European Employment Insights

> “Employers must include risk analysis in workplace design.”

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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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European Employment Insights

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March Issue **April Issue** **May 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.

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Austria

COURT
Reminder: Limitation period for vacation entitlements

According to the Austrian Vacation Act employees are entitled to 25 days of vacation per year (based on a 5-day work week), increasing to 30 days after 25 years of service. This vacation entitlement expires two years after the end of the vacation year in which the entitlement arose.

With regard to the limitation period for vacation entitlement, the ECJ has already ruled that employees must be informed by the employer of the impending limitation period for vacation entitlement and must be asked to use their vacation.

The Austrian Supreme Court followed this case law and ruled that a vacation entitlement cannot become time-barred if the employer has not informed the employee of the limitation period.

However, this stipulation only applies to the minimum vacation entitlement of four weeks under European law. The fifth and sixth week of vacation, which are regulated under Austrian law, are not affected by this. Nevertheless, it is advisable to inform the employee in due time of the impending limitation period in all cases.

LAW
Additional minimum content for employment contracts

With a recent amendment to the Employment Contract Law Amendment Act (AVRAG), Austria is implementing the so-called Transparency Directive (EU Directive 2019/1152 on transparent and predictable working conditions).

The following new minimum contents of practical relevance have been added: (i) termination procedure, (ii) registered office of the company, (iii) job description, (iv) remuneration (additional information on the method of payment of remuneration and the method of compensation for overtime in addition to the basic salary/wage, other remuneration components and due date of remuneration), (v) social insurance provider, (vi) probationary period, (vii) training (if the employee's work requires further training or such training is contractually guaranteed, this right must be recorded in the employment contract.)

The extended minimum content applies to all employment contracts entered into on or after March 28, 2024.

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Belgium

Employers must include risk analysis in workplace design.

LAW

New legal framework to improve ergonomics and prevent musculoskeletal disorders at work

The Royal Decree of 19 March 2024 amends Book VIII of the Code on Well-being at Work, enhancing ergonomics and the prevention of musculoskeletal disorders (MSD). It introduces definitions for a prevention advisor-ergonomist, ergonomics at work, MSD, and musculoskeletal risks. Employers must consider ergonomics in workstations' design, layout, and modification to prevent MSD and related health issues.

A risk analysis, addressing biomechanical and other relevant factors, is required, involving the internal prevention advisor and, if necessary, a prevention advisor-ergonomist. Employees participate in this risk analysis as well. Employers will have to implement prevention measures based on the analysis, considering the Committee's and prevention advisor-ergonomist's opinions. Results should be documented in the global prevention plan and annual action plan. Employers must provide information and training on musculoskeletal risks to employees and the Committee and ensure health surveillance for workers exposed to these risks.

LAW

Simplification of the creation of a joint internal service for prevention and protection at work

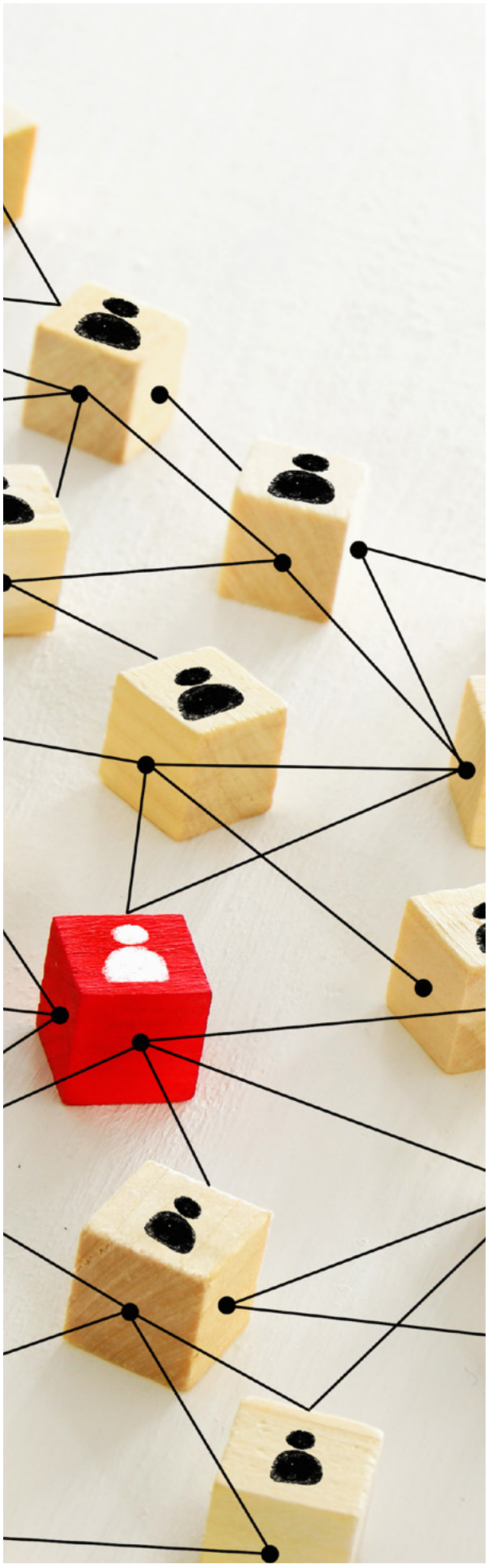
The Royal Decree of 26 March 2024 has simplified establishing a common internal service for prevention and protection at work, effective July 1, 2024. Employers can form a joint service if it adds value to the prevention policy and promotes employee well-being. The decree reduces administrative burdens and modifies establishment requirements.

For establishment of a (i) small common internal service, no ministerial or royal decree is needed; a notification to the Directorate General of Humanization of Labor at the Federal Public Service on Employment, Labor and Social Dialogue (HUA) with a current list of employers suffices. The joint service can operate as long as conditions are met. If not, employers must have their own internal service.

The establishment of a (ii) large common internal service requires ministerial authorization. The responsible employer submits an application to the HUA. The Directorate General Control on Well-being at Work will evaluate and provide an opinion.

The joint service can operate as long as conditions are met. If not, the authorization expires, and employers must have their own internal service.

Changes affecting the service must be reported to the HUA. The decree includes also operating rules and transitional provisions.



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Bosnia and Herzegovina

LAW
Amendments to the Labor Law

The National Assembly of the Republika Srpska adopted the Law on Amendments to the Labor Law, in which a new article was added to the part regulating the area of wages and other income of employees, which stipulates that if an employee is prohibited from receiving his/her salary through a bank account, which prohibition is not based on a court, administrative or other decision of the competent authority, the employer shall pay the salary and other personal income in cash by post.

Before paying the salary in cash, the employer is obliged to submit a written notification to the Tax Administration about the method and reason for payment and information about the employee to whom the salary is paid in cash.

An employer who pays a salary in cash in contravention of mentioned article is liable to a fine of BAM 200.000.

Read More

COURT
Medical technicals not entitled to educators' salary.

The Banja Luka District Court ruled that medical technicians in pre-school institutions, who can perform certain tasks of educators, do not have the right to the same salary as educators. The court explained its position by stating that, under the law, employees are guaranteed equal pay for equal work or work of equal value that they perform for the employer, and that work of equal value is understood to mean work that requires the same level of professional training, i.e. education, knowledge and skills, in which the same work contribution is made with the same responsibility.

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Croatia

GUIDELINES

Persons with disabilities face numerous obstacles in employment

The Ombudsman for Persons with Disabilities recently pointed out that people with disabilities in Croatia face numerous obstacles and continue to encounter prejudices and stereotypes in society and in the workplace. Despite good legislative framework and regulations that regulate their employment, there are often complaints that people with disabilities are not provided with reasonable adjustment during the recruitment process and later during the employment relationship.

