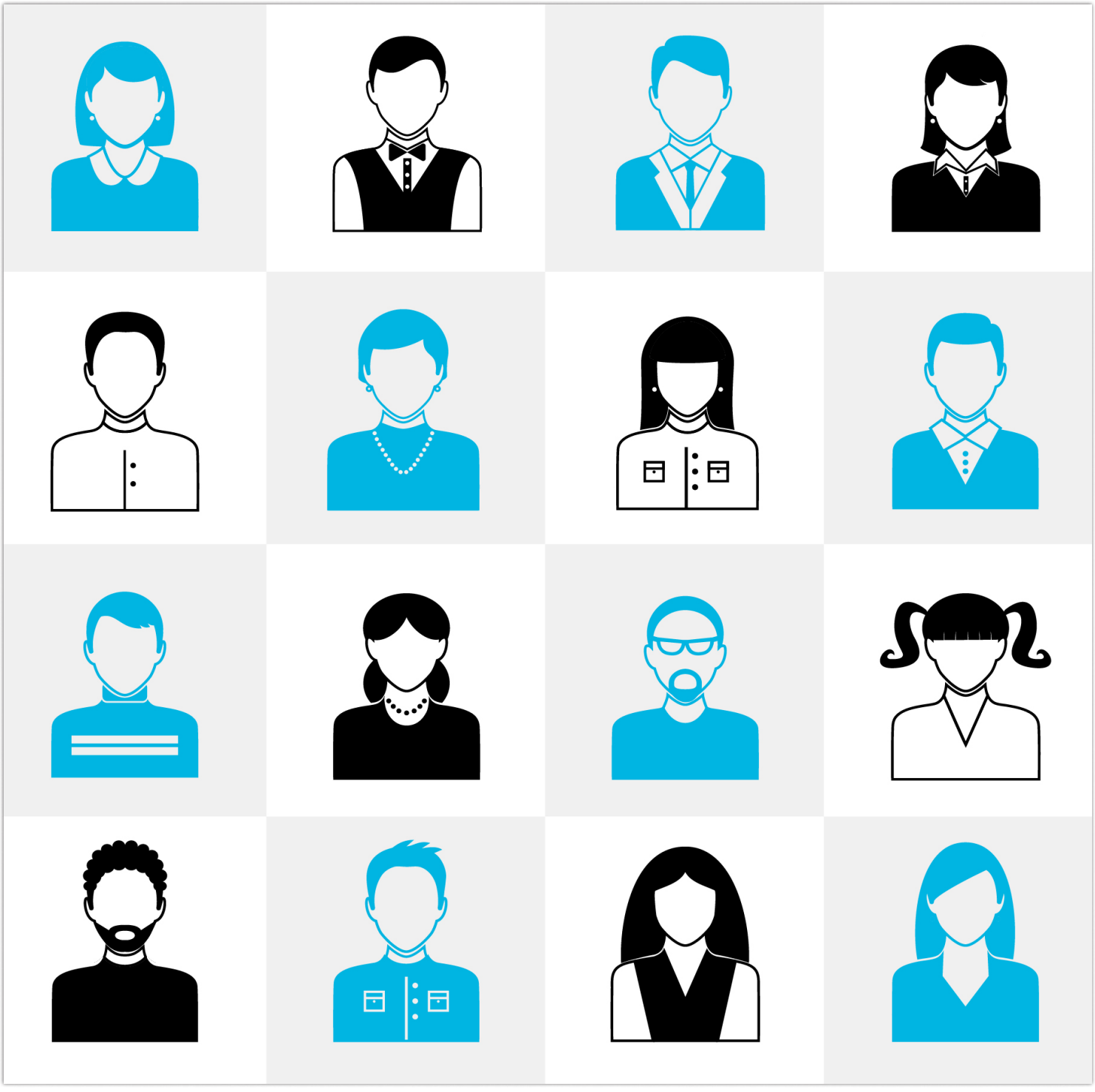
European Employment Law Update



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INTRODUCTION

An organisation's workforce is one of its most important assets. However, for organisations with a pan-European presence, keeping up to date with changes in legislation and best practice can seem like a never-ending task. This is particularly the case in the area of labour law, where change can be fast paced.

