions of the Law include:

- Business trips abroad not exceeding 30 days continuously or 90 days within the calendar year are not considered a secondment.
- Secondments cannot exceed 12 months – however, extension is possible.
- Employees must consent, in written form, to the secondment.
- Employers are obliged to execute an annex of the employment contract with the employee, regulating the secondment.
- The employer is also obliged to provide seconded employees with accommodation and food, commuting costs, as well as a salary that amounts to, at least, the minimum salary applicable in the country of secondment for the duration of the secondment.

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Establishment of employment relationship in the case of a civil law contract

While the Employment Relationship Act itself has not gone through major amendments in the past year, the courts have implemented significant changes regarding the issues which are not regulated by this Act.

In the past few years civil law contracts, containing all elements of the employment relationship, have been very common on the Slovenian labour market, despite efforts of the legislator to prevent such contracts and to promote employment contracts, especially employment contracts for indefinite periods of time. Civil law contracts represent a burning issue as they normally provide less security than an employee would receive under an employment contract of indefinite duration. For that reason, the law gives priority to the latter, and sets out that civil law contracts may be concluded only in exceptional cases. In the case of a civil law contract, which *de facto* represents employment, the law provides for the presumption on the existence of an employment contract. The employee may request the court to establish the existence of the employment relationship for an indefinite period of time.

In the past year the court has taken a view that is the opposite of the previous court practice in this area.

Until recently the court claimed that it may establish the employment relationship only in cases when the employee has previously made a claim that the termination of the employment relationship was illegal. It was quite common that the employee would file a lawsuit for establishment of the employment relationship for indefinite periods of time once the civil law contract was terminated, but the court rejected this claim as the employee had not previously filed a claim questioning the legality of the termination of the employment relationship. Therefore the employee's request for establishment of the employment relationship was not rejected due to substantial reasons, but only due to the procedural reason of failing to previously file a separate dismissal-related claim.

In its more recent decisions, at the beginning of 2016, the court took the opposite position and stated that the above-described requirement of the older court practice was unreasonable as it resulted in situations in which the employee was obliged to file a request for finding termination of the employment relationship to be illegal, while such an employment relationship wasn't even established by the court and as such didn't formally exist. Contrary to this, in its recent decisions the court has taken the view that the employee may file a lawsuit for establishment of the employment relationship independently of a request for an acknowledgment on the illegality of the employment relationship. Such a lawsuit may be filed during or 30 days after the civil law contract is terminated.

In doing so, the court has therefore taken a further step in providing additional security to employees who are engaged in a working process based on civil law contracts. It can be expected that such employees will obtain rights from the employment relationship more easily than before.

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Although numerous legislative reforms in labour matters have taken place in recent years (in particular, the Labour Reform of 2012), new legislative norms have been scarce in the past year due to the political situation in the country.

Notwithstanding the above, there have been a few major legislative changes and court judgments, with the most relevant as follows:

Maximum severance compensation for unjustified dismissal

The Labour Reform of 2012 changed the system of calculating severance compensation for unjustified dismissal, differentiating the period before and after the Reform, entitling workers to compensation of 45 and 33 days' salary per year respectively, up to a maximum of 720 days.

In its judgment of 2 February 2016, the Supreme Court ruled that even if the maximum of 720 days' severance compensation was exceeded at 12 February 2012, the severance compensation accruable after such date could be accumulated at a rate of 33 days per year of service, up to a maximum of 42 months.

However, the judgment was overruled by the Supreme Court judgment of 18 February 2016, which clearly stated that the resulting severance compensation amount could not exceed 720 days' salary, unless a higher amount had been accrued prior to 12 February 2012.

Annual Employment Policy Plan for 2016

On 31 August 2016, the Annual Employment Policy Plan for 2016 was published, establishing the employment objectives for 2016. This Plan defines the active employment policy services and programs to be carried out by the State as a whole and by Regional Governments under the framework of their authority in this respect, as well as the indicators to be used to evaluate the degree of achievement.

Extension of the Employment Activation Program

On 16 April 2016, the Royal Decree-Law extending the Employment Activation Program was published. The program was designed for the long-term unemployed in a situation of special need, with family burdens, and actively seeking employment. It involves the implementation of active employment policies in order to increase opportunities for people in receipt of financial unemployment benefit amounting to 80% of current monthly public income indicator of multiple effects (€426) to return to the labour market.

