European Employment Insights

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May Issue

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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 400 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.

We invite you to read in-depth employment information in our monthly Andersen Employment Insights newsletter. This newsletter provides an overview of the latest developments in employment law, guidelines, case law and collective agreements from various countries.

Stay well informed and maintain your competitive edge with Andersen.

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Belgium

LAW
Directors and employees can now be held liable by third parties more swiftly for personal mistakes

On July 1, 2024, the law introducing Book 6 of the New Civil Code was published in the Belgian Official Gazette, updating rules on extra-contractual liability. Effective January 1, 2025, this law expands liability for auxiliary persons, such as subcontractors, directors, and employees, towards third parties.

Under the current law, auxiliary persons are largely protected against claims by third parties and cannot be held directly liable unless exceptional circumstances apply. Book 6 changes this, allowing third parties to directly seek compensation from auxiliary persons for their mistakes.

Auxiliary persons can invoke the same defenses as their principal, including contractual clauses. They can also rely on their own agreements and legal defenses, although serious faults or intentional damage may limit these defenses. The law allows for contractual limitations on liability.

It is advised to review and adjust contracts before January 1, 2025, to comply with these changes.

LAW
Indexation of the mileage allowance

Employers can grant a fixed mileage allowance to employees who use their own vehicle (car, motorcycle, or moped) for business travel or commuting.

A royal decree from November 10, 2022, introduced quarterly indexation of this mileage allowance starting October 1, 2022. From July 1, 2024, to September 30, 2024, the mileage allowance is set at EUR 0.4297 per kilometer. It is important to note that the quarterly indexation of the mileage allowance currently coexists with the annual indexation, and the applicable system may vary depending on the sector.

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Bosnia and Herzegovina

COURT
Vocational training costs

The costs of education, vocational education and training are covered by employer funds and other sources in accordance with the law and general regulations. If an employee interrupts his or her education or training, he or she is obliged to reimburse the employer for the costs, unless the interruption was due to legitimate reasons.

This was confirmed by the Supreme Court of the Republic of Srpska in its ruling of April 2024, in which it stated that the employee is obliged to compensate the employer for expenses in the form of salary compensation, paid taxes and contributions during the specialization, because the employee undertook to work for the employer for a certain period of time after the specialization.

Since the employee committed to work for the employer for 6 years after the end of the specialization, and he/she worked for two years before the lawful termination of the employment relationship due to the dismissal by the employer, he/she is obliged to compensate the employer for a proportionate part of the specialization costs related to the four years, for which he/she did not fulfil his/her contractual obligation.

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COURT
Contribution of employees to work-related injuries

In its recent ruling, the First Instance Court in Kozarska Dubica stated that the employer's liability for damage suffered by an employee at work or in connection with work is determined in accordance with the general principles of liability and is based on the principle of presumed liability and objective responsibility.

Since the employee, while performing the tasks assigned to him/her, used machines that represent a dangerous object, and since the owner of this object is the employer, the employer is liable according to the principle of objective responsibility.

However, by operating a machine for which he or she was not sufficiently trained, the employee partially contributed to the injury and the court found that this contribution in the specific case was 20%.

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Croatia

The Croatian government has decided to significantly increase the salary base for state officials by 83.45% to address disparities with civil servant salaries, promote political engagement, and combat corruption.

LAW
Government adopted a decision to increase salaries of state officials

Having in mind the recent adjustment of the salary base for civil servants and employees, as well as the economic growth and low unemployment rates, the Croatian government decided it is the right time to also adjust the salary base for state officials, which has not been changed for years. In practice, this caused irrationality in the system where some civil servants have higher salaries than ministers who are their superiors.

The salary base will increase by a significant 83,45 percent, that is by EUR 947,18 gross. The mentioned decision will also mean a salary increase for the presidents of the three most important political institutions in the country, that is the Prime Minister, President of the Croatian Parliament and President of the Republic of Croatia, whose salaries will increase by about 70 percent. Apart from them, the members of parliament, ministers and members of the State commissions for public procurement control are also included in this salary base increase.

The reasons for this decision can be found in the intention to eliminate the disparity between the salary base for state officials and the one for civil servants, to attract people to engage in politics and was also presented as an anti-corruption measure.

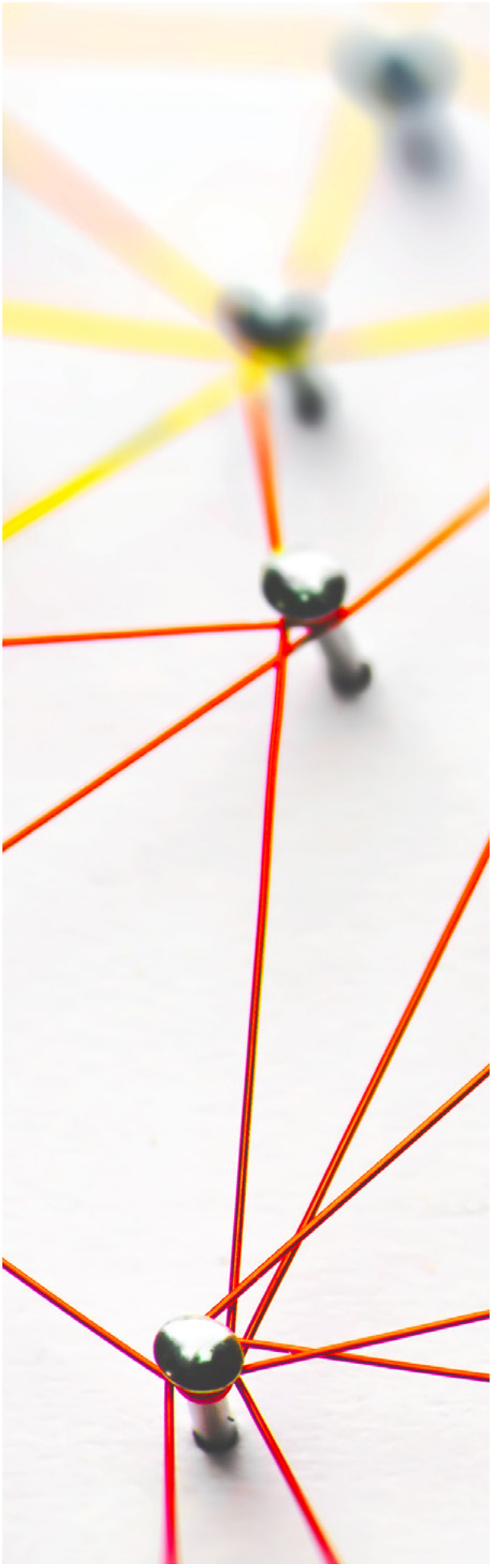
LAW
Employees in Croatia have the longest working week

A recent study by The European Foundation for the Improvement of Living and Working Conditions (Eurofound) revealed that employees in Croatia have the longest working week, which does not include unrecorded, in other words unpaid overtime work.

Trade unions pointed out that examples of a shorter average working week can be found in many EU countries, where it was mostly introduced through branch collective agreements. Shorter working hours have the potential to increase productivity, improve employee satisfaction, work-life balance and reduce sick leave periods.

The Labor Act states that if the law, collective agreement, agreement concluded between the works council and the employer or the employment agreement does not stipulate working time, full-time work shall be deemed to be forty hours per week. The law allows for the employer and employee to stipulate otherwise, which is an option not regularly found in practice, but more as an exception.

Shorter working hours have the potential to increase productivity, improve employee satisfaction, work-life balance and reduce sick leave periods.