We have collaborated with a number of leading law firms across Europe to create a Guide to European Labour Law changes. In this Guide, we summarise the key changes which are on the horizon for 2015, in order to assist you in creating your people strategy for the next 12 months.

In a number of jurisdictions the current economic pressures and austerity measures continue to influence new employment legislation, including in the introduction of additional protections for those working on temporary contracts, as well as social welfare reforms. The guide also outlines key changes in some of the traditional areas of employment law, including holiday pay and discrimination.

Contact details for all of the contributor firms are provided within the Guide, so please do get in touch if you have any questions.

BELGIUM

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The aim of the new centre-right government, in place since October 2014, is to focus on social economic cost-cutting measures to safeguard social welfare as summarised below. The current wave of protests and strikes - already referred to as the "hot autumn" in Belgium - clearly show that the trade unions are not planning to easily acquiesce in the measures "imposed" by the new government.

- Although exceptional in Europe, Belgium maintains the automatic wage indexation. To limit the labour costs, a one-time "index jump" has been proposed for 2015. This was very negatively received by the trade unions who claim that the long term loss for workers is not compensated by job security and that the measure only benefits employers.
- Salary freezes have been introduced for 2013-2014 and are expected to be extended for 2015-2016. An increased level of control of the wage norm and an automatic correction mechanism in case of transgression is also planned for 2015.
- Reductions in employers' social security contributions, already granted in the Competitiveness Pact of the previous government, will be extended. The intent is to decrease the present average rates of 33% for white-collar workers and 39% for blue-collar workers to a single basic rate of 25%.
- Creation of a new career path offering companies more flexibility with regard to working time and work organisation. Salaries will be adapted to competencies and productivity, possibly resulting in a possible decreasing salary curve but compensated by a better work-life balance.
- A gradual rise in the retirement age from 65 to 67 by 2030 (66 in 2025).
- Further limitation of the bridge pension system (now called unemployment with company allowances') by increasing the age from 60 to 62 and a reform of the exceptional regimes.
- Gradual abolition of the pension bonus.

Creation of a "single" status for workers

In 1993, the Constitutional Court ruled that the difference in treatment between blue collar and white collar workers was no longer acceptable. However, it took until 2013 before legislative action was taken, finally leading to a Parliamentary Act of 26 December 2013 that fundamentally harmonised the notice periods for blue and white collar employees. The law came into force on 1 January 2014.

The new notice periods are more favourable for blue-collar workers, but less for white-collar workers. The major advantage of the new rules is their clarity, since the parties will no longer have to negotiate the notice period.

Although an important step was taken towards the constitutional principle of equality, numerous discriminations between the two statuses remain, e.g. different applicable joint committees, different pension rights, and different holiday pay.

It is expected that in 2015 the legislation will continue eliminating the discriminations between the two categories of workers. The Act of 5 May 2014 has, for example, taken a second step in the harmonisation process. By 1 January 2025, the differences between blue-collar workers and white-collar employees regarding their supplementary pension plans must be eliminated according to a specific timeframe starting in January 2015.

Dismissal

A federal CBA no. 109, concluded on 12 February 2014 by the National Works Council, which came into force on 1 April 2014, obliges employers to justify their decisions in detail when dismissing workers. Until 31 March 2014, a formal reason was only required in some circumstances such as dismissal for gross misconduct or dismissal of a protected employee.

For 2015, it is expected that, the newly introduced obligation to "motivate" dismissals will trigger numerous disputes before the Labour Courts. It is expected that the parties will try to avoid such discussions by agreeing to accept the employer's reason for the dismissal, in exchange for additional compensation.

Psychosocial risks

On 1 September 2014, new legislation regarding psychosocial risks came into force. The new legislation broadens the scope of the previous legislation on harassment by covering all psychosocial risks (such as stress and burnout), instead of being limited to violence, moral harassment and sexual harassment at work. Consequently, the new rules, as well as the contact details of the prevention advisor for psychosocial.

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The new Labour Act (Official Gazette No.93/14, hereinafter: "Labour Act") has just recently been introduced in Croatia on 7 August 2014, and what lies before us is a period of implementation of these significant and substantial changes.