For example, when a person in a wheelchair applies for a job, the test should not be held on a higher floor if the facility does not have an elevator, or employers insist on formalities that are not necessary to perform the duties of the position, such as a driver's license for a school cleaning lady. Although most discrimination and violations of employment and labor rights occur in the state and public services, they can also be found among private employers. There are about 660,000 people with disabilities in Croatia, half of them are of working age and can potentially be a solution to the employers' constant problems in finding workers.

GUIDELINES

Varteks workers end strike after wage guarante

Workers at the popular Croatian Varteks textile company in Varaždin have been on strike since May 6, 2024 until May 14, 2024, over the non-payment of part of their wages for February and all of their wages for March.

Varteks has been in a difficult situation for some time, but in the 105-year history of the company there have already been such moments that ended positively and Varteks continued production. This is the first time that wages have not been paid for so long and production has not been resumed.

The Independent Trade Union Varteks announced that the workers' strike was ended, and the workers resumed work after the payment of unpaid wages to all workers from the fund of the Workers' Claims Insurance Agency was guaranteed. The appointment of the new management of Varteks and the agreement with the management and shareholders on the plan of further activities of the company had a positive effect on the adoption of this decision by the trade union.

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Cyprus

LAW
Stamp duty on employment contracts

Employment contracts with private sector employees are subject to stamp duty. The employment contract can validly designate the party responsible to deal with stamp duty considerations; be it the employer or the employee. In the event stamp duty due is not dealt with, all terms of the employment contract are regarded as valid and enforceable between the employer and the employee only. For the purposes of admissibility and enforcement in civil court proceedings, stamp duty unpaid on an employment contract will be required to be paid at the time of proceedings, unless otherwise directed by court order.

Stamp duty is calculated by, and payable in euro to, the Tax Department as a percentage on the gross annual remuneration stated in the employment contract, namely: 1,50‰ for remuneration between EUR 5,001 to EUR 170,000 and 2,00‰ for remuneration over EUR 170,000 (with zero stamp duty applicable on the first EUR 5,000). The maximum stamp duty chargeable is capped at EUR 20,000. Stamp duty is payable within thirty days from either the execution date (if executed in Cyprus) or the recorded delivery date of the employment contract to Cyprus (if executed abroad), with penalties being applicable in the event of late or insufficient payment.

LAW
Increase for maternity leave entitlements

The duration and scope of maternity leave entitlements have been substantially redefined in recent amendments delivered to Law 100(I)/1997. As of March 1, 2024, maternity leave entitlement has been increased from eighteen to twenty-two consecutive weeks for the first child, such entitlement also encompassing employees having a child through surrogacy.

Emergency provisions catering for additional extensions of up to eight weeks are in place to cover the contingency of the newborn requiring hospitalization, whether due to premature birth or otherwise. Maternity leave entitlement has also been increased from sixteen to twenty consecutive weeks in cases of adoption of a first child under the age of twelve.

Transitional statutory provisions ensure that the aforesaid extended maternity leave entitlements will apply to all employees who will be on maternity leave on March 1, 2024.

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Estonia

Employees get opportunity to work during sick-leaves.

LAW

Estonia allows working during long-term sick-leave

The Estonian Parliament has passed a law that allows people on long-term sick leave to continue working under adapted conditions. They are entitled to corresponding salary and compensation from the Health Insurance Fund. Previously, those on sick leave were not allowed to work or earn income subject to social tax during the time they were excused from work.

However, as of May, the system has been changed so that employees can work under adjusted conditions after being on sick leave for 60 days. Adjusted conditions include, for example, working part-time or performing lighter work duties. The change is estimated to affect about 17,000 employees per year, of whom about 30% are expected to take advantage of the opportunity to work while on sick leave.

GUIDELINES

Palgapeegel (the Pay Gap Mirror) - new app by the Labor Inspectorate to analyze the gender pay gap

According to the latest data from the Estonian Statistics Board, the gender pay gap in Estonia was 13.1% last year and 17.7% in 2022. Since April, employers can use the new digital solution for analyzing and reducing the pay gap, the Pay Gap Mirror, which shows whether and how big the gender pay gap is in their organization. The new app aims to raise awareness of the gender pay gap among employers and help reduce it without increasing the administrative burden on employers.

All employers with at least three women and three men can use this app at the Labor Inspectorate's self-service. Its use is voluntary for the employer. The payroll figures are based on data already submitted to the government and are calculated by the Statistical Office.

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France

Staggered hours and Sunday remote work during the upcoming Olympics.

GUIDELINES
Work organization during the Paris 2024 Olympic Games

The upcoming Olympic Games are prompting companies based in Paris and the surrounding region to plan ahead for the organization of work during the summer of 2024, either to limit travel restrictions for employees or to support a temporary increase in activity during this period. A guide for businesses was published by the Ministry of Employment on April 23.

The guide is available on the Ministry's website, and aims to support companies by suggesting the introduction of staggered working hours, the use of Sunday remote working during the Olympic Games period, a derogation from the weekly rest period, etc. We are at the disposal of any companies wishing to receive assistance in organizing their activities during this period in France.

Read More

LAW
Self-reporting of sick leave

In its annual report, the "Cour des Comptes", one of France's leading administrative bodies, suggested that employees should be able to self-declare their very short-term absences from work. The balance of the system would be based on a simple self-reporting by the employee to justify his or her absence, and a waiting period of 2 days to qualify for social security coverage.

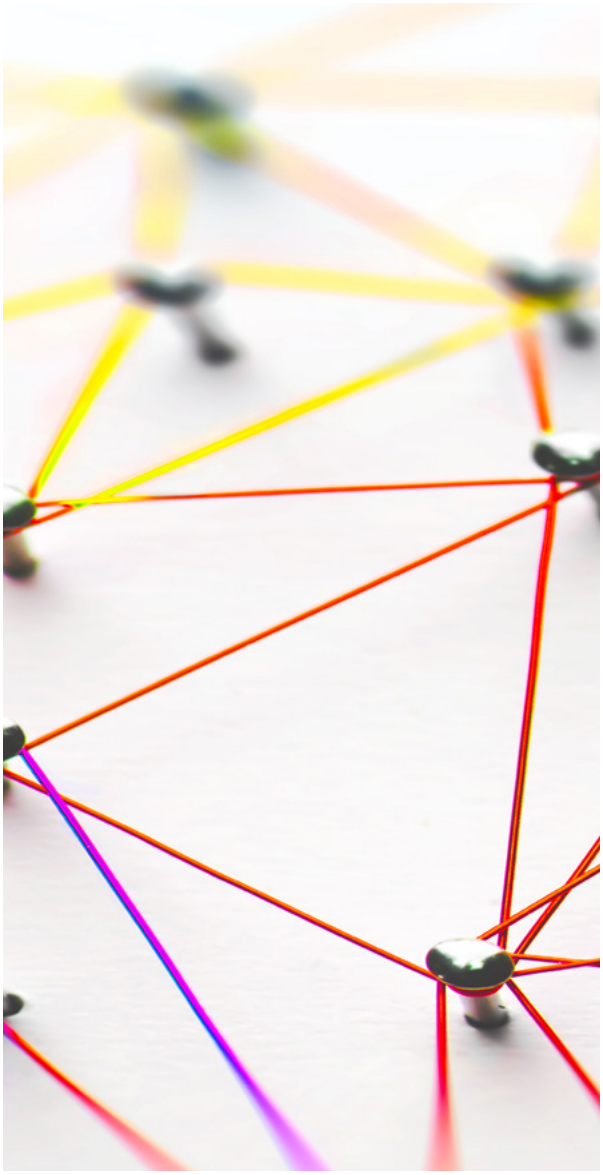
The aim of this proposal is to free up doctors' medical time. The inspiration for this proposal comes from the United Kingdom, where this procedure has been used since 1985 for absences of less than 7 days. For now, it is a simple recommendation that would require a lot of legislative effort to implement, but it has generated a lot of comments and interest. Stay tuned.

