

Labor & Employment Law Strategic Global Topics

Fall 2017 edition

Top 10 labor and employment
law risks around the world



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Top 10 labor and employment law risks around the world

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Editorial



Risk is one of the red-flag dangers for businesses around the world today. Whether the risks are due to market uncertainty, business disruption, reputational issues or legal non-compliance, it is critical for a multinational corporation to identify, understand, quantify, and mitigate its risks.

As for specific labor & employment law-related risks, these risks are very local in nature as they differ from country to country based on the rules and regulations of each one, and must be understood and analyzed on a local basis.

In this issue of EY's Labor & Employment Law Strategic Global Topics guide, we present the 10 top HR legal risks per country.

Roselyn Sands

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Editor





Argentina



Javier Sabin

The business environment poses many challenges for companies. One of them is labor risk, so proper management has a relevant place in company agendas.

Following are risk factors that our practice detects in Argentina, being local regulations compliance one of the main issues increasing the companies' labor risks, which leave the companies subject to claims by the employees and fines from labor authorities.

1. Defective employee registration

There are numerous regulations regarding employee registration that companies should comply with. Although this is widely known, employee registration is not always carried out properly.

2. Provincial contribution omission

There are provinces in Argentina that keep regulations effective by establishing the obligation to pay provincial contributions levied on the salary of employees carrying out duties in specific jurisdictions.

3. Items included in pay slips on which employer and employee contributions to the social security system are calculated

Regarding social security the base for calculating employer and employee contributions includes almost every item paid to employees regarding their working activities, whether in cash or in kind, provided that it can be valued in money.

4. Breach of regulations governing outsourced staff

It should be noted that the outsourcing employer is jointly liable for the labor and social security obligations assumed between the staffing company and its employees during the term of the agreement, as well as for any obligations arising from its termination.

5. Breach of regulations governing service providers

In relation to independent service providers, under certain circumstances, the regulatory agency may believe that there is a covert employment relationship and thus claim the employer and employee contributions to the social security system related to any amounts paid to the service providers.

6. Prevalence of the protective principle

In the case of doubt as to how a law, a contract or a specific act should be interpreted, the one that is most favorable to the worker should be chosen.

7. Inclusion in the Public Registry of Employers with Labour Sanctions (REPSAL)

Through REPSAL, employers data is published, with penalties for unregistered work. The employers included will not be able to access programs, welfare or promotion actions, benefits or subsidies administered, implemented or financed by the National State. Nor will they be able to contract with him and participate in concessions of public services and licenses, nor access credit lines of public banking institutions, nor usufruct the benefits of reduction in contributions.

8. High costs regarding the contracting of workers' compensation insurance companies

The average rate charged by workers' compensation insurance companies is calculated based on a percentage of the total salary amount; however, these percentages vary depending on the company's business activity. The increase in rates is directly related to the increase in claims brought by workers against workers' compensation insurance companies.

9. Trade union protection

This is the special protection provided by Law No. 23,551 to parties that hold elective or representative positions in labor unions to avoid changes in working conditions, dismissals or employer's abuse of authority. This is grounded on section 14 bis of the Argentine Constitution that provides the necessary guarantees for trade union representatives to fulfil their labor union duties and those related to employment stability.

10. Collective bargaining

Argentina has a powerful labor union system made up of approximately 6,400 unions grouped by business activity. They are in charge of salary negotiations by activity where they establish the minimum rights to which workers are entitled based on the governing principle effective in Argentina whereby laws cannot be amended to the detriment of workers.

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Australia

Australia's Fair Work system has evolved to regulate several key areas of the employment relationship strictly. Both federal and state laws often impose significant penalties for noncompliance, so a robust knowledge of the key risks is essential before doing business in the jurisdiction. With this in mind, here are the top 10 employment law risks:

1. Duties and obligations of senior management and directors

Directors are bound by certain statutory duties, regulated by the *Corporations Act 2001* (Cth), and will vary depending on the nature of the work relationship. However, the most commonly held duties include acting in good faith for the best interests of the company, avoiding conflict of interests and not secretly profiting from their position. Other duties for senior management are found in the *Fair Work Act 2009* (Cth) (FW Act), and both federal and state legislation.

2. Termination for proscribed reason

The FW Act prohibits employers from terminating an employee for the following reasons: due to illness or injury, trade union affiliation or non-affiliation, acting as an employee representative, making a complaint against the employer, race, color, sex, sexual preference, age, disability, marital status, religion, political opinion, origin or absence due to parental leave.

3. Representative bargaining and union rights of entry

Unions may bargain on behalf of their members in certain situations and have a variety of rights when bargaining. A central right held by unions is the right of entry, where a union that holds a valid permit may, with notice to the occupier of a premises, send its officials into that premises to investigate

breaches of the FW Act, which includes holding discussions with workers.

4. "Major change" consultation

Most industries are regulated by at least one industrial instrument known as a modern award (MA). MAs are used as a benchmark for bargaining a collective agreement. The FW Act and most MAs require employers to consult with their employees before making a definite decision in relation to a major workplace change (e.g., a large-scale redundancy due to automation).

5. Transfer of business

A transfer of business occurs where there is an old employer transferring employees to a new employer. If a transfer of business takes place, the new employer must recognize and honor the employee's accrued period of service and any entitlements that would be payable by the old employer (e.g., accrued sick leave, flexible work arrangements and parental leave).

6. Workplace discrimination

Anti-discrimination legislation in Australia specifies two main types of discrimination: direct and indirect. Both are prohibited by various state and federal schemes.

7. Working hours and related entitlements

National Employment Standards (NESs) set the minimum requirements of employment and cannot be excluded by contract or other instruments. These include:

- ▶ A maximum working week of 38 hours, plus "reasonable" additional hours for full-time employees
- ▶ A right to request flexible working arrangements
- ▶ Public holidays and the entitlement to be paid for ordinary hours on those days

- ▶ Termination payments
- ▶ 12 months of unpaid parental and adoption leave
- ▶ The right for new employees to receive the Fair Work Information Statement

8. Work health safety

Employers owe a duty of care to their employees for a safe work environment. The scope of duty extends to all reasonable steps to make sure employees are safe, including personal protective equipment, if required.

9. Wages and entitlements

Australia currently has a minimum wage of AU\$18.29 per hour, and some awards and EBAs may specify a higher minimum rate of pay. Casual employees are entitled to a 25% loading on top of the minimum wage.

10. Specific regulation of relationships

Australia has a unique industrial relations system and several unique employee entitlements, such as long service leave and superannuation. Employment relationships in Australia are specifically regulated at both federal and state level. Regulation in states and industries can vary significantly. Thus, it is essential to consider the relevant state- and industry-specific legislation, and understand its relationship to federal employment legislation, before answering any employment questions.

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Austria



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Verifying that a company is legally compliant in its employee matters is a challenging but critical task. Knowing the typical employment law risks for a company can help the employer successfully deal with these risks and be compliant. While some risks result from developments or trends such as digitalization, cross-border working or globalization (e.g., data protection and wage and social dumping), other risks are intensified by this changing environment imposing increasing pressure on industries (e.g., working time compliance and special protected employees).

1. Working time compliance

Austrian law stipulates a maximum daily working time of 10 hours and maximum weekly working time of 50 hours.

Exceptions allowing longer hours require a reason (e.g., shift work, on-call service or extraordinarily increased demand) and often additional approvals. For the purpose of monitoring compliance, the employer must keep records of hours worked. These records have to be handed over to the employees on a monthly basis and to the authorities upon request. Noncompliance with recording obligations and the breach of working time rules are subject to high fines.

2. Over-aged workforce

Until 30 June 2017, employees aged 50 years and older enjoyed special protection against termination, as they could successfully challenge a termination for being socially unfair primarily based on their age. As a consequence it was extremely hard for older employees to get a new job. A new law entered into force on 1 July 2017 that applies to all employment relationships starting on that date or thereafter with employees aged 50 and older. According to the law, age can no longer be considered a main argument

for declaring a termination socially unfair and therefore void.

3. Independent contractors

Another sensitive issue relates to independent contractors. If an independent contractor is reclassified as employee, serious adverse consequences arise for the employer. The employee is retroactively entitled to employment benefits (e.g., overtime payment, sick pay and paid vacation). Further, the employer must retroactively pay social security contributions and make up for unpaid withholding taxes. High fines may become due.

4. Data privacy in the workplace

Recently, more attention has been paid to protection of employee data, with regard to transfer of data abroad, video surveillance and consent requirements. The matter is especially important as the GDPR will enter into force soon.

5. Protection of confidential information

Especially regarding employees who have access to sensitive, confidential information, the employment contract should explicitly include a confidentiality clause covering the time period during and after termination of the employment relationship.

6. Termination of special protected employees

This affects groups of employees such as the handicapped, those on maternity leave, employees on parental part-time, employees on educational leave, members of the works council or apprentices enjoy special protection against termination. Their employment relationship can be terminated only for good cause and/or upon approval of special authorities or the court, or by adhering to specific procedures stipulated by law. The procedures before court/special authorities can be very time-consuming

and may take even up to one year or longer, depending on the individual circumstances.

7. Mass redundancy

In the case of mass redundancy, Austrian law stipulates special information obligations toward the Public Employment Service Austria (AMS). Compliance with these rules is crucial, as terminations are void otherwise.

8. Unknown state laws

Being up to date with new laws and planned amendments is important for every company to avoid fines resulting from noncompliance.

9. Compliance with collective bargaining agreement (CBA)

In Austria, most employees are covered by a CBA, which usually stipulates minimum pay, annual salary increase, working time rules, vacation entitlement for special occasions, etc. The rules stipulated in the CBA cannot be amended to the detriment of workers; for example, by individual agreement. Compliance, especially regarding minimum pay, is crucial, as the LSD-BG stipulates high fines for underpayment. The number of inspections is steadily increasing.

10. Correct calculation of salary and statutory deductions

In Austria, the employer and the employee are required to pay social security contributions. The employee's part of the contributions are withheld by the employer and then paid together with its own contribution. The amount of contribution payment is based on the employee's monthly gross salary.

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Brazil

The Brazilian Consolidation of Labor Laws had a recent reform passed by the Government, but most of the previous risks will remain.

1. Difficulties in adapting to a 1940s legislation

Brazilian companies struggle to adapt their dynamic 21st-century operations into a very employee-protective piece of legislation from the 1940s. The consequence is a high number of labor claims being filed in Brazilian courts.

2. Reform “by half”

The legislation currently in force was issued in 1943, yet the reform passed by the Government is only partial and does not address all the issues that trigger litigation.

3. Union representation issues

First, due to the Consolidation of Labor Laws (CLT) reform published in July 2017, union contributions are no longer mandatory.

This means that, from the new CLT’s effective date, employees will be able to choose whether or not to contribute to their professional category union. However, the lack of payment of union dues may weaken the representativeness of the unions in favor of employees.

4. Lack of validation of termination by unions

The new CLT also states that unions will no longer have to confirm the termination of employment contracts. The disadvantage for the employee is that eventual inconsistencies may not be identified nor repaired by employers.

5. Legislation vs. courts

As some of the new rules suppressed some employees’ rights, the Brazilian Attorney General’s Office has filed a Direct

Unconstitutionality Action to cancel this kind of rule, which confirms the legal uncertainty related to the new labor legislation.

6. Outsourcing to external service providers

Following the CLT modifications, Law No. 13.429/2017 allowed companies to hire an external workforce, regardless of their core business, without binding these workers to an employment contract.

However, if the worker is subordinate to the contracting company, the labor and social security authorities may recognize the employment relationship between the parties and demand the payment of the social security charges.

7. Conditions for hiring external workforce

In addition, companies who choose to hire an external workforce must grant the same benefits those given to regular staff, which increases companies’ expenses.

The management of external workforce should be in every company’s agenda, since the part hiring services is also deemed liable in the case of employment rights being suppressed.

Additionally, all invoices paid by companies will be reported in the Digital Bookkeeping System for Withholding and Other Tax Information (EFD-Reinf) environment, which will start in 2018.

8. Constant changes on payroll charges methodology

Provisional Measure (MP) No. 774/2017 also affected companies. It was intended to terminate the social security contribution calculated on companies’ gross revenue (CPRB).

The Government published this MP to avoid unemployment and to decrease payroll costs. However, since Brazil is currently

facing an economic crisis, the Government concluded that the CPRB decreases its revenue and tried to terminate it before the end of the year.

However, many companies had already chosen to pay their social security contribution based on their gross revenue, which would last until December 2017.

9. Digitization of labor and social security reporting

Additionally, companies will have to face the delivery of the files from the Digital Bookkeeping System for Tax, Social Security and Labor (eSocial) as of 1 January 2018.

The risk for employers is to fulfill all mandatory information in their systems, both for the eSocial and EFD-Reinf, to avoid any obstacle to sending mandatory events and/ or sending incorrect information that can lead to an inspection and, in the worst-case scenario, to an administrative fine.

10. Political uncertainty

Although a recent labor reform was just passed, the Brazilian Government has already issued statements on the intention of amending the reform within the next few months. Such instability generates uncertainty among companies and averts them from investing, and deviates companies strategies and forecasts.

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Canada



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1. “Canadianizing” employment agreements

Courts hold employers to the strictest interpretation of the high employment standards across Canada. Accordingly, when expanding operations into Canada, it is important to “Canadianize” employment agreements and company policies that are being imported from other countries. If a provision or policy does not comply with minimum employment standards, it will be void, and the common law standards (which are favorable to employees) will apply.

2. Multiple jurisdictions

Almost all minimum standards and general employment-related matters are individually legislated by each of the provinces and territories (the Federal Government legislates only in respect of employment matters in industries that are deemed “federal undertakings”). Accordingly, care must be taken when operating across several Canadian jurisdictions to ensure multi-jurisdictional compliance.