The changes affect the duration of working hours, overtime, execution of employment contracts, workers' council, termination of employment contracts, strikes etc.

The new Labour Act introduces the possibility of assignment of workers to a subsidiary of the employer (Croatian subsidiary - up to six months; foreign subsidiary - up to two years). This assignment of workers to another (affiliated) employer is entirely new in Croatian labour law.

Hours of work

Significant amendments were also made to the provisions regulating working hours and the schedule of working hours. The provisions governing full time work have been amended so as to allow employees already working full time to effectuate 8 more hours of additional work per week (180 hours a year) on occasional work; it also allows an uneven schedule of weekly working time. Furthermore, the employer is obliged to provide the employee with a written request for the overtime work (before such work commences). In cases of urgency, the employer is obliged to issue a written confirmation of the request within seven days from making the request. The total working hours of a worker engaged in overtime work is limited to 50 hours of work (both regular and overtime) per week.

Fixed-term employment

The new Labour Act explicitly stipulates that the provisions governing fixed-term employment contracts, termination of employment contracts, notice periods and severance pay are neither applied nor relevant for those natural persons who are, pursuant to the provisions of the Croatian Companies Act, both members of the management board and in an employment relationship with a company.

In some aspects, the new Labour Act is less strict:

- Employers are not obligated to report the contract for separate place of work to labour inspection.
- Employee who works full time under certain conditions, may enter into contracts with another employer (extra work).
- Regular termination of employment is not conditional on an obligation to educate or train employees for other jobs within the same employer.

Termination of employment

Speaking of termination, under the conditions prescribed by law, the notice period may now actually run during temporary incapacity for work, annual leave, paid leave and garden leave. In judicial termination, indemnity is reduced to a maximum of eight prescribed or contracted monthly wages. Also, the institution of redundancy program is abolished and the criteria and procedures for the decision on the extension of the collective bargaining agreement are changed.

Implementation of the above changes is expected in 2015.

Regarding other labour news expected in 2015, the new Collective Agreement for Trade has not been signed yet, as negotiations "stalled" mainly regarding the new Labour Act.

Employers shall harmonise their working regulations with the provisions of the Labour Act within six months following the entry into force of this Act, i.e. at latest by 7 February 2015.

As of 1 January 2015 changes and amendments of the Croatian Pension Insurance Act entered into force, by which each new employee shall be registered by an employer before the competent authorities at earliest 8 (eight) days before beginning work and at latest before the start of work (i.e. at latest 1 working day earlier), and shall be de-registered in next 24h as of end of employment relationship.

DENMARK

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The Danish Government has recently introduced a number of bills that will lead to changes in Danish labour and employment law. The bills were introduced as part of the Danish Government's legislative program for 2014-2015. The most important changes are outlined below:

Danish Salaried Employees Act

Pursuant to Section 2a of the Danish Salaried Employees Act, an employee who is dismissed after having been employed with the same company for 12, 15 or 18 years is entitled to a severance allowance of one, two or three months' salary, respectively. However, pursuant to Subsections two and three, this does not apply if the employee, upon expiry of employment, will receive state pension or retirement pension from the employer and has been a member of the pension scheme before reaching the age of 50.

The bill introduces new seniority requirements. Pursuant to the bill, salaried employees will still accrue a right to one month's salary if they have been employed with the same company for more than 12 years and in future they will accrue three months' salary if they have been employed with the same company for more than 17 years.

Furthermore, in order to ensure compliance with EU case law, the bill also repeals subsections three - four. Thus, if the bill passes, the employer can no longer refuse to provide severance pay on grounds of the salaried employee's possible entitlement to receive a state or an employer's retirement pension.

The bill constitutes a significant simplification of the existing rules.

Bill to amend the Danish Anti-Discrimination Act

The Act currently contains a provision exempting agreements stipulating a mandatory retirement age of 70 years or more, from the prohibition against age discrimination.

A new bill amending the act will abolish this provision to the effect that in future it will no longer be possible to validly enter into such agreements - collective as well as individual - on the expiry of an employment relationship due to age.

