European
Employment
Insights

“Facial recognition may not be used to monitor workplace entry and attendance”

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INDEX

2 Andersen Global
4 Introduction
5 Context
6 Albania
8 Belgium
10 Bosnia and Herzegovina
12 Croatia
14 Cyprus
16 Czech Republic
18 Estonia
20 Finland
22 France
24 Germany
26 Hungary
27 Ireland
28 Italy
30 Liechtenstein
32 Lithuania
34 Malta
36 Poland
37 Portugal
38 Republic of Moldova
40 Romania
42 Slovakia
44 Slovenia
46 Spain
48 Switzerland

Introduction

European Guide to Support Employers
Employment of Managing Directors

This comprehensive guide provides a detailed overview of regulations and conditions surrounding the employment and appointment of managing directors within limited liability companies (LLCs) in over 30 European countries.

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You may also be interested in:

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The guide provides an overview from over 20 European countries of recent legal developments, tips for navigating complex legal issues, and staying up to date on notable cases.

February Issue **March Issue** **April Issue**

Context

Andersen Employment and Labor Service Line is your go-to partner for navigating the complexities of local and international labor laws and customs. We help you steer clear of employee-related issues while staying competitive in the global economy.

Our team comprises specialist lawyers and tax advisors who proactively guide both domestic and international companies of all sizes, spanning various industries. With a presence in more than 450 locations worldwide, Andersen offers top-notch advice through local experts. We stand by your side throughout the entire employment relationship, from its establishment to termination, making us your trusted partner in all employment-related matters.

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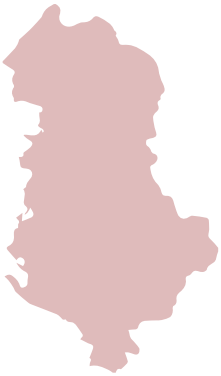
Albania



When there are indications suggesting discrimination, the burden of proof is on the employer to prove that no violation has occurred.

COURT
Burden of proof in discrimination cases

Recent significant ruling of the Constitutional Court of Albania not only upholds the constitutional principle of non-discrimination and the right to pursue lawful employment but also examines a key legal concept: the burden of proof. The Constitutional Court underscores that when there are indications suggesting discrimination, the burden of proof falls on the employer to demonstrate no violation occurred. This shift of responsibility from the employee, who is the victim of discrimination, to the employer, who is the alleged perpetrator, is based on the vulnerability of the discriminated individual. Therefore, the employer must present credible evidence that refutes the existence of discriminatory circumstances.

Conversely, the court is obligated to examine the alleged facts and assess whether the evidence provided by the employer sufficiently proves that the actions taken in the employment relationship were not motivated by discriminatory reasons.

Given this ruling, employers must proactively create a discrimination-free workplace. They should ensure company policies align with anti-discrimination laws, provide continuous training to employees on recognizing and addressing discrimination, establish transparent procedures for reporting and investigating complaints, and promptly address any instances that arise.

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LAW
Albania advances reciprocity agreements on social protection

The Republic of Albania is actively pursuing the conclusion and ratification of reciprocity agreements on social protection. On April 14, 2024, Law No. 23/2022 came into force, ratifying the Agreement between the Republic of Albania and the Republic of Kosovo on social protection.

Currently, the Albanian Parliament is examining and is expected to ratify another significant agreement on social security. This agreement, signed between Albania and Italy on 6 February 2024, is of particular importance due to the substantial presence of Italian companies operating in Albania.

The enactment of Law No. 23/2022 and the anticipated ratification of the Albania-Italy agreement reflect Albania's commitment to enhancing social protection measures and strengthening ties with its international partners. These agreements aim to foster cooperation and mutual support in social protection, benefiting citizens and facilitating smoother interactions between countries.

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Albania recently implemented an agreement with Kosovo and is poised to ratify another one with Italy, reflecting its commitment to improve social protection for its citizens.

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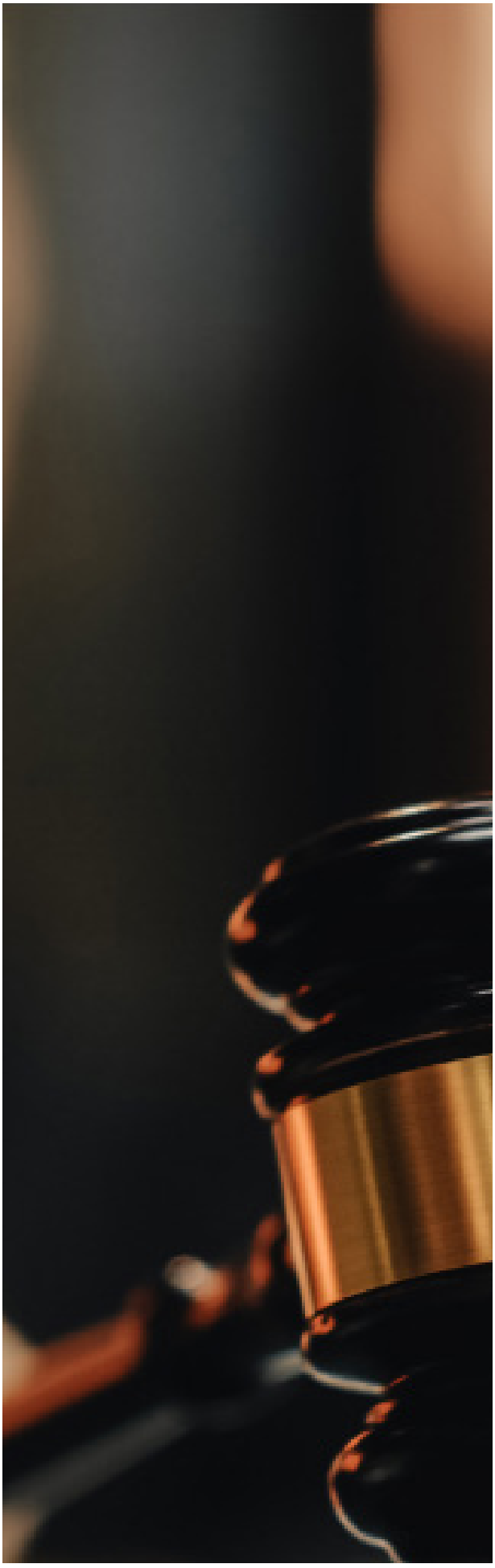


Belgium

The May 2024 social elections require companies to set up or renew Works Councils and Committees for Prevention and Protection at Work.

LAW
Social elections of May 2024

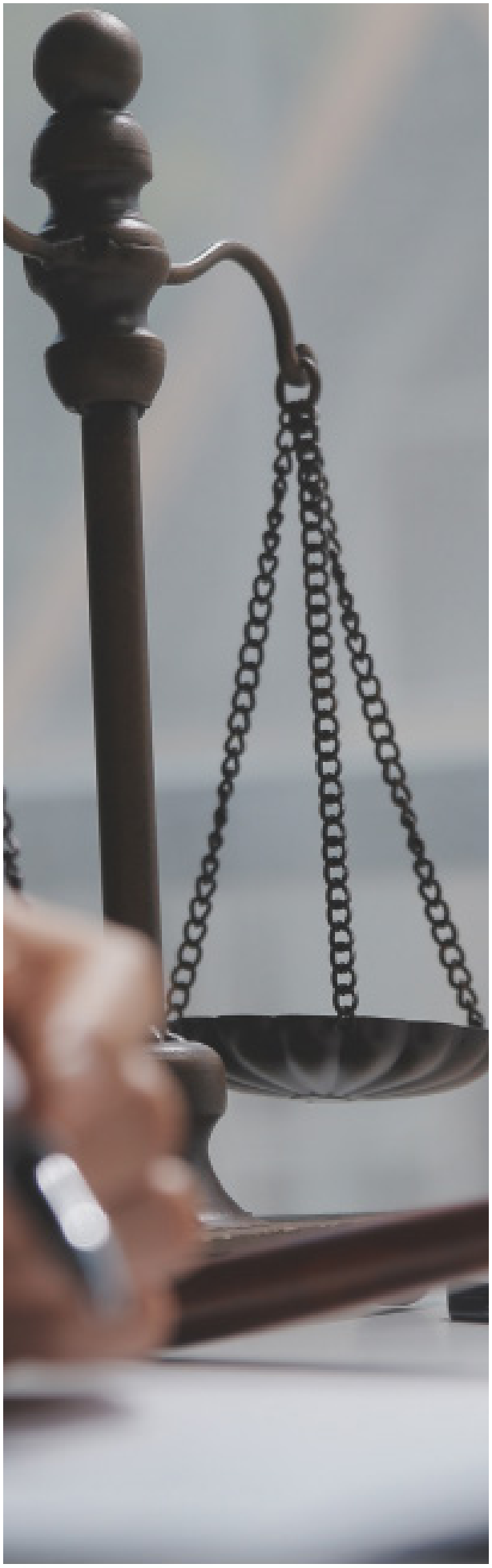
The May 2024 social elections are approaching, mandating companies to establish or renew Works Councils and Committees for Prevention and Protection at Work. Works Councils are obligatory for companies with at least 100 employees or those with 50 to 99 employees renewing previous councils. Committees for Prevention and Protection at Work are required for companies with at least 50 employees. These elections are organized at the level of the "Technical Business Unit" (TBU), which may encompass multiple legal entities merged under certain circumstances.