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Cyprus

Payment in lieu of notice (PILON) permits employees to receive a lump sum instead of servinge their termination notice period.

LAW
Statutory and contractual payments in lieu of notice

Payment in lieu of notice (PILON) comprises a lump sum payment made by an employer to an employee representing the notice period (statutory or contractual) instead of an employer requiring the employee to serve the notice in fact. Where notice of termination of employment is given by an employer to an employee, PILON can – at the employer's sole discretion – be exercised as a statutory right by the employer. An employee who receives PILON is considered employed until the end of the prescribed notice period. Where notice of termination of employment is given by an employee to an employer, a right to PILON will only exist if, and be enforceable as, expressly provided in the employment contact or as otherwise mutually agreed by the parties.

Whilst under termination notice by an employer, an employee is statutorily entitled to accept, as well as commence, employment with any new employer and is under no further obligation to notify the employer of such new employment undertaken. Where the employee undertakes such new employment during the termination notice period, any right to payment for the remainder unserved notice period is lost.

LAW
Employee's right to a good referencs

An employee is statutorily entitled to receive a reference letter from the employer upon termination of employment. The employee must expressly request the reference letter from the employer; it will not be generated automatically. The right to a reference letter cannot be contracted out and is applicable to all modes of termination of employment, both amicable and contested.

In terms of content, the statute expressly provides that a reference letter must at least: (a) mention the dates of commencement and termination of employment; and, (b) provide a description of the employment undertaken by the employee whilst in employment; and, (c) exclude any adverse references or comments concerning the employee. An updated job description could substantially contribute to point (b) above.

Where an employer denies or unreasonably delays the issuance of a reference letter, or includes adverse references or comments concerning the employee, the employee can lodge – direct and free of charge – a formal complaint against the employer through the online platform of the Department of Labor Relations.

A labor inspector will thereafter undertake any discussion for the resolution of the matter with the employer including, without limitation, the imposition of fines in the event of non-compliance.

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Where an employer denies or unreasonably delays the issuance of a reference letter the employee can lodge direct and free of charge a formal complaint against the employer with the Department of Labor Relations.

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Finland

After the consultation round, both substantive and technical amendments have been made to the draft act.

LAW

Draft act on promoting local collective bargaining sent for a regulatory impact analysis

On June 28, 2024, the Ministry of Economic Affairs and Employment submitted to the Finnish Council for Regulatory Impact Analysis a draft government proposal to increase the possibilities for local collective bargaining. The Ministry had circulated the report of the tripartite working group that prepared the bill from March 1 to April 12, 2024. After the consultation round, both substantive and technical changes were made to the draft act.

The most important changes concern, for example, the person from the employees' side who can conclude a local agreement with the employer. In contrast to the draft, the agreement could not be concluded jointly with the employees.

Control over local agreements in unorganized workplaces would also be strengthened. The employer would have to submit the local agreement concluded with the personnel representative to the occupational safety and health authority. The government aims to submit the proposal to Parliament in August 2024.

COURT

Administrative court rules food couriers are not employees

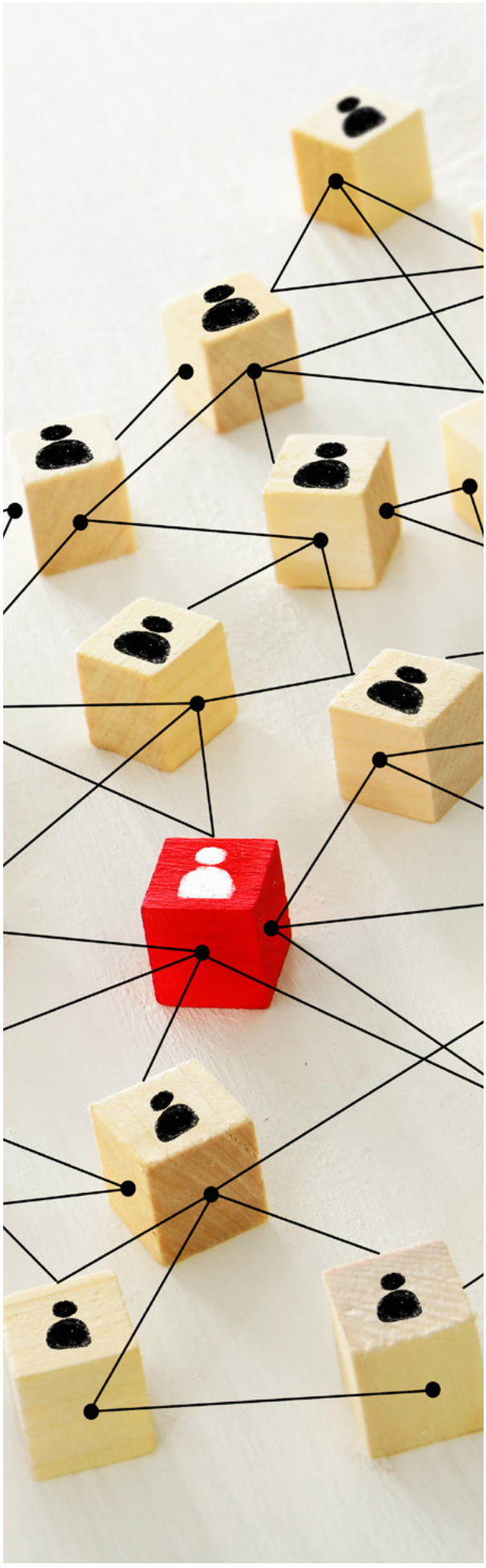
The Hämeenlinna Administrative Court ruled that food couriers working for platform companies do not qualify as employees under employment law. The Administrative Court's decision of 21 February 2024 concerned an appeal filed by a platform company against a decision of 1 November 2021 issued by the Occupational Safety and Health Authority (“OSHA”) of the Regional State Administrative Agency for Southern Finland. In the 2021 decision, the OSHA considered the food couriers to be employed and obliged the platform company, as the employer, to keep a record of the hours worked.

The appealed decision on the employment relationship was taken by the OSHA on the basis of an overall assessment. In its ruling, the Administrative Court assessed the fulfillment of the criterion of management and supervision of work differently from the opinion given by the Labor Council requested by the OSHA. The OSHA has appealed the decision to the Supreme Administrative Court for a preliminary ruling because it considers that the legal situation is unclear.

COURT

The employer had acted properly to comply with its obligation to offer work

The alarm center operations of a national company's subsidiary in Kuopio had been outsourced, resulting in the complete cessation of work for the control room attendants. According to the personal evidence presented in the court, a union representative employed by the company had been offered a job at a redundancy meeting as a service adviser in another town 150 km away. He had then been sent a weekly e-mail listing all the vacancies in the group companies. The Labor Court of Finland found that the way in which the company had offered the job was in line with what was required of it in order to fulfill its obligation to offer work. The union's claim was dismissed.



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France

LAW
French parliamentary elections

Following the dissolution of the National Assembly and the early parliamentary elections, the composition of the new assembly does not allow any political party to secure an absolute majority that would enable legislation to be passed without the need for consensus. In this respect, the French President of the Republic has accepted the resignation of Prime Minister Gabriel Attal and his government but is not yet in a position to appoint a new one.

The current government therefore remains in office, and its action is limited to the management of current affairs. In other words, no new announcements can be made, and the summer will therefore be a quiet one in terms of legislative and regulatory news on employment law. See you in September for the next developments.

The reference salary to be taken into account for the calculation of compensation in lieu of notice and for dismissal without real and serious cause is the salary received by the employee prior to the period of therapeutic part-time work and the period of sick leave.