COURT
Notifying an employee of the sending of his/her termination letter

Can an employer notify an employee of a dismissal letter on the day the letter is sent? The French Supreme Court is particularly attentive to the chronology of events. According to the judges in a decision dated April 3, 2024, it is important to check whether the letter notifying the termination was sent to the employee before the telephone conversation during which he or she was informed of his/her dismissal.

If there is no evidence of this prior dispatch, the dismissal will be declared without real and serious cause, even if the letter of dismissal is sent on the same day as the telephone call. We therefore advise our clients to keep proof of the registered letter of dismissal. This will prove that the letter was sent before the telephone call informing the employee of the decision to dismiss.

We therefore advise our clients to keep proof of the registered letter of dismissal.



COURT
Racist comments and dismissal

Comments about the color of an employee's skin made during a company Christmas dinner can be discriminatory and therefore justify the dismissal of the employee who made them. This principle was reiterated by the French Supreme Court in a decision dated May 15, 2024. Although they were made during a festive occasion outside normal working hours, the racist comments punished were made during the Christmas dinner organized by the company's works council in the presence of people working together.

It must therefore be considered that this event fell within the scope of professional life and, consequently, it is justified for an employer, informed of such facts, to carry out an investigation and, if necessary, punish the author of such remarks for misconduct by dismissing him or her.

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Germany

As a rule, employees who work from home do not create a permanent establishment in Germany for a foreign company.

GUIDELINES

German tax authorities on home offices as permanent establishments

The German Federal Ministry of Finance has clarified whether home offices in Germany can be considered permanent establishments for tax purposes. In a letter dated February 5, 2024, the ministry revised the application decree for the German Fiscal Code (AEAO).

The updated AEAO to Section 12 no. 4 states that ordinary employees working from home typically do not create a permanent establishment for foreign companies. This is because a permanent establishment requires the employer to have power of disposal over the premises, which is usually not the case for home offices. Key conditions include: (1) employer covers home office costs and equipment, (2) rental agreement between employer and employee without broader usage rights and (3) no alternative workplace provided by the employer. Exceptions apply, especially for management-level employees, where criteria remain uncertain and require individual assessment. This update is crucial for companies with remote employees in Germany, impacting tax liabilities and compliance.

COURT

Smaller works council possible if there is a shortage of applicants

The size of a works council is determined by the number of employees in a company. For instance, in a company with 101 to 200 employees, seven works council members are to be elected. However, if there are not enough candidates to fill all seats, the Federal Labor Court has ruled that a smaller council can be formed (Case 7 ABR 26/23).

A clinic with around 170 employees, which should have a seven-member works council, had only three employees run for the council in the 2022 elections. Consequently, a three-member council was elected. The clinic operator challenged this in court, arguing the election was invalid. However, both the Hamburg Labor Court and the Hamburg Regional Labor Court upheld the election's validity.

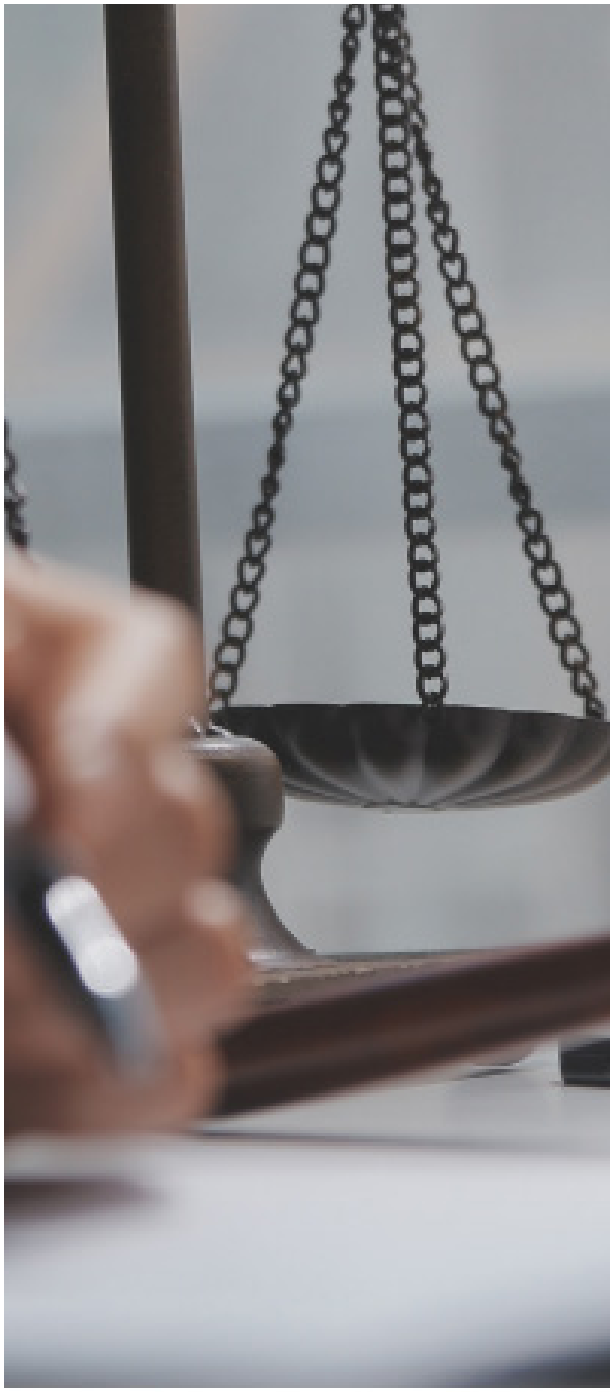
The Federal Labor Court confirmed that the election is valid even if there are fewer candidates than seats. The court's decision brings legal clarity, aligning with the view that § 11 Works Constitution Act (BetrVG) applies analogously in such cases. This ruling ensures practical application for future elections, even in scenarios with fewer candidates than the prescribed number of council members.

COURT
Abuse of gender discrimination laws

A law student in Germany repeatedly sued companies for gender discrimination compensation under the General Equal Treatment Act (AGG). The Higher Labor Court of Hamm (LAG Hamm) ruled that his actions were an abuse of the legal system (Case 6 Sa 896/23).

The student, who completed industrial clerk training and studies law full-time, applied for secretarial jobs far from his residence. His applications were poorly prepared and aimed at gender-specific job postings. When rejected, he claimed gender discrimination and sought compensation. In one case, he applied for a secretary position 170 kilometers away, provided minimal and poorly presented information, and received no response. He sued the company for discrimination but was found to have filed similar lawsuits nationwide.

Both the Dortmund Labor Court and LAG Hamm dismissed his case as an abuse of rights. The court emphasized that compensation claims under AGG are invalid if pursued abusively. This ruling highlights that exploiting anti-discrimination laws will not be tolerated. Nevertheless, employers should ensure job postings comply with equality standards to avoid similar issues.



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Hungary

LAW
Medical examinations to assess fitness for work

On 1 September 2024, new regulations will come into force that will abolish the general requirement for mandatory medical examinations to assess fitness for work.

In order to reduce the administrative burden on employers and employees, the general requirement for mandatory medical examinations to assess fitness for work will be abolished. However, the legislation may define certain jobs and occupations for which a medical examination will continue to be mandatory, and in addition to the legislation, the employer may require the same by its own decision. In both cases, the employer is still be obliged to provide the employee with the medical examination free of charge.