3. Notice of termination

Employees dismissed without cause are entitled to notice of termination (or pay in lieu thereof, which is calculated on the basis of an employee’s total compensation during the notice period). Such notice is governed by statute as well as common law. While statutory entitlements are relatively minimal, common law reasonable notice has a soft upper limit of 24 months.

Although common law reasonable notice (and the elements of the employee’s compensation that continue during that period) can be reduced by way of a written employment agreement, if the terms of that agreement provide for less than the statutory minimums, the provision

would be unenforceable, and common law reasonable notice would apply.

4. Buying a business

When purchasing a Canadian business, it is imperative to review its policies and employment agreements. In particular, a review of accrued notice of termination entitlements, and the company’s compliance with employment standards and policy requirements, should be conducted to avoid unexpected post-closing liabilities.

5. Making changes to employment agreements

An employer runs the risk of constructive dismissal (i.e., a deemed without-cause termination) where it unilaterally makes a fundamental change to an employee’s employment (e.g., a demotion, change of workplace location, reduced compensation or implementation of termination provisions). If such a change to an employee’s employment is unavoidable, the risk of a constructive dismissal claim can be minimized by offering the employee consideration for the change or giving the employee sufficient notice of when the change will come into effect.

6. Required policies

Across Canada, employers are required to implement various written policies that, depending on the jurisdiction, cover: health and safety, pay equity, workplace violence and harassment, and accessibility.

7. Restrictive covenants

Restrictive covenants in an employment context (particularly non-solicitation, non-competition and nonacceptance covenants) are difficult to enforce given that courts will generally refrain from restraining a

departing employee from earning a living. However, these can be enforceable if drafted narrowly and with a view to protecting a company’s interests.

8. Employment status

While workers in employment relationships are protected by various minimum standards, workers carrying on business as independent contractors do not have the same protections. Accordingly, employers who misclassify a worker as an independent contractor who, in substance, is actually an employee will incur unexpected liabilities associated with an employment relationship (e.g., employment standards and notice of termination).

9. Discrimination

Each jurisdiction sets out various prohibited grounds upon which employers cannot discriminate against employees (e.g., disability and religion). Not only must employers refrain from discriminating during the recruitment process, they also have a duty to accommodate employees identifying with these prohibited grounds to the point of undue hardship. Failure to comply with anti-discrimination legislation could result in human rights claims.

10. Privacy

While not all jurisdictions in Canada have statutes addressing the collection of employee personal information, the common law provides various protections. In general, if employers collect, use or disclose this information, they must do so with consent and for a bona fide business purpose.

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According to Chilean labor law, the main labor and employment risks for companies are the following:

1. Employees' constitutional rights breach

If the company (employer) is condemned by the Labor Court for discrimination acts or breach of constitutional rights (physical and mental well-being, protection of privacy, inviolability of private communications, religious freedom, freedom of speech, work or collective bargaining), the employer can be condemned to pay moral damages to the employee of between 6 and 11 months' salary and to register in a public register that prohibits negotiation with the Government or public companies, which is economically damaging for the employer.

2. Unfair labor practices

Such conduct interferes with freedom of association, forming of unions or collective bargaining procedures. Any form of discrimination or coercion is also considered unfair. If the company (employer) is condemned by the Labor Court for anti-union conduct, it will result in the same consequences as in No. 1 above.

3. Strikes

Unions Company or Inter-Company Union have the right strike in the collective bargaining process. The risk is the employers' prohibition of replacing any employees, internal or external, striking. This constitutes unfair labor practice. There is no maximum limit to a strike's duration.

4. Minimum services (MSs) and emergency groups (EGs) during strikes

An exception of the prohibition above, 180 days before the start of collective bargaining, the employer must settle with unions the MS and EG to attend the essential services established by law (protection of company property, employees' health and safety, prevention of environmental hazards) during the strike. If there is no agreement between the parties, the labor authority defines the MS and EG.

5. Not fully paying social security contributions

If the social security contributions are not fully paid once the employment contract is terminated, employees could claim before a court that their dismissal is invalid and, accordingly, the employer could be condemned to pay wages until the social security contributions are fully paid and the employee is informed of such payment.

6. Unfair dismissal

Employees regard their grounds for dismissal to be unjustified may claim so before a court and obtain compensation in lieu of prior notice, severance payments and legal increases, calculated on severance payments from 30% up to 100%, depending on the dismissal cause unfairly invoked.

7. Economic unit or "Multirut" (multiple company numbers)

Any employee or union member is entitled to claim the existence of a single employer in a group of companies. The

law establishes that this happens when there is only one company directing the work of all employees (company policies, compensation, etc.) and when different companies have similar or complementary services or goods. The courts will determine if these companies constitute a single employer in a labor trial.

8. Subcontracting and temporary workers (outsourcing)

The law permits a company (client company) to employ the services of another company (contractor company) in order to provide services with the contractor's personnel, within the client's property and for an unlimited amount of time. Yet if this is done to simulate the hiring of new employees, the client company can be condemned, and all those employees must be hired by it. Outsourcing (hiring of temporary employees) is allowed but restricted to a few causes, and with limited time lapses.

9. Occupational accidents

If an employee has a serious occupational accident, the labor authority can shut down the workplace indefinitely while the accident is investigated.

10. Employee's dismissal immunity

Labor law protects certain employees from dismissal – such as female employees who are pregnant and some labor union members – by granting them "immunity from dismissal." Employees protected under this immunity may be dismissed only by a court order based on specific enumerated legal grounds. If not, reinstatement is applicable.

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China



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1. Termination of employment contract

An employer cannot terminate an employment contract without statutory causes stipulated in mainland China employment contract law (ECL); i.e., unilateral or “at-will” termination is not recognized. Strict applicable circumstances and procedures are set forth for each statutory legal cause in PRC laws. Further, the employer shall bear the burden of proof in the case of termination, while the economic cost for the employee for filing the case with the labor arbitration commission or court is very limited. Therefore, labor disputes of the individual that arise in the termination shall be given due attention, especially for the collection and preservation of evidence.

2. Waiver of the right to overtime payment

Some employers with modern production methods mandate a working day extending beyond the standard eight hours, and many employees even seek such arrangements to maximize their earnings. However, unless the employer has obtained approval for a special working-hours system, it would not exempt the employer from the legal liability of extending working hours in excess of the statutory limits, even if an employee’s contractual consent has been obtained to extended working hours or, more importantly, waive their right to overtime wages. Various disputes arise due to such waivers in China.

3. Labor policies and rules

In China, employers are required to establish and perfect their labor policies and rules (including a code of conduct), which are commonly referred to as the employee handbook, in order to outline their detailed rules for daily management.

Employers are advised to observe the series of preconditions specified in PRC laws, such as “democratic procedures”; otherwise, provisions formulated are ineffective and can not be served as a valid legal basis for disciplinary measures in the case of a the dispute.

4. Merit and annual bonus

In order to promote employees’ work performance, merits and annual bonuses are increasingly adopted by employers in China, even though they are not mandatory under ECL. However, so far, specification of the bonus target, reviewing process and payment period are still overlooked by employers. Many employees fail to obtain bonuses, especially when their employment is terminated early, and therefore initiate labor arbitrations and lawsuits. Employers may lose the case if the bonus-related agreement is unclear.

5. Annual leave

Employees are entitled to paid annual leave, the length of which depends on the cumulative length of the employment period that the employee has served. In practice, related disputes may be triggered frequently because the employer sets up more standards for the entitlement of annual leave, stipulates a lower compensation standard for unused annual leave or does not distinguish the rules on statutory annual leave and company benefits leave.

6. Medical leave

Risks focus on the calculation of the medical leave period and the payment standard of sick leave. In addition, terminating an employee who is still in their medical leave period is limited; employers find discharging their burden of proof very difficult in these cases.

7. Dual employment for overseas assignment

Many multinationals face the labor disputes of having an expatriate sign an employment contract with their Chinese entities while also keeping an employment contract with the overseas company during the overseas assignment period. In this situation (i.e., dual contract arrangement), the expatriate could be entitled to double benefits from both foreign law and PRC law.

8. Contribution of social insurance

The administrative penalty and/or labor disputes concentrate on making a social insurance contribution for the employee according to a basis and rate that are below the legal standard, and not making social insurance registration under the employer’s own social insurance account.

9. Non-competition

Labor disputes related to non-competition are in a rising tendency due to the improper noncompete agreement regarding the standard and payment of the compensation and the evidence collection.

10. Adjustment of work position and salary

The casual adjustment of an employee’s work position at will is widely welcomed by employers, and some employers are used to specifying it at the employer’s sole discretion. However, in China, to the most lawful extent, this adjustment is be subject to the acceptance and agreement of the employee unless there are legal grounds to do so.

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Colombia

Due to the current legislation and political changes in Colombia, the following are the key labor and HR risks and challenges:

1. Colombia's accession process with the Organisation for Economic Co-operation and Development (OECD)

As part of the accession process, the OECD has evaluated Colombia's implementation of labor and social security practices and legal instruments. The Labor and Social Affairs Committee has made some specific recommendations to Colombia regarding labor intermediation, pension reform, special protection for unionized employees and employment formalization, among others. Once Colombia's membership is ratified, the OECD's policies will be mandatory.

2. The peace treaty

The peace treaty signed in June between the Colombian Government and the FARC will have tremendous labor implications that will be visible with the rural reform, the political participation for the FARC, and the increase of taxes and fines imposed by administrative entities to finance the Government's commitments. There are some labor bills in Congress to reinforce and create more labor and administrative obligations to employers to protect employees' labor rights, mainly in rural areas.

3. Social security contributions and payroll taxes

The Unit for Pension and Payroll Contributions (UGPP) is making unexpected visits to companies and conducting administrative inspections to verify the correct payment of social security contributions. To date, the UGPP has fined 1,965 companies for these main reasons: (i) considering real salary payments as non-salary ones; (ii) delayed payments; (iii) lack of consistency between the payroll and the accountability.

4. Implementation of the Safety and Health at Work System (SG-SST)

As of 1 June 2017, employers must implement a complex and dynamic SG-SST that considers and prevents dangers and risks that employees and contractors might face in the execution of the hired activities. Not complying with the implementation deadlines exposes the employer to fines and even to the closing of the company.

5. Intermediation and outsourcing

Services performed through third parties, such as temporary services agencies, independent contractors and outsourcing companies, in which they act as intermediaries and in which individuals render business core activities, have been flagged by labor authorities. The Ministry of Labor has penalized 1,532 companies in the last year for illegal intermediation.

6. Employment stability for employees with a special condition

Pregnant women, unionized employees, sick employees or employees with any disability, employees in maternity or paternity leave, or those entitled to receive their pension in three years or less enjoy a special protection that involves the inability to be dismissed or downgraded on their labor conditions without the permission of the Ministry of Labor or the competent judicial authority. In practice, labor authorities do not grant those permissions.

7. Trade unions

Negotiations between the Colombian trade unions and companies are slow and difficult due to the high cost of the list of petitions requested by the unionized employees. Some of them are decided through an arbitration court due to the impossibility of entering into an agreement. One of the Government's commitments is to protect and promote trade unions'

rights, which implies an additional responsibility for employers.

8. Payment of overtime and night surcharges

Due to the change in night work incorporated since July 2017 in Colombian legislation, employers might recognize the night surcharges to employees who work at night or in shifts, from 9:00 p.m. to 6:00 a.m. Before, the night work started at 10:00 p.m. This change will increase the payroll costs for companies.

9. Performance and reward competitiveness align with new businesses and generations

As there are multiple generations on the same payroll it is difficult to set up attractive recruitment, retention and compensation policies that benefit every employee.

10. Flexibility and work-life balance

New generations are demanding work-life balance and flexibility to remain in a job for a while. HR teams are dealing with the responsibility of creating attractive flexibility programs such as home office, extralegal vacation plans and part-time schedules as part of their retention plans. Labor regulations are going in the same direction. Since last month, employers have to grant one day every six months for employees to share with their families.

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Costa Rica



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1. Discrimination at work and violation of special protection of employees

With the entry into force of the reform to the Labor Code in July 2017, discrimination at work became a very sensible issue.

The reform extends the causes of discrimination and introduces an extraordinary summary proceeding to attend discrimination claims.

This will also apply when an employer violates the employment security of union representatives and the special protection that some employees have, such as pregnant workers, employees on nursery leave, victims of sexual harassment and underage employees. These employees can be dismissed only with prior authorization of the Ministry of Labor.

The consequences to the employer can be reinstatement of the employee, and payment of unpaid salaries and damages.

2. Social security and labor risk policy

One of the major risks that an employer can take is not registering its employees before the Social Security Administration and National Insurance Institute.

The liability to the employer will imply the payment of medical costs of sicknesses and costs of work-related accidents and/or sicknesses, and a retroactive payment of social security payroll.

3. Labor shifts

Noncompliance with the daily and weekly limits of work shifts established in the Labor Code can generate labor claims related to overtime payment and breach of labor laws.

4. Minimum wages

It is important to verify if the company complies with the Minimum Wage Decree of each period.

Breach of the decree may imply the payment of salary differences and labor benefit differences.

5. Noncompliance with labor laws

Breach of labor and social security laws can generate an inspection from the Ministry of Labor, with a consequent process before the Labor Court that can imply the payment of pecuniary penalty that goes up 23 base salaries.

6. Professional services contract vs. employment contract

Hiring an employee under a professional services contract to avoid the payment of labor rights is highly risky.

The company can be exposed to future labor claims, retroactive payment of social security payroll and income taxes, and payment of medical costs of sicknesses and medical costs of work-related accidents and sicknesses.

7. Sexual and labor harassment

Another risk for the employer is not investigating sexual and labor harassment cases, because the company can be exposed to pay moral damages if a labor lawsuit is presented.