New criterion for the assumption of collective dismissal

Following recent European legal doctrine (ECJ judgment dated 13 May 2015), the Supreme Court ruled in its judgment of 17 October 2016 that the criteria to determine the existence of collective dismissal – and therefore the need to meet the relevant formal requirements – must not only be based on the total number of workers in the company, but also on the number of workers at each work centre affected by it, provided that there are more than 20 workers at the work centre.

Until now, Spanish regulations have not conformed to European Law, and legislative amendments are therefore expected in the short term.

Now the country has a new government as a result of an alliance between the conservative party and one of the new parties in Parliament. As a result, legislative changes on labour law are expected in the short term as it was part of the alliance agreements.

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New legislation for the protection of whistleblowers

A new law with the purpose of enhancing the protection of whistleblowers will come into effect in Sweden on 1 January 2017. This legislation (referred to as the Whistleblower Act) provides special protection against reprisals from the employer for employees who raise the alarm regarding serious wrongdoings in the employer's business. "Reprisals" extends to all kinds of actions or omissions that may result in negative consequences for the employee. However, it is not only employees that are covered by the new Act – agency workers also enjoy equivalent protection in relation to the client company.

In order for an employee or agency worker to be protected under the Whistleblower Act, the alarm must be raised in accordance with the procedure laid down by the Act. In this respect, the Whistleblower Act distinguishes between three different ways of raising an alarm: internal alarms, alarms to the employee's trade union, and external alarms. Internal alarms are those directed to the employer, as well as alarms communicated through the employer's internal whistleblowing system. External alarms are those directed to a public authority.

There is no requirement that the serious wrongdoing must be proven by the employee or the agency worker in order for the protection under the Whistleblower Act to take effect. With respect to internal alarms or alarms to the employee's trade union, it is sufficient that the individual raising the alarm has a concrete suspicion about such activities. However, the accuracy requirements are higher for external alarms. For such alarms, the individual must have a well-founded reason for the allegation of serious wrongdoing. As a general rule, the individual must also first raise the alarm internally.

An employer or client company who acts in breach of the Whistleblower Act may be liable for damages.

New rules in the Discrimination Act

As of 1 January 2017, more stringent rules entered into force in the Discrimination Act regarding the employer's obligation to take active measures for the purpose of preventing discrimination and promoting equal treatment. These new rules impose an obligation on the employer to systematically and continuously:

- Investigate.
- Analyse.
- Take preventive measures.
- Evaluate and follow-up on risks of discrimination or non-equal treatment in the employer's business.

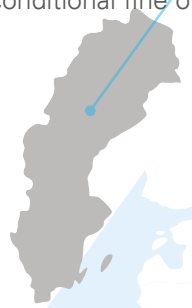
This work is to be done in relation to: working conditions; recruitment and promotion; training; salaries and other terms of employment; and options for combining work and parenthood.

In contrast to the previous rules regarding active measures which only covered gender, ethnic origin, and religion or other system of belief, the new rules include all grounds for discrimination. Hence, from 1 January 2017, employers are required to consider transgender identity or expression, disability, sexual orientation, and age in their active measures to prevent discrimination and promote equal treatment.

Additionally, the rules regarding salary surveys have been tightened. Employers are now obliged to conduct salary surveys every year compared to the previous rules which provided for such obligation every third year.

The obligation to take active measures applies to all employers. However, the obligation to document the work in writing differs depending on the number of employees in the company. All employers must also have guidelines and routines for the purpose of preventing harassment, sexual harassment, and reprisals.

Non-compliance with the new rules may result in a conditional fine order.



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Project work in Switzerland

It is common for EU firms to have to send their employees to Switzerland in order to fulfil their contractual obligations. However, as Switzerland is not part of the EU, working in Switzerland – even for short periods – is subject to some restrictions and formalities. Furthermore, the applicable regulations may have an impact on the pricing which any EU firm tendering for a project in Switzerland should be aware of.

Registration process

EU companies may send employees to Switzerland for up to 90 working days per calendar year without needing to obtain a work permit. It is important to note that the 90 days are on an aggregate basis for the company and not per employee. The rule only applies to EU citizens and third country nationals who have had a valid EU work permit for at least 12 months.