The Sectoral Minister - in agreement with the Minister responsible for Health and the Minister responsible for Employment Policy - is authorized to determine by decree the jobs, duties and positions for which a medical examination is to determine fitness for work is mandatory.

The new rules do not have to be applied if the legislation governing the legal relationship for organized work provides for specific health requirements for the person concerned.

LAW
Employer's duty to notify extended to substances toxic to reproduction

In accordance with the amendment of Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, the obligation of the employer to notify has been extended in the Act on Labor Safety to include substances that are toxic to reproduction. If the activity involving carcinogenic or mutagenic substances has already been notified, the notification, including data on substances harmful to reproduction must be sent to the territorially competent authority for occupational safety and health as a notification of change no later than 10 January 2025. Thereafter, activities involving carcinogenic, mutagenic or reprotoxic substances must be reported to the occupational safety authority by January 10 of each year.

However, employers must be aware that the GFM Decree No. 55/2023. (XII. 28.) defines the substances toxic for reproduction as well and the cases in which an out-of-order notification must be submitted to the occupational safety authority.

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Ireland

LAW
Employment Collective Redundancies Act 2024

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 ("the Act") was recently signed into law by the Irish president.

The Act amends the provisions of the Protection of Employment Act 1977 relating to collective redundancies by inserting the definition of a "responsible person". A responsible person is defined in the Act as a liquidator, provisional liquidator, receiver or other court-appointed person. The Act sets out the obligations of a responsible person regarding the provision of information and consultation to employees and also extends the obligation to provide notification to the Minister of collective redundancy situations arising to insolvency situations. Where a responsible person fails to initiate consultations with employees under the Act, they may be guilty of an offence and therefore liable on summary conviction to a class A fine.

The Act also provides for the making of a complaint to the Workplace Relations Commission by an employee, where the employee has been dismissed prior to the expiry of the 30-day period following notification to the Minister (the maximum compensation for which is four weeks remuneration).

LAW
Gender pay gap reporting

The upcoming third anniversary of the Gender Pay Gap Information Act 2021 ("the Act") means that going forward, gender pay gap reporting requirements are extending to include employers with 150 employees or more. In 2025, this is due to extend and apply to employers with more than 50 employees.

The Act requires employers to report to the Minister on any pay gaps as between male and female employees in respect of hourly remuneration, bonuses and benefits-in-kind. In addition, where any pay gaps are identified, employers must set out the reasons for this and the measures being taken, or proposed to be taken, to eliminate or reduce any such pay gaps.

Employers should take particular note of the provisions this month as they must choose a 'snapshot' date in June. They then have up to six months to prepare their calculations before the reporting deadline which is set at six months following the snapshot date. The remuneration data should reflect employees' remuneration for the 12-month period preceding the chosen snapshot date.

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Italy

LAW

Cohesion Decree – social security exemptions

On May 7, 2024, the Official Gazette published Decree No. 60 on Further Urgent Provisions on Cohesion Policies, also called the Cohesion Decree. The Decree outlines provisions promoting the employment of disadvantaged categories through social security exemptions.

It funds the establishment of new businesses in Southern Italy by disadvantaged beneficiaries younger than 35, through the Stay in Southern Italy 2.0 ("Resto al SUD 2.0") program.

Additionally, it provides incentives to self-employment in strategic sectors for the development of new technologies and the digital and environmental transition, including social security exemptions up to EUR 800 per month, and monthly grants of up to EUR 500 for unemployed individuals under the age of 35.

The Youth Grants ("Bonus Giovani") program offers social security exemptions of up to EUR 500 per employee, per month (EUR 650 in Southern Italy), to hire employees under 35 who have never been hired for an indefinite term.

LAW

Social security exemptions for women and special economic zones

The Cohesion Decree also outlined the following additional social security exemptions.

Women Grants ("Bonus Donne") provides a social security exemption up to a cap of EUR 650 per employee, per month, for indefinite term employment of women of any age who have been unemployed for at least 6 months and are resident in the South of Italy, or women of any age who have been unemployed for at least 24 months regardless of their residence.

Another exemption, the Special Economic Zone exemption ("Bonus ZES"), offers a social security exemption of up to EUR 650 per employee, per month, for employers employing up to 10 employees for hirings in the Special Economic Zone (Southern Italy's regions) of individuals older than 35 and unemployed for at least 24 months.

LAW

Verification of the adequacy of the incidence of labor on the value of construction works

The Cohesion Decree amended the provisions enacted only a couple of months beforehand by the so-called "Safety-PNRR Decree". Accordingly, in the context of construction works,

the director of works (if appointed) or the principals (in private contracts) and respectively, project managers (in public contracts), shall have to verify the adequacy of the incidence of labor on the relevant construction work, before proceeding to complete payment.

In private contracts with a value of at least EUR 70,000, payment of the final balance in violation of said verification shall be punishable with an administrative penalty of EUR 1,000 to 5,000 to be paid by the director of works or, if none has been appointed, by the principal.

COURT
Settlement in front of unions may not occur at a venue different than unions' premises

The Court of Cassation, in Decision No. 11731/2024, ruled that dismissal for exceeding the work protection period during illness can be discriminatory if the employee is disabled. The maximum period of job protection during illness ("comporto") must be deemed a part of the "reasonable accommodation" duty that an employer must fulfill before dismissing a disabled employee. The application of the ordinary period of job protection during illness, to employees with disabilities may constitute indirect discrimination.

In fact the ordinary period of job protection does not take into account the increased health risks and comorbidities of workers with disabilities, thus potentially making an otherwise neutral action discriminatory. In cases of alleged discrimination, the burden of proof is primarily on the employer, as long as the employee has provided plausible factual evidence suggesting discrimination. This includes the employer's awareness of the employee's disability. If an employee plausibly demonstrates discrimination, the employer is obligated to thoroughly examine the reasons of the illness leave, the known disability, and how to balance the employee's need of time to recover and the business need to limit the organizational consequences of an employee's absence.

COURT
Settlement in front of unions may not occur at a venue different than unions' premises

In a recent decision (Decision No.10065/2024), the Court of Cassation stated that conciliations signed with the assistance of unions should not only occur ensuring that employees are actually assisted by unions, but also at unions' premises (in the case decided by the court, a settlement had been signed within company premises, which was not deemed adequate to grant the employees' freedom to decide). Settlements outside the premises identified by the law can be challenged within six months, and consent revoked, without need to allege reasons therefor.

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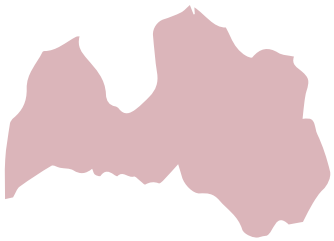
Latvia



COURT

Requirements for the establishment of the employer's right to reclaim remuneration

In January 2024, the Senate of the Republic of Latvia issued a ruling in the case No. SKC-107/2024 on the application of a provision of the Labor Code, according to which an employer may make a deduction from the remuneration to be paid to an employee in order to recover an unused and unreimbursed advance payment made to the employee in connection with an official or business trip or to cover other anticipated expenses. Deduction within the meaning of this provision is a means of enforcing the right of recovery out of court if the employee agrees with the basis and amount of the deduction.

The Supreme Court referred to previously established case law, which concluded that the employer's right to file a complaint in court within two years for the recovery of overpaid advances, as provided for in Section 78(3) of the Labour Law, is possible if the employer has, not later than two months from the date of expiry of the period for repayment of the advance, issued an order to the employee stating the basis and amount of the right of reclaim and has notified the employee thereof.

The Supreme Court concluded that the conditions for the establishment of the employer's right to recover the advance payment do not change if the employment relationship is terminated.