COURT
Severance pay and therapeutic part-time work

An employee hired on a full-time basis switched to part-time therapeutic work and was then dismissed for serious misconduct. In this case, the French Supreme court ruled on June 12, 2024, that the reference salary to be taken into account for calculating compensation in lieu of notice and for dismissal without real and serious cause is the salary received by the employee prior to the period of therapeutic part-time work and the period of sick leave, if any, preceding it. The basis for calculating legal or contractual redundancy pay is, whichever is more advantageous for the employee, that of the last twelve or three months preceding the period of part-time work and the period of sick leave, if any, that preceded it.

LAW
Value-sharing scheme for companies with 11 to 49 employees

From January 1, 2025 and for a period of five years, a new value-sharing obligation will be tested in companies with 11 to 49 employees and making regular profits. The companies concerned by this new obligation are those with at least 11 employees (excluding sole proprietorships) which are not subject to the obligation to set up a profit-sharing scheme, nor covered by a profit-sharing or incentive agreement, and which have made a net profit for tax purposes of at least 1% of sales over the last three financial years. It should be noted that foreign companies with permanent establishments in France and with a net fiscal profit in France of at least 1% of sales over three consecutive years are also subject to this new obligation.

COURT
Refusal to change working hours and dismissal

An employee working night shifts refused on three occasions to switch to daytime working hours, citing the need to look after his 80% disabled daughter, for whom the MDPH (French Departmental Agency for the Disabled) had recognized that the parents had to take responsibility for at least 20% of the child's activities by adapting their working hours.

In a decision handed down on May 29, 2024, the French Supreme Court ruled that the employee's dismissal for gross misconduct was unjustified because the change in working hours was incompatible with his compelling family obligations.

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An employee's conduct outside working hours can only justify dismissal in exceptional cases where it has a concrete negative impact on the company or is linked to the employment relationship.

LAW
Termination due to conduct outside working hours

Imagine you are the HR manager of a company. A video is posted on a social media platform showing young people partying on holiday. In the video, the young people chant the xenophobic slogan "foreigners out". The video quickly went viral, resulting in a major backlash. Soon all the media were reporting on the video. The identities of the young people become known. One of them is an employee of your company, which is easy to find out online.

You are appalled by the employee's behavior and immediately confront him. Although the employee admits having made a big mistake, you see no further basis for trust and terminate the employment relationship without notice. Your company is soon faced with a claim for unfair dismissal.

German labor courts regularly have to deal with the question of whether an employee's behavior outside working hours (e.g. on social media platforms) can justify a dismissal. In principle, an employee's conduct outside working hours is no reason for dismissal. Only in exceptional cases, such conduct constitutes a breach of secondary contractual obligations provided that it has a concrete negative impact on the company and/or there is a link to the employment relationship.

COURT
Dismissal due to participation in right-wing extremist event

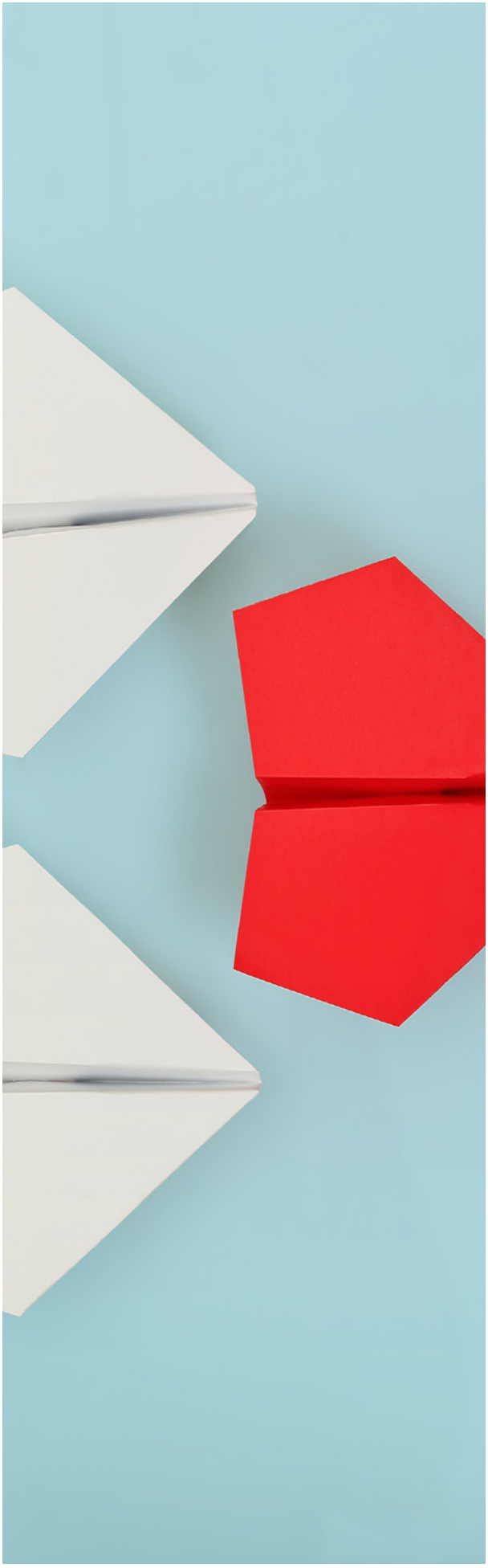
In a recent ruling, the Cologne Labor Court decided that participation in an event considered to be right-wing extremist does not automatically justify dismissal.

An employee of the City of Cologne took part in an event which allegedly dealt with the “remigration” of people of non-German origin. The City of Cologne found out about this and gave her extraordinary notice due to breach of her duty of loyalty.

The employee won the subsequent dismissal dispute. The court ruled that participation in the event alone does not justify extraordinary dismissal.

She is not subject to any increased duty of loyalty to the City of Cologne. The extent of the duty of loyalty to a public employer depends on the position and scope of duties of the employee. An employee only owes such a degree of loyalty that is indispensable for the proper performance of the work. This duty of loyalty is only violated by conduct that is aimed at actively promoting or realizing anti-constitutional goals. This cannot be concluded from the mere participation in the event. It is not clear whether she agrees with what was said at the event.

Sentence of the Cologne Labor Court case number 17 Ca 543/24.



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Hungary

In a recent decision the Curia interpreted the rule allowing for reduction of legal fees restrictively.

COURT

What extent can courts reduce the amount of legal fees awarded to the winning party?

In a recent decision the supreme judicial body of Hungary (the Curia) has given a restrictive interpretation of the rule allowing for the reduction of attorneys' fees. The decision is directly binding on all lower courts, and therefore courts should follow the Curia's guidance in the future.

The position of the Curia is that hourly rate of legal representative may only be reduced if it is “manifestly contrary to market conditions and common sense”. As the fees cover all the expenses of the lawyer's own business, it is irrelevant what the proceeding court thinks about the level of fees the client would otherwise accept. Moreover, a lawyer's work cannot be judged only by the number of pages of pleadings and the number of hours spent in court, since the time spent on preparation, document analysis, client consultation and other preparatory work is an integral part of the work. The quality of the lawyer's work should not be a reason for a reduction. This would create a self-contradiction: the lawyer's work may have led to a successful outcome, but it was not adequate.

The Curia stated that it is not sufficient for the court to reduce the legal costs on general grounds without giving specific reasons, as this would violate the parties' right to a fair trial: the court must support its decision on the legal costs with detailed reasons based on the case file.

The decision no. Pfv.II.20.887/2023/6.