Preparation involves defining the TBU, assessing the workforce, and determining if elections are necessary. The preparation period begins in the last quarter of the preceding year, with December 2023, being a key month for the May 2024 elections. Employers bear full responsibility for organizing the elections, and failure to comply may result in criminal or administrative fines. It's essential for companies to ensure compliance to avoid penalties and ensure proper representation for both employers and employees in Works Councils and Committees for Prevention and Protection at Work. The social elections will be held on between 16 and 26 May.

LAW
Workers undergoing fertility treatments are protected from dismissal

The newly published Belgian act protects employees undergoing infertility treatments or medically assisted procreation (MAR) from dismissal and discrimination, akin to maternity protection. The act creates a right to be absent for fertility treatments, but it does not create an entitlement to paid leave. Employers found dismissing or discriminating against such employees may face penalties, including paying the affected worker a lump sum equivalent to six months' gross salary, alongside standard dismissal compensation.

This legislation, effective from April 28, 2024, reflects a crucial stride in acknowledging reproductive health's significance in the workplace. By extending similar protections to those undergoing fertility treatments, Belgium affirms its commitment to workplace inclusivity and support for diverse employee needs.



The new Belgian act, effective April 28, 2024, safeguards employees undergoing fertility treatments from dismissal and discrimination.

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Bosnia and Herzegovina

An employee is entitled to compensation for unused annual leave if he or she can prove that the employer has denied him or her the right to use the annual leave.

COURT
The entitlement to compensation for unused annual leave

In a recent decision, the Cantonal Court of Zenica ruled that an employee is entitled to compensation for unused annual leave if he or she can prove that the employer has denied him or her the right to use the annual leave.

In the concrete case, the employee was employed on a fixed-term agreement and applied for annual leave 8 days before the expiration of the agreement. The employee stated that he/she had applied for annual leave as soon as he/she had been informed that the employer was not going to extend the employment agreement. Consequently, the employee was only able to use 6 days of annual leave.

The court held that the employee has not submitted a timely request to use annual leave, nor had he/she stated that the employer had not allowed him/her to do so, so the employer could not be held responsible for the failure to use the leave.

The employee was aware of when his/her employment agreement would end, and the fact that he/she learned near the end of the employment relationship that it would not be renewed does not change the fact that the employer cannot be held responsible for the failure to use the annual leave.

GUIDELINES
The new Rulebook on the procedure for determining temporary incapacity for work

The Board of the Health Insurance Fund of the Republic of Srpska has adopted a new Rulebook on the procedure for determining temporary incapacity to work, with the aim of incorporating the best practices into the regulatory framework in order to further improve the area of sick leave and minimize abuse of this right.

The new regulation clearly specifies the cases in which a general practitioner can prescribe sick leave of up to 30 days and the cases in which the opinion of a specialist in the relevant branch of medicine from a health care institution that has a contract with the Health Insurance Fund of the Republic of Srpska is required.

Also, the Rulebook defines more precisely the entitlement to sick leave for diagnoses for which the maximum duration of sick leave is 28 days. In order to prevent any attempt to abuse the right in practice, the Rulebook includes specific mechanisms to control sick leave, such as extraordinary assessments.

In conclusion, the legislator's intention is to simplify the implementation of the rules in practice by defining them precisely, while ensuring that any potential abuse of rights is detected and prevented in a timely manner.

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The new Rulebook on the procedure for determining temporary incapacity to work is adopted with the aim of incorporating the best practices into the regulatory framework in order to further improve the area of sick leave and minimize abuse of this right.

GUIDELINES

Video surveillance footage of the employee

The Data Protection Agency (DPA) published a decision in which it partially accepted the appeal of the data subject and found a violation of personal data due to the fact that a third party, without informing the data subject of the surveillance, processed personal data by means of video surveillance. The DPA rejected the appeal in part concerning the transmission of the collected data to the employer. The employee claimed that the third party had misused the installed video surveillance system because video surveillance is a technical protection measure whose use is justified only for the purpose of protecting persons and property, and that the third party had no legal basis for processing personal data through the use of video surveillance and transmission - transfer to the employer.

The DPA found that the third party had committed a personal data breach by failing to provide adequate notice of the video surveillance, but that no breach had been committed by providing the video footage to the employer.

The employer's right to protect his personal and private life cannot override the employer's legitimate interest in determining a possible breach of duty by the employee while refueling the employer's official vehicle.

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Therefore, the employer's right to protect his personal and private life cannot override the employer's legitimate interest in determining a possible breach of duty by the employee.

GUIDELINES
Communication for entitlement to old-age pension

In order to resolve the claims for the right to a pension more effectively, the Pension and Disability Insurance Fund of the Republic of Srpska has issued a notice inviting all insured persons who meet the conditions for acquiring the right to an old-age pension in 2024 and 2025 to contact the nearest office of the Fund, according to their place of residence, in order to complete the documentation and update the data necessary for the procedure of deciding on the right to a pension.

The purpose of the notice is to ensure that, with timely cooperation between the insured and the Fund, the efficiency and effectiveness of the Fund's professional service in carrying out the administrative procedure is at a very high level. Completing the documentation in a timely manner will enable the insured to exercise their rights within 7-15 days, which is considerably quicker than the two months prescribed by the Law.

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Croatia

LAW
News in the system of salaries and other material rights of judicial officials

Salaries and other material rights of judicial officials in the Republic of Croatia are regulated by the Law on Salaries and Other Material Rights of Judicial Officials (hereinafter: the Law), which determines all elements of the salary of judicial officials. The amendments to the Law entered into force on 1 April 2024.

The salaries of judges and other judicial officials are calculated by applying a specific coefficient to the salary base. Recent legislative changes have increased the gross salary calculation base for judicial officials to EUR 787.75. This represents an 11.5% increase over the previous base. Additionally, the coefficients used for calculating the salaries of these officials have also been raised.

Furthermore, judicial officials are also granted certain other material rights, for example: (i) compensation for living apart from the family and compensation for travel expenses to the family's place of residence during weekly rest and public holidays; (ii) reimbursement of expenses for official trips and travel expenses related

to the performance of judicial duties; (iii) reimbursement of transportation costs to and from work; (iv) annual Easter and Christmas bonus; (v) a gift for a child up to the age of 15; (vi) medical examination.

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LAW

Obligation to establish channels for professional communication when working through digital work platforms

The Ministry of Labor, Pension System, Family and Social Policy recently published an opinion in which it states that in order to enable professional communication and exchange of information in the business process with other employees and the employer, the Labor Code actually prescribes the obligation of a digital work platform or aggregator as an employer to ensure the possibility of establishing contact with persons who perform work for it.

This is because platform workers are mutually unrelated persons who work in different locations, but for the same employer, due to the specific nature of their work, their possibility of contact with other such persons (other workers and participants in the business process), and the employer is significant difficult.

The Labor Act does not prescribe how the employer will fulfill this obligation. However, the Ministry believes that the method must be suitable and represent an effective means that enables participation in the required communication for all the mentioned persons.

As one of the appropriate ways of ensuring the possibility of professional communication with other employees of the employer could be, for example, involvement in a WhatsApp group or similar platforms in which all persons subject to the legal obligation to facilitate professional communication can be included.

Digital work platforms shall enable professional communication between platform workers and other workers, participants in the business process and employer.

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Cyprus

LAW
Tax incentives for expat employees

Any expat employee whose gross annual remuneration ranges between EUR 19,501 and EUR 55,000 per annum benefits from a tax exemption of 20% on the gross annual remuneration or on a specified portion of EUR 8,550 of the taxable gross annual remuneration (whichever is the lower) for five years, starting from the tax year following the year of employment, provided that the employment commences in Cyprus not later than 2025.

The expat employee should be in a position to show, if and when requested by the Tax Department of the Republic of Cyprus, that: (a) the remuneration was generated from employment in Cyprus; and, (b) that the expat employee was not a Cypriot tax resident before the commencement of the employment in Cyprus. No income tax applies to gross annual remuneration from employment exercised in Cyprus that is up to EUR 19,500.

LAW
Tax incentives for highly compensated employees

Highly compensated employees (HCEs) of companies focusing on establishing economic substance in Cyprus are afforded significant personal tax incentives to relocate to, and perform their duties from Cyprus. Each tax incentive is claimed (declared) by the employee concerned on the personal tax return submitted to the Tax Department of the Republic of Cyprus each year and applies to income tax only (not to social security contributions, national health insurance contributions and other deductions).