Read More

GUIDELINES

Employment of children and adolescents

As the summer season is approaching, the State Labor Inspectorate reminds about the procedures and restrictions on the employment of children and adolescents set out in the Labor Law of the Republic of Latvia.

Exceptionally, a child over the age of 13 may be employed during the school holidays in certain simple jobs determined by the Cabinet of Ministers, which are not harmful to the child's safety, health, morals and development. The employment of a child requires the written consent of a parent (guardian).

However, an adolescent may be employed only in jobs that do not involve an increased risk to his or her safety, health, morals and development (jobs in which adolescents cannot be employed are set out separately in Cabinet of Ministers regulations). For example, an adolescent may not be employed in jobs related to the sale of alcoholic drinks and tobacco products, demolition of various objects and structures, or logging.

The employment contract must be signed by one of the child's parents as the child's legal representative. The adolescent may sign the employment contract by himself/herself.

The employment contract with the child or adolescent does not stipulate a probationary period, the child or adolescent cannot be employed at night or overtime, and shorter working hours are also stipulated.

Before signing the employment contract, the employer must inform one of the parents (guardian) of the child or adolescent about the risks in the workplace and the occupational health and safety measures.

Read More

GUIDELINES
Content of the job advertisement

The State Labor Inspectorate has drawn attention to the requirements for the content of job advertisements stipulated in the Labor Law.

The job advertisement must contain: (i) the first name and surname of the employer - a natural person - or the name (company) and registration number of a legal person, or the name (company) and registration number of a personnel agency which, on behalf of the employer, evaluates the suitability of applicants and conducts the selection procedure; (ii) the total gross monthly or annual amount of the wage for the given profession or the planned range of the hourly wage rate.

The job advertisement may not apply to a particular sex, unless the requirement is an objective and substantiated precondition for the performance of respective work, and it is prohibited to specify age limitations, except for the cases where, by the law, persons of a certain age may not perform the respective work.

Particular attention is drawn to the fact that it is prohibited to indicate the knowledge of a particular foreign language in a job advertisement unless the knowledge of that language is objectively and reasonably necessary for the performance of the duties of the job. The employer is obligated to justify the foreign language requirement in the job advertisement.

Read More

It is forbidden to indicate a foreign language requirement in a job advertisement, unless knowledge of the language is objectively necessary to perform the duties of the position.

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Liechtenstein

Written contracts are recommended to avoid ambiguities and facilitate proof in disputes.

LAW
Is it necessary to draw up the employment contract in writing in Liechtenstein?

In practice, most employment contracts are concluded in writing. According to Liechtenstein regulations, an ordinary employment contract does not require any special form. It is therefore sufficient for the parties to agree verbally on the content of a specific employment contract. If an employer accepts work which, according to the circumstances, can only be expected to be performed in return for remuneration, an employment contract is even concluded tacitly - without the parties having explicitly discussed the content of the contract.

In deviation from the principle of freedom of form, apprenticeship contracts and commercial traveler's contracts must be concluded in writing.

In addition, the law or various collective labor agreements (CLAs) also stipulate that some specific contractual agreements must be in writing. For example, a non-competition clause or a regulation on overtime pay that deviates from the law can only be validly agreed in writing.

Even if employment contracts can be concluded or amended verbally in most cases, it is advisable in practice to agree these in writing. This avoids ambiguities and makes it easier to prove the alleged agreements in the event of a dispute.

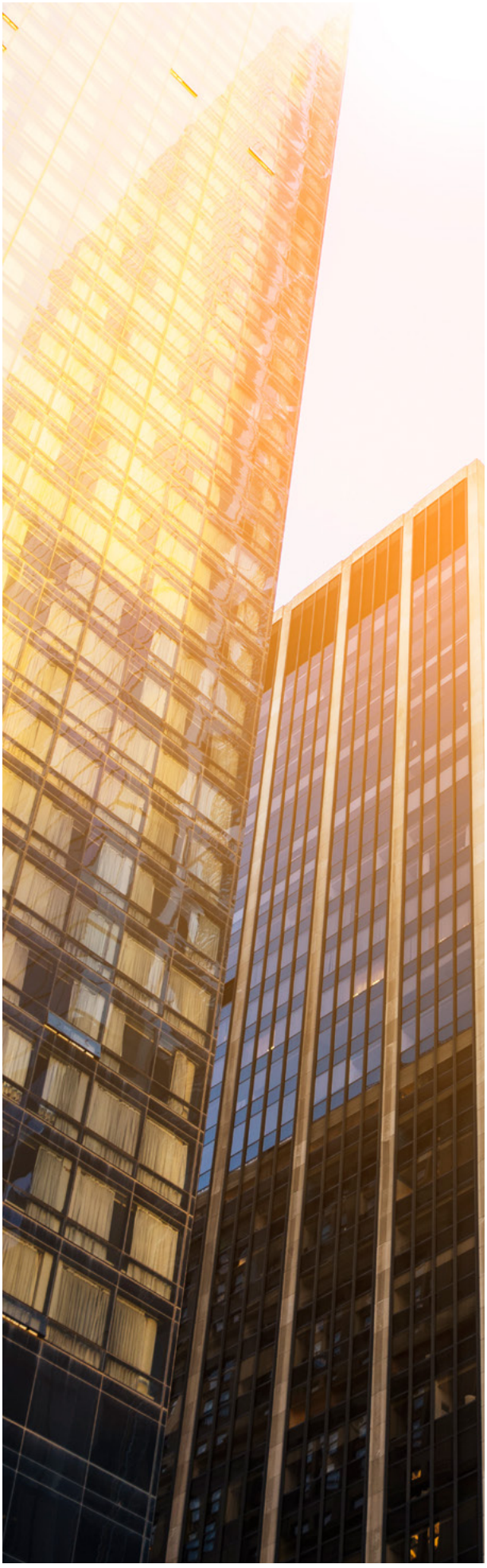
LAW
Termination of an open-ended individual employment contract in Liechtenstein

Liechtenstein labor law (like Swiss labor law) is often more flexible and liberal compared to labor law regulations in other European countries. In principle, either party to an employment contract can terminate it at any time with or without cause, provided that the statutory or contractually agreed notice period is observed.

However, the employee is protected from dismissal during certain periods (so-called "blocking periods" such as in the case of pregnancy or illness/accident). Furthermore, the employer must ensure that a dismissal could not be considered abusive. A notice of termination issued by the employer during a blocking period is null and void. It must therefore be given again after the period has expired.

The grounds on which a dismissal is considered unlawful are regulated by law. For example, termination of employment is unlawful if it is based on an inherent characteristic of the employee's personality such as age, race, gender, origin or other, if the employee exercises a constitutional right such as political activity or religious beliefs, etc. In contrast to dismissal by the employer during a qualifying period, unlawful dismissal is valid. The employee has no right to continue to be employed. However, the employer who issues the unlawful dismissal is obliged to pay compensation to the employee.

After the end of the probationary period, the statutory notice periods are one month in the first year of service, two months in the second and up to and including the ninth year of service and three months thereafter. The parties may freely determine the length of the notice period in writing, whereby the notice period may not be shorter than one month.



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Lithuania

In Lithuania, minors can work from the age of 14, but different restrictions apply depending on whether they are between the ages of 14 and 16 or 16 and 18.

GUIDELINES
Things to know about employing children and adolescents

With the beginning of the summer, young people are actively looking for seasonal jobs, i.e. temporary employment opportunities. The State Labor Inspectorate of the Republic of Lithuania notes that in collectives where young people work there are often violations of labor regulations, such as illegal work, non-payment of wages, inadequate working conditions, misuse of working and rest time, etc. In Lithuania, minors can work from the age of 14, but different restrictions apply depending on whether they are between the ages of 14 and 16 or 16 and 18. Young people may not be able to perform all types of work. As part of the restrictions, minors cannot work in jobs where alcohol is involved in any way, such as taking or placing orders.