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Ireland

GUIDELINES

Revenue guidelines for determining employment status for taxation purposes

The Irish Revenue Commissioners have published guidelines outlining how to determine the employment status of gig economy workers for the purposes of tax.

The guidelines summarize the principles outlined in the Supreme Court decision of Karshan -v- Revenue Commissioners which was handed down in October of last year.

For tax purposes, the guidelines provide a five-step decision-making framework that businesses should use to determine whether a worker is an employee or self-employed.

This is based on the 5 questions outlined in the Karshan decision which were as follows: exchange of wage / remuneration; provision of own services; sufficient control; terms of contract; any legal reasons to adjust these requirements.

Where an individual is engaged as an employee, taxes should be deducted from their employment income through the employer's payroll system on or before when a payment is made.

Where an individual is engaged as a self-employed individual, they will generally have to register for self-assessment and file their own income tax.

Read More

> **According to the Workers Relations Commission, there is a need for employers to clearly state all requirements for a position in advertisements.**

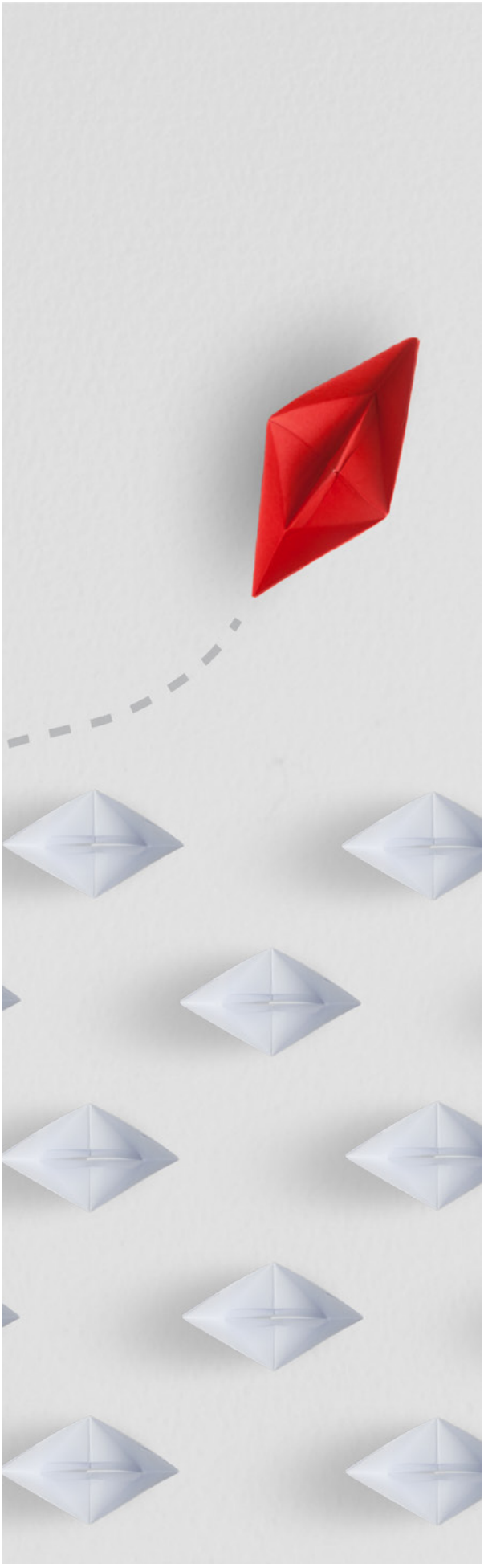
COURT

A worker versus a government body

A decision was handed down recently by the Workplace Relations Commission ("WRC") in a case where the WRC believed there were significant inconsistencies in the job requirements for the role which the employee applied for.

The employee applied for a supervisor position in October 2021 but was ultimately removed from the panel as she had eight penalty points on her driver's license. The employee acknowledged that the job specified the need for an unendorsed license i.e. no penalty points, however there was no indication of a penalty points threshold or definition of an unendorsed license. She also claimed that after she was removed from the panel, a lower ranking employee on the panel who also had penalty points was offered the role.

It was held that there were significant inconsistencies in the employer's position regarding the job requirements for the role. While the employer stated the role required no penalty points, it was noted that the employee's colleague with three penalty points was offered the role, which contradicted the employer's stated requirements. Employers should ensure advertised roles outline all requirements, including definitions for terms such as "unendorsed license."



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Italy

GUIDELINES
Table for standard compensation of personal injuries

In June a team of judges of the Milan court published the latest issue (valid as of January 1, 2024) of a set of guidelines that the Milan court had published for the first time in 1995, in order to streamline the judicial awards of damages for personal injuries (the Milan Table).

While the original goal of the court had been to coordinate the judges of the Milan court, so as to minimize discrepancies perceived as inequitable, the Milan Table soon became an authoritative and universal standard throughout Italy, used both in judicial, as well as non-judicial assessments of damages, despite its non-binding nature.

The Milan Table is based on standard values of percentage points of disability (differentiated by age) originating from an event damaging an individual's health. Percentage points originating from a health injury have to be assessed by a medical examiner and courts anyway have some room of flexibility. The Table is relevant in many employment-related matters, spanning from occupational safety, to consequences of workplace harassment, stress, burnout.

LAW
Furlough made more convenient to fight climate change

The use of furlough schemes, which allow employers to suspend employment while social security pays an allowance to employees, has been made more accessible for certain farming workers and those in construction and excavation activities in case of "objectively non-avoidable circumstances," such as extreme weather conditions. This change was introduced by Law Decree No. 63/2024, converted into law on July 13, 2024, and further clarified by guidelines issued by INPS (the social security agency) on July 26, 2024. The measure is temporary and will last until December 31, 2024.

GUIDELINES
Social security exemption for southern regions

With guidelines of July 17, 2024, INPS (the social security agency) communicated the EU Commission approval, until December 31, 2024, of a 30% social security exemption in favor workers in economically depressed areas in the South of Italy. The Italian government planned a 30% exemption until December 31, 2025, and a 20% exemption in 2026 and 2027 and a 10% exemption in 2028 and 2029, but such exemptions are subject to EU Commission approval, normally granted for shorter periods of time.

If an employer cannot prove the economic or objective reasons for a dismissal, employees dismissed under employment agreements started after March 7, 2015, can claim reinstatement rather than just a statutory indemnity.

COURT

The reinstatement remedy applies to dismissal for economic reasons that prove non-existent

With decision No.128 of July 16, 2024, the Constitutional Court reviewed claims that the Italian law on dismissals, breached several constitutional principles, including the one of equality before the law, because it did not provide that judges could reinstate dismissed employees in their jobs (and not only award a statutory indemnity), if the reasons on which dismissal was grounded, proved non-existent.

As a consequence of this decision, if an employer cannot prove the existence of the economic, objective reasons of dismissal stated in a dismissal letter, dismissed employees will be able to claim reinstatement to their jobs and not only a statutory indemnity.

Said decision applies only to employment agreements started after March 7, 2015 (previous employment agreements are regulated by a different set of laws).

COURT

Disciplinary dismissals for reasons punishable only with lesser sanctions are not subject to reinstatement

With decision No.129 of July 16, 2024, the Constitutional Court reviewed claims that the Italian law on disciplinary dismissals, allegedly breached several constitutional principles, including the one of equality before the law, because it did not provide that judges have to reinstate employees in their jobs (and not only award damages), if the reasons on which a disciplinary dismissal was grounded, are punishable only with lesser sanctions, according to the applicable collective agreement.