Apart from the gross annual remuneration thresholds set for each tax incentive, all employees should be in a position to show, if and when requested by the Tax Department, that: (a) the remuneration was generated from employment in Cyprus; and, (b) that the employee was not a Cypriot tax resident before the commencement of the employment in Cyprus.

In particular, half (50%) of the gross annual remuneration of a HCE is tax exempt for a period of ten years starting from the first year of employment in Cyprus, provided that the HCEs gross income from such employment exceeds EUR 100,000 each year the exemption is claimed. Moreover, half (50%) of the annual remuneration of employees whose gross income from such employment exceeds EUR 55,000 each year the tax exemption is claimed is tax exempt for a period of seventeen years starting from the first year of employment in Cyprus.

Cyprus offers significant tax incentives for highly compensated employees (HCEs), including substantial income tax exemptions for up to seventeen years, contingent on meeting certain income thresholds and proving that the income was earned in Cyprus.

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Czech Republic

LAW

Government to overhaul the system of minimum and guaranteed wages

The Czech minimum wage system is composed of a minimum wage and a guaranteed wage. The minimum wage sets the general minimal remuneration for work while eight guaranteed wage limits determine the same for certain employment positions based on factors such as complexity or required physical effort. Both are usually increased annually by a government decree.

Government now decided to introduce a preset formula for minimum wage to be linked to the average wage for future adjustments. Proposed by the Ministry of Labor and Social Affairs, the changes stem from a European directive seeking to standardize minimum wage levels across EU states. Minister emphasizes transparent and predictable wage growth, targeting a minimum wage of at least 47 % of the average wage by 2029. This package of legal changes also aims to reduce the number of guaranteed wage levels from eight to four. Importantly, these should newly apply only to workers in public sector. Wages of employees in private sector should be thus limited only by the minimum wage from 2025 on.

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COURT

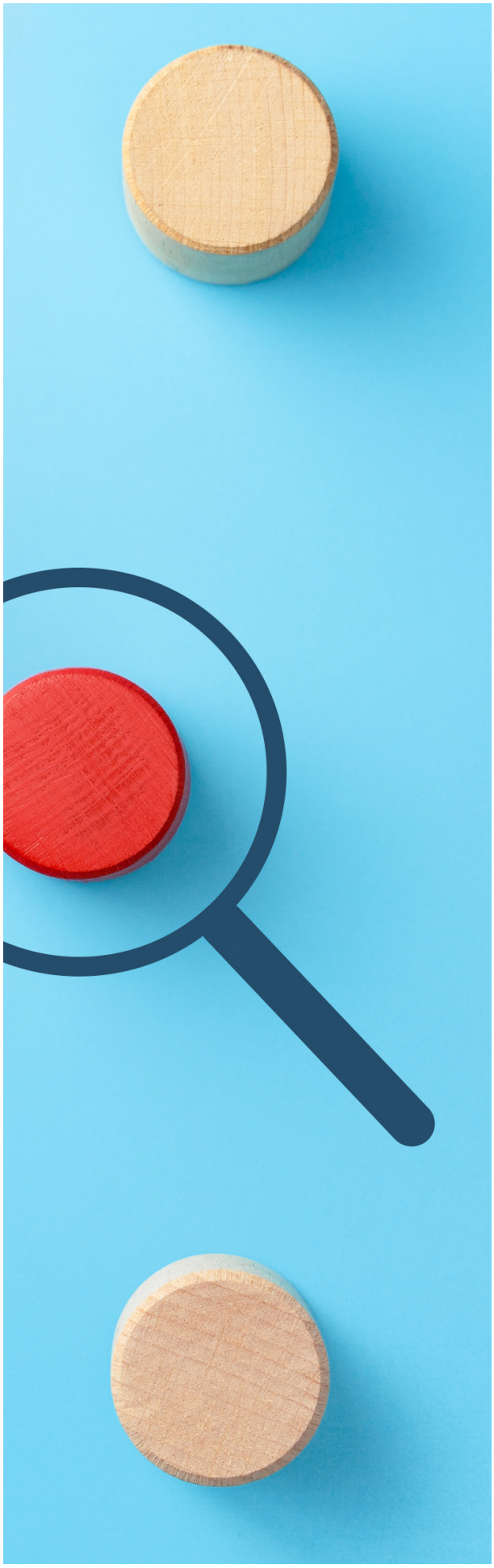
Post-traumatic stress disorder (PTSD) as a work-related injury

Law defines a work-related injury as any damage to employee's health that occurs while performing their duties or in direct connection to them, caused by sudden and violent exposure to external influences. Such external influences (events) are typically accidents, but also employee's excessive effort when performing work or disproportionate stress.

The recent ruling of the Supreme Court has clarified what event can cause psychological injury as work-related. Firstly, the court confirmed that mental trauma can occur independently of physical harm. Secondly, the court clarified how the trauma must be related to the incident: the injured person must either be directly involved or observe the event.

In the case in question the employee worked at tunnelling project when the excavation hole collapsed and buried his colleague. Following that, the claimant developed a post-traumatic stress disorder. Although he was not harmed in the incident, he realized he could have been killed at work.

Nevertheless, the worker did not directly witness the collapse itself, but only secondary symptoms of the incident (dust and noise). Such indirect involvement in the event was not found sufficient to establish a work-related injury. The Supreme Court thus denied his claim.



The court confirmed mental trauma can occur without physical harm but denied a claim where the worker experienced trauma from indirect effects (dust and noise) rather than witnessing an actual accident, in this case, a tunnel collapse.

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Estonia

ECJ is to decide whether the mandatory vaccination requirement corresponds to EU directives.

COURT

Estonian Supreme Court seeking ECJ preliminary ruling in paramedics COVID vaccination case

The City of Tallinn, acting as employer and paramedics are arguing in the Supreme Court of Estonia, among other things, whether the employer had the right to require employees be vaccinated against COVID-19.

The employer terminated paramedics´ employment contracts as they refused vaccination. The employees contested the termination of their employment contracts in court. Both the first-tier county court and second-tier circuit court found that the termination of their employment contracts was void, as the employer had no legal right to compel the employees to get vaccinated.

The Supreme Court found that in order to decide the case, it is necessary, inter alia, to take a position on whether an employer's right to compel employees to get vaccinated derives from the Occupational Health and Safety Act. With this Act Estonia has transposed the EU's Directive on Biological Agents as well as the Framework Directive on Occupational Safety and Health (OSH Framework Directive). The Supreme Court concluded that without seeking the opinion of the ECJ on the interpretation of the aforementioned directives, the assessment of the extraordinary termination of the employment contracts in question won't be possible.

GUIDELINES
Sad statistics of work accidents

The Estonian Labor Inspectorate has published the statistics on safety, accidents and health at work for 2023. Over the year, both the number of accidents at work and the number of fatal accidents at work have decreased. However, last year there was an average of 8 accidents per day - mainly in trade, construction, transport and storage, health care and the timber industry.

Last year in Estonia, ten people lost their lives at work, with an average age of 30-45. Nine of the fatalities were men and one was a woman. Construction remains one of the most problematic sectors, with 281 accidents last year, three of which were fatal. Most accidents in the construction sector involved ladders and various tools such as circular saws, knives, axes and scissors. Last year's more difficult economic situation led to a 23% increase in the number of labor disputes.

The Estonian Labor Inspectorate's 2023 report shows a decline in workplace accidents and fatalities, averaging 8 accidents per day, primarily in sectors like trade, construction, and healthcare. Despite the decrease, construction remains problematic with 281 accidents, including three fatalities.

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Finland

The employer's obligation to offer another job in order to avoid dismissal does not necessarily imply the right to the first suitable vacancy.

COURT
Can employer choose what job to offer as an alternative to dismissal?

Following the decision to close Malmi Airport, the employer (company B Ltd) had announced in January 2015 that it would later dismiss all air traffic controllers employed at the airport, including air traffic controller. In autumn 2015, the employee applied for the vacant air traffic controller positions at Helsinki-Vantaa airport but was not selected. In the summer of 2016, when the employee's employment continued, the employer offered him a job as an air traffic controller at Tampere-Pirkkala airport. The employee accepted the job, but found that the employer had breached its obligations by not offering him the job as an air traffic controller at Helsinki-Vantaa airport at a time when his job at Malmi airport was coming to an end.

In contrast, the Supreme Court ruled that B Ltd did not violate its obligations under the Employment Contracts Act by not offering the employee the first mentioned job at Helsinki-Vantaa Airport. In its judgment, the Supreme Court ruled that the employer's obligation to offer another job in order to avoid dismissal does not necessarily imply the right to the first suitable vacancy. Both jobs involved tasks that the employee had not performed in his previous position and that required him to acquire additional training. Neither job was therefore equivalent to work under employee's contract of employment.