The bill was adopted on 18 December 2014. Thus, individual agreements which have already been entered into on a mandatory retirement age will become void as of 1 January 2016.

Regulations regarding Restrictive Covenants

Non-competition and non-solicitation clauses are currently only governed by the provisions set forth in the Danish Salaried Employees Act. However, pursuant to the new bill, the current regulations on non-competition and non-solicitation clauses will apply to all employees and not only to salaried employees. Furthermore, the bill also proposes a maximum duration of 12 months for restrictive covenants. Finally, the bill proposes that the rules on compensation for accepting a restrictive covenant are changed with the result that the longer a restrictive covenant applies, the higher the compensation received by employees.

The government is also expected to prohibit the use of non-hire clauses.

Danish Holiday Act

The amending bill proposes that employees who are not entitled to sick pay shall receive holiday pay during sickness after the first day of absence of each period of sickness. The aim of the bill is to ensure compliance with the EU Directive on Working Time.

The bill was adopted on 4 December 2014 and entered into force on 1 January 2015.

Danish Act on the Labour Court and Industrial Arbitration

Pursuant to an amending bill, the Labour Court will in future be granted jurisdiction in certain disputes concerning the Danish Act on Temporary Employees.

The bill was adopted on 4 December 2014 and entered into force on 1 January 2015.

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Changes in Non-Discrimination legislation

Tightened requirements are expected in 2015 for preventing discrimination in the workplace. The new Non-Discrimination Act, which is currently under consideration, proposes several significant changes in the legislation.

Under the proposals, employers will be obliged to implement reasonable adjustments in order to better promote the working conditions or employment opportunities of employees or candidates who are disabled or otherwise demand special consideration due to, generally speaking, their physical condition, gender, ethnical background or any other comparable individual reason that may be subject to discriminatory behaviour. Failing to make reasonable adjustments or refusing to guarantee sufficient protection would be regarded as discrimination. Furthermore, all employers with at least 30 employees would be required to prepare an equality plan.

The sphere of prohibition of discrimination will be specified more extensively in the future. Thus, discriminating against an employee who is not himself or herself disabled but whose child is disabled shall also be considered as discrimination in employment, based on a preliminary ruling of the Court of Justice of the European Union.

It is proposed that the maximum amount of the compensation (currently €17,800, although it includes a possibility for the court to exceed the maximum amount) payable for breaching the prohibitions of discrimination be removed and the amount payable being based only on an overall assessment of the situation.

Changes regarding external staff and posted workers

The Act on the Contractor's Obligations and Liability when Work is Contracted Out and the Act on Posted Workers are to be revised with the aim of tightening certain requirements in situations where work is contracted out or where the employer has foreign posted workers.

Regarding the first mentioned Act, the main changes relate to extending the information to be obtained from the contractor to also cover information on tax debt as well as pension insurance and occupational health care coverage. Application of the increased negligence fee (a maximum of €50,000) for non-compliance is proposed to be extended from the building and construction industry to other fields of business where work may be contracted out under the scope of application of the Act.

The main revisions of the Posted Workers Act relate to certain information obligations. Employers with posted workers will be obliged to inform the foreign employer of the Finnish authorities whose responsibility it is to supervise and advise on compliance with the Posted Workers Act. Moreover, the foreign employer of the posted workers will have an obligation to present a certificate of the validity of the social security coverage of the posted workers prior to the posted workers commencing their work.

Other news

Industrial peace

Finnish labour market organisations are negotiating new improvements in order to better ensure industrial peace. Illegal strikes and measures of support have resulted in extensive discussions regarding the right to strike and whether the current measures are adequate for the prevention of illegal strikes.

The aim of these regulations is to implement a new system whereby labour market organisations are able to more efficiently negotiate in case of disagreements and conflicts to eliminate the current situation where strikes are used as negotiation tactics.

Retirement age

Finnish labour market organisations have recently negotiated a new higher nationwide retirement age, and the preparatory work for the new legislation is to be initiated in 2015. The lowest general retirement age is expected to be gradually increased from the current age of 63 to 65.