8. Disciplinary processes

It is highly risky not to document disciplinary processes in Costa Rica because the burden of proof relapses on the employer.

Improper documentation may lead to payment of pre-notice, severance, interests, costs and indexation in the case of condemn in an eventual trial.

9. Dismissal letter

With the entry into force of the reform to the Labor Code in July 2017, dismissal letters with cause must include a detailed description of the violation or fault committed by an employee.

Also, the letter must be presented to the Ministry of Labor if the worker refuses to sign it.

Only the causes established in the dismissal letter can be discussed in an eventual trial; therefore, it is highly risky to include general descriptions in the letter.

10. Registration of vacations, Christmas bonuses and payment of overtime

Because the burden of proof relapses on the employer, it is highly risky if the company does not document the payment of vacations, Christmas bonuses and payment of overtime.

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The top 10 current employment risks in the Czech Republic are based on our most common findings of the state inspection bodies:

1. Illegal work performed outside an employment relationship

Employers prefer to have flexibility in terms of how they engage their workers. Some of them attempt to eschew the labor law regulation and mandatory contributions (i.e., social security and health) by engaging freelancers. However, such behavior is prohibited and penalized.

2. Foreigners working illegally

In addition to applying for the necessary residence permit, non-EU citizens must obtain a relevant work permit in order to work legally in the Czech Republic. Employers must also notify the respective labor office of any changes in status regarding the employment of foreigners, as well as EU citizens.

Many employers neither provide notification, particularly with regard to EU citizens, nor submit applications for the correct type of work permit or any changes in relation thereto.

3. Violations of rules about agency workers

Employment agencies and those who use agency workers (users) still fail to ensure that the working conditions and salaries of agency workers are not worse than working conditions of users' employees who are in comparable positions.

4. Guaranteed wages or surcharges

In addition to regular wages, employers are obligated to provide employees with any applicable statutory surcharges (e.g., weekend work, overtime, night shifts) and/or supplementary payments, provided an employee's wage level is not of the guaranteed wage (eight statutory levels, depending on the type of work).

5. Failure to record working hours duly

Under Czech law, the start and finish time of each shift must be recorded, as well as overtime work, night shifts and standby for each employee.

6. Failure to maintain a written work schedule

Employers often fail to maintain a written schedule of weekly working hours and to present it to employees along with any modifications made to the schedule on time. Furthermore, employers often fail to comply with the duty to provide a one-week break in the scope of 35 hours or breaks between shifts of at least 11 hours (or 8 hours in exceptional cases) within a 24-hour period.

7. Unequal treatment

Noncompliance concerning equal treatment and the prohibition of discriminatory practices remains a problem. Examples include discriminatory wording of job ads with respect to age and gender, and gender-based pay discrepancies.

8. Failure to provide all wage components in a due and timely manner

Under Czech law, employers are obligated to pay wages to their employees on the predetermined pay day. However, many employers regularly fail to meet this obligation.

9. Failure to inform employees

Within 30 days of an employee's start date, an employer must inform the employee in writing about the basic work and wage conditions, as well as any changes made thereto. Many employers are unaware of this duty.

10. Occupational health and safety

Employers frequently breach their duties to seek out potential workplace risks and take appropriate measures to mitigate them. Such measures may include providing personal protective equipment and verifying an employee's state of health for performing the work required. At workplaces where employees from different employers work together, shortcomings in health and safety compliance remain.

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Finland



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1. Employer does not have legal grounds for termination of employment agreement

The Employment Contracts Act sets the grounds for termination of the employment agreement due to the employee's person and due to financial and production-related grounds. The general provision on the grounds for termination states that the employer shall not terminate an indefinitely valid employment contract a without proper and weighty reason.

The possible consequences include damages for groundless termination, amounting up to 24 months' salary.

2. Employer does not follow the Co-operation Act when reducing personnel

The Act on Co-operation within Undertakings is applicable to companies normally employing 20 people or more. When reducing personnel on financial and production-related grounds, the employer shall observe the provisions set out in the act; otherwise, it can be held liable for indemnification, the maximum amount of which currently being €34,519 per employee.

3. Employer does not follow the Working Hours Act

The Working Hours Act includes detailed rules on working hours and does not go with the current working methods, which increases the challenge of observing the working hours regulations. It is good to note that the Working Hours Act is to be renewed, most likely, next year.

4. Employer amends conditions of employment without valid grounds

An employer has, to a certain extent, the right to amend unilaterally terms that apply in employees' work. However,

if the question is about amending working provisions that constitute conditions of employment, the changes require agreement with the employee or grounds for dismissal.

5. Employer does not apply collective bargaining agreements (CBAs)

There are approximately 200 different CBAs in Finland, of which more than 170 are generally binding. Most fields of business are covered by CBAs. Due to CBAs' generally binding nature, non-organized employers shall also apply CBAs.

6. Employer applies wrong CBA

It is also important to apply correct CBAs, as they include several essential provisions directly applicable to the employment relationship.

7. Employer does not observe the obligation to treat employees equally

An employer must treat all employees equally, unless deviating from this is justified considering the employee's duties and position. Breaching this obligation may lead to compensation for the employee as well as punishment under the Criminal Code.

8. Employer does not have sufficient non-competition and nondisclosure clauses in place

Employees may not, in principle, work for another party or engage in activities that would cause harm to the employer as a competing activity during the employment relationship. If there are particularly weighty reasons related to the operations of the employer, it is possible to agree on a non-competition provision that applies for a time after the employment relationship has ceased. Furthermore, it is possible to agree on a nondisclosure obligation that extends for a time after the term of the employment.

9. Employer gives notice to an elderly employee

If an employer dismisses or lays off an elderly employee and the employee becomes unemployed or laid off for a long time, the employer may become liable to pay the employer's liability component. This system has been established to finance unemployment benefit expenses incurred by the termination or layoff and applies to employers an with annual payroll of more than ca. €2 million (in 2017).

10. Employer concludes a groundless fixed-term employment agreement

The employment agreement is valid indefinitely unless it has, for a justified reason, been made for a specific fixed term. Agreements made for a fixed term on the employer's initiative without a justified reason shall be considered valid indefinitely.

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France

1. Wage and hour laws

Regulations regarding working time are rather complex, yet flexibility may be obtained through collective bargaining. Failing to comply with the strict and formal requirements of French wage and hour laws triggers not only heavy financial exposure but also criminal sanctions.

2. Works Council management

French corporations are required to inform and consult the Works Council (and other employee representation bodies) on a regular basis in a formal and time-consuming process.

Works Council management remains a challenge for many corporations in France, especially on important business transformation projects.

3. Contingent workforce management

The increasing use of a contingent workforce raises complex labor and employment law issues, including those relating to social security and pensions, and may expose companies to financial, criminal and reputational risk.

Misclassification risk or dual employment risk are two major risks faced by companies using contingent workers.

4. Cause for termination

French rules on workforce restructuring have been constantly reformed and continue to be, with the Macron ordinances aiming at more simplification. However, it remains complex, with strict requirements for legal justification and a formal process involving multiple players – notably, the Work

Council(s) and the labor administration – which may trigger delays and financial exposure in the implementation of business transformation projects.

5. Mobility issues: posting of workers

France transposed, in a strict way, the European directive on the posting of workers. A posted worker is a worker employed by a foreign employer working outside France, but temporarily posted in France to carry out work.

The current French legal context creates significant compliance challenges and risk exposure for foreign companies operating in France with posted workers, as well as for their clients. Possible risks include criminal and civil sanctions as well as administrative sanctions, such as suspension of the activity.

6. Collective bargaining to achieve flexibility

Collective bargaining increases the possibility for a company to customise the rules of the work force from rules provided at an industry-level or French law under certain conditions and not in all matters. This will trigger a complex situation with increased risk for corporations if the rules negotiated at the company's level are challenged by employees or their representatives.

7. Health and safety

Employers in France have a strict obligation to ensure their employees' safety. This includes both physical and mental/psychological safety. Violation of this obligation triggers criminal sanctions.

8. Employment documentation and restrictive covenants

Any employment that is not a strict 35-hour-per-week open-ended relationship is strictly regulated under French law. Such requirements might be easily overlooked by an employer.

In addition, any restriction to rights and freedoms of employees must be justified and proportionate to the aim of the restriction. This creates uncertainty in the validity of any restrictive covenants.

9. Harassment/discrimination and pay equity

Under French law, any difference of treatment, including salary, bullying and sexual harassment, among employees is strictly prohibited, except in very limited cases when the employer can prove that the difference corresponds with a legitimate and proportionate objective and answers a crucial and determining professional demand. There are criminal sanctions attached to differential treatment.

10. Data privacy protection

The collection and use of personal data for HR management is subject to the general principles of French data protection rules; violation may trigger criminal as well as administrative sanctions.

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Georgia



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Observation of the prevailing labor and employment legislation and market in Georgia reveals the following top 10 risks:

1. Labor agreements with indefinite term

According to the Labor Code of Georgia, if a labor agreement is made for more than 30 months, or if labor relations continue as a result of executing labor agreements consecutively and their duration exceeds 30 months, an indefinite labor agreement shall be deemed to have been concluded. In this case, the employer will not be entitled to terminate the labor agreement on the grounds that the it had expired.

2. Labor agreements with the term of less than one year

The Labor Code states that, where the term of the labor agreement is less than one year, it shall be concluded only in the specific circumstances set out under the Labor Code.

3. Enforceability of noncompete clause

A labor agreement may establish an employee's obligation not to use knowledge and skills acquired in the course of fulfilling the terms and conditions of the labor agreement in favor of any other competing employer. In case the noncompete clause of the labor agreement is not drafted carefully, the clause will be unenforceable.

4. Grounds for termination

If case the labor agreement includes specific grounds for termination, the employer may face the risk that, in order to terminate the labor agreement, the employer will only be entitled to rely on such grounds.

5. Applicable law

In the event the labor agreement is governed by laws other than those of Georgia, the agreement should be drafted cautiously to avoid any potential risk of its invalidity before the courts of Georgia.

6. Paid leave accrual rules

The Labor Code does not stipulate the paid leave accrual rules. Therefore, it is up to the employer to regulate the rules of granting the paid leave in order to avoid paying compensation not earned by the employee.

7. Overtime work and working time

The Labor Code states that overtime work shall be paid in an increased amount of "the hourly rate of pay", but does not specify the minimum amount of the increase. Taking into account that there is not an established practice related to this matter, the amount of compensation for the overtime work remains unpredictable.

Furthermore, according to the Labor Code, work shall be deemed as overtime when an adult employee, upon both parties' agreement, works for a period exceeding 40 hours a week.

In addition, the Labor Code defines the specific operating conditions: the duration of working time in enterprises with specific operating conditions requiring more than eight hours of uninterrupted production/work process must not exceed 48 hours a week.

However, the Labor Code defines neither the overtime threshold nor the minimum compensation for such specific work. As a result, it is unclear whether overtime work begins beyond 48 hours or beyond

40 hours. Questions could also be raised about whether overtime compensation for such work should be the same as for normal work.

8. Part-time jobs

The Labor Code does not obligate the employee to keep the employer informed of their part-time job. The absence of this obligation in the labor agreement leads to the risks of the employer assessing whether or not the part-time job impedes the employee's fulfillment of the duties associated with his main job and/or if the person for whom the part-time job must be performed is a competitor to the employer.

9. Maternity and parental leave

The wording of the provision of the Labor Code related to maternity and parental leave is vague regarding whether the father is entitled to such leave.

10. Work safety

According to the Labor Code, the employer shall provide the employee with a working environment that is maximally safe for the life and health of the employee. Such a general provision does not provide a proper safety guarantee for the employee.

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Germany

From a practical point of view, companies who want to hire in Germany should familiarize themselves with the following labor and employment topics:

1. Working hours and working breaks

Based on a six-day working week, the general legal maximum of working hours is 48 per week, which can be extended up to 60 hours, provided that, within six months or 24 weeks, the average will not exceed 8 hours per day. Due to statutory working breaks, working time must be interrupted after more than 6 hours of work.

2. Vacation

Minimum legal vacation is 20 working days annually, based on a five-day working week. Collective bargaining agreements and individual employment contracts usually provide holiday regulations that go beyond the statutory minimum. During a vacation, an employee is entitled to receive vacation pay equal to their current salary.

3. Statutory sick pay

An employee is entitled to sick pay if sickness stops the employee from performing their work. It amounts to 100% of the normal salary and can be received for a maximum period of 6 weeks in the case of a particular disease.

4. Minimum wage

German law provides for a national minimum wage amounting to €8.84 gross per working hour, which must not be decreased.

5. Agency workers

It is common to engage freelancers for special projects. However, the distinction between employees and freelancers is particularly important for determining the application of employment and labor

laws, as well as the payment of social security contributions and the obligation upon the employer to deduct income tax. A “freelancer” is someone who performs services on an independent basis and assumes the sole risk for his business.

The term “employee” instead describes someone who performs services under the direct supervision of his employer. If someone pretends to be a freelancer, the “employer” might have to face criminal and tax-based consequences.

6. Works council and employee representation

Works councils can be established in all companies with five or more employees upon request of the employees. The Works Constitution Act grants to the works councils respective participation and co-determination rights in relation to considerable decisions involving personnel, social, economic and operational matters.

7. Termination of employment

A person’s employment relationship can be terminated by ordinary notice with a notice period or extraordinary notice without observing a notice period. In the case of an ordinary notice, the employment relationship terminates after expiration of the applicable statutory or contractual notice period. The statutory notice period at commencement of the employment relationship amounts to 4 weeks to the 15th or the end of a calendar month and extends in correspondence with the seniority of the employee up to 7 months after 20 or more years of employment. An extraordinary termination ends the employment relationship immediately. Respective notice can be given by either party due to an important reason that makes any further trustworthy collaboration unacceptable.