As a consequence of this decision, even if an employee was successful in objecting that his/her disciplinary dismissal breached the applicable sanctions under the relevant collective agreement, s/he would not be allowed to claim reinstatement, but only a statutory indemnity. Said decision applies only to employment agreements started after March 7, 2015 (previous employment agreements are regulated by a different set of laws).

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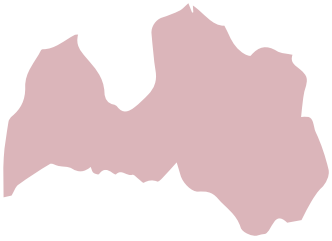
Latvia



Annual paid leave in the current year may be granted in parts, nevertheless one part of the leave in the current year shall not be less than two uninterrupted calendar weeks.

LAW
Minimum requirements for paid annual leave

The summer season is usually vacation time. To guarantee employees' rights to rest, the minimum requirements for annual leave are regulated by the Labor Law.

The annual paid leave may not be less than four calendar weeks, not counting public holidays, and it is granted each year in accordance with the agreement between the employee and the employer or with a leave schedule, where possible considering the employee's wishes. Annual paid leave in the current year may be granted in parts, nevertheless one part of the leave in the current year shall not be less than two uninterrupted calendar weeks.

In exceptional cases when the granting of the full annual paid leave in the current year may adversely affect the company's activities, it is permissible to transfer part of the leave to the subsequent year with the written consent of the employee. The part of the leave in the current year must not be less than two consecutive calendar weeks.

It should be noted that paid annual leave is granted for the employee's year of employment, calculated from the date of conclusion of the employment contract and ending in the relevant month and date of the following year.

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LAW
Other leaves stipulated by the Labor Law

In addition to paid annual leave, the Labor Law also entitles employees to supplementary leave, study leave, maternity leave, parental leave and leave for the father of child, adopters or any other person who, at the request of the child's mother, takes part in the care of the child.

Annual paid supplementary leave is granted to employees who have children in their care - the number of days of supplementary leave (from one to three working days) depends on the number of children and their age, and whether the employee has a child with a disability in their care. Employees whose work is associated with a special risk are also entitled to paid supplementary leave.

The Labor Law provides that an employee is entitled to 20 working days of study leave for the purpose of taking a state examination or preparing and defending a diploma paper but does not determine that the employer is obliged to pay for this leave. The conditions for the payment of study leave may be agreed between the parties in the employment contract or in the agreement or may be laid down by the employer in an internal regulation or order.

Read More

The Labor Law grants employees various types of leave, including supplementary leave based on childcare responsibilities, study leave, maternity and parental leave, and leave for fathers and other caregivers.

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Liechtenstein

Whether an arrangement is an employment contract depends on the actual intent of the parties and key criteria such as work performed for a third party, integration into a third party work organization, a continuing obligation, and payment of wages.

LAW
Distinction between an employment contract and other types of contracts

Under Liechtenstein law, it is not always easy to decide whether an agreement constitutes an employment contract or another type of contract. In cases of doubt, it is not the name of the contract in question that should be taken into account, but rather what the parties actually intended. If the satiation is ambiguous, the authorities tend to assume an employment contract.

Important criteria that indicate the existence of an employment contract are: (i) performance of work for a third party, (ii) integration into a third party work organization, i.e. subordination relationship, (iii) existence of a continuing obligation, (iv) wages in return for the work performed.

In addition, the following questions, for example, can be used to determine circumstantial evidence: (i) Who pays for the necessary expenses of the party providing the labour? (ii) Who pays the social security contributions? (iii) How free is the party performing the work in the organisation of the work and working hours, in the manner of performance and in the choice of place of work? (iv) Are paid holidays granted?

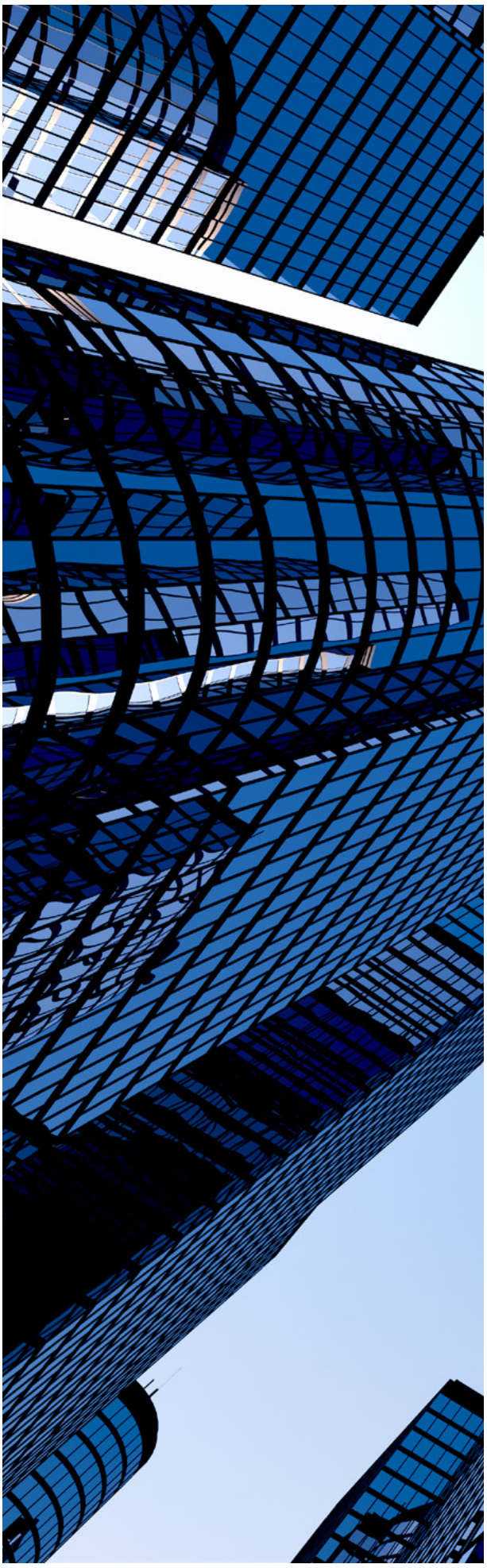
LAW
Post-contractual non competition clause

Employers and employees can agree to a post-contractual non-competition clause in writing. The non-competition clause comes into force upon termination of the employment relationship.

The non-competition clause is only permissible if the employee has gained insight into the clientele and/or business or trade secrets, and the use of this knowledge could significantly harm the employer. A non-competition clause must be limited in terms of time, subject matter, and territory.

An excessive non-competition clause can be reduced to a permissible level by the judge. A non-competition clause is excessive if it is effectively equivalent to a professional ban for the employee (e.g., in the case of doctors, lawyers, architects, etc.).

If the employee violates the non-competition clause, they must compensate the employer for the resulting damage. If a contractual penalty has been agreed upon, the employee can exempt themselves by paying the contractual penalty, unless it has been agreed that the payment of the contractual penalty does not exempt them from the non-competition clause. If agreed in writing, the employer may also demand that the breach of contract be remedied (specific performance).



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Lithuania

The high temperatures of the summer season create new risks in the workplace.

GUIDELINES
Construction sector developments

Starting July 1, 2024, the requirements for transparent employment measures are changing. Every construction worker, whether employed, self-employed, or posted to Lithuania, will receive a unique Transparent Worker Identification Code by logging into their Sodra account (or their employer's account) and completing an application. Until now, the Transparent Worker Identification Code has only been mandatory for employees working on a construction site.