Switzerland has implemented an online registration process for this. Registration has to take place at least eight days before the start of work in Switzerland, except in case of emergencies. No registration is required for work lasting eight days or less per calendar year (on an aggregate company basis) except for construction, hospitality, cleaning and security services as well as itinerant workers (including itinerant traders, peddlers, market-traders, stall-keepers, circus and fairground workers) where registration eight days in advance is always compulsory.

Prohibition of employee lending

Only a company's own employees can be posted, not temporary workers hired from an agency. This is because employee lending from abroad into Switzerland is prohibited. Furthermore, the employment of employees solely for the purpose of sending them to a project in Switzerland is in most cases also prohibited employee lending.

In the IT industry in particular, it needs to be ensured that the services are exactly described in the service agreement and that such service does not qualify as mere employee lending.

Compliance with local salary standards

During the project work in Switzerland, the EU company has to comply with mandatory working conditions (e.g. health and safety standards, maximum working hours, minimum breaks), minimum vacation requirements (generally 20 days on an annual basis) and with the minimum salary requirements set forth by Swiss law, in governmental working conditions or collective bargaining agreements. If no minimum salary requirements are formally set, the minimum Swiss market conditions have to be complied with. The Swiss government makes regular checks on workplace conditions.

Expenses

The EU company also needs to pay expenses in relation to the assignment of its employees, in particular the actual costs for food and housing or hotel accommodation in Switzerland.

Remedies

In case of non-compliance EU companies can receive a fine of up to CHF 5,000 (approximately, €4,657). In case of severe or repeated breaches a company can be banned from providing services into the Swiss market.

Summary

Taking into account the mandatory compliance with Swiss minimum salary standards, any EU company tendering for project work in Switzerland needs to familiarise itself with the additional costs resulting from a potential assignment and include such costs in its offer for the project.

Moreover, it is important to track the days spent in Switzerland. If the 90 days have already been used for other projects or are not sufficient for a project, a formal work permit needs to be obtained for at least part of the workforce. At the moment, the process of obtaining a work permit can take up to three months so timing is of great importance.

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Brexit

Following the UK's vote to leave the EU, the UK Government has stated their intention to preserve the rights guaranteed by EU law. They will do this by converting all EU provisions into domestic law on the date of exit. These provisions will, thereafter, be subject to UK case law in relation to their implementation and interpretation. Also, depending on what international obligations are in place following Brexit, the rights and obligations will no longer be enshrined as part of EU law, and will be subject to amendment by the UK Parliament.

As an alternative UK body of case law in relation to these rights develops over time, the UK courts could reverse recent decisions of the Court of Justice of the European Union (for example, the decisions in respect of the calculation of holiday pay, and the mandatory carrying forward of annual leave accrued during sick leave). In addition, the rules on collective consultations in situations of redundancies and business transfers (under the UK TUPE Regulations) may be watered down, as well as the protections for agency workers currently afforded by EU law.

On the assumption that a "hard Brexit" will take the UK out of the single market, UK employers will also face increased administrative and financial barriers in recruiting EEA nationals, although again the details of a new immigration system are still to be ironed out.

For EEA nationals who have already exercised their right of free movement and are currently living and working in the UK, transitional arrangements on immigration status are likely to be agreed as part of the formal Brexit negotiations. A cut-off date may be imposed as the UK Government will want to avoid creating an increase in European immigration in advance of Brexit. Whether or not these arrangements will confer limited or permanent residence status is an area of potential uncertainty.

Gender Pay Gap Reporting

From April 2017, UK employers with over 250 employees will have to produce and publish gender pay gap reports detailing:

- The percentage difference between mean and median hourly pay for male and female employees.
- The proportion of males and females who received a bonus in the past 12 months.
- The percentage difference between mean and median bonus pay.
- The proportion of male and female employees in each salary quartile.

Employers can choose to include an explanation of any existing pay gap and set out what action they plan to take to resolve the gap, however this is not required. The reports will have to be published on each employer's UK public website by April 2018, and uploaded to a governmental database.

A failure to comply will amount to an unlawful act under the UK Equality Act 2006, and may result in enforcement action by the Equality and Human Rights Commission.

Apprenticeship Levy

From April 2017, employers with a total annual payroll of more than £3m will have to pay 0.5% of their wage bill towards this levy (subject to an offset of £15,000 per employer). Different practical arrangements for using the funds raised will apply across England, Scotland, Wales, and Northern Ireland, but in essence the policy intention is to increase funds available for training in the UK through apprenticeship schemes.