Additionally, if the company regularly employs more than 10 employees and the employee to be dismissed has been employed in the company for more than six months, the dismissal requires a social justification under the Employment Protection Act.

8. Collective dismissal

Collective dismissal procedures are triggered if an employer intends to dismiss a number of employees within 30 calendar days. To avoid inefficiency of all dismissals, the employment agency must be respectively notified, in advance and in writing, of the intended collective dismissal.

9. Special protection rights

There are numerous provisions that grant special protection rights against dismissal to certain groups of employees. It comprises, inter alia, pregnant employees, severely disabled employees and work council members.

10. Statutory severance payment

There is no general legal entitlement to severance payments for employees. Legal entitlements for severance payments can only result from a social plan or a collective bargaining agreement, or if the employer offers a payment voluntarily on the condition that the employee does not file a complaint.

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Greece



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The landscape for Greek employment law has been influenced dramatically by the current economic circumstances, such as the financial crisis. Also affecting the landscape is the fact that labor law is not fully aligned with relevant tax and social security law provisions. The main risks that Greek employers currently face may be summarized as follows:

1. A contingent workforce

Under the current financial circumstances and relevant social pressure, there is a common risk in a workforce occupied by a contingent workforce. Workers can claim to have a direct employment relationship with employers based on the allegation that the latter exercise managerial right over their work.

2. Reclassification of independent contractors as dependent employees

In the event an independent contractor provides services mainly to a single client for nine consecutive months, there is a legal presumption that the contractor is employed as a dependent employee. Potential reclassification also influences taxes and social security withholding obligations.

3. Social security obligations related to independent contractors

Although workers might be classified as independent contractors with income that derives from one or two entities, they may be deemed employees (at least for social security purposes). In such cases, the employer would be required to bear part of the cost of their social security contribution coverage.

4. The concept of salary

Employee earnings, both in cash and in kind, that do not serve the operational needs of the provision of employment may be considered part of the salary. Thus, they may be subject to social security contributions. The determination of which benefits are classified as part of the salary is a major labor issue that also influences taxes and social security withholding obligations.

5. Amendment of the Collective Redundancies framework

The Collective Redundancies legal framework has been recently amended, removing the “veto option” formerly available to the Greek Administration.

The risk lies with the fact that the new law is not broadly implemented, and many issues require further clarification.

6. Working hours reporting requirements

During the financial crisis, Greek labor laws were rigid with regard to overtime and, more specifically, reporting requirements. Noncompliance may lead to extreme fines, depending on the size of the workforce, the severity of the violation, etc.

7. Lock-out option

Recent legislation suggests a move to reinstate the employer’s right to a lock-out in the event of a strike.

8. ICT Incorporation is still pending

The incorporation of Directive 2014/66/EU on the conditions of entry and residence of third-country nationals is still pending. The result is that employment practices are not always fully aligned with immigration and social security requirements.

9. Unlawful termination of contract of employment

In the case of unlawful termination, employees are eligible for salary compensation starting from the date of the contract’s termination until the day the employer makes the compensatory payment.

10. European General Data Protection Regulation (GDPR)

The introduction of the new European GDPR presents challenges with regard to an employee’s consent for the processing of personal data for employment law purposes.

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Harry Lin



Hong Kong

Hong Kong's talent pool has become the city's most valuable asset and companies have recognized this by developing their human resource capabilities to manage their human capital base. Though employment relationships are generally governed by a mix of legislative enactments and common law concepts (i.e., contract law and case law), such legal frameworks will not eliminate all employment risks entirely.

1. Recruitment

Companies are generally free to hire employees without considering the quota or percentage requirements of local hires. However, the recruitment practices, if not properly conducted, can attract unwanted risk to a company; for example, if a job applicant's prospects are affected on discriminatory grounds such as sex, marital status, pregnancy, family status and race.

2. Cross-border employment

When hiring foreign employees to work in Hong Kong (or Hong Kong employees to work abroad), the choice of governing law for the employment contract will determine an employer's compliance obligations. Even if a foreign employee is hired to carry out most of their work in Hong Kong under a foreign law-governed contract, they would likely be entitled to employment rights under Hong Kong law.

3. Bonus payments

The payment and entitlement of bonuses has always been an issue for employers, because it is often not clear from the contract as to whether such bonus payments are discretionary. The true nature of the bonus may be in dispute, particularly when dealing with employees who expect to earn most of their remuneration through bonus payments. Care should be taken in assessing the true nature of such bonuses and in drafting the employee's entitlements under the contract.

4. Protection of personal data privacy

For many multinational companies, it is not uncommon for personal data to be transferred in and out of Hong Kong. However, the risk associated with personal data is especially apparent when dealing with companies that are careless. Some companies do not take the necessary precautionary measures to control the use, handling and storage of personal data by third-party data processors. Due diligence regarding third-party data processors is essential to ensure compliance with data privacy laws in all applicable jurisdictions.

5. Lack of clear and comprehensive policies or procedures

Employment policies are crucial in managing relationships with employees, as well as managing employee behavior. Such clarity is particularly important with regard to liability. Where a disciplinary or grievance procedure is not sufficiently clear and comprehensive, employers who decide to dismiss their employees summarily may risk attracting a wrongful dismissal claim.

6. Restrictive covenants

Though the use of restrictive covenants can discourage an employee's unauthorized disclosure, poorly drafted restrictive covenants may face enforceability issues and may be challenged. In general, the scope, duration and geography covered by the restrictive covenants (i.e., non-compete, non-solicit and non-dealing clauses) should accurately reflect the employee's seniority.

7. Payment of severance and long-service payments

Multinational companies often provide their employees with contractual retirement and retrenchment benefits. However, if such contractual benefits are not properly drafted, companies may be required to make separate statutory severance or long-service payments. Therefore, contractual retirement and retrenchment benefits should be carefully drafted to consider any applicable statutory payments.

8. Restructuring and redundancies

Unlike other jurisdictions, Hong Kong does not have any specific consultation or notification requirements regarding redundancies. However, employers are normally expected to use a fair and objective approach when selecting employees for redundancies, particularly when dealing with categories of employees who are protected against termination.

9. Employment status (independent contractor)

The use of independent contracts has brought a sense of convenience to organizations looking to add talent without the burden of complying with the required employer obligations. However, such independent contractor relationships are not always clearly distinguished. The legal principles differentiating such relationships are being continually established and applied. Care should be taken to assess the contractual relationship continually to minimize the risk of unknowingly developing an employment relationship with independent contractors.

10. Termination of employment

Hong Kong's statutory termination right of making payment of wages in lieu of notice is quite unique in that both employers and employees are free to make payment to shorten and eliminate the notice period. With this right, employers should be aware that employees are free to leave their employment posts immediately after having made the adequate payment in lieu of notice. In such circumstances, companies will be forced to find a quick replacement for the departing employee, as an employer cannot require the employee to work through their notice period.

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Hungary



Gabor Jagicza

1. Working time and rest time

Despite the frequent inspections by the Hungarian labor authority and the lawsuits initiated by employees, allocation, registration and compensation of working time in compliance with Hungarian labor requirements remain a challenge for several employers. Due to the scope of potential detrimental consequences, this certainly belongs to the top 10 employment risks employers must watch out for.

2. Termination of an employment relationship

In general, the unilateral termination by an employer should be justified with real and clear reasoning. This has always been a challenge for employers – unlawful termination may result in the obligation to pay a maximum of 12 months of an employee's salary as compensation for lost pay.

3. Disguised employment agreements

Parties are free to choose the form of their contract, but it is considered risky to conclude a civil law contract instead of an employment agreement. Namely, if the parties actually establish an employment relationship, the civil contractual relation may be classified as disguised employment. This entails various risks, ranging from taxation to criminal law consequences. The challenge is even greater if the employment relationship is atypical.

4. Data protection

Protection of the employee's personal data has gained more focus recently as employees become more aware of their data protection rights. This risk is even more apparent as the date of the GDPR entering into force comes closer.

5. Health and safety requirements

Meeting the requirements of Hungarian health and safety regulations is another challenge that all employers face. Noncompliance may be revealed especially as a result of an inspection by the Hungarian labor protection authority or an accident for which the employee may have a claim against the employer.

6. Unregistered employment, concealed salary

Perhaps the most common labor law breach in Hungary is "black work." This phrase is used when the employer does not comply with the registration (and, consequently, the taxation) obligations with regard to employees. It is a similar widespread infringement when an employee's salary defined in their employment contract equals the mandatory minimal wage but they receive more money as salary, usually in cash (a similar method is to register an employee as part time even though they are working full time). Hungarian authorities look for this and similar forms of tax fraud.

7. Simplified employment

Employers tend to forget (either intentionally or by negligence) to notify the authorities that an employee worked for more days in a month than it is possible within the framework of simplified employment. Because it is considered tax evasion, the National Tax Authority may impose fines.

8. Workforce mobility

In recent times, when the Hungarian job market has experienced a shortage of skilled workers, employers have applied a wide range of solutions. Examples are manpower lending through temporary workers and flexible working hours. However, using these solutions to tackle a labor shortage is a tough challenge that requires careful planning and contracting to comply with labor and taxation regulations.

9. Equal treatment

Compliance with the requirement concerning equal treatment from the time of recruitment to the termination of employment is also one of the top 10 employment risks. However, many cases remain involving employers who discriminate against people based on their gender or ethnic origin.

10. Protected employees

Hungarian labor law protects certain employees from dismissal (such as pregnant employees), working in another position or place (e.g., works council president or trade union officer), working in another city (e.g., employees raising children younger than 16 alone) or working overtime, in an uneven working time schedule (e.g., employees raising children younger than 3 alone).

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India

In the recent past, the Government has initiated several campaigns to rekindle foreign investments in India. These efforts are evident in the launch of the Make in India' and 'Ease of Doing Business campaigns, wherein they have shown commitment toward developing India as an attractive investment hub. However, risks continue plaguing the labor and employment sector, which investors must be mindful of.

1. Multiplicity of legislations

There are many central and state-wise employment laws, each having different applicability criteria and compliance requirements. That leads to varied obligations on the employers, such as maintaining registers, making periodic filings and inspections. Compliance is not applicable uniformly and may differ from state to state, increasing the burden of compliance and consequent risks.

2. Registrations/licenses for setting up business

Registration/license requirements with multiple labor authorities under various legislations (depending on the nature and size of business). Examples are factory licenses, trade licenses, registration under relevant shops and establishment acts. Bureaucratic red tape and complex licensing preconditions have a negative impact on timelines for setting up business in India.

3. Regulated hours of work, leave, etc.

Working hours, leave, holidays and working conditions for employees are regulated. Any variations usually trigger a lengthy pre-approval process from labor authorities. Examples of such variations are women working night shifts and establishments that must be open beyond stipulated hours.

4. Stringent dismissal procedure

The concept of at-will employment is not recognized in India. Employers must,

therefore, always safeguard the risk of unfair dismissal claims. In case of a "workman" as defined under the Industrial Disputes Act, 1947, the employer must meet certain preconditions (depending on the number of workmen in the industrial establishment). Examples are a written notice period ranging from 30 to 90 days, severance compensation and intimation/ approval of the appropriate authorities. For non-workmen, compliance with minimum notice prescribed under the relevant shops and establishment act is required.

5. Exit barriers

There are exit barriers for certain establishments. For instance, closing down an undertaking employing 100 or more workmen requires prior approval of the appropriate government and satisfactory reasons for the intended closure. If permission is not granted, the closure is deemed to be illegal, and the workmen become entitled to all benefits under law as if the undertaking has not been closed down.

6. Unenforceability of post-employment restrictions

An employer may impose noncompete restrictions on the employee during the term of employment. However, post-employment noncompete restrictions are usually not enforceable, as they are considered to be contracts in restraint of trade, hence void under the Indian Contract Act, 1872. Accordingly, an employee cannot be restrained from joining a competing business.

7. Risk in engaging contract laborers

The practice of engaging contract laborers in establishments for skilled as well as unskilled jobs is common in India. The principal employer (PE) must ensure that the contractor fulfils their obligations under the Contract Labour (Regulation and Abolition) Act, 1970, otherwise the onus of making payments to contract laborers falls on the PE. Further, if the PE exercises a sufficient degree of control and supervision

over contract laborers, there is a risk of the employer's relationship with the workers being deemed as employment.

8. Threat of strikes, labor unrest

Due to disputes arising between employers and workers regarding wages, working conditions and discrimination, instances of strikes and labor unrest have become a frequent occurrence in India.

9. Challenges for foreign nationals

Foreign nationals coming to work in India are not exempted from compliance with central- and state-specific labor legislations. Foreign nationals on secondment from countries with which India has not signed a social security agreement suffer financial costs because social security contributions become mandatory in both countries. Further, every foreign national who is employed in India must obtain an employment visa, which is granted to highly skilled and/ or qualified professionals who are being engaged by an entity in India on a contract or employment basis. Employment visas are generally not granted for jobs for which qualified Indians are available. Depending on the nationality of the foreign national, eligibility conditions for grant of an employment visa may differ.

10. Permanent establishment risk

A foreign company hiring an employee in India without a business presence there exposes itself to the risk of being treated as a permanent establishment, thus attracting tax implications in India.

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Italy



Stefania Radoccia

Italian labor law presents many critical aspects and peculiarities. The following are insights into the most important ones.

1. Protection against unfair individual or collective dismissals

There are several differences in the sanctions involving employees hired before 7 March 2015 and those hired after. That is the date that the Jobs Act (Law No. 23 of 2015) took effect. There are also differences in consideration of the reasons grounding the individual or collective dismissal.