However, as of July 1, 2024, the Transparent Worker Identification Code will be mandatory for all employees carrying out any type of construction, repair, or renovation work, including on private property. If persons performing construction work do not have a valid Transparent Worker Identification Code, this will be considered illegal construction work, and the client will be held liable.

Read More

GUIDELINES
Work on the day off

Rest days are intended for rest and recovery. If unforeseen situations require an employee to work on their rest day, it's crucial to adhere to the legal limitations. An employee can only be assigned to work on a rest day not included in the work or shift schedule with their written consent. Additionally, the employer must comply with mandatory maximum working hours and minimum rest periods. For work performed on a rest day outside of the work or shift schedule, the employee must receive at least double their regular salary, including all components such as bonuses, allowances, and other elements.

Therefore, it is the responsibility of every employer to ensure compliance with these legal requirements to avoid adverse legal consequences and penalties.

Read More

GUIDELINES
Allowance for long-term work

The long-term employment allowance is available to employees who have worked for more than five years. However, if a labor dispute committee or a court decides that the dismissal was unlawful, the date of dismissal is postponed and the grounds for dismissal are changed.

This change may result in the loss of the employee's right to long-term employment benefits. Employers must notify the National Social Insurance Board if the reason for dismissal changes. If it finds that the benefit has been paid unjustifiably, it will claim compensation from the employer. After compensating the State Social Insurance Fund Board, the employer can seek reimbursement from the employee and, if necessary, take the matter to court to recover the benefits paid out unlawfully due to the employee being unjustly enriched.

Read More

COURT
About undeclared temporary work

On July 4, 2024, the Supreme Court of Lithuania reviewed an administrative case involving a director of a legal entity who failed to declare temporary employment activities performed in the company according to the procedures established by the Labor Code of the Republic of Lithuania. The Supreme Court of Lithuania, upon reviewing the case, stated that temporary employment is characterized by the temporary employee performing work activities for the benefit and under the authority of the user of temporary work for a specified period, rather than for the benefit of the temporary employment agency. Therefore, cases in which employees are temporarily assigned to work for companies within their field of activity and for their purposes, under the supervision and direction of the user of the work, and with the provision of the necessary means and tools by the user of the work, are to be considered as temporary employment contracts.

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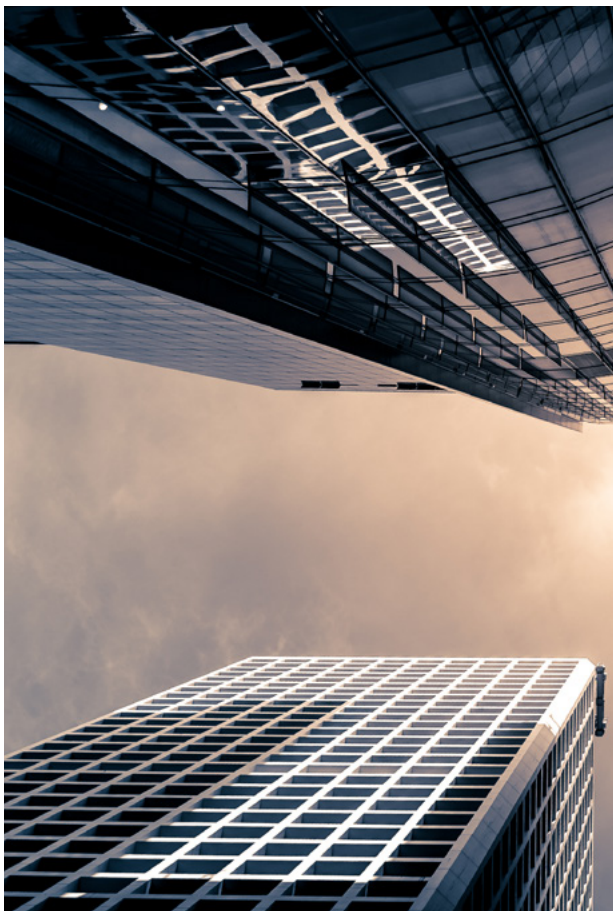

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Malta

Employers of temporary agency workers and outsourced workers will be legally required to provide equal pay to all employees performing the same work, regardless of whether they have fixed-term or permanent contracts.

COURT
Equal pay for temporary agency workers

The Maltese Government has published a Legal Notice declaring the transposition of the European Parliament and Council Directive 2008/104/EC which regulates temporary agencies and their activities within the European Union, effective as of January 2025. It comes to light with the ever-growing challenges of the Maltese employment industry, particularly the country's aging population and employee migration which have led to a spike in the importation of international workers and the need to safeguard their employment rights. This Legal Notice provides for equal pay for equal work for all workers doing the same job within the same company. Following this, employers of temporary agency workers and outsourcing workers would be legally bound to equally pay all employees doing the same work, regardless of whether they have definite or indefinite contracts.

Read More

COLLECTIVE AGREEMENTS
Malta Union of Teachers' new collective agreement

A new collective agreement has been reached between the government and the Malta Union of Teachers which is expected to bring about substantial improvement in income and conditions of work for teachers working in State and Church schools.

The Agreement revises the policy on security and behaviour in schools, provides for a substantial increase in educator's remuneration, special leave and allowances, as well as the opportunity for educators to carry forward onto the next scholastic year, any unused special leave they might have.

This Agreement was endorsed by 92% of the Malta Union of Teachers members and is expected to be part of a chain of other agreements expected to follow.

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Poland

Changes to collective labor law will include requirements for negotiating collective agreements, setting maximum durations for these agreements, and granting external trade union representatives access to workplaces.

LAW
Upcoming changes to collective labor law

The Ministry of Family, Labor and Social Policy is working on changes to collective labor law, which will affect collective labor agreements, collective bargaining, and trade unions. The proposed regulations include a requirement to negotiate workplace collective agreements and the option to include issues such as work schedules, overtime, remuneration conditions, and work organization in these agreements.

Additionally, the regulations will introduce maximum durations for collective labor agreements and mandate electronic submissions to the National Register of Collective Labor Agreements. According to the draft, the new regulations are set to come into effect on January 1, 2025.

Read More

LAW
New access rights for union representatives in the workplace

The Ministry of Family, Labor and Social Policy is working on amendments to collective labor law. As part of these changes, the rules regarding access to workplaces for members of trade union organizations, who are not employed by the given employer, will also be modified.

Employers will be required to grant access to individuals from outside the company who are representatives of a trade union organization operating within the company or a trade union whose members work for that employer. These individuals must adhere to the employer's regulations and must not interfere with the proper performance of work on the premises.

Failure to provide access to authorized persons will result in fines or restrictions on freedom.

LAW
Expansion of eligible groups for social benefits

A new regulation has been adopted to increase social benefits. The updated income criteria for social assistance are as follows: for individuals living alone, the threshold will be 1010 PLN, an increase of PLN 234, or 30%. For individuals in a family, the threshold will be PLN 823, an increase of PLN 223, or 37%.

The change in income thresholds will also raise the maximum amount of the permanent allowance to PLN 1229, an increase of PLN 229, or 23%. These changes will take effect on January 1, 2025, and will expand the group of individuals eligible for benefits.

Read More

GUIDELINES
Whistleblower procedure start date pushed to January 2025

The Ministry of Family, Labor and Social Policy has postponed the implementation of whistleblowing procedures until January 1, 2025. The Ministry explained that internal whistleblowing procedures may not begin at companies until early next year. This is because, according to the Law on Whistleblower Protection, employers must first verify the number of their employees. If a company has 50 or more employees, it must implement the procedures.