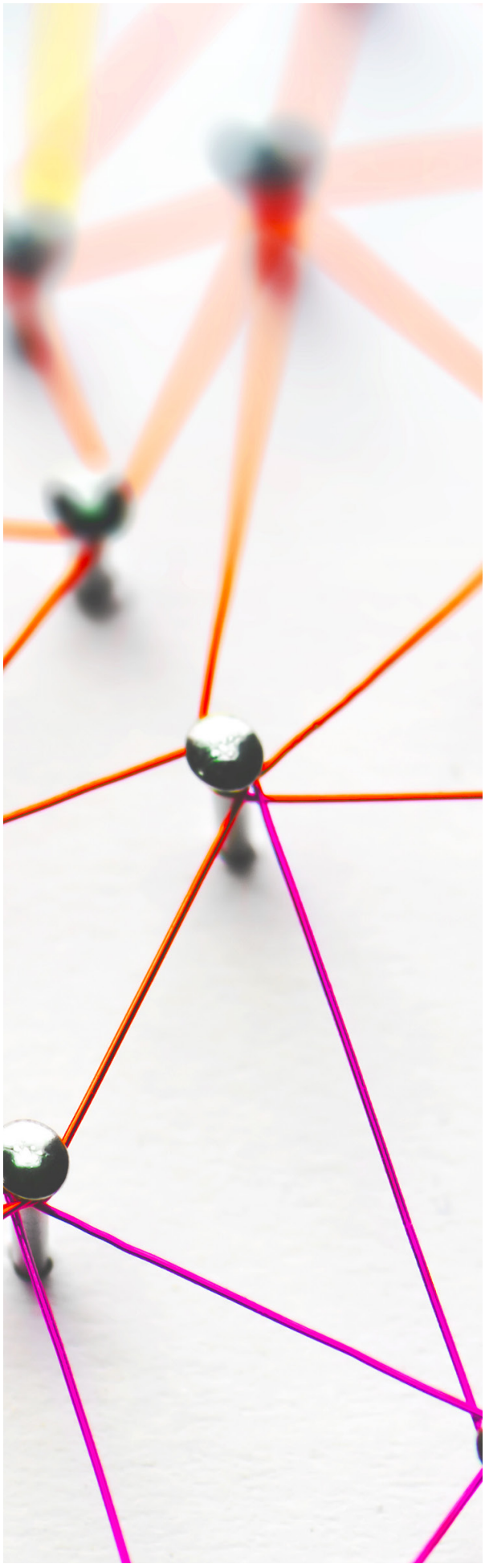
LAW
Amendments to the Posted Workers Act

The Posted Workers Act ("PWA") is amended to better meet the requirements of the EU Directives. The amendments are based on infringement proceedings the European Commission has initiated against Finland. So far, the PWA has not fully met the requirements of the EU's implementing Directive on the posting of workers and the Directive concerning the Mobility Package in road transport. In addition, there has been shortcomings concerning the protection of posted workers against inappropriate treatment.

The amendments concern, among other things, certain administrative requirements laid down in the PWA and the protection of posted workers against inappropriate treatment. In order to protect posted workers, a new provision prohibits retaliatory measures and imposes a liability for damages were the prohibition violated.

As regards the provisions on road transport, the amendments clarify the PWA and improve the supervisory capabilities of occupational safety and health authorities. The legislative amendments enter into force on 1 May 2024.

In order to protect posted workers, a new provision prohibits retaliatory measures and imposes a liability for damages were the prohibition violated.



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France

All sick leave entitles the employee to paid leave (occupational or non-occupational).

LAW
Paid vacation and sick leave

On 10 April 2024, the bill reforming the rule that an employee who is absent due to a non-work-related illness or accident cannot acquire paid leave during this period was finally adopted. This reform legalizes the positions taken by the Court of Justice of the European Union and the French Supreme Court, both of which had already declared these rules unenforceable against sick employees.

From now on, the French Labor Code will provide that: all sick leave entitles the employee to paid leave (occupational or non-occupational); paid leave is earned up to a limit of 2 days per month in the case of non-occupational illness; the employer must inform the employee, within one month of resuming work, of the amount of paid leave available and the date by which it may be taken; an employee who has been unable to take paid leave due to sick leave may defer it for up to 15 months from the date of notification by the employer.

These new provisions will take effect the day after the law is published, which is expected before the end of April.

COURT
Reimbursement of remote working expenses

The Paris Court of Appeal has confirmed its position on the reimbursement of remote working costs by the employer. In the absence of a binding agreement (employment contract, company agreement or collective bargaining agreement), the employer is not obliged to reimburse the costs of remote working. This position is justified by the fact that the French Labor Code clearly states that if remote working is voluntary, i.e. not imposed by the employer, the employee is solely responsible for all costs arising from the organization of his or her remote working activity. The employer has no legal obligation to cover these costs. Some employment tribunals try to resist this analysis, but their decisions are now all being overturned on appeal.

In the absence of a binding agreement (employment contract, company agreement or collective bargaining agreement), the employer is not obliged to reimburse the costs of remote working.

COURT
Travel and effective working time

In principle, time spent traveling to the office or to meetings with clients does not constitute actual working time (travel by car, train, plane, etc.), with the sole exception of itinerant employees for whom travel is an integral part of their professional activity. In a decision dated March 6, 2024, the French Supreme Court ruled that the mere fact that an employee remains contactable during travel time does not mean that this time should be considered as actual working time.

However, the plaintiff employee submitted certificates from relatives and colleagues stating that he was always available, even during his travel time. However, according to the French Supreme Court, the fact that he was only reachable did not mean that the employee had to remain at the employer's disposal and follow his instructions without being able to carry out any personal activities. Only on this condition could the employee's commuting time have been treated as actual working time.

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Germany

COURT
Vacation compensation in the event of dual employment

The Federal Labor Court had to deal with the offsetting of vacation entitlements in the case of simultaneous employment relationships (BAG, 5.12.2023 – 9 AZR 230/22). The plaintiff, who had entered into a further employment relationship following a termination without notice that was later declared invalid, asserted claims for vacation compensation against the initial employer for vacation not taken.

The Federal Vacation Act (BUrlG) only regulates the handling of vacation entitlements in the case of successive employment relationships during a calendar year. In this case, the employee does not have a claim against the new employer insofar as vacation has already been granted by the former employer. This serves to exclude double entitlements. In line with this legal concept, the BAG ruled that in case of simultaneous employment relationships, vacation granted in the new employment relationship must be offset against the vacation entitlements with the initial employer for the calendar year if the employee could not have worked for both employers simultaneously.

With this ruling, the BAG consistently develops its case law on vacation law and clarifies an question of high practical relevance. The possibility of offsetting of vacation may reduce the financial risk for former employers in separation situations.

COURT
Calculation of vacation in the simultaneous event of short-time work and illness

The Federal Labor Court ruled that if an employee falls ill during short-time work "zero", during which there is no obligation of the employee to work at all, the period of illness may not be equated with periods in which the employee is obliged to work when calculating the amount of the vacation entitlement (BAG, Urteil vom 5.12.2023 – 9 AZR 364/22).

The case concerned an employee who was sick during short-time work. After termination of the employment relationship, the employee demanded compensation for 15 days of vacation not granted and argued that the sick days during short-time work should be considered as normal working days when calculating the vacation entitlement.

The BAG, however, rejected the employee's claim. In its ruling, the BAG clarified that in the event of short-time work, an employee's vacation entitlement is based on the remaining days of the week on which the employee is required to work, even if the employee is absent due to illness. As the parties

have mutually agreed on short-time work "zero" and the employee had not to work at all when he fell ill, the employee did not acquire any vacation entitlements for the period of the short-time work.

The Federal Labor Court has ruled that if an employee falls ill during a period of “zero” reduced working hours in which no work is required, those sick days are not counted in calculating vacation entitlement.

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Hungary

The authority measures for guest workers have been further tightened.

LAW
Immigration law

The authority measures for guest workers have been further tightened by Government decree no. 35/2024. (II. 29.). Namely, in the future an application for a work permit can be rejected even if the employment of the third-country national is not justified on the basis of "other employment considerations".

Such other employment considerations may include, in particular, if the employer wishes to employ a third-country national instead of a Hungarian worker who is in a long-term employment relationship without a legitimate reason.

LAW
Ban on employment of guest workers in public- and state budgetary bodies and state-controlled companies

The government has also published a new regulation (decree no. 79/2024. (IV. 8.) on the employment of third-country nationals in Hungary, which prohibits the employment of guest workers in public- and state budgetary bodies and state-controlled companies.

Therefore, after April 9, 2024 these entities cannot establish an employment relationship with a guest worker on the basis of a residence permit for employment purposes, or for guest workers or for employment for the purpose of investment. However, only in the case of state-controlled companies a person appointed by the government may grant an exemption from this new prohibition on the basis of a compelling reason, on the initiative of the Minister exercising ownership rights over the company on behalf of the state.