2. Limits for fixed-term employment contract

Italian law foresees certain requirements and limits for fixed-term employment contracts that can be entered into by parties without any specific justification, but for a maximum of 36 months and with maximum of 5 extensions. In the case of noncompliance with legal requirements, the contract might be converted into an open-term contract and/or involve administrative fines. In the absence of specific provisions in national collective bargaining agreements (NCBAs), the maximum fixed-term contracts must not exceed 20% of the total number of permanent employees in force as of 1 January of the year of hiring.

3. Health and safety obligations

Employers must comply with many health and safety obligations, such as evaluating the health and safety risks and identifying the steps that must be taken to eliminate or reduce the risks to a minimum. Breach of an employer's health and safety duties carries both criminal and civil penalties.

4. Employee's personal data

The collection of employees' personal data is permitted only if the data is relevant for the purposes of the processing; if prior information is given to the employee and the employee gave their consent, and with prior authorization of the guarantor in the case of sensitive data. Noncompliance results in administrative fines.

5. Assignment to lower tasks

There are legal constraints for the assignment to lower tasks and duties, and their violation might be sanctioned by a labor court in the case of judicial litigation.

6. Compulsory online fulfillments

The Ministry of Labor has recently introduced compulsory online fulfillments in the case of hiring, terminating, transforming or extending of the contract.

7. Union's consultation

In certain cases, if an employer carries out collective redundancies or transfers of undertakings, union representatives have to be involved in a consultation and information procedure. In case of noncompliance, the unions can bring legal action.

8. Discrimination of employee

Finally, if discrimination against an employee is found to exist, the labor court can require the employer to develop a plan to remove discriminatory practices and publish that decision in a national newspaper. It can also order the employer to pay damages.

9. Working performances not based on a subordinate employment relationship

In the case of staff leasing, the contract shall be in writing and have certain requirements; if not, the employees will be legally considered as permanent. If the supply of workers is unlawful, employees can claim the existence of an employment relationship directly with the user from the starting date of the contract. Administrative fines may also apply. In the absence of specific provisions in NCBAs, the maximum number of staff leasing for an indefinite period of time must not exceed 20% of the total number of permanent employees in force as of 1 January of the year in which the contract is entered into.

10. Independent contractors

There is increased misclassification exposure. The rules related to employment contracts will apply to self-employed workers who provide services performed in an exclusively personal and continual manner, and for whom the employer determines the timing and place of work. Exceptions include certain self-employed contracts, such as workers listed on a professional register, members of the company's board of directors and cases provided for by any applicable NCBAs.

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Junya Kubota



This article summarizes the top 10 pitfalls or risks with regard to employment law in Japan.

1. Labor management agreement for overtime work

Under the Labor Standards Act of Japan (LSA), the maximum number of work hours is 40 hours per week and 8 hours per day. Overtime work requires an employer to execute a labor management agreement with employees' representatives at each workplace and file the same with the Labor Standards Inspection Office. A violation could be criminally punished.

2. Managerial employee

Under the LSA, a managerial employee is exempt from work hour regulations, including statutory overtime allowance. However, by courts, the scope of managerial employees is (very) narrowly interpreted, and an employer is often ordered by a court to pay statutory overtime allowance for the past two years (statute of limitations period) to an employee who the employer thought was a managerial employee, plus interests and a penalty.

3. Overtime allowance included in base salary

An employer sometimes provides in an employment contract that "base salary includes overtime payment." However, to include a statutory overtime allowance in base salary, certain rules established by court precedents must be complied with. Failure to do so would result in an additional payment of overtime allowance with interests and a penalty.

4. Individual independent contractor

An individual independent contractor is not an employee and thus is not protected by employment laws. However, a contractor often claims that they are actually an employee, not a contractor, and that employment regulations should apply, including restrictions on unilateral termination, statutory overtime allowance and mandatory social insurance.

5. Conversion of fixed-term employment to indefinite-term employment

Under the Labor Contract Act of Japan, if a fixed-term employee's total contract term with an employer exceeds five years by renewal(s), they have a right to convert their fixed-term employment to indefinite-term employment.

6. Dismissal for redundancy

Dismissal for redundancy is quite difficult in Japan. Courts generally determine whether a dismissal for redundancy is valid by looking into these four factors: (a) the necessity to reduce the workforce; (b) whether the employer made decent efforts to avoid the dismissal for redundancy; (c) the appropriateness of the selection of dismissed employees; and (d) the appropriateness of the dismissal procedure.

7. Dismissal for poor performance

Dismissal of a poor performer is also quite difficult in Japan. Generally, to show that a dismissal is valid, an employer must provide evidence that the employee's performance is significantly poor, and that there is no chance for improvement despite warnings and opportunities.

8. Harassment

Sexual harassment, power harassment (or workplace bullying) and maternity harassment are often disputed. If a harasser employee is held liable for the act, the employer will almost certainly be held vicariously liable.

9. "Equal pay for equal work"

Unreasonably unequal treatment between fixed-term employees and indefinite-term employees considering various factors is prohibited. Part-time workers are protected by similar regulations. Further, new regulations to eliminate unequal treatment between regular employees and irregular employees are going to be enacted in the near future.

10. Outside labor unions

Sometimes, an employee suddenly becomes a member of a labor union outside of the employer and tries to solve their individual employment issue using collective bargaining power. If this happens, a collective bargaining session would be costly and lengthy.

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Luxembourg



Laurence Chatenier

According to Luxembourg labor law, the major labor and employment risks for companies are the following:

1. Hiring of a foreign worker who does not have any work permit

The employer may be ordered to pay an administrative fine of €2,500 for each non-authorized worker.

Imprisonment (from eight days to one year) and/or fines from €2,501 to €20,000 may be ordered, notably for repeated breaches, work in abusive conditions or the employment of a minor.

Finally, the employer may be prohibited to doing business for a maximum of three years and may be ordered to close its business on a temporary or permanent basis.

2. Offense to the rights of the employees' representatives

Any offense to the rights of employees' representative bodies may entail a fine from €251 to €15,000. If the breach is repeated, the fine may be increased and an imprisonment, from eight months to three years, may be ordered.

3. Noncompliance with mandatory rules on posted workers

Employees posted in Luxembourg may benefit from the same rights as local workers. A foreign employer posting employees in Luxembourg must provide specific information, such as an employment contract, medical statement, professional skills statement, proof of coverage for social security and a work permit, if required. Once the full documentation is registered by the labor

authorities, a "social badge" is to be issued. Failure to comply with those provisions may entail fines ranging from €1,000 to €5,000 per posted worker, with a maximum of €50,000. In the case of a serious breach, the labor authorities may suspend the activities of the posted workers.

4. Fixed-term employment contracts

Fixed-term employment contracts must have written documentation and may be justified by a temporary legal ground, such as replacement of a sick employee or exceptional increase in business. Noncompliance with these rules entails a requalification of the fixed-term employment contract into an indefinite-term employment contract, notably subject to regular termination rules.

5. Nonpayment of social security contributions

The nonpayment or late payment of social security contributions by the employer may entail additional payment amounting to 7.2% of the sums owed.

6. Unfair dismissal

Dismissals need to be based on sufficient grounds. Any employee dismissed without valid ground may claim for material and moral damages. The labor court will calculate the material damages by assessing a reference period, i.e., the reasonable period necessary for the employee to find another job on the market, taking into consideration their age, qualifications and field of activity. After this period, which usually ranges from two to 24 months, the labor court will assess the employee's financial loss during this time. In regards to moral damages, the

labor court will take into consideration the troubles raised by the dismissal as well as the age, health condition and length of service of the dismissed employee.

7. Protected employees

Some categories of employees, such as pregnant women or members of the staff delegation, benefit from a legal protection against dismissal, and specific rules and schedules apply.

8. Termination of the contract during the trial period

An employment contract may provide a trial period (up to 12 months under specific conditions). In this case, the contract can be terminated by both parties without justification nor indemnity. However, a notice period is applicable and must be carefully managed: it must expire by the last day of the trial period. Otherwise, the contract is deemed to be an indefinite-term contract and the regular rules on dismissal will apply.

9. Data protection

Depending on the kind of data to be processed, the employer is subject to a prior notification or authorization from the National Commission for Data Protection. Noncompliance with these requirements may entail administrative fines.

10. Overtime

Overtime is subject to prior notification or authorization from the labor authorities and triggers additional payment (or time off). Noncompliance with the overtime rules may entail fines from €251 to €15,000.

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Mexico

Mexico's agenda regarding labor legal matters has been moving from form to substance. Nowadays, authorities are scrutinizing personnel structures not only by considering the documentary evidence but also by analyzing the ways in which the labor stakeholders interact with one another and, particularly, the motives and implications of the interaction.

The purpose of this article is to address the top 10 labor and employment challenges in Mexico as a consequence of this change of direction mentioned above.

1. Outsourcing

Labor law and tax law have both strengthened the rules.

In short, subcontracting exists when a services entity renders activities for the benefit of the operating company and the latter supervises and determines such services (lack of self-management).

Thus, the operating entity will be deemed as jointly and severally liable (co-employment).

Services under this structure shall not: (i) be the only activities required to run the business of the operating entity; (ii) be the same activities followed by the operating entity; and (iii) be considered within the core business of the operating entity.

Failure to comply with the rules will trigger direct liability and profit sharing exposure for the operating entity.

2. Employment terminations

The employment contract can only be terminated if a statutory case of termination arises; otherwise, a severance

must be paid. The severance threshold is calculated by considering 3 months of integrated salary and 20 days of integrated salary per year worked. In the case of litigation, back wages may apply.

3. Litigation

In general, the burden of proof is on the employer's side. Unfair dismissal claims must be challenged by arguing a "just cause" termination. Documentary evidence aimed to prove the terms of the employment benefits is essential. The lack of such documentation will have a negative impact for the employer.

4. Unions and strike calls

Some labor unions in Mexico are continuously searching for serve a strike notice on, claiming for a forceful execution of a Collective Bargaining Agreement. If a strike call is admitted by the Labor Board, a work stoppage could easily take place, even before the board determines whether the union has standing.

5. Contingent workers

The length of the contract must be for an undefined term. Contingent employment can only be structured for a specific project or in the case of a leave of absence. Multiple temp contracts with one employee could lead the Labor Board to determine that the contract is for an undefined term, which could trigger severance in case of termination.

6. Reduction in force

Collective termination (total or partial) is subject to authorization of the Labor Board, provided it is grounded on a

statutory case of termination. Failure to secure such authorization could lead to employees claiming for reinstatement.

7. Decent job

Employers in Mexico must implement policies and follow specific practices to avoid discrimination, mobbing, etc. Failure to do so may lead the employee to terminate the contract, ask for severance and claim for damages before the civil court.

8. Restructure of benefits

Authorization from the Labor Board is required to restructure the benefits and labor conditions of all or part of the personnel.

9. Restrictive covenants

Noncompete provisions could be difficult to enforce due to the constitutional right to work. However, alternative mechanisms can be implemented to claim for damages.

10. Independent contractors

Such a structure can be implemented if the individual provides a professional service and remains independent throughout the execution of the contract.

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Netherlands



Joost van Ladesteijn

Despite the following risks, the Netherlands offers companies a strategic location in Europe and a healthy social and economic work climate.

1. Protective termination laws

Dutch labor law is rather protective. Before terminating an employment agreement unilaterally, employers must seek permission from a governmental body (UWV) in case of a termination for economical or organizational reasons, or a court decision. Termination may be particularly tricky in cases when an employee is ill.

2. Sick pay and responsibility for integration

Although the term for which employers are obligated to provide sick pay is currently a political debate, at the moment, employers are obliged to provide sick pay up to two years. Failing to do so may result in an extension to a third year of sick pay. To minimize financial liability, compliance is essential.

3. Workplace safety and employers' liability for industrial injuries/occupational illnesses

Employers have a high burden of proof to show that the workplace is safe. Failing to do so may have financial consequences in the case of an industrial injury or occupational illness. As soon as a minimum causality between the injury/illness and the work is assumed, the burden of proof shifts from the employee to the employer, which may trigger costs for investigations, legal fees, etc.

4. Legislation on the avoidance of scheme arrangements and chain responsibility for minimum wages and minimum holiday allowance

Companies that hire the services of external (foreign) service providers are

obligated to act as good guardians toward these employees. These workers should be paid in accordance with the applicable minimum wages and minimum industry-wide standards (if applicable). Besides a variety of administrative obligations, employees may also hold the company liable if their employer fails to pay and their setup qualifies as a scheme arrangement.

5. Correctly applying industry-wide collective labor agreements and pension arrangements

Changes to activities of companies following acquisitions, de-mergers, outsourcing or insourcing may affect the applicability of (industry-wide) collective labor agreements or pension arrangements. This may have costly consequences if not frequently checked.

6. Obligatory severance, (transitievergoeding) for employment exceeding two years

Dutch law obliges employers to grant a statutory severance to all employees whose employment agreement terminates or expires after being employed for two years. Exempted are resignations, terminations at the pensionable age and terminations for cause.

7. Successive employment and prearranged insolvency (end of pre-pack)

Companies that intend to acquire the assets of companies that went bankrupt should carefully investigate possible labor consequences before hiring the employees of these companies. Under certain circumstances, they might have to compensate such employees for the aforementioned obligatory severance, including previous years of employment.

8. Requirement to inform employees timely of expiration and/or renewal of temporary contracts

Employers are obliged to inform their employees timely about whether a contract for a definite period of time will be renewed. "Timely" means at least one month before the expiration date.

9. Hiring independent contractors

Companies that hire independent contractors will have to make sure these contractors are considered entrepreneurs, both from a tax and labor law perspective. Failing to do so may result in both tax and labor law liabilities.