The number of 50 employees includes those who work on a full-time equivalent basis (under employment contracts) and/or those who perform paid work under non-employment contracts, including contractors. The law requires employee counts to be calculated on July 1 or January 1.

This position may be suprising, since the main part of the law goes into effect on September 25, 2024. Many companies are preparing to implement internal procedures by that date, as the law does not provide for a transition period.

LAW
Maximum temperatures at work

The Ministry of Family, Labor and Social Policy is working on a draft law to set maximum temperatures in the workplace. Currently, there are no specific rules about maximum temperatures, only minimum ones. Employers must ensure safe and hygienic working conditions and appropriate temperatures for the work being done.

The new rules are a response to climate change. The Chief Labor Inspector emphasized that increasing climate change needs to be addressed. The proposed changes may include setting maximum temperatures based on the type of work, introducing paid breaks, or giving the right to rest in a cool room.

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Portugal

LAW
Seasonal activities and employment

Portuguese labor law largely favors long-term contracts, based on the idea of longevity and stability of the employment relationship, which is intended to be lasting through time.

Therefore, the standard regime corresponds to employment for an indefinite period of time, although there are exceptions which allow for employment for a fixed or determinable period of time.

The contract for a fixed or uncertain term is expressly regulated by law and recourse to it must comply with the established legal criteria, which are based on the company's temporary needs, such as those of a company with seasonal activity.

Seasonal activity has come to be defined as an activity that only occurs during a certain period of the year, which is necessarily limited, and subsequently loses its usefulness.

Therefore, in order to be valid, the fixed-term contract based on seasonal activity must specifically state what characterizes such seasonality, imposing a mandatory reference to the time of year during which the activity is developed, alongside other specific legal requirements.

LAW
The right to rest and enjoyment of annual vacation

The Portuguese Labor Code grants employees an annual paid vacation period corresponding, generally, to 22 working days. According to the legislation, the vacation period must, in principle, be scheduled by agreement between the employer and the employee, with the possibility of interpolated vacation days, being mandatory to enjoy at least 10 consecutive days of vacation.

The purpose of this rule - compulsory enjoyment of 10 consecutive days of vacations - strives to ensure that employees have the opportunity to benefit from their right to rest, thus protecting their physical and mental integrity. Concomitantly, under the rules of the Labor Code, employees may not perform any other paid activity during their vacations, unless they already perform it cumulatively or their employer authorizes it. Should this situation arise, the employer is entitled to reimbursement of the vacation pay and the respective allowance, notwithstanding the employee's potential disciplinary liability.

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Slovakia

The Labor Code amendment effective from 1 August 2024 extends the obligation for service suppliers to pay wages not paid by direct subcontractors from only cross-border service providers to now include domestic service providers in Slovakia.

LAW
Liability for unpaid wages in supply chains for specified types of services

As stated in the March edition of the newsletter, the Labor Code was planned to be modified as to the conditions for payment of wages in subcontracting chains.

The amendment entered into force on 1 August 2024 and it stipulates the provisions on the obligation of a service supplier in the territory of the Slovak Republic to pay wages that have not been paid to an employee by the employer, if the latter is a direct subcontractor of the service supplier (the service supplier is not liable for the unpaid wages for the entire chain of subcontractors, nor the direct subcontractor is not liable for its subcontractors), as well as in specifying the conditions under which such a service supplier may refuse to pay wages.

The original wording of the Labor Code was applicable only to the cross-border provision of services, whereas the amendment allows its application also to the domestic provision of services.

The employee is entitled to be paid by the service provider only to the extent of the minimum wage applicable at the time of performance of work under the subcontracting relationship for each hour of performance of work, up to a maximum of the difference between the amount of the minimum wage applicable at the time of performance of work under the subcontracting relationship for each hour of performance of work and the wage provided by the subcontractor for the performance of that work.

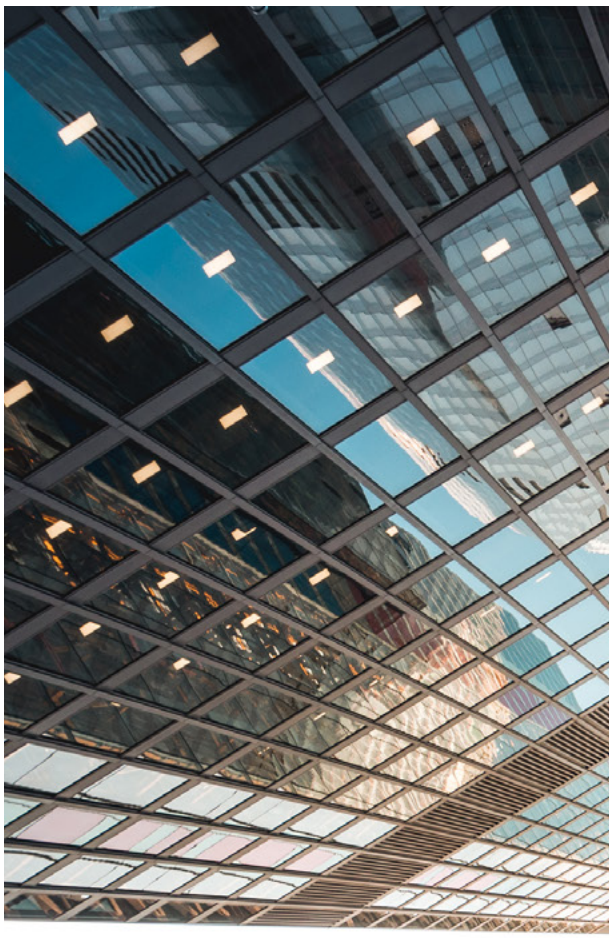
LAW
Amendment to the Act on the Residence of Foreigners – effective from July 15, 2024

The purpose of the amendment was to transpose the new Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and repealing Council Directive 2009/50/EC.

Substantial part of the amendment is focused on the content of highly skilled employment, which is considered to be employment requiring higher professional qualifications and for the performance of which the third-country national is entitled to a monthly salary of at least 1.2 times the average monthly salary of the employee.

Higher professional qualifications are evidenced by a decision on recognition of a higher education document or a decision on recognition of a higher education degree.

Another part of the amendment deals with modification of the conditions for granting a work permit to a foreigner and the conditions for granting a temporary residence permit, in particular for the purpose of employment. It also simplifies the process of applying for a residence permit in the territory of Slovakia, where the foreigner will not have to submit some of the existing documents with the application, as they will be transferred to another entity.



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Slovenia

COURT
Determination of contractual penalty for non-compliance with the notice period

On May 28, 2024, the Supreme Court ruling VIII Ips 18/2024 was published, in which the court addressed the question of whether it is possible to agree on a contractual penalty for an employee in an employment contract in case of non-compliance with the notice period. The court held that in considering the permissibility of use of the contractual penalty, the subordinate and dependent position of the employee compared to the employer must be taken into account, both when concluding the employment contract and during the existence of the employment relationship. One of the purposes of labor law is to mitigate such a position. This purpose is expressed through the mandatory provisions of labor law, which must also be considered when assessing the permissible use of civil law institutes in the field of labor relations. Allowing a contractual penalty during the term of the employment relationship and upon its termination would worsen the position of the employee and further improve the position of the employer.

Therefore, a contractual penalty in the event of the unilateral cessation of the employee's work during the notice period is not permissible, as it represents an excessive intrusion into the rights and obligations of the employee, unlike liability for damages for the incurred damage.