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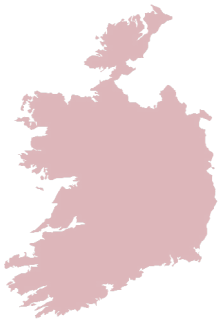
Ireland



LAW
Auto-enrolment pensions scheme

The Irish government has recently published the Automatic Enrolment Retirement Savings System Bill 2024.

The scheme provides that in circumstances where an employee does not have a pension scheme of their own, the employee earns more than EUR 20,000 per year and they are aged between 23 and 60, they will be automatically enrolled into the new system.

People earning less than EUR 20,000 per year and who are aged outside the 23-60 bracket will be able to opt in, as long as they aren't already in a pension scheme.

Employer contributions will initially start at 1.5% of the employee's gross pay and gradually increase: in year 4 to 3%; in year 7 to 4.5%; in year 10 to 6%.

These contributions will be fixed so therefore employees and employers won't be able to contribute less or more than the set rate.

In order to manage the process, there will be a central administrative body established in Ireland if the Bill is passed, so that employers will not have to involve themselves in managing the system.

LAW
Restriction of mandatory retirement ages

The Irish government is set to introduce the Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024.

The Bill, which has yet to be published, intends on delivering statutory provisions which will allow, but not compel, an employee to stay in employment until the Irish state pension age, which is currently 66 years of age.

The Bill intends to provide that, as a general rule of thumb, an employer cannot set a compulsory retirement age below the state pension age if the employee does not consent to retire. This element of consent reflects the fact that many employees may want to retire at the contractual retirement age.

The Bill also provides for certain exemptions, particularly in relation to retirement ages which are set out in law, some public servants or finally, in limited circumstances where the employer can provide objective justification for the retirement age such as where the role is physically demanding or there are public-safety concerns in certain professions.

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Italy

LAW
Immigration: entry and stay of non-EU digital nomads and agile employees

The Ministerial Decree of February 29,2024, published on April 4, 2024, implemented the law on the entry into Italy of highly qualified non-EU nationals, outside of entry quotas established for non-EU employees. The Decree applies to employees as well as self-employed workers. In order to qualify for a residence permit, applicants must have a minimum annual income (in 2024 about EUR 25,000.00), health insurance, housing documents, at least six months of experience in agile work, and an employment or a collaboration agreement.

The residence permit should be applied for directly at the local Police Central Offices ("Questura") within eight working days of entry and shall be valid up to 12 months and renewable annually. It may not be issued in case the employer / principal was convicted of offenses related to illegal immigration in the last five years. Family reunification is permissible with residence permits of the same duration. The activity carried out in Italy will be subject to Italian social security laws (including any applicable bilateral conventions) and Italian tax laws.

COURT
Employer's waiver of notice does not require indemnity payment

The Supreme Court, with decision No. 6782 dated March 14, 2024, addressed the case of an employee who had resigned and that, when her employer waived its entitlement to a notice, claimed the payment of an indemnity in lieu of same. The lower courts upheld such claim. However, the Supreme Court reversed the decision stating that an employer's waiver of notice does not obligate to the payment of compensation in lieu, since notice is considered an obligation of the terminating party as well as a right of the other party. Since the waiver of notice is the waiver to one's own right, it cannot result into the creation of an obligation, such as to pay any indemnity, unless there is a specific clause in the agreement (or collective agreement) providing for it.

COURT
Supreme Court affirms workers' rights in post-merger collective agreement case

The Supreme Court, with decision of April 17, 2024, decided the case of a worker of a company merged into another company and the worker's claim to remuneration provided for by a collective agreement that had been signed by the merged company and that, after the merger, had been replaced by a new collective

agreement signed by surviving company. Both the worker and his union had expressed their dissent.

In upholding the worker's claim, the Court ruled out that the new company collective agreement had replaced the previous one as a result of the merger, since it had been concluded after same, and also ruled out any relevance of the favorable or unfavorable nature of the new collective agreement, declaring that the express dissent of a worker affiliated to a non-signatory union is sufficient to exclude that it binds the dissenter. Pay attention to the context in which the decision was taken. In fact, it often happens that, following mergers and business transfers, there is a need to harmonize terms and conditions of employment: the Court's decision calls for extreme attention in assessing the necessary actions.

Despite a new agreement signed by the surviving company, the Court recognized the worker's right to retain the terms of the original agreement due to his and his union's express dissent, affirming that dissent by a union member from a non-signatory union is enough to prevent the new agreement from binding

GUIDELINES

Gender equality: the deadline related to the biennial report 2022-2023

On April 10, 2024, the Ministry of Labor informed that the deadline for the submission of the Biennial Report 2022-2023 on the situation of male and female personnel for companies with more than 50 employees shall be extended from April 30 to July 15, 2024. Companies must compile the report for the biennium 2022-2023 by July 15, 2024. Companies participating to governmental tenders may submit a copy of the biennial report of the previous biennium (2020/2021) and integrate it with the report for the biennium 2022/2023 by July 15.

Let us remind you that the report can also be prepared, on a voluntary basis, by companies with fewer than 50 employees, and that the report collects crucial information about the employed female and male workers, the number of pregnant female workers, the number of female and male workers hired during the year, the differences between the starting salaries of workers of each sex the contractual classification and the function performed by each worker employed, also with reference to the distribution among workers of full-time and part-time contracts, as well as the amount of total remuneration paid and the variable components, and information and data on selection processes at the recruitment stage, tools and measures for reconciling work and life, inclusion policies and criteria for career advancement.

GUIDELINES
Facial recognition may not be used to monitor workplace entry and attendance

On March 28, the Data Protection Authority for the Protection of Personal Data announced that it had imposed material economic sanctions on several companies that had installed and made use of a facial recognition system for the purpose of monitoring workplace entry and attendance.

The companies had defended themselves, among other things, arguing that they had intended to contrast absenteeism and protect themselves against claims for overtime compensation, and that the system installed had been declared GDPR-compliant by the supplier.

The authority found that the facial recognition system violated multiple data protection provisions, primarily because the processing of biometric data is not permitted for attendance monitoring purposes.

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Liechtenstein

Asylum seekers are allowed to work immediately upon filing their application and are provided a structured qualification contract.

LAW
Qualification contract for asylum seekers

In contrast to many other countries, asylum seekers in Liechtenstein are allowed to work from the first day after submitting their asylum application. The pursuit of gainful employment requires the approval of the Migration and Passport Office.

The qualification contract for asylum seekers, temporarily admitted persons and persons in need of protection is intended to identify and promote informally acquired skills with the aim of introducing people to the requirements of the regular labor market in the medium term.

The asylum seekers gain work experience in several internship stages in order to meet the requirements of the labor market.

The qualification contract includes three stages of four months each with a minimum starting wage and two further graduated minimum wages that are lower than the regular minimum wage for unskilled laborers in accordance with the wage and protocol agreement. Every four months, a target agreement meeting is held to determine whether the next level has been reached.

Once the last stage has been successfully completed, the qualification contract is deemed to have been fulfilled. The asylum seeker, temporarily admitted person or person in need of protection receives a certificate from Refugee Aid. From then on, the provisions and minimum wages for unskilled workers apply in accordance with the wage and protocol agreement.

Read More

LAW
Sexual harassment at the workplace

In Liechtenstein, the term "sexual harassment at the workplace" covers any behavior of a sexual nature or based on gender that is unwelcome from one side and that violates a person's dignity. Sexual harassment can be carried out with words, gestures or actions. It can be perpetrated by individuals or groups. Typical acts of sexual harassment are: suggestive and ambiguous remarks, sexist jokes and slogans, intrusive looks, showing and hanging up pornographic material, unwanted physical contact, approaches accompanied by promises of advantages or threats of disadvantages, and sexual assault (coercion).

In Liechtenstein, the law provides more options for victims of sexual harassment than for bullying, obliging employers to protect workers and intervene in cases of harassment. The Equal Treatment Act mandates active prevention measures against sexual harassment, and employers can face legal claims or be required to pay compensation if they fail to act, even if discrimination is only made credible, not proven.

The legal basis offers victims of sexual harassment in Liechtenstein more options for action than victims of bullying.

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Lithuania

COURT

Employer-initiated changes to wage conditions

On April 4, 2024 the Supreme Court of Lithuania heard a case on whether the employer's order to reduce the number of services without the employee's written consent does not change the necessary conditions of remuneration. As a rule, changes in remuneration, which is one of the essential terms of an employment contract, can be made only on the employer's initiative with the employee's written consent.

The Court points out that if the employee does not act and does not defend his rights, which may have been violated, it shall be presumed that the employee has agreed to work based on the changed conditions of remuneration in accordance with the legal regulation of the Labor Code of the Republic of Lithuania. In this case, there is no legal basis for declaring the change in the terms of remuneration unlawful. It is worth noting that the legislator's intention is to obtain the employee's consent to the change in remuneration.