Read More

GUIDELINES
Mandatory health checks for employees

All persons seeking employment or working in a work environment where occupational risks are likely to occur are required to submit to a pre-employment health assessment and periodic health assessments during employment. To prevent accidents at work and occupational diseases, employers must organize the implementation of preventive measures.

According to Lithuanian law, employers are obliged to organize compulsory health checks for employees, to provide them with the opportunity to have a health check during working hours and to pay them an average remuneration for this time. It should be noted that both the employer and the employee have an interest in complying with the law. However, it is also important to consider the actual condition of the employee's health. The employee must not avoid health checks and must be responsible regarding his health, i.e. he must not conceal or avoid disclosing his actual health condition. This is the way for the employer to avoid serious legal and financial problems.

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LAW

More opportunities for work-life balance with family needs

On May 7, 2024, the draft law amending Article 138 of the Labor Code was registered in the Parliament of the Republic of Lithuania. The draft amendment to this article is aimed at providing more opportunities for citizens of Lithuania to balance work obligations with family needs.

The Labor Code currently provides for measures for reconciliation of family and work obligations - additional rest days. This entitlement applies to working parents with one child under the age of 12, one disabled child under the age of 18, or two children under the age of 12, and three or more children under the age of 12, or two children under the age of 12 where one or both are disabled.

According to this project, parental supervision is important not only for minors under 12, but also for adolescents, which is why this amendment would change the age limit from 12 to 16.

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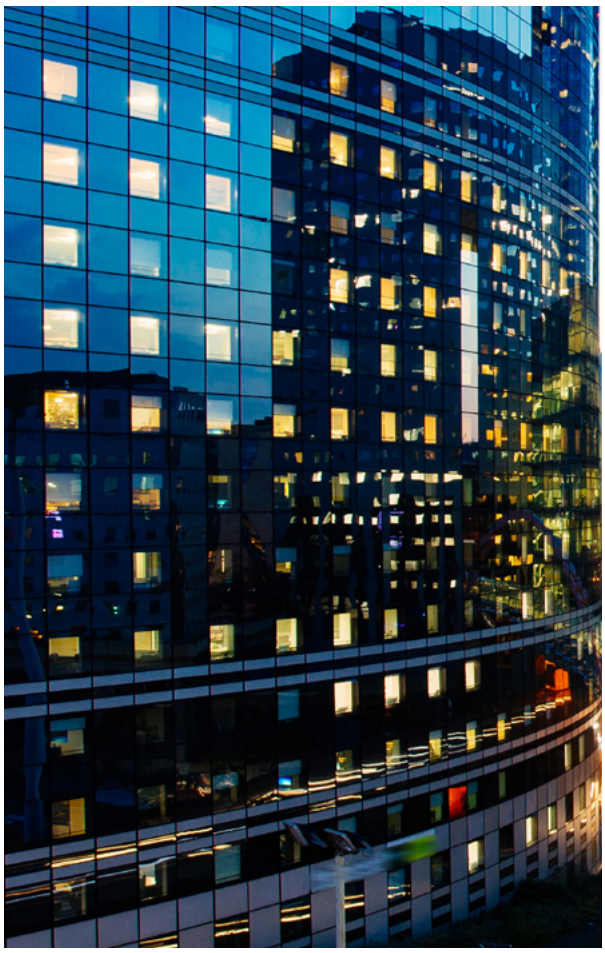

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Malta

Workers have one year to file a lawsuit against their employer for exploitation and nonpayment of wages. However, they must be aware of loopholes in the law that can cause them to lose a case due to procedural errors.

COURT
Procedural loopholes and unjust exoneration

In a recent judgment, the Maltese Court has made a verbal note, calling upon Malta's legislator to address a loophole resulting from the provisions of Maltese Civil law, whereby employers manage to get cases of non-payment of wages declared time barred. The presiding Magistrate argued that Genesis Global had more than 100 lawsuits filed against it by former employees, of which many have been deemed procedurally irregular. Such decisions were mostly based on the fact that the company's director was never a resident of Malta and the other two directors, who are Maltese citizens, had resigned just before the company's closure, making it procedurally difficult to notify the defendant company. Many a time, this has consumed enough time for the prescriptive period for legal action to lapse.

As it stands, employees have one year to initiate proceedings against their employers in cases of exploitation and non-payment of wages. However, employers have used the legal loopholes to their advantage, unjustly winning cases on the basis of procedural mishaps.

The Court ordered that all its verbal notes on the matter be sent to the Prime Minister and the minister for home affairs and employment.

LAW
E-communication and disciplinary procedures

In a recent judgment, the Court of Appeal declared that a disciplinary warning may be given through a digital platform, however, such must be written in the clearest and most direct manner. The court explained that one should not be expected to read between the lines to understand the implications of the message received. Similarly, the court held that such correspondence must be formal, and have no leeway for interpretation. Applying such to the case in question, the court explained that a message on Whatsapp, asking for a meeting, does not translate to a warning.

The court also delved into the kind of language used in the text message received by the former employee.

It outlined the familiarity expressed in the correspondence between the employer and the employee in question, and declared that warnings and notices of initiation of any disciplinary procedures require a standard of formality, offering the employee the opportunity to defend his position.

Lastly, the court expressed that even if such modes of communication are becoming more and more popular, it believes that dismissals and warnings shall only be communicated in person, in a formal and understanding ambiance.

The Court of Appeal recently ruled that disciplinary warnings can be issued via digital platforms, provided they are written clearly and formally, leaving no room for misinterpretation.

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North Macedonia

GUIDELINES
Starting of free access to the labor market within the framework of the Open Balkan

Citizens of the Republic of North Macedonia, Serbia and Albania from March 5, 2024 can use the measure of free access to the labor market within the Open Balkan.

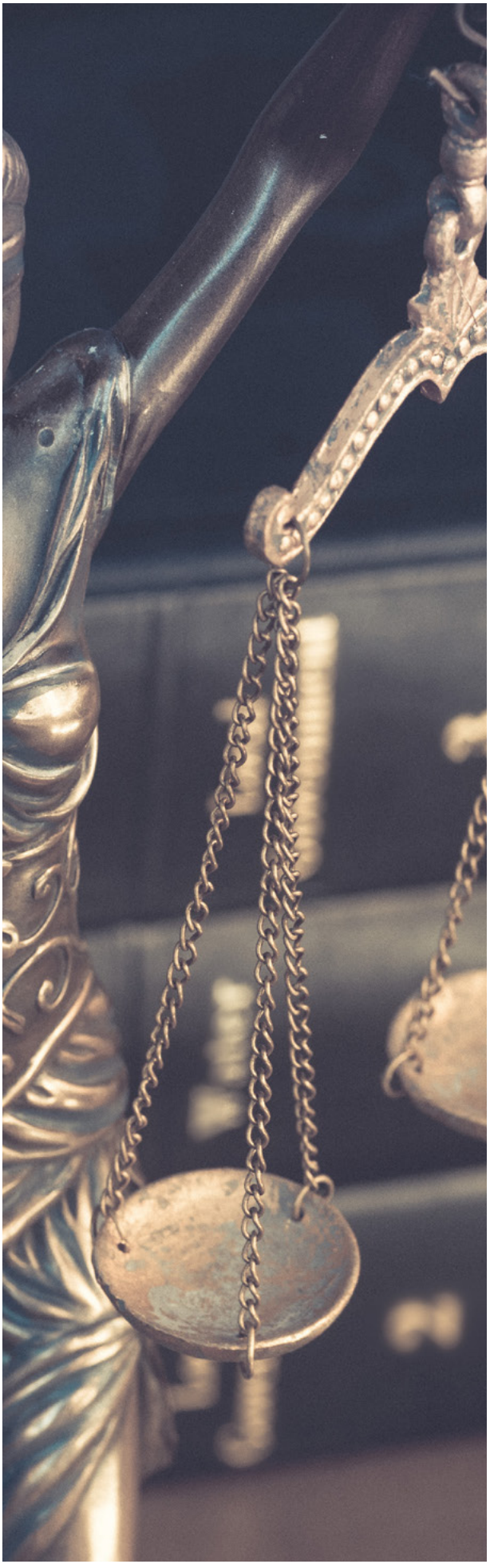
The measure derives from the international agreements signed between the Republic of North Macedonia, Serbia and Albania as members of the Open Balkan initiative, namely the Agreement on conditions for free access to the labor market in the Western Balkan, as well as the Agreement on the interconnection of schemes for electronic identification of citizens from the Western Balkan. With the agreement on conditions for free access to the labor market, it is possible for the citizens of the mentioned states to work in any of the three states without obtaining work permits, without barriers, without applications and waiting, without administrative costs and will be able to have an uninterrupted stay of two years during which they have the right to find a job.