10. Works council consultation rights and right of consent

Dutch works councils have serious powers to delay decision processes if they have not been consulted correctly. In situations where the works council has the right of advice, execution of the intended decision must be postponed in the case of a negative advice, allowing the works council to consider a procedure at the entrepreneur court in Amsterdam. In situations where the works council has the power of consent, execution is, in principle, not possible without such consent.

Works council consultation processes must be managed carefully.

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New Zealand

1. Noncompliance with Holidays Act 2003

Noncompliance, and the requirement to remediate any underpayments (to current and former employees) going back six years, is currently affecting many New Zealand businesses. Payroll systems have often not been configured in a compliant way, which means that errors are systemic and affect a large number of employees. The regulator (MBIE) is enforcing employer obligations through Enforceable Undertakings, which generally require a complex six-year recalculation process for every leave transaction.

2. Health and safety prosecutions

The Health and Safety at Work Act 2015 (HSWA) was passed with the intention of minimizing exposure to workplace health and safety risks, so far as is reasonably practicable. The HSWA aims to do this by requiring officers to demonstrate due diligence, by imposing wide-ranging responsibilities and encouraging worker participation, with high penalties for breach. Businesses are encouraged to be proactive and take a critical risk approach to their health and safety management.

3. Deficient employment investigations/disciplinary proceedings

Significant burdens are placed on employers, when conducting investigations or disciplinary processes, to act as a fair employer could act in the circumstances. Failure to follow a fair process may result in an unjustified disadvantage or dismissal claim.

4. Risks of restructuring

When considering whether termination of employment on grounds of redundancy is justified, the courts are placing increased emphasis on ensuring that the decision is both substantively and procedurally justified. As well as following the correct

process, employers must ensure that they can demonstrate that the redundancy decision itself is one that a reasonable employer could make in the circumstances.

5. Managing migrant workforce

Immigration New Zealand (INZ) has recently implemented a policy allowing it to ban employers who have incurred an employment standards-related penalty from recruiting migrant employees for six months to two years. To minimize this risk, employers who regularly recruit employees from abroad should comprehensively review their internal systems to ensure compliance with employment legislation.

6. Pay equity breaches

Recent Court of Appeal case law confirmed that, when determining equal pay cases, reference may be made to comparable workers employed by other employers and industries if the claimant's industry does not contain an appropriate comparison.

The Employment (Pay Equity and Equal Pay) bill (currently before Parliament) provides a new process (akin to collective bargaining) for pay equity claims to be resolved. Rectification of pay inequity is likely to be a major area of employer liability in the coming years.

7. Mischaracterizing employees as contractors

Determining whether an individual is an employee or a contractor is crucial to ensure proper tax and employment law compliance. Errors in this regard can result in income tax penalties, an unjustified dismissal claim (as these issues often surface on termination), holiday pay underpayments, and social security and superannuation liabilities. Increasing use of a contingent workforce and flexible work models mean that this issue is likely to become more prominent in coming years.

8. Termination of employment for medical incapacity

Like any dismissal, a fair process must be followed before any termination of employment. The key question is when an employer may "fairly call halt" to the relationship. Particularly for intermittent illnesses, this can take some time, by which point, the business is often impacted and the relationship between employer and employee strained.

9. Use of social media

The prevalence of employees' participation in social media poses several risks for employers, ranging from damage to the employer's reputation due to negative employee comments to issues around ownership of contact lists (on sites such as LinkedIn) following termination of employment relationships. It is essential for employers to be transparent and have a comprehensive and well-drafted social media policy.

10. Implementation of drug and alcohol policies

Because drug and alcohol testing of employees involves significant intrusion into an employee's privacy, it is crucial for employers to have a comprehensive drug and alcohol policy setting out the parameters and circumstances of testing. Employers are generally only able to conduct random testing (as opposed to testing post-incident or on "reasonable suspicion") in "safety-sensitive areas."

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Norway



Jane Wesenberg

Employment risks in Norway vary considerably depending on the nature of the business. However, the following rank among the most important risks:

1. Health and safety

Working conditions in Norway are generally very good, although the standards in various industries and occupational groups differ. The risk of workplace accidents poses a risk for all employers: legally, financially and in terms of reputation. Systematic health, environmental and safety activities to prevent and reduce these risks should therefore be the highest priority for all employers.

2. Recruitment

Recruiting the right people is crucial for all businesses. A good recruitment process is therefore essential. Once a person is employed, dismissal is not easy. Although a probation period may be agreed, an employee may only be dismissed during this period for reasons related to their adaptation to the work, technical skills and reliability. The employee must receive necessary training and appropriate corrections. Dismissals during the probation period are often set aside because the employer failed to provide relevant feedback.

3. Working hours

Working hours and overtime rules are strict, and employers must implement tailored measures to ensure that all employees work within the statutory or agreed maximum limits. The risk of noncompliance is particularly high in construction and similar projects, where different workforces work interdependently and to strict deadlines. Compliance is monitored by the Labor Directorate,

which can perform audits and impose fines for breach.

4. Minimum pay

There is no general minimum wage in Norway, but collective agreements contain minimum rates of pay. In some industries, these apply to all workers who perform the same type of work. The risk of noncompliance is particularly high in industries that employ large numbers of foreign workers. Employees who are paid below the specified rates can claim back pay. The Labor Directorate can also impose fines.

5. Discrimination

Discrimination on the grounds of gender, political allegiance, pregnancy, ethnic background, religion, age, physical handicap or sexual orientation is generally prohibited. Following an allegation of discrimination, the employer has the burden of proving that there has been no discrimination. Employers risk fines for noncompliance with anti-discrimination legislation. Victims of discrimination can also claim damages for economic and noneconomic loss.

6. Financial crime

Although Norway is one of the world's least corrupt countries, incidences of work-related financial crime pose a real threat to employers. Besides financial loss, employers risk criminal liability, reputational damage, and exclusion from public tenders and markets.

7. Data privacy

Compliance with the General Data Privacy Regulation, which will apply in Norway from 25 May 2018, imposes new burdens on employers when processing their

employees' personal data. Employers must also ensure that employees comply with the regulation when processing personal data in the course of their employment. The threat of large fines for noncompliance poses a risk for employers.

8. Temporary and contingent workers

Fixed-term contracts, temporary contracts and hired labor are only permitted in Norway in limited circumstances. An employee who is engaged in breach of the rules can petition for an order that they are permanently employed.

9. Dismissal

Employees cannot be dismissed without cause, and strict procedural rules must be followed. Errors during the dismissal process can lead to legal action and a ruling of unlawful dismissal. An employee who disputes the lawfulness of a dismissal may normally remain in their post until the dispute is finally decided by the courts. The risk of dismissal therefore lies clearly with the employer.

10. Protection of intellectual capital

A company's intellectual property (IP) is often more valuable than its physical assets, and employers should consider the need to protect their IP through confidentiality clauses, IP protection clauses and restrictive covenants in employment contracts. Noncompete clauses can only be invoked in limited circumstances, and the employer must pay the employee remuneration if the clause is invoked. They should therefore not be used indiscriminately, but can be a useful tool to protect IP in appropriate cases.

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Poland

Nowadays, the most common issues related to labor law in Poland involve:

1. Reclassification of civil law contracts

Due to tax reasons, employers prefer to conclude civil contracts over employment agreements. However, if the civil contract includes all basic characteristics of the employment agreement, the contract may be considered by the labor court as an employment agreement and the employer may be subject to a fine up to PLN30,000 (~€7,000).

2. Overtime

According to Polish law, the maximum number of overtime hours shall not exceed 150 in a calendar year for an individual employee. Employers who do not comply with this provision shall pay a fine of up to PLN30,000 (~€7,000).

3. Employee outsourcing

More companies are transferring their employees to another firm, usually to a professional agency. This practice has many tax benefits and minimizes the cost of employment (e.g., less money will be spent on employee benefits). But this is also a risk, because legal provisions regulate directly what kind of employee leasing is allowed.

4. Discrimination

The employer should make sure that their actions will not be interpreted as unequal treatment or discrimination. In today's business, it is important to have a favorable image. A discrimination claim could damage a good reputation.

5. Mobbing

Noncompliance of anti-mobbing policies can be very costly for an employer. The court may order the employer to pay compensation. In Poland, the average amount is PLN15,000 to PLN20,000 (~€3,500 to ~€4,700).

6. Personal data

In accordance with employment law, an employer is obligated to use due care in the storage of employee data, particularly personal information. Inadequate protection of personal data may be subject to a fine of up to PLN50,000 (~€11,500).

7. Personal rights

The number of employers to introduce biometric timeclocks has increased in recent years. Many employees believe that the practice of using their fingerprints is a violation of their personal rights and demand compensation for damage caused. The lack of precise legal regulations is problematic.

8. Illegal employment

To minimize costs, some employers do not use employment contracts. While this practice obviously reduces costs, it involves significant risks to the employer. If illegal employment is discovered, the employer may face fines of up to PLN30,000 (~€7,000) and social security contributions.

9. Health and safety standards

According to Polish law, the employer must provide suitable working conditions, including a uniform sleeping facilities for drivers. If an employee suffers an

accident at work because of an inadequate health and safety policy, the employer will face fines ranging from PLN1,000 to PLN30,000 (~€200 to ~€7,000).

10. Financial liability of employees

Pursuant to the Polish Labor Code, the employee who, due to improper performance of duties, has caused damage to an employer shall be held financially liable. However, the compensation cannot exceed the amount of three months' remuneration. As a result, employers are often exposed to the risk that the difference will be covered from their own money.

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Portugal



Rodrigo Serra Lourenço

1. Applicable collective bargaining agreements

In Portugal, it is possible, notably through government extension orders or HR qualification errors, that the more favorable terms of a specific collective bargaining agreement (CBA) are applicable to all or some workers of a given employer, and not those being applied. This may lead to increasingly higher outstanding payments to these workers, if what is due under the CBA is higher than what is paid by the employer.

2. No limitation period for labor credits

In Portugal, outstanding labor credits can always be claimed by the employees, even if they date from several years ago – there is no limitation period for labor credits. This requires great caution with regard to procedures and evidence of payment.

3. Unpaid overtime

All work done outside the work schedule of the employee – before or after normal working hours, or on weekly rest days – is considered overtime and must be paid at a higher rate. Employers that tolerate work rendered in such conditions are subject to claims for payment of overtime.

4. Fixed-term employment contracts: motive

Fixed-term employment contracts are exceptional and allowed only under detailed justification. This must include: i) a lawful motive for resorting to fixed-term hiring; ii) a term that is compatible with the motive invoked; and iii) a detailed explanation of the motive, the term and their relation to the job post to be occupied by a fixed-term worker. If a court finds any of these insufficient, the contract will be considered indefinite.

5. Fixed-term employment contracts: renewals

Fixed-term employment contracts are automatically renewed unless a notice of termination is served by the employer, and they become indefinite contracts if the number of allowed renewals is exceeded. Notices of termination must comply with a mandatory notice period (30 or 60 days, depending on the case); if the notice period is not complied with, the contract will be considered as having been renewed for an additional period or having become an indefinite contract, depending on the case.

6. Service providers being considered as permanent employees

In Portugal, the authority for work conditions and the public prosecutor may, upon receiving, from whatever source, information about a contingent worker who is in fact working as an employee of a company, start a legal procedure to have the worker recognized as a permanent employee of the company, without the need for any action by the worker. If the court agrees, the contingent worker in question is automatically considered a permanent employee.

7. Customary practices as source of vested labor rights

Under Portuguese labor law, repeated practices in the context of the labor relation that last for a significant period of time may lead to the formation of vested rights of the workers, notably in the fields of wages, work schedules and professional category or tasks to perform.

8. Wrongful tax frameworks of labor installments

Payment of wages through installments with a more favorable tax framework (e.g., per diem mileage in own car at the service of the company) may lead to heavy additional tax levied on the employer, as well as fines.

9. Errors in disciplinary procedure (termination with cause)

Termination with cause is only possible upon a complex disciplinary procedure, where the omission of requirements of time and form often leads to the termination in question being considered invalid by a court.

10. Mandatory professional training

It is mandatory to provide each full-time employee with at least 30 hours of professional training every year. Failure to do so will lead to fines and eventually to the payment of the missing training time as work time to the employee.

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Russia

1. The most costly risks: violation of workplace safety and labor protection requirements

An employer risks fines ranging from RUR50,000 to RUR200,000 for each violation, with respect to each particular employee. Repeated violations will result in disqualification of company officials and suspension of company activities.

2. The most harmful risk: delay in salary payment

The definition of salary is rather broad. It is not limited to basic salary but includes other types of remuneration, such as bonuses, compensation for work in harmful conditions, "northern" allowances and co-efficients. Besides fines and disqualifications, delay in releasing salaries may lead to imprisonment of company officials.

3. The most embarrassing risk: lack of obligatory terms and conditions in an employment contract

All obligatory terms and conditions are explicitly listed in the labor code. However, in practice, employers quite often miss some provisions or specify them incompletely (e.g., description of workplace conditions, terms of mandatory social security and the employer's taxpayer identification number).

4. The most controversial risk: discrimination and unequal treatment on the basis of salaries

An employer may face the risk of claims for discrimination and unequal treatment if employees holding the same job positions are granted different benefits – in particular,

different salary rates – in the absence of any objective reason for the difference (e.g., length of service or work experience).

5. The most widespread risk: violation of termination rules and procedures

There is no possibility of "termination at will" except for a CEO of a company. Generally, an employer may dismiss an employee only on the grounds of and in compliance with the procedures specified by the labor code.

6. The most unexpected risk: absence of mandatory psychiatric examinations

Employees whose work involves sources of enhanced danger are required to undergo psychiatric examinations at least once every five years. Failure to comply means the risk of fine for a company in the range from RUR110,000 to RUR130,000.