Read More

COURT

On the employee's obligation to repay overpayments of long-term working benefits

On March 28, 2024 the Supreme Court of Lithuania heard a case concerning an employee's obligation to repay his former employer for overpayment of long-term employment benefits. The ruling states that an employee is entitled to a long-term employment allowance if the employee is dismissed at the employer's initiative without any fault on the part of the employee, but that if the grounds for dismissal are found to be unlawful and the grounds for termination of the employment contract are changed, the basis for entitlement to a long-term employment allowance ceases to exist.

The Court notes that the situation in which the dismissal of an employee would be considered unlawful and the employee would not be obliged to repay the long-term employment allowance would be clearly contrary to the principles of reasonableness, fairness, and justice. So, if the grounds for dismissal have changed, the employee is no longer entitled to this guarantee.

Read More

If an employee is wrongfully dismissed without fault, and the dismissal grounds are later deemed unlawful, their entitlement to a long-term employment allowance is nullified.

GUIDELINES
Training on violence and harassment

The State Labor Inspectorate of the Republic of Lithuania points out that one of the obligations of employers is to organize training for employees on the risks of violence and harassment, preventive measures, rights and obligations of employees in relation to violence and harassment.
All employers, regardless of the number of employees, are required to provide training for employees. However, the Labor Code of the Republic of Lithuania does not specify the manner and form of training, so the employer may conduct it according to the nature of the company's business or the practice of organizing training (training may be conducted both remotely and face-to-face). It should be noted that the fact of training should be properly documented in internal documents so that the employer can prove that the obligation has been fulfilled. The Labor Code also does not specify the frequency of training, but the employer should conduct it periodically and update it depending on the company's situation.

Read More

GUIDELINES
Legal compliance in employment agreements

An employment agreement is considered to have been concluded if the parties have agreed on the necessary terms of the employment agreement, and the employer has notified the Board of the State Social Insurance Fund of the conclusion of the employment contract and the hiring of the employee in accordance with the established procedure at least one working day before the scheduled start of work.

The Lithuanian State Labor Inspectorate reminds of the right to start work the day after signing an employment contract only if the above conditions are met. Therefore, if an employer fails to comply with the obligation to properly document employment contracts, or if the employer keeps conflicting documents regarding the employment relationship, the employer bears the risk of the consequences of non-compliance.

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Malta

> **The distribution of the employee's duties among other staff members demonstrated that the tasks were still essential, indicating that the termination was not due to redundancy but was instead an unfair dismissal.**

COURT
Redundancy under Maltese Employment Law

The Maltese Court of Appeal, in Sciortino vs Orange Travel Group, reaffirmed that British Common Law is the main source of Maltese Employment Law, and hence applied the former's understanding in deciding the case in question.

In its judgment, the Court explained that, redundancy must be proven on the basis of the following questions: (a) Was the employee dismissed?; (b) If so, had the requirements of the business for the employees to carry out the work of a particular kind ceased or diminished (or were expected to do so?)? (c) If so, was the dismissal caused wholly or mainly by the state of affairs? It continued by explaining that, the crucial element in the second question is that, if there truly was a significant reduction in the business requirements, the employer should not apply a ''contract test" whereby he simply considers the specific tasks the employee was employed for, but rather, take a more general approach in safeguarding the employee's engagement.

Applying this reasoning to the case in question, the court determined that the fact that the employee's tasks were split between other employees was sufficient to demonstrate that the employee's duties were still necessary. This indicates that this was not a case of redundancy but rather, of unfair dismissal.

LAW
National minimum wage per week

On January 1, 2024, the National Minimum Wage National Standard Order was enacted in Malta. This brought about changes to the minimum wage per week related to a normal working week. The order categorizes the different standards and amounts in accordance with the employee's age, setting the following benchmarks: (i) age eighteen years and over : EUR 213.54, (ii) age seventeen years: EUR 206.76, (iii) under seventeen years : EUR 203.92.

The national minimum wage of part-time employees shall be calculated pro rata at the same hourly rate of a comparable full-time employee. Such amounts may however vary according to any Wage

Regulation Order which may be regulating a particular field of employment. It should be noted that in the event that an Order applies, the wages payable to any employee shall not be less than those stipulated in the National Minimum Wage National Standard Order.

Such benchmarks have been increased in light of the increases for cost of living, while also taking into consideration the approximate expenses individuals have to incur according to their ages.

Read More

As of January 1, 2024, Malta enacted the National Minimum Wage National Standard Order, which establishes age-based minimum wage benchmarks and ensures that part-time wages align proportionally with full-time rates, reflecting cost of living increases.

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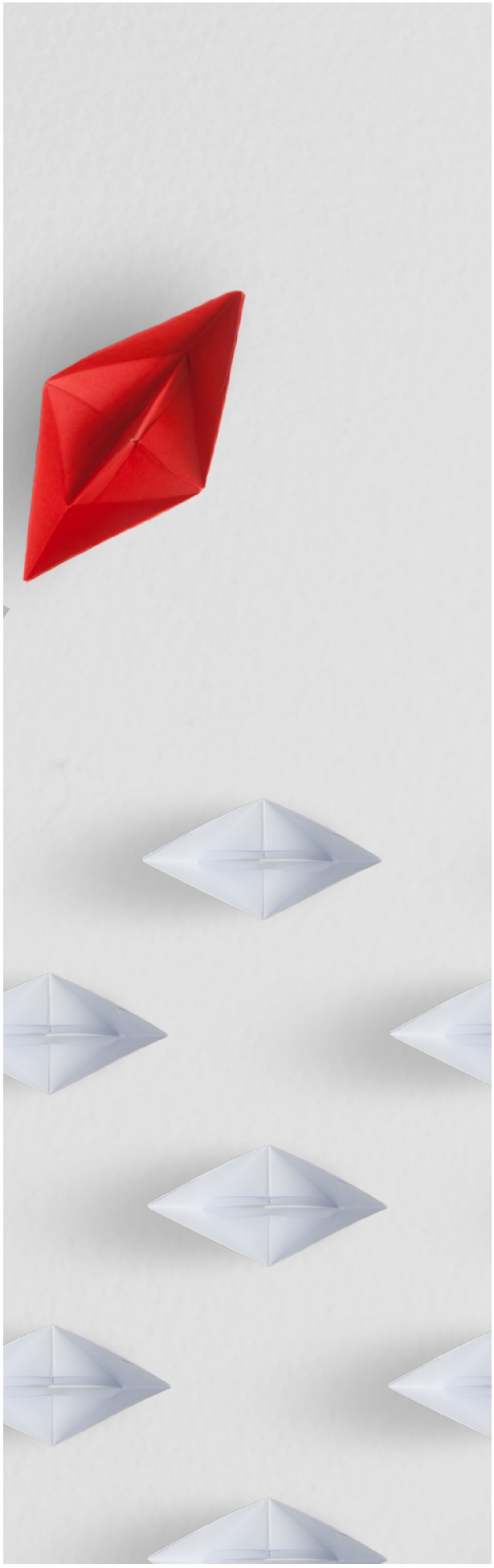

Poland

COURT
The scope of an employee's duties does not have to be included in the employment contract

In the ruling of January 17, 2024 (III PSK 26/23), the Supreme Court indicated that the employer may inform the employee about the scope of his duties in any way, i.e. also by posting these duties on the internal network (Intranet).

The case concerned an appeal against the termination of an employment contract. The employer indicated inadequate supervision of the subordinate team as the reason for terminating the contract. The employee, in turn, claimed that the dismissal was unfair because he was not obliged to control any other employees. He argued that he had not signed any document specifying the scope of his duties (and these duties were neither indicated in the employment contract nor were they in his personal file).

However, the courts of all instances dismissed the employee's claim, finding that the above-mentioned circumstances don't matter. What is important is whether the employee could become familiar with the scope of his duties (and this was the case here because they were posted on the internal network, i.e. the Intranet). The above was confirmed by the Supreme Court, finding that such action by the employer is fully legal.

LAW
Full social security contributions for civil law contracts in 2025

All civil law contracts in Poland are to be subject to mandatory social security contributions starting in 2025, according to media reports. It is because one of the conditions for Poland to receive money from the National Reconstruction Plan is the contribution of civil law contracts to social security (milestone A71G KPO).

Actually in Poland, more than 2 million people perform work on the basis of civil law contracts (umowy zlecenia). These contracts are subject to different contributions than a contract of employment. As a rule up to the minimum wage - if a person earns more, there is no obligation to collect social security contributions on the excess over the minimum wage. However, this is set to change from next year. After the changes, contributions for pension, accident and sickness insurance are also to be full paid on these contracts.

At present, the draft changes in this respect have not yet been published.

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Portugal

Recent Portuguese court rulings have shown differing interpretations on the employment status of couriers with digital platforms, with one recognizing an employment relationship and another denying the applicability of a new legal presumption for older contracts, both subject to appeal.