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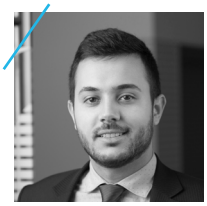

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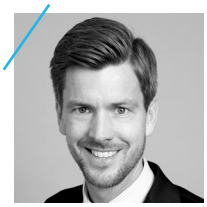

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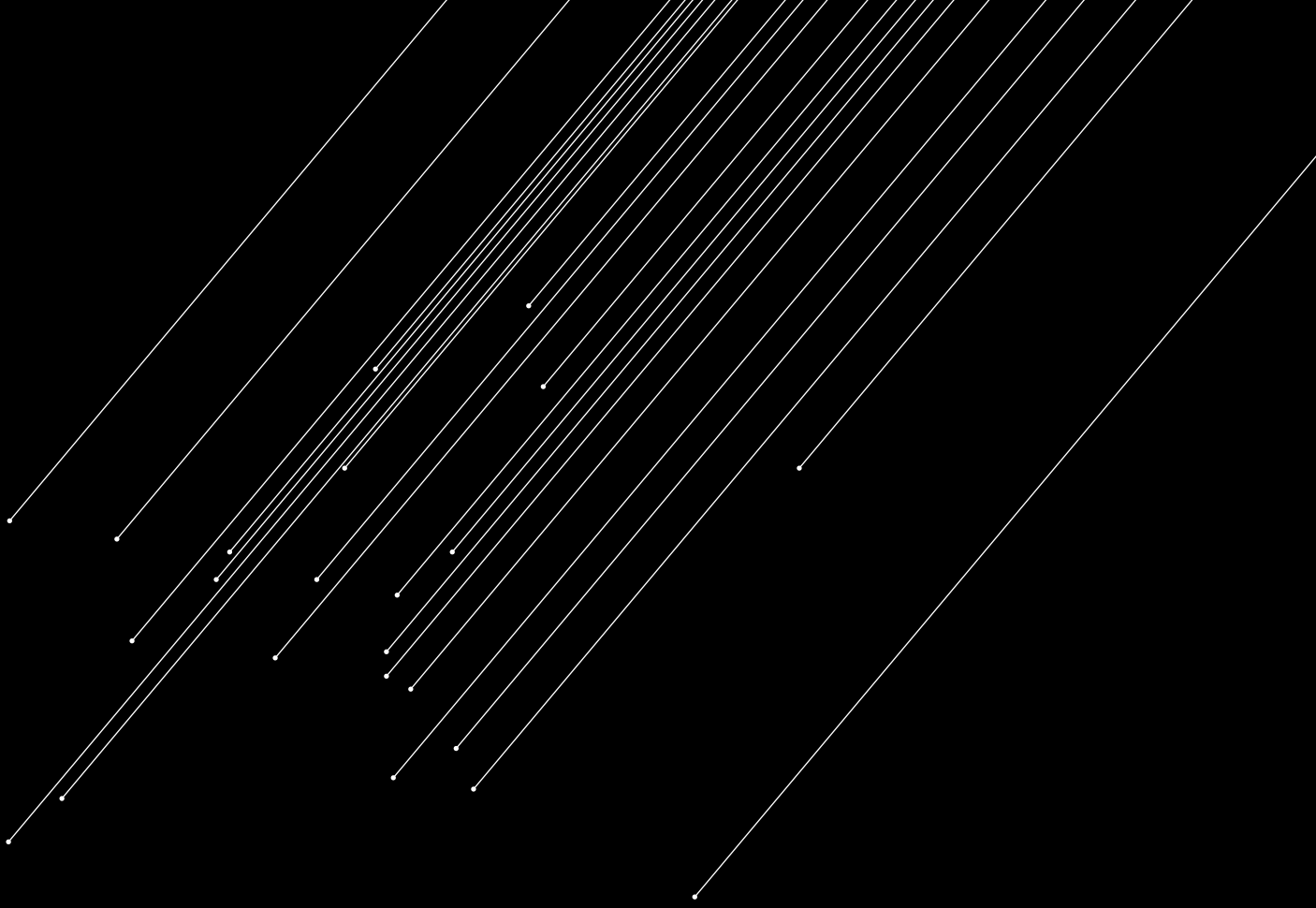

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