7. The most common risk: lack of compulsory internal policies and regulations

Every employer must issue a number of employment-related documents, namely:

- ▶ Internal labor rules and regulations
- ▶ Regulations on processing personal data
- ▶ Labor safety regulations
- ▶ Staffing schedule
- ▶ Vacation schedule

8. The trickiest risk: misclassification of independent contractors

For years, companies tend to use independent contractors instead of employees because as such arrangements provide more flexibility and cost savings.

In particular, contractors do not enjoy the safety guarantees envisioned by the labor law (such as protection against termination at will, overtime and sick leave compensation, and vacations).

9. The most country-specific risk: violation of employees' personal data localization requirements

Collection and storage of Russian employees' personal data outside of Russia is prohibited. In the case of personal data transfer outside of Russia, the relevant data must, in any case, still (also) be stored on servers located in Russia.

10. The most debated risk: illegal "loan" of employees

As of today, loaning employees is prohibited in Russia, with the exception of certified employment agencies and particular types of intra-group secondments (e.g., "loan of employees" between affiliated companies or between parties to a shareholder agreement).

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Republic of Serbia



Marijanti Babic

Apart from the possibility of facing a civil lawsuit, an employer's actions, such the ones described in points 1 to 0 above, constitute general offenses for which both the employer and its authorized representative are liable and may be fined. Finally, authorized representatives, as well as the employer, may be held liable for a criminal offense if, by taking these actions, they knowingly violated the employee's rights deriving from employment.

According to the severity of the consequences for the employer and their frequency in practice, top labor and employment risks may be:

1. Unlawful dismissal

An employer may dismiss an employee only for cause prescribed by the Labor Law or internal acts the employment contract in accordance with the law. Prior to dismissal, the employer must issue a warning containing reasons and proof for the dismissal, with a deadline of at least eight days for the employee to reply. If determined to be unlawful, the dismissal may be refuted in court proceedings, resulting in the employee's reinstatement and/or entitlement to damages.

2. Factual work

If a person works without a valid employment contract, pursuant to the labor law, it will be considered as if an employment contract for an indefinite period of time has been concluded. The individual holds all rights and duties deriving from employment if the factual work is performed under conditions and in a manner corresponding to work that is actually performed on the basis of an employment contract.

3. Failure to pay salary in accordance with the law

The employer is bound to pay the salary and issue-related pay slip to the employee by the end of each month, for the previous month. The salary must not be lower than the applicable minimal salary, determined in accordance with the Labor Law.

4. Failure to apply protective measures regarding health and safety

These measures are prescribed as the employer's duty under the Law on Safety and Health at Work.

5. Harassment at work

Pursuant to the Law on Prevention of Harassment at Work, an employer must protect its employees from harassment. The employer is bound to inform the employees, in writing, on the prohibition of harassment, as well as to implementing measures to prevent further harassment. The employee may not be put in an unfavorable position (including disciplinary measures and dismissal) for initiating a procedure for protection from harassment.

6. Discrimination of employees

This is explicitly prohibited by the Labor Law with regard to recruiting, employment rights and conditions (e.g., salary, working hours, benefits), promotions, training and dismissal.

7. Unlawful overtime work

The employer may request overtime work only when work that had not been planned needs to be finished within a certain deadline (sudden increase in volume, force majeure, etc.). Overtime work is limited to a maximum of four hours a day and eight hours a week. An employee is entitled to

at least a 26% salary increase for overtime work.

8. Violation of annual leave

Under the law, employees are is entitled to at least 20 days of annual leave, which may be used all at once or in parts. If used in parts, the first should last at least two weeks and be used within the respective calendar year, whereas the rest is to be used until the end of June the next year.

9. Misuse of volunteering

Pursuant to the Law on Volunteering, a company may engage volunteers if this is not for the purpose of gaining profit nor replacing the work of employees and other people engaged on a nonemployment basis.

10. Conversion of fixed-term employment

If a fixed-term employment contract is concluded contrary to the provisions of the Labor Law (particular situations and generally limited duration), or if an employee continues to work for an employer for at least five business days upon expiration of the agreed term, it will be considered that an employment relation for indefinite period of time is established.

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Singapore

With the rise of the gig economy the nature of labor and employment risk in Singapore has changed. In this article, we set out the top 10 employment risks in Singapore.

1. Misclassification of workers

The gigeconomy has increased the risk of employers misclassifying workers. The key issue is whether these workers are employees or independent contractors. This distinction is important because employees are entitled to various statutory benefits and protections, but independent contractors are not.

2. Failure to make Central Provident Fund (CPF) contributions

CCPF contributions are mandatory for all employees who are Singapore citizens and Singapore permanent residents (SPRs). Employers who misclassify employees as independent contractors fail to make CPF contributions at the statutory rates.

3. Failure to file correctly computed personal income tax returns

With the miscalculation of salary and misclassification of workers, annual salary calculations for income tax payments may be made incorrectly.

4. Employment of foreigners without proper work passes

With limited exceptions, foreigners must obtain a work pass in order to work. There remain employers who fail to obtain the correct work passes, or apply for them after the foreigner has already been working in Singapore for several weeks.

5. Balancing foreigner vs. Singaporean ratio

All foreigners must obtain work passes to work in Singapore. There are different categories of work passes but, in most cases, there is a quota. This quota is calculated as a ratio of the number of Singaporeans and SPRs to foreigners. Failure to maintain this ratio may lead to a sudden loss in manpower as work pass applications are rejected and existing work passes are canceled.

6. Failure to train employees on the Personal Data Protection Act (PDPA)

Singapore's PDPA imposes various obligations on organizations. Despite increasing enforcement of the PDPA, many employers and employees are still unaware of what is expected of them under this act.

7. Noncompliance with wage and hour laws

The Employment Act imposes various limits on the number of hours an employee can work as well as the minimum statutory rate of pay for overtime work. Many employers fail to abide by these regulations.

8. Employment of underage workers

With the increase in the number of casual jobs perpetuated by apps, young people are finding it increasingly easy to join the workforce. Employers or service providers must be careful to ensure that they are able to enter into a legally binding contract with them. In most cases, children aged more than 13 years may be employed in light work. There are also various special regulations for the employment of a minor.

9. Failure to keep track of new employment laws

Many employers fail to keep track of the various new regulations relating to employment law. This may lead to payroll calculations being performed based on outdated laws. In many cases, employers may inadvertently be contravening new regulations.

10. Engaging foreign directors without required approvals

All foreigners who are also directors of Singapore-registered companies must obtain the approval of the authorities if they are directors of a company other than that for which their work passes are approved. Many companies are unaware of this obligation and fail to get the requisite approvals.

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Slovak Republic



Soňa Hanková

Slovak labor law is, to a large extent, harmonized with that of the EU. However, there are certain specifics that may present additional obligations for employers in their day-to-day business.

1. Limited fixed-term employment

Employment agreed for a definite period changes, through operation of law, into employment agreed for an indefinite period if an employee continues, with the knowledge of their employer, performing their work after the originally agreed employment term expires.

2. Temporary assignment

The maximum period of temporary assignment of an employee in Slovakia is limited by law to 24 months and is possible only for objective operating reasons when the assigning employer is not able to assign work to a regular employee. After the 24-month period, the employment relationship between the assigned employee and the original employer would be deemed terminated by operation of law, with a new employment relationship established between the employee and the assigning employer.

3. Assignment as illegal employment

Illegal employment is also committed by failure to pay contributions to Slovak social and health insurance systems. This often happens in cases of assignment, when notification of the authorities is delayed. An employer fined for illegal employment can also be excluded from grants of subsidies and public procurement procedures.

4. Delays in obtaining immigration permits

Non-EU citizens can work in Slovakia if they have a work permit and temporary residence permit for employment purposes. Obtaining these permits is a

time-consuming and difficult administrative procedure that can take several months to complete.

5. Risk of illegal employment of freelancers

Companies concluding agreements with independent contractors are exposed to a certain level of risk of misclassification of the contractual arrangement from a commercial relationship to an employment relationship. This can result in the obligation of the employer to pay additional tax, social and health insurance payments, as well as significant fines for illegal employment and litigation costs.

6. Prohibited monitoring of employees

An employer can monitor employees only after giving them prior notice. The term “monitoring” is not legally defined. This brings uncertainty into the rights of employers in cases of investigation of employees without their knowledge.

7. Acting on behalf of an employer

All employment-related legal acts (e.g., creation or termination of employment) are carried out by an employer’s statutory body or empowered employees. According to recent case law, the validity of legal acts executed by a third person, including an attorney-at-law based on a power of attorney, may be successfully disputed. This brings practical difficulties into the operating models of companies that have their HR departments and management located abroad with an affiliated company and not employed directly by a Slovak entity.

8. Trade unions

A trade union may be established by a minimum of three employees. These individuals then have significant mandatory rights and represent the interests of

all employees to the employer without needing to obtain support from the majority of employees.

9. Limited restrictive covenants

Parties can agree only on nondisclosure and noncompete covenants:

- ▶ During the term of employment
- ▶ Post-termination, only on a noncompete covenant for a maximum of one year

Any additional restrictive covenants or detailed conditions are potentially unenforceable against the employee.

10. No employment of executive directors

Slovak law does not allow performance of the position of executive director (as member of a statutory body) based on an employment contract. In the event that the executive director did not conclude a specific commercial contract, they may claim from the company remuneration for execution of their function for previous years of appointment, in addition to a salary they have already received, based on an employment contract.

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Spain

The top 10 labor risks for employers in Spain may appear at different moments of the labor relationship:

A. Beginning of labor relationship

1. Temporary agreements

The causes that justify fixed-term contracts are limited. The duration of the temporary contracts foreseen by Worker's Statute or applicable collective bargaining agreement (CBA) shall not be exceeded, and the grounds should be identified.

Noncompliance creates the risk that they could be considered indefinite in nature, which increases employers' chances of having to pay severance and facing sanctions.

2. Noncompete covenants

For the validity of the clause, the employer must prove an effective industrial or commercial interest in the inclusion of the noncompete obligation within the employment relationship and shall pay to the employee an "adequate" economic compensation.

3. Nature of the labor relationship of the key personnel

Regardless of how the company and the key personnel define their relationship, there are certain factors that will determine whether an employment or a commercial relationship exists. Special care should be taken in determining the nature of the relationship when the individual is on the board of directors.

Ordinary employment relationships will also be differentiated from special labor relationships, which are governed by special laws that address specific issues that may arise.

B. During the labor relationship

4. Applicable collective bargaining agreement

Important employment issues can be regulated and improved through CBAs. CBAs are detailed, binding agreements negotiated for each specific sector industry in the entire country or for a limited geographical area, or even at a company level.

The conditions foreseen in the CBAs will be applicable even if the validity of the collective agreement expires and the year of "ultra-activity" elapses, as long as it has not been denounced by one of the signing parties and a new CBA has not been negotiated.

5. Health and safety at work

Employers must ensure health and safety at work. They have an obligation to notify the labor authorities that they are opening a workplace; perform a risk assessment and prevention plan; train workers; and monitor workers' health. Failure to comply with occupational risk prevention obligations may give rise to administrative, labor, criminal and civil sanctions.

6. Employees' representatives

Companies with at least six employees may hold elections to elect employees' representatives to represent the employees within the company's management. The number of representatives will depend on the number of employees at the work center or company.

7. The registration of working hours

Employees can work up to 80 hours of overtime a year. The payment of overtime will be at least at the same rate as the ordinary working hour, or compensated with time off. The recording of working time must be done daily and will be

summed up and compensated to the employee accordingly.

Part-time employees may not perform overtime.

C. Termination of the employment relationship

8. Collective dismissal

The legislation for collective redundancy will be triggered when an employer terminates employees exceeding a determined threshold, based on economic, technological, organizational or productive grounds.

In the case of collective redundancy, other payments may result, depending on the number of employees affected, their ages, etc.

9. Specific additional protection against dismissal in cases of maternity

Apart from the generic prohibition against discrimination on the grounds of sex, additional protection is provided for individuals who are entitled to maternity-or paternity-related rights. In this sense, while ordinary dismissals may be considered unfair and an employee can be dismissed without good cause by paying severance compensation, the Workers' Statute specifically foresees that the dismissal of employees who have a special protection against this may only be considered either fair or null and void.

10. Breach of fundamental rights

A dismissal shall be declared null and void if the company breaches any fundamental rights or civil liberties (any kind of discrimination, etc.). The employee will be reinstated with back pay.

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Sweden



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1. Employment protection

Dismissals must be handled in accordance with the mandatory provisions in the Employment Protection Act. Dismissals must always be based on an “objective reason.” In addition, a dismissal without notice is only lawful when the employee has committed a fundamental breach of the employment agreement. Unlawful dismissal may lead to substantial economic damages to the employee that are between 6 to 32 times their monthly salary. The size of the economic damages vary depending on the employee’s length of employment. Depending on the circumstances, an employee may declare a dismissal void.

2. Notification to the Unemployment Bureau

In the case of redundancy involving five or more employees, an employer must file a notification to the Unemployment Bureau with certain information regarding the affected employees. The notification date will govern the deadline for when the organizational changes can be put into effect. The employer’s responsibility is linked to criminal liability and monetary sanctions.

3. Trade union consultation

An employer who is bound by a collective bargaining agreement (CBA) shall request trade union consultation prior to deciding on important changes in the business and changes to the working environment. An employer without a CBA may also, in certain situations, need to partake in a consultation. There is also a general obligation to consult with trade unions upon their request. Upon failure, an affected trade union may be awarded general damages.

4. Holiday entitlement

An employee has a right to 25 days of vacation each year. Four consecutive weeks shall be scheduled during the period from June to August upon the employee’s request.

5. Holiday allowance

Holiday allowance shall be calculated on all portions of compensation, including variable elements, such as bonuses. In the case of a bonus payment, additional holiday allowance will be payable by law, if not specifically regulated contractually.