COURT

Portuguese court rulings on the presumption of employment contracts with digital platforms

In the last publication we mentioned the creation of the legal presumption of an employment contract in the context of a digital platform. More recently, two primary court decisions have come to light, assessing the contractual relationships between couriers and digital platforms operating in Portugal.

One of the decisions considered that the relationship between the digital platform and the courier materially constituted an employment relationship and ordered the platform to recognize the existence of an employment contract, with the specific characteristics of this relationship to be discussed and defined in a separate case to be pursued by the employee.

Meanwhile, another primary court, responsible for analyzing the relationship of dozens of couriers with a digital platform in a single action, ruled that, for couriers whose activity began before May 2023, the new legal presumption of an employment contract does not apply. With regard to the remainder, the court found that the evidence in the case pointed to the absence of a relationship of a subordinate nature, and that two or more of the indications provided for in the legal provision governing the presumption in question had not been met.

Both decisions are still subject to appeal and are therefore they are not definitive.

LAW

Regulations on working conditions for administrative employees

Ordinance 128/2024/1 was published on April 2, 2024 amending the Ordinance regulating the working conditions of administrative workers not covered by specific collective regulations, which is only applicable in mainland Portugal, since in the Autonomous Regions it is up to the respective Regional Governments to issue an ordinance on working conditions.

The Ordinance increases the minimum salaries of all eleven salary levels by 7.89 %. The minimum salary for level XI is set at EUR 820 (equivalent to the guaranteed minimum monthly salary for 2024), while for level I the minimum salary is set at EUR 1,297.

The monthly absence allowance, in situations where it is due, is updated to EUR 41.70. The value of each diuturnity is increased to EUR 25.53 (the limit of 5 diuturnities is maintained). The food allowance remains at EUR 6.00 for each working day.

The law in question came into force on April 7, 2024, and the minimum wages established are effective retroactively from March 1, 2024.

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Republic of Moldova

Moldovan business community is concerned about the new rules on the annual paid leave of the employees'.

LAW
New rules on annual paid leave

Effective as from 1 April 2024, the new amendments to Moldovan Labor Code allow employees facing valid reasons to carry forward their unused annual leave for up to two years.

At the end of each calendar year, employers shall provide notification to employees, either in written or digital form, detailing the balance of their accrued/unused annual leave days, along with their expiration date, as well to arrange for their use based on a mutually agreed-upon schedule. Refusal of employees to comply with these arrangements is null and void.

Any accrued but unused leave before 1 April 2024 must be used by 31 December 2029 under the relevant schedules. Failure to adhere to these deadlines may result in their forfeiture, subject to compensation regulations.

Moldovan business community find these new rules to be unclear regarding the leave's forfeiture and its related compensation as well burdensome in terms of an additional obligation of employers to provide employees with annual notification thereof.

Read More

COURT

Disciplinary dismissal is overturned by court when it is improperly documented

In March 2023, the Moldovan Supreme Court found inadmissible the appeal of the former employer against the decision of the appeal court on unfair dismissal claim. According to the findings of the lower courts, the disciplinary dismissal had been improperly documented and, therefore, overturned.

Termination "at will" is not allowed in Moldova. The cause and procedure of disciplinary dismissal are expressly regulated by Moldovan Labor Code as well as mandatory provisions of the documents issued within such a procedure. In particular, the employer failed to include the factual and legal background in the disciplinary decision. The reference to the conclusion of the investigation committee is not sufficient for this purpose. The rules violated by the employee should have been clearly identified and indicated in the disciplinary decision of the employer.

As a result, the employee was reinstated in his position, paid the salary for the forced absence from work during the court proceeding, legal fees and moral loss.

Read More

Moldova's Supreme Court upheld a lower court's decision that the disciplinary dismissal was improperly documented, leading to the employee's reinstatement with compensation for lost wages, legal costs and moral loss.

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Romania

New regulations introduced in Romanian immigration law allow certain foreign individuals, including holders of EU Blue Cards and long-term residence rights, to work in Romania without work permits.

LAW
New exemptions introduced for foreign work permits

As of March 8, 2024, significant changes have been implemented in Romania concerning the requirement for companies to obtain work permits for hiring foreigners. Three new categories have been introduced that exempt certain individuals from this requirement.

These include foreigners who possess a valid EU Blue Card issued by a Member State of the European Union and intend to engage in work activities in Romania as highly qualified workers under mobility arrangements; foreigners holding a valid EU Blue Card, provided they have completed 12 months of legal employment as highly qualified workers in Romania; and foreigners who have long-term residence rights granted by another Member State of the European Union and hold a long-term residence permit with the annotation "Former EU Blue Card holder."

These exemptions mark a significant shift in employment regulations, aimed at facilitating the recruitment and retention of highly skilled foreign workers within Romania

LAW
Revised conditions for issuing work permits for highly qualified workers

Effective March 8, 2024, Romania has updated the conditions for obtaining work permits for highly qualified workers. Employers must now show intent to hire a foreign national for a highly qualified role with either a full-time, indefinite employment contract or a fixed-term contract of at least 6 months—shortened from the previous one-year requirement. The salary offered must be at least equivalent to the national average gross salary, reduced from the earlier requirement of twice the national average.

Additionally, the prospective foreign employee must have superior professional skills relevant to the job, meet all authorization conditions, and have no criminal record that impedes their work in Romania.

Employers must also demonstrate that they have attempted to fill the position with a Romanian citizen, a citizen from another EU Member State, the European Economic Area, the Swiss Confederation, or a foreign national with long-term residence rights in Romania.

These changes aim to simplify the hiring process for highly skilled foreign workers, reduce bureaucratic hurdles, and ensure fair employment practices while still protecting opportunities for local and EU/EEA/Swiss citizens.

> **A new regulation mandates the completion of individual employment agreements with foreigners within a maximum period of 15 working days.**

LAW
Timeframe for signing employment agreements with foreigners

A new regulation outlined in Government Emergency Ordinance No. 25/2024 mandates the completion of individual employment agreements within a maximum period of 15 working days. This timeframe commences upon the arrival of foreigners in Romania or upon obtaining a new employment permit, specifically in cases involving long-stay visas for employment purposes. Failure by employers to adhere to this stipulation will result in penalties ranging from RON 5,000 to RON 10,000.

LAW
Implementation of additional requirements for obtaining the work permit

Effective March 22, 2024, a supplementary condition has been established for obtaining work permits. Employers seeking permits for permanent workers must demonstrate actual engagement in the relevant field of activity for a minimum duration of one year.

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Slovakia

New regulations have expanded the eligibility for national visas to more Indian nationals, specifically in the fields of transport and various industrial occupations.

LAW

Extension of the scope of persons eligible for a national visa to include the Republic of India in selected occupations

Government regulations have come into force which extend the range of third-country nationals who can be granted a national visa, namely nationals of the Republic of India.

Regulation No. 34/2024 amended Regulation No. 113/2023 Coll., which provides for the possibility of granting a national visa also to Indian nationals in the field of employment related to cargo and bus transport; as a bus driver a maximum of 2,000 national visas may be granted in total, as a driver of "LKW" a maximum of 5,000 national visas may be granted in total in the interest of the Slovak Republic.

Regulation 35/2024 amended Regulation No 383/2023 Coll., which provides for the possibility of granting a national visa also to Indian nationals in selected occupations in the field of industry, e.g. maintenance worker, metal welder, construction, operating electrician, etc. The Regulation also increases the total number of national visas that can be granted in a calendar year to 10,000 (previously 2,000).

GUIDELINES

Ministry of Labor, Social Affairs and Family of the Slovak Republic presents package of employment support projects

Set of three new projects aims to create jobs for the unemployed, motivate people to stay in their new jobs and make it easier for children and family center inmates to find work.

The "Right to First Job" project supports the creation of jobs for the unemployed and is aimed for all job seekers who have been registered with the Labor, Social Affairs and Family Offices.

The "Motivate Yourself to Work" project aims to encourage new employees to stay in their new jobs. It is intended for employees who have been registered as unemployed immediately before joining the project and who have been removed from the register due to the start of an employment or similar employment relationship.

Contributing to the independence of young adults from centers for children and families and increasing their chances of entering the labor market is the main objective of the project Young Adult Education. Under the project, the State will contribute to courses aimed at obtaining a driving license for Group B and higher groups and a driver qualification card.

Slovakia has launched three new employment support projects to create job opportunities for the unemployed, encourage job retention and help young adults from children and family centers enter the labor market.