The institutions responsible for the implementation of the measure in the Republic of North Macedonia are the Ministry of Information Society and Administration in the section of issuing identification numbers for the Open Balkan, the Ministry of Internal Affairs in the section of issuing identification numbers for foreigners and the Employment Agency in the section of issuing certificates for free access to the labor market, which enables employment in the Republic of North Macedonia.

GUIDELINES
Conversion of employment from fixed term to indefinite term

According to the Labor Law, the employment contract can be concluded for a definite period of time (the duration of which is predetermined) and for an indefinite period of time (the duration of which is not predetermined).

The employment contract for definite period of time can be concluded for a certain period of time to perform the same activities, with or without interruption for up to 5 (five) years. This period includes one or more contracts that can be concluded for a definite period of time with the same employer, to perform the same work, in order to prevent the exploitation of the employee through the final use of fixed-term employment contracts.



After the expiration of this period, the employment based on an employment contract for definite period of time, except for the employment contract for seasonal work, is transformed into an employment relationship for an indefinite period, provided that the employee continues to work after the expiration of the term (5 years), under conditions and in a manner determined by law.

Fixed-term contracts can last up to five years, including multiple contracts with the same employer. After five years, except in the case of seasonal work, they are converted into permanent contracts.

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Poland

LAW
Extension of maternity leave for parents of premature babies

The Ministry of Labor is working on a draft law to extend maternity leave in cases of premature births. According to the Ministry's announcement, the additional maternity leave will be optional, granted upon request, and must be taken in one continuous period immediately following the standard maternity leave. The application is to be submitted 21 days before the end of the standard maternity leave, and the duration of the additional leave will range from 8 to 15 weeks.

The leave will be available to parents of children born before the 28th week of pregnancy or with a birth weight not exceeding 1000 grams, children born after the 28th week but before the 36th week of pregnancy with a birth weight over 1000 grams, and children born after the 36th week of pregnancy, provided they meet certain conditions.

Read More

LAW
Changes to the rules for calculating employee's length of service

The Ministry of Family, Labor and Social Policy plans to introduce changes in the way the length of service of an employee is calculated. This is important because the length of service determines the acquisition of certain employee privileges, such as the length of annual leave.

The planned changes are that periods of work performed on a basis other than an employment contract and business activity will count towards length of service. The periods to be included in the length of service include work performed on the basis of a civil contract, individual business activity, the exercise of the mandate of a deputy, member of the European Parliament or senator, the performance of paid work during imprisonment or temporary detention.

The Ministry points out that determining the length of service on the basis of the existing conditions leads to unequal treatment with regard to the acquisition of employment rights. Different treatment of such persons may violate the constitutional principles of equality.

A draft bill in this respect is expected to appear in the third quarter of 2024.

Read More

LAW
New law on access of foreigners to the labor market

Work has started on a new law on access of foreigners to the labor market in Poland. The existing legislation is considered inefficient and ineffective. The plans include the creation of a new law that comprehensively addresses the issue of foreigners' access to the labor market in Poland.

The aim of the Act is to streamline the procedures for assigning work to foreigners, to reduce existing abuses, to fully computerize the procedures, to reduce the backlog of cases in the offices and to integrate foreigners into the Polish labor market. The new rules are to build on the existing ones, but are to be improved in key areas. Proceedings on the issue of work permits are to be electronic. In addition, the regulations are to introduce the possibility of running programs to integrate foreign workers.

Undoubtedly, the current proceedings in this respect are often tedious and take a very long time. The proposed changes may facilitate foreigners' access to the labor market in Poland. A draft bill in this respect is expected to appear in the third quarter of 2024.

Read More

LAW
More trading Sundays

The proposed project aims to increase the number of trading Sundays by allowing businesses to operate on the first and third Sundays of each month.

When the changes come into effect, employers will be required to take certain actions. In addition to increasing the number of trading Sundays, the proposal includes ensuring that employees receive 200% of their regular pay for Sunday work, an alternative day off within six calendar days before or after such a Sunday, and at least two Sundays off in a calendar month.

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Portugal

GUIDELINES

New Government and the potential revisions to labor law

Portugal was faced with early parliamentary elections, which led to the establishment of a new government. With a new Labor Minister in office, possible revisions to the current labor legislation have been discussed, with a focus on analyzing the practical repercussions of the legislative changes of May 2023.

At the center of the discussion is the latest presumption of the existence of an employment contract, applicable to contractual relationships with digital platforms.

The Labor Minister confirmed that a review of the regime applicable to digital platforms will be promoted, deeming it necessary to safeguard the situation of truly self-employed professionals, without neglecting situations in which it is recognizable that there is a factual employment relationship, while also admitting that these relationships can assume a subordinate, autonomous or economically dependent form.

While not ruling out the possibility of eliminating the presumption of employment applicable to relationships with digital platforms, the Minister highlighted that the final solution will depend on the will of the partners, to be decided in social consultation.

LAW

Repercussions of failure to report the admission of an employee

According to the Social Security legislation, employers must disclose the admission of employees to the competent social security institution within twenty-four hours of the commencement of the contract or, in exceptional situations in the case of very short-term employment contracts or shift work, this disclosure may be made within twenty-four hours of the commencement of the activity.

Currently, and due to recent legislative changes in the labor field, it is now stipulated that employers who fail to communicate the admission of employees, in compliance with the legal rules, within six months of the aforementioned deadlines, will be punished with imprisonment for a maximum of three years or a fine of up to 360 days. Intent of the employee was demonstrated.

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Slovakia

Slovakia's employee holiday allowance requires larger employers to cover some eligible holiday expenses.

LAW

Holiday allowance provided by the employee (extension of the beneficiaries)

The employee holiday allowance is introduced in Slovakia with effect from 1 January 2019. One of the reasons of its introduction was to support entrepreneurship in Slovakia in the field of tourism.

An employer who employs more than 49 employees shall provide an employee who is in an employment relationship with the employer for a continuous period of at least 24 months, at the employee's request, a holiday allowance amounting to 55% of the eligible expenses of the employee, but not exceeding EUR 275 per calendar year. For an employee who has an agreed employment relationship for a shorter work period, the maximum amount of the holiday allowance per calendar year shall be reduced in proportion to the shorter work period. The holiday allowance may be granted to an employee by an employer employing less than 50 employees under the same conditions and to the same extent.

Currently, the possibility of providing a holiday allowance applies to the employee and designated family members (spouse and children), but an amendment of the Labor Code is in the legislative process, according which the possibility of providing a holiday allowance is extended also to the parents of the employee.