6. Noncompete restrictions

Noncompete restrictions shall comply with market practice; otherwise, they may not be enforceable. A noncompete restriction shall offer certain levels of compensation during the restrictive period and may generally not apply for a period longer than 9 to 18 months.

7. Compensation survey

An employer (of 10 employees or more) shall annually perform and document a compensation survey aiming to create possibilities for wages to develop equally, irrespective of gender. This survey shall analyze the payment structure in order to discover, fix and prevent any wage differences due to gender.

8. Equality reviews

Employers must actively prevent inequalities and discrimination in the workplace. The purpose is to combat discrimination and promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. An employer (of 25 employees or more) shall document these measures in writing.

9. Working environment

Employers are responsible for the work environment and must provide a healthy and risk-free workplace for employees. Employers must perform risk assessments in the workplace, and conduct stress and workload evaluations, as well as assess the physical and psychosocial environment. The employer’s responsibility is linked to criminal liability and monetary sanctions.

10. Tax obligations

The employer must withhold preliminary taxes on all portions of salary payable. The employer must also pay social security contributions amounting to 31.42% on top of the gross salary amount.

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Switzerland

When speaking about risks in labor and employment law, the Swiss legal system appears to be quite liberal, particularly with regard to the employment relationship between the parties, which is mainly governed by the principle of contractual freedom.

1. Salary vs. bonus

A recurrent question is to determine if an agreed bonus constitutes owed salary or a voluntary extra allowance. Criteria has been set forth by the Swiss federal court concerning such issues as reservation of discretion and voluntariness or regularity of payment.

Altering a requalification of a bonus into owed salary requires preliminary verification that it complies with Swiss law.

2. Compensation of top management in Swiss publicly listed companies

In 2013, the Swiss voted in favor of legislation on the moderation of indemnities granted to the top management of Swiss companies publicly listed in Switzerland or abroad. Specific restrictions now apply on the remuneration of top management, and governance principles have been strengthened for these companies.

Making sure corporate governance practices of the company are in line with the new legislation will help avoid civil and criminal consequences.

3. Mandatory social plan

Employers with at least 250 employees are obliged to offer a social plan for collective dismissal if they intend to dismiss at least 30 employees within 30 days for reasons unrelated to the employee specifically. Breaching this obligation may delay the termination dates and engender further costs for the employer.

4. Minimum salary

A general minimum salary does not exist under Swiss law. On 4 August 2017, a general minimum salary of CHF20 per hour was introduced in the canton of Neuchâtel. When employees are posted to Switzerland, minimum salary rules of the specific canton should be reviewed to avoid this risk.

5. Collective bargaining contracts and customs

Minimum salaries may also be contained in collective bargaining contracts in specific work branches and regions. Cantons have developed customary salaries in specific branches used as minimum referential in certain fields. It is recommended to determine whether a collective bargaining contract or customs apply.

6. Seconded employees

Swiss minimum work conditions are applicable to posted workers, and loan staff may require authorization and may be prohibited when coming from abroad to Switzerland. This rule may also apply to intra-group situations. In this regard, the State Secretariat for Economic Affairs issued on June 2017 an interpretative directive aiming to formalize the application of the law to intra-group situations. A careful review of the effective situation and the contractual structure should therefore be conducted before posting an employee.

7. Termination of an indefinite – duration employment contract

While in Switzerland it is not required to give a cause for termination of an indefinite-duration employment contract, the employee may be under mandatory protection periods (e.g., due to pregnancy or illness) during which no termination shall occur or the termination may be qualified as abusive.

8. Work-time recording

Since 1 January 2016, new provisions on work-time recording apply, and employers may waive their obligation to keep systematic and detailed time records under certain conditions.

9. Sunday, bank holidays and night permits

Sunday, bank holidays and night work are notably subject to authorization restrictions from labor authorities.

When a company decides to send employees to Switzerland, it should determine on which days the activities will be performed to remain compliant in Switzerland.

10. Overtime and additional work

A distinction is made between overtime, for which compensation in time or in cash may be contractually excluded, and additional work, for which such compensation cannot be excluded. Additional work that leads to specific restrictions must be diligently monitored by the employer, as it may be subject to controls by the authorities.

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Turkey



Mehmet Küçükaya

A review of the prevailing labor legislation in Turkey reveals the following top 10 risks:

1. Equal treatment principle

No discrimination is permissible in the beginning, execution and termination of an employment relationship. If an employer violates this, the employee may demand compensation. However, the burden of proof is on the employee, as the asserting party.

2. Responsibility in subcontractor relationships

An employer may assign some work to subcontractors. The main activity shall not be divided and assigned. Only auxiliary work for the production of goods and services or dividable parts of main work that requires expertise due to technological reasons or features of the workplace and business are to be assigned to subcontractors. Both employers are jointly liable.

3. Definite – and indefinite-term employment contracts

An employment agreement shall be made for a definite or an indefinite period. A definite-term agreement must not be concluded more than once, except when there is an essential reason. If an employer terminates the fixed-term employment agreement unfairly before its due time, the employee shall be entitled to wages for the entire period.

4. Working time and overtime

A workweek is 45 hours maximum. Unless the contrary has been decided, working time shall be divided equally by the days of the week worked at the workplaces. The employee may work up to 270 hours of overtime in a year.

Written consent is required. An employer shall be subject to an administrative fine for

each employee if they do not pay wages for overtime work or let the employee use their paid leave, or do not get the employee's written approval for overtime.

5. Material change in working conditions

In the event of any cancellation or change in the employment agreement, or any workplace practice that may be deemed material, written consent is required. If the change is based on a valid reason, however, and the employee rejects it, the employer may terminate the employment agreement based on the valid grounds. If the changes have no valid reason, the employee may terminate the employment agreement by claiming various remunerations.

6. Transfer of employment agreement or workplace

When the enterprise or one of its sections is transferred to another person, employment agreements are also transferred on the date of the transfer to the transferee with all the rights and obligations involved. Employee's approval must be obtained. If the employee rejects, this is not a valid cause for termination. In the event of transfer, both employers are jointly liable for two years.

7. Termination and reinstatement

Termination can occur only for valid reasons and under certain conditions.

Before termination, a notification must be sent to the other party. In order for a termination for valid reasons, the terminating party must follow termination notice requirements stipulated under TLL. By the end of the notice period, the employment relationship is deemed to be terminated; otherwise, compensation for the period of notice must be paid. For an employee with at least six months of service, an employer at a business with 30 or more employees is obliged to justify the

termination on the valid grounds stipulated under the TLL. Otherwise, the employee may challenge the termination before labor courts and request reinstatement to their last position as well as reimbursement of wage losses. The burden of proof rests with the employer.

8. Collective termination

An employer contemplating collective termination must notify employees with written information at least 30 days prior to the intended layoffs. A collective dismissal occurs when it involves at least 10 employees in establishments with 20 to 100 employees who are to be terminated on the same date or at different dates within one month.

9. Occupational health and safety

The work being performed in a workplace is categorized in three hazard classes, and there are statutory obligations that the employers must fulfill. Failure to comply with these rules carries administrative fines.

10. Data protection and the monitoring of employee communication

Data Protection Law establishes a set of rules regulating company activities involving gathering, processing, deleting, destroying and anonymizing personal data. The Data Protection Law largely reflects the EU Data Protection Directive. Monitoring the communication of employees requires explicit prior written notification to the employee or it will be considered a breach of privacy.

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1. Brexit

Over the next two years, some significant changes to UK legislation are expected, such as the EU Withdrawal Bill. However, the immediate effect on UK employment law is likely to be less significant in certain areas – TUPE, family leave and working time – because the UK has settled and accepted positions. The key impacts will be in the war for talent – retaining and incentivizing staff – and mitigating discrimination risks arising from the rights of different citizens in the UK. Employers are keen to understand their opportunities and restrictions in a rapidly changing environment.

2. Gender pay gap reporting

From April 2018, employers with 250 or more employees are required to report on the gender pay gap of their workforce. The “pay gap” and “bonus pay” gap between male and female employees from the previous year must be published annually on the employer’s website as a percentage figure. The results are expected to have reputational impacts on employers.

3. National Minimum Wage (NMW)

A key focus of the UK tax authority (HMRC) is combatting the underpayment of UK workers. The UK Government has introduced a “name and shame” campaign that identifies employers who have failed to pay NMW and/or National Living Wage (currently £7.50 per hour for workers aged 25 and older) by publishing their details on the HMRC website. As well as receiving financial penalties and having to remedy underpayments, the reputational risk of being identified is intended to encourage NMW compliance.

4. Tribunal fees

The Supreme Court has ruled that fees introduced in 2012 in the employment tribunal are both unlawful and restrict

individuals’ access to justice. It is likely that the removal of fees will lead to an increase in claims; the Government had promised to reimburse historic fees should they be found to be unlawful, so there are also anticipated challenges of previous fees as well as lost opportunity for those deterred by fees.

5. Employment status

Prompted by challenges such as zero-hour employment contracts and workers in the gig economy, the Government’s recent “*Taylor Review into modern working practices*” recommended a number of key legal workplace reforms. These included amendments to the current legal employment categories (employee, self-employed and worker), closer alignment between employment law and tax law, as well as practical changes to encourage workplace flexibility and promote the growth of the UK’s gig economy. The difficult balance is in ensuring individual workers have basic working rights and protections, as well as the desired flexibility for both companies and their workforces.

6. General Data Protection Regulation (GDPR)

The GDPR comes into force in May 2018, imposing mandatory breach reporting on employers. Where there has been a data breach (such as an accidental or unlawful loss, or disclosure of an employee’s personal data), employers will have to notify the data protection authority within 72 hours. Potential fines could go up to the greater of 4% of annual worldwide turnover or €20 million.

7. Discrimination

Discrimination claims remain a key risk for UK employers. While overt direct discrimination on the basis of a protected characteristic (e.g., gender, race, disability or age) is now less common, employers

can still fall foul of the Equality Act 2010 by implementing practices that have the effect of disadvantaging certain employees. There is no minimum service requirement or cap on the potential award for a discrimination claim, so employers need to be clear of their obligations from day one.

8. Fraud and anti-bribery

With globalization and increased cross-border activity, companies must assess the increased risks of fraud against the company and the exposure of the employees to bribery. Organizations must ensure that there are adequate compliance programs in place, and that employees are sufficiently trained in their obligations and responsibilities.

9. Business protection

Restrictive covenants in employment contracts protect the business by preventing an employee from using confidential information or intellectual property, or from soliciting customers or employees, or generally competing for a period after termination of employment. Covenants can be difficult to enforce and must be carefully tailored to the individual’s role. Getting it wrong can be costly for an employer in lost business and damaged reputation.

10. Workforce restructuring

Whether due to Brexit, tax reasons or other grounds, many employers are reviewing their global operations to expand or reduce their business presence in specific jurisdictions. The movement of the workforce is key, and employers are encouraged to start planning as early as possible.

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Ukraine



Halyna Khomenko

Most labor and employment risks in Ukraine are associated with the fact that the current Labor Code of Ukraine, adopted back in the Soviet Union in 1971, does not reflect modern trends and realities in employment, such as a contingent workforce and BYOD. Adoption of the new Labor Code, which will address issues discussed in this article, is on the current agenda of Parliament, and it is expected that the document will be adopted by the end of 2017. Below, we outline some of the most common employment risks in Ukraine.

1. Hidden/deemed employment

In order to reduce costs and administrative burden, companies often engage workers as civil contractors rather than employees. If this fact is revealed by the labor authorities during an inspection, companies and their executives may face severe sanctions.

2. Termination

Ukrainian labor law is rather employee-protective, and termination of employees at the employer's initiative may appear complicated and burdensome, especially if termination concerns special categories of employees with additional protection (e.g., pregnant employees).

3. Financial responsibility

In most cases, employees' financial responsibility for damage at work is limited by their average monthly salary.

4. Foreign employees

Employers are responsible for obtaining work permits for engaging foreign employees.

The procedure has been recently simplified in terms of the required documents. However, it still contains a number of peculiarities that should be taken into account.

5. Outbound assignments

Ukrainian law does not address matters of outbound assignments. The most common practice in these cases is either to keep the employee's home employment contract or to terminate the employee in Ukraine and hire them in the new location. Both options are connected with risks from the employee and employer perspectives.

6. Trade unions

Trade unions are given rather wide powers for representation and guaranteeing the rights of employees prescribed by the labor law and collective bargaining agreements.

Therefore labor disputes and litigation between trade unions and employers are common in Ukraine.

7. Remote work/flexible time arrangements

Currently, Ukrainian law does not explicitly address remote work and flexible time arrangements. However, employers still use these types of work arrangements. The new draft labor code aimed to regulate these issues.

8. Labor inspections

State authorities are closely monitoring employers' compliance with fulfillment of guarantees on labor payment, proper formalization of the employment relationships and fulfillment of employers' tax and social security obligations.

9. HR administration

HR document flow is quite bureaucratic and is governed by a number of individual regulatory acts, which makes the process time- and resource-consuming.

10. Discrimination at work

Ukrainian labor law stipulates nondiscrimination of employees and job seekers based on their origin, sex, material state, age, beliefs and other grounds. The new draft labor code also contains anti-harassment provisions. An increasing number of companies espouse the internal code of conduct and train their employees on its topics.

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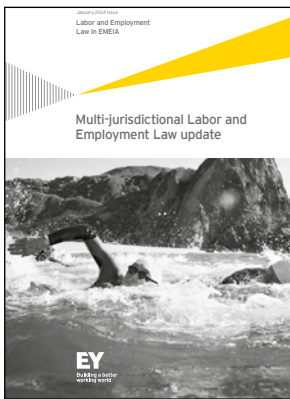
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