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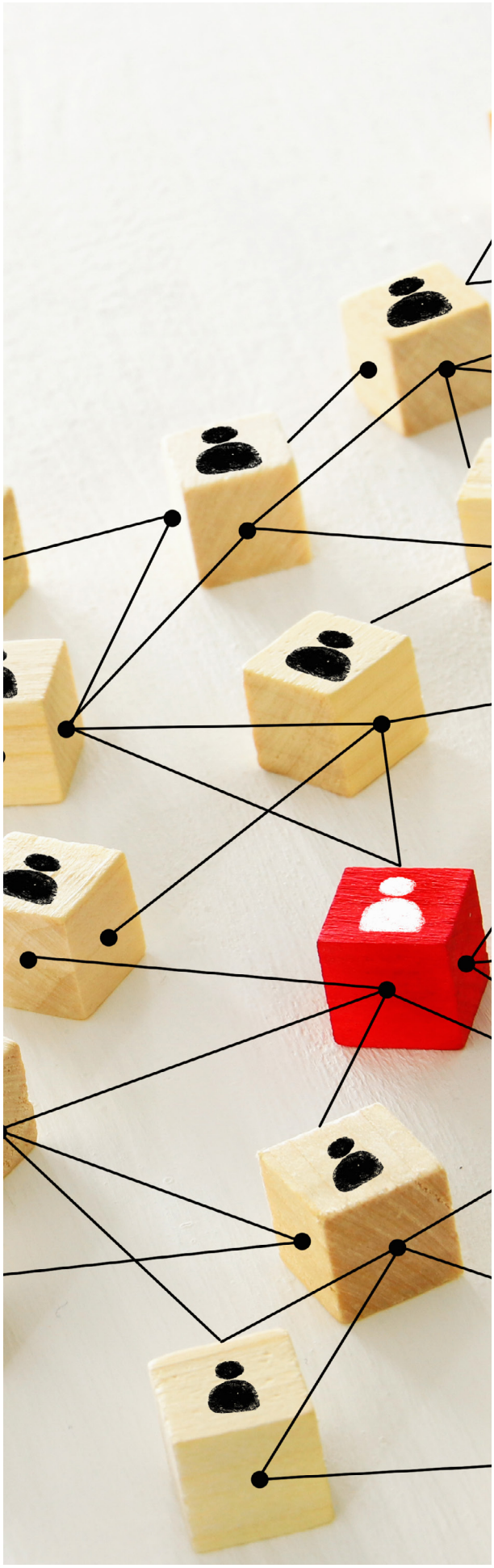

Slovenia

COURT
The prohibition on employing foreigners

On April 5, 2024, a Constitutional Cort published a decision stating that the first paragraph of Article 42 of the Employment, Self-Employment, and Work of Foreigners Act, and the second paragraph of this provision, insofar as it relates to the prohibition of employment and work of foreigners by an employer who has been fined for an offense, are not in conflict with the Constitution.

The request for a constitutional review was submitted by the National Council because it was considered to be an infringement of the freedom of work and the right to free economic initiative.

The reasoning of the decision indicates, among other things, that the prohibition on employing foreigners in these cases should be understood as a measure aimed at encouraging economic entities to comply with regulations. The challenged regulation, as determined by the Constitutional Court, does not violate the right to free economic initiative, nor does the freedom of work guarantee the right to employment with a specifically chosen employer. The challenged measure is limited in time and does not entail a prohibition on employing all workers. The challenged regulation serves the public interest objectives, and the Constitutional Court has also ruled that the intervention is in line with the general principle of proportionality.

LAW
Annual leave allowance

The deadline is approaching when employers must pay employees annual leave allowance. According to the Employment Relationships Act, an employer is obligated to pay an annual leave allowance to an employee entitled to annual leave, at least in the amount of the minimum wage. It is the company's policy to pay the annual leave allowance to the employee no later than July 1 of the current calendar year.
In Slovenia, as of January 1, 2024, the minimum wage is set at EUR 1,253.90, but employers typically pay the annual leave allowance in a higher amount, which is determined by the branch collective agreement .
The maximum amount of the annual leave allowance is limited to 100% of the average salary of employees in Slovenia, which at the time of writing this article (April 2024) amounts to EUR 2,317.82.

This means that the payment of the allowance must not exceed this limit if the employee wishes to receive a non-taxable amount. If the allowance exceeds the average salary,

only the portion of the allowance that exceeds 100% of the average salary is considered in the tax base of income from employment, not the entire amount. Social contributions are not paid from the annual leave allowance.

Employers in Slovenia must pay an annual leave allowance, at least equal to the minimum wage of EUR 1,253.90, by July 1 each year, with a cap at 100% of the average national salary of EUR 2,317.82 for tax-free benefits.

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Spain

LAW

New additional solidarity contribution mechanism

Royal Decree 322/2024 of March 26. On January 1, 2025, among other new features, the additional solidarity contribution mechanism will come into force, which aims to balance the contributions to the public pension system taking into account the current aging of society. This Royal Decree imposes the payment of a complementary contribution to the Social Security, to be distributed between the employer and the employee, for those employees' income exceeding the maximum contribution base, which is set at EUR 4,720.5 per month for the year 2024.

COURT

Nullity of dismissal after returning from disability leave

The Superior Court of Justice of Asturias, Social Chamber, 1st Section, issued Judgment number 273/2024 on February 20, under Appeal number 63/2024, declaring the nullity of a dismissal for poor performance occurring two months after an employee returned from temporary disability leave.

The judgment analyzes a case in which a worker, who was on leave due to a long-term temporary disability, was dismissed disciplinarily 2 months after returning to her job, by means of a letter of dismissal which only refers to a "decrease in her usual performance in recent times".

Although 2 months had elapsed since the worker's medical discharge, the Superior Court of Justice argues that there is a clear temporal connection between the dismissal decided in January 2023, and the worker's previous situation of temporary disability, since the worker only rendered services for 5 days in November and December.

Consequently, the Court ratified the decision of the Social Court, which had upheld the worker's claim, thus declaring the dismissal null and void.

COURT

Workplace surveillance: Privacy rights upheld in Court´s decision

The Supreme Court, Fourth Chamber, Social Court, in Judgment number 2840/2024 of March 5, under Appeal number 1754/2023, ruled that the right to privacy and digital disconnection of a worker is not violated by installing a computer application that records telephone conversations on her corporate cell phone.

In the case in question, the employee requested the indemnified termination of her employment contract, claiming to be a victim of harassment, threats and pressure at work, basing her claim on the fact that the company had carried out espionage by installing a recording application on her professional cell phone without her consent. The Court rejected the appeal of the employee in line with the decision of the Madrid High Court of Justice, as it considered that her right to privacy and to digital disconnection had not been violated, since the cell phone that had been given to her was a work tool, and it was expressly forbidden to use it for personal purposes. On the contrary, the employee installed a computer application to record telephone conversations, storing more than a thousand conversations.

Installing a recording application on a corporate cell phone does not violate an employee's privacy or digital disconnection rights if the phone is designated solely for work purposes.

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Switzerland

The Federal Council permits more flexible working hours and rest periods in auditing, fiduciary, tax consultancy, and ICT sectors.

LAW
Working hours and rest periods

In 2023 the Federal Council has introduced new provisions to the Ordinance on Labor, allowing for more flexible working hours and rest periods in certain industries. Companies in the auditing, fiduciary, and tax consultancy sectors, along with those in the information and communication technology (ICT) sector, stand to benefit from these changes.

For services companies in the audit, fiduciary, or tax consultancy sectors, a special annual working time model can be introduced for key employees. This includes an increase in the maximum workweek from 45 to 63 hours, the interruption of rest periods, and the ability to work on Sundays without prior authorization for up to nine Sundays per year. However, these regulations only apply to employees who meet specific conditions.

In the ICT sector, companies primarily providing services such as software development or IT systems planning can take advantage of longer working hours and shorter rest periods. However, this relief is only available for urgent and unforeseeable activities or projects involving international collaboration, and workers must be over 18 years old. These new regulations permit extended working hours, reduced daily rest periods, and the possibility of interrupting rest periods under certain conditions.

GUIDELINES
Employment Contracts and Staff Regulations: Key Insights

Employee handbooks, or staff regulations, are utilized within companies to establish standardized employment conditions, although, they are not legally binding. Employers are not required to maintain such regulations; however, they can significantly aid in ensuring consistent application of employment terms, such as holiday allowances and salary continuations. Alternatively, these aspects may be addressed within individual employment contracts.

Employment contracts might refer to the Swiss Code of Obligations, which covers also private employment law, often making separate staff regulations unnecessary, especially in industries with comprehensive collective or standard contracts.

A key element in the implementation of staff regulations is their formal acceptance by employees, typically validated through a signature that confirms their understanding

and agreement. This formalization ensures uniform adherence to the regulations across all employees.

Introducing or amending staff regulations requires careful handling, as these actions cannot be unilaterally imposed by employers and necessitate employee consent. Particularly when changes are disadvantageous to employees, negotiations may lead to a "change termination," allowing for renegotiation under the condition of potential contract termination if agreement is not reached.

This approach underscores the importance of transparency and mutual agreement in the establishment and modification of workplace regulations, emphasizing a professional balance between employer initiatives and employee rights.

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