COURT

No more uncertainty about the decision on organizational change

The decision on organizational change is an exclusive institution of labor law, which is regulated by the Labor Code; therefore, the decision on organizational change must be assessed according to the Labor Code, on the basis of which it was within the competence of the managing directors (although in the present case it was not a majority of the managing directors) to decide on the organizational change consisting in the termination of the employment relationship.

However, the Commercial Code is not subsidiary to the Labor Code, which would allow the application of the Commercial Code to assess the substantive condition for the validity of termination of employment pursuant to the Labor Code (written decision on the organizational change).

Therefore, failure to comply with the rule under the Commercial Code does not affect validity of the termination of employment. The Labor Code regulates actions of the employer (whether a legal entity or a natural person) and determines persons who act on behalf the employer. It is not possible to assess the protection of an employee with the help of a commercial law institution, which should serve a completely different purpose – in this case protection of the employer from the inside (protection of the shareholders from managing directors).

The Labor Code exclusively governs organizational changes affecting employment terminations, and the Commercial Code does not apply to assess the validity of such terminations.

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Spain

GUIDELINES

Campaign of the Labor and Social Security Inspection against possible abuses in the trial period of employment contracts.

The Inspection is starting a campaign in which it will carry out a thorough review of employment contracts, both part-time and full-time, that are terminated due to not having successfully passed the trial period, despite having exceeded their maximum duration. Likewise, special attention will be paid to the termination of contracts of employees who fail to pass the probationary period, despite having been previously hired to perform the same tasks of the current job position.

Read More

COURT

Infringement of the right to digital disconnection of the employee

An employee had received several e-mails outside his working day. Although the court declared that there was no violation of the right to digital disconnection, on the grounds that these e-mails did not require reading or immediate response, the upper Court now declares that the right to digital disconnection has been violated and establishes an economic compensation in favour of the employee.

The reasoning of the Court is that the right to digital disconnection implies a double aspect, since it not only implies the right of the employee not to respond to communications from the employer or third parties, but also the employer's duty to refrain from contacting the employee outside working hours.

Judgment of the Superior Court of Justice of Galicia (Social Chamber) no. 1158/2024, of March 4, Rec. no. 5647/2023.

COURT

The fine line between dismissal and voluntary resignation.

The Chamber rejected the dismissal claim filed by an employee who, after two years on leave of absence to care for a family member, informed the company of her desire not to return to work and, instead, requested to be dismissed, fraudulently, since her objective was to obtain the corresponding unemployment benefit.

The company refused to accept this request, informing the employee that she would either return to her job or leave voluntarily. In view of this situation, the employee did not go to work on the date established for her return, so the company processed with the Social Security her abandonment under the concept of "resignation/voluntary leave".

The employee filed a claim for dismissal against the company, but both the Labor Court and the Chamber confirmed that the company's classification of the termination as voluntary resignation was correct, since the fraudulent intent of the employee was demonstrated.

Judgment of the Superior Court of Justice of Catalonia (Social Chamber), no. 817/2024, of February 14, Rec. no. 6351/2023.

COURT

A contract termination after a short-term sick leave is not considered a situation of discrimination due to illness.

The company informed the employee of the termination of his contract for unsuccessfully passing the probationary period. However, prior to this communication, the employee was on sick leave for 14 days.

Although, at first, the Social Court declared this termination null and void for violation of the fundamental right to equality and physical integrity, the Chamber upheld the appeal of the company, arguing that the sick leave was of such a short duration that the employee could not be considered a sick person, but a person who had a minor illness, which is not protected by the provisions of Law 15/2022, of July 12, 2002, on equal treatment and non-discrimination.

The contrary would imply the existence of a shield for the employee that contravenes the will of the legislator. Thus, in this case, in the absence of discrimination, prevails the freedom of the parties to withdraw from the contract during the trial period.

Judgment of the Superior Court of Justice of Madrid (Social Chamber), No. 227/2024, of March 6, Rec. no. 1019/2023.

The minor illness did not fall under protection against discrimination, thus allowing termination during the probationary period.

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Switzerland

Family allowances may be higher if the Cantons so choose.

LAW
Family allowances

Family allowances are one-time or periodic cash benefits that partially compensate for the financial burdens arising from one or more children.

Child Allowance offers at least CHF 200 monthly per child, paid from birth until the child turns 16. If a training allowance becomes applicable before the child turns 16, it replaces the child allowance. Additionally, this allowance covers children aged 16 to 20 with a disability preventing them from earning.

Education Allowance provides at least CHF 250 monthly per child, starting from the month the child begins post-compulsory education, but not before their 15th birthday. This allowance continues until the end of education or until the child turns 25. If the child earns at least CHF 2390 monthly or CHF 28,680 annually, the education allowance is not granted.

Birth and Adoption Allowance: Cantons can offer these benefits per federal guidelines. They are one-time payments per child for births or adoptions, with no cumulative benefits. A birth allowance is given for live or stillbirths after 23 weeks of pregnancy if the mother has lived in Switzerland for nine months. No allowance if receiving unemployment insurance or if the child is born abroad.

The mentioned family allowances are the minimum amounts; however, the Cantons can decide to provide higher amounts.

COURT
Unpaid internship or employment contract?

An economist with a degree from Bucharest, equivalent to a Swiss bachelor's, worked as an unpaid intern for a Swiss fiduciary company. Despite her claim for a salary, the cantonal and federal courts determined that her contract was an unpaid internship. She had experience as an assistant accountant in Romania and briefly worked at her husband's firm in Switzerland. Over 14 months, she did not receive or request a salary and accepted a work certificate describing her position as an unpaid internship.

The cantonal court noted her limited accounting experience, lack of salary requests, and acceptance of her intern status, concluding both parties intended an unpaid internship.

The Federal Supreme Court upheld this decision, finding her experience insufficient to suggest she would only accept paid work and that her role mainly benefited her by providing practical Swiss accounting experience.

According to the Swiss Code of Obligations, internships are not subject to labor laws if they primarily benefit the intern by offering practical experience. The courts found this applied in her case, as the internship helped her gain knowledge of Swiss accounting practices, serving her career interests more than the company's needs. Thus, the internship was legally unpaid under Swiss law.

TF 4A_150/2023 of November 30, 2023

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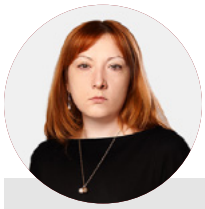
Ukraine

Ukraine's Labor Code now mandates that employment relationships continue with the transferee in the event of business transfers, requiring notification to trade unions or work representatives prior to the transfer.

LAW

New labor law transfer and notification requirements in M&A deals

In 15 May 2024, Ukraine implemented the EU Directive on the safeguarding of employees' rights in the event of transfers of undertakings by supplementing the Ukrainian Labor Code with a new article. The Labor Code now contains definitions of a transferor, a transferee and the rule that in case of the transfer of an undertaking employment relationships shall continue with the transferee. This is despite the fact that under Ukrainian labor laws, employment relationships exist between the company-undertaking and its employees, and not the owner of the undertaking. The transferor and the transferee are required to notify a primary trade union organization or elected representatives of a work collective not later than ten business days prior to the transfer about: the date or an approximate date of the transfer; the reasons for the transfer; the legal, economic and social implications of the transfer for the employees; any measures envisaged in relation to the employees. The primary trade union organization (elected representatives of a work collective) has five business days to initiate negotiations with the transferor and/or the transferee to avoid or mitigate consequences of the transfer for employees. At the same time, the law does not establish any consequences for a failure to provide such notification and to comply with any arrangements reached during negotiations.



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