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LAW
Adopted amendment to the vocational and technical education act

On June 28, 2024, the Act Amending the Vocational and Technical Education Act (ZPSI-1C) was adopted, which, among other things, specifies changes regarding the reimbursement of costs for students in practical training under an apprenticeship contract.

ZPSI-1C supplements the components of the apprenticeship contract and adds an additional provision on the right of the student to receive meals during work or to be reimbursed for meal costs during work.

Furthermore, among the duties of the employer who enters into an apprenticeship contract, the obligation to provide meals during work for the student or to reimburse the student for meal costs during work is also added.

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Spain

COURT

The handbag as evidence: valid checking or labor privacy violation?

An employee was dismissed for disciplinary grounds because of carrying in her handbag products that she had not paid for when leaving the shopping center where she was working.

Although previously the Court declared the dismissal fair, the sentence was appealed and the High Court of Justice of Andalucia declared the dismissal null and void, on the grounds that the check carried out by a security guard, without the presence of a legal representative of the employees, violated the employee's right to privacy, which annulled the evidence obtained and led to the declaration of nullity of the dismissal.

Subsequently, the Supreme Court upheld the nullity of the dismissal and emphasized the importance of respecting the privacy and dignity of employees in situations of checking personal belongings, highlighting that the presence of a third person during the check is a guarantee of objectivity and effectiveness of the evidence.

Sentence of the Supreme Court (Social Chamber) number 874/2024, 5th of June 2024, Appeal number 576/2022.

COURT

Nullity of the clauses in agreements that seek to substitute compensation of remote working expenses for days off

The sentence analyses a collective conflict raised by the trade unions requesting the nullity of the clauses of the teleworking agreements in the company adopted since the pandemic.

The first clause stipulated the company's right to require office work for up to 20% of the working time, which is considered as a unilateral modification not permitted by the Remote Working Law. On the other hand, the second clause stipulated that compensation for remote working expenses is made by giving days of free disposal, which is considered insufficient and not in accordance with the law.

The sentence declares both clauses null and void on the grounds that they violate the provisions of current labor legislation, highlighting the importance of respecting the rights of employees when speaking about remote work, including the obligation to economically compensate the expenses arising from this type of work.

Sentence of the National Audience (Social Chamber) number 62/2024, 3rd June 2024, Appeal number 289/2023.

COURT
Heart attack in the changing rooms as a working accident

An employee suffered a heart attack in the company's changing rooms before starting his working day and his wife requests for a widow's pension and death benefit for an accident at work. Initially, the Social Court rejected the claim considering that it was not an accident at work, as the heart attack did not happen during working time.

However, the Social Chamber of the High Court of Justice overturned this decision, declaring that the employee's death was indeed an accident at work, as he was at the workplace and had put on the safety boots necessary to carry out his duties, which is considered essential for the provision of his services, being therefore in working time.

However, the Supreme Court finally concluded that the heart attack cannot be considered an accident at work, because the employee had not yet registered in or started his job, and it also pointed out that the presumption of employment does not apply if the employee was not at his workplace at the time of the incident.

Sentence of the Supreme Court (Social Chamber), number 724/2024, 22nd May 2024, Appeal number 3911/2021.

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Switzerland

Either party may terminate an employment agreement at any time, observing the specified notice periods, which vary from 7 days during probation to 3 months after ten years of service, with exceptions for fixed-term contracts and suspensions due to illness or accidents.

LAW
Termination of employment agreement

Either party may terminate an employment agreement at any time, provided that the agreed termination period is observed.

If the employment agreement or the collective bargaining agreement does not state otherwise, the following periods of notice must be observed in accordance with the provisions set out in the Swiss Code of Obligations: during the probationary period: 7 calendar days; during the first year of employment: 1 month for the end of one month; from the second to the ninth year of service: 2 months, for the end of one month; from the tenth year of service: 3 months.

A fixed-term contract will automatically come to an end on the scheduled date. It is not possible to terminate it in advance unless there are serious reasons for doing so or unless the contract provides for this option.

In the event that the employee becomes ill or is involved in an accident after being dismissed, the notice period will be suspended for the duration of the illness or accident. It will then resume when the employee is able to work and will be extended to the next possible date (e.g., the end of the month).

LAW
Protection period

Once the probationary period has concluded, an employer is prohibited from dismissing an employee on the grounds of illness or accident. In such cases, the employee is protected from dismissal for a fixed period. During the first year of employment, the employee is protected for 30 days. For the second to fifth year, the period is 90 days. From the sixth year onward, the employee is protected for 180 days. The same protections apply during pregnancy and for 16 weeks after childbirth.

In all of these cases, the employer is required to wait until the employee returns to work before issuing a notice of termination. Any notice given during the protected period is considered null and void, rendering it invalid.

The employer must then terminate the employment relationship again when the employee returns to the workplace or at the end of the protected period for the termination to be valid. Otherwise, the contract continues to run normally.

However, during a protected period, the employee is permitted to issue a notice of termination.

After probation, employees are protected from dismissal due to illness or accident for specific periods: 30 days in the first year, 90 days from the second to fifth year, and 180 days from the sixth year onward.

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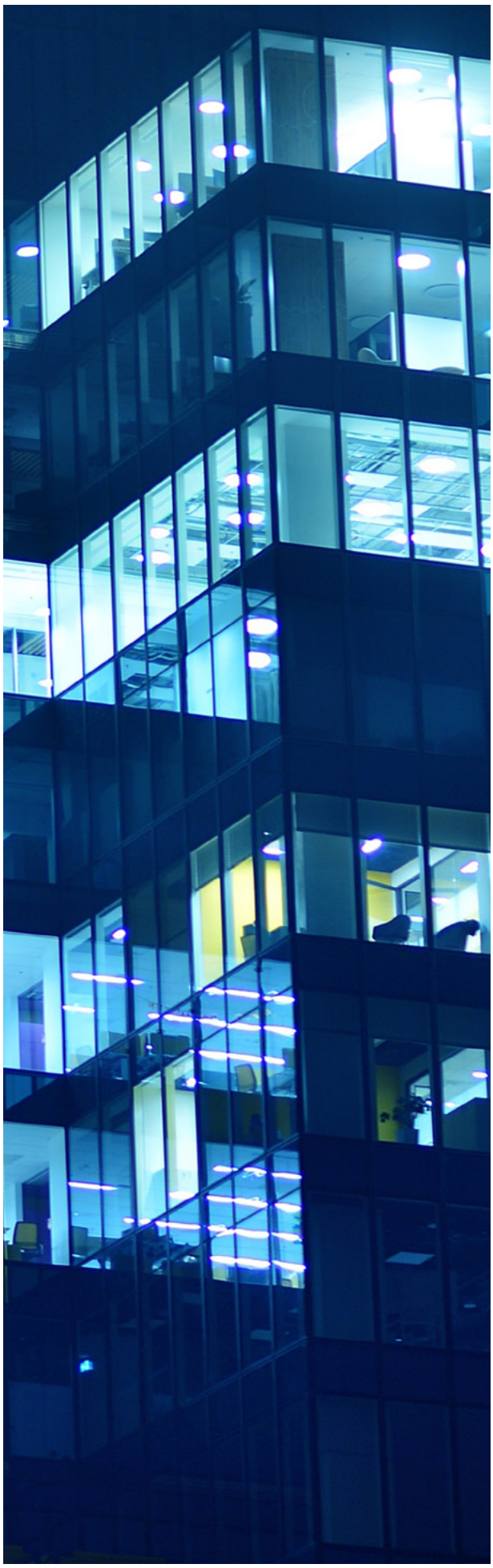

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