FRANCE

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Three major bills are expected to modify French employment law in 2015: reformation of the Labour courts, removal of the obstruction offences (delit d'entrave), and amendment to the law on working time.

Reform of the Labour courts

Labour courts are dedicated to handling individual disputes between employers and employees. The suits are mainly introduced by employees (96.3% in 2012) and seek mainly to challenge the reason for dismissal (8 out of 10 requests).

The Labour courts are not composed of professional magistrates but of four counsellors including two representing the employers and two the employees, who are elected by their peers every five years.

Prior to the commencement of court proceedings, the case goes before the conciliation board, which comprises an employee- and an employer counsellor. The board endeavours to find an agreement between the parties: in 2012, only 20% of the requests introduced in court ended up with conciliation. Where the parties do not conciliate, the case is then referred to the judgment committee consisting of four counsellors.

In the event of a failure to reach a decision, the case is then referred to a professional judge to decide the case.

The Government filed a bill to reform the appointment of Labour court counsellors and accelerate the implementation of the Labour court proceedings.

Labour court counsellors would be appointed, on the one hand, by the trade unions and, on the other hand, by the employers' organisations. This system should, provided the text is adopted, enter into force at the end of 2017.

There are additionally, plans to accelerate the procedure before the Labour Court.

Nowadays the duration of a procedure before the Labour Court lasts around 15 months from the day of the request to the final judgment and even more in some overcrowded Labour Courts (28 months). This duration is considered to be unacceptable as it does not allow the employees to obtain a fast decision.

The power of the conciliation board is to be strengthened. In case of failure of the conciliation, the bill provides, should the parties agree, for the removal of the committee judgment stage so that the case be reviewed in a hearing presided by a professional judge.

In case of failure of the conciliation relating to a case of termination, the board of conciliation may refer the case to a limited judgment committee (an employer and employee-counsellor) which will rule within three months.

Should the employer be condemned, he shall pay the employee a lump sum in accordance with a scale fixed by decree and that will depend on the employee's seniority.

Should the employee and employer counsellors fail to reach a decision, the case will be sent back to resolve the impasse.

Removal of the obstruction offences

The works councils must be informed and consulted on many employers' actions relating to the general management of the business. For example, in case of transfer of a company, the employer must first inform and consult the works council on the proposed transfer.

Should the employer fail to respect this information and consultation process, it could be sued for the offence of obstruction. This offence carries a prison sentence (probation for first offenders) and a fine payable by the employer.

The President of the French Republic has proposed that the criminal penalties associated with the offence of obstruction be replaced by financial penalties. However, this proposal does not have unanimous support and some unions have already expressed their opposition to it.

Sunday work and night work in retail businesses

Last year, France has been the theatre of a major debate on the ability for employers to have their employees work on Sundays and, in some major tourist areas, to work after 9pm.

A group of unions systematically and successfully challenged the Sunday and night openings of retail stores. As a result, employers were prohibited from opening on those days/schedules, with severe penalties in operation for breaches.

The left-wing Government has proposed a bill, currently pending before Parliament but largely acclaimed by the right-wing opposition, upon which work on Sundays would be mostly authorised and extended to populated areas.

GERMANY

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The most significant change in Germany in 2015 is the "Minimum Wage Act (MiLoG)", effective as of January 1 2015. The Act stipulates the implementation of a mandatory national minimum hourly wage of €8.50.

In general, all employees – including those in marginal part-time employment – are covered by the MiLoG. For some occupational groups the MiLoG formulates exemptions from this principle. Unfortunately, the scope of these exemptions is not clear. This creates significant legal uncertainty.

Under section 3 MiLog, any agreement that constitutes an intentional or unintentional deviation from the MiLoG, to the detriment of the employee is invalid. The same applies to concealed circumventions of the MiLoG, such as unpaid overtime which in the case of a fixed monthly salary might mean that the minimum wage for each hour of actual work is not reached. An invalid agreement does not lead to the employer's obligation to pay the minimum wage, but instead according to Section 612 German Civil Code (BGB) the remuneration usually expected in the respective sector has to be paid (e.g. the standard wage pursuant to the existing collective bargaining agreements) which can be considerably higher than the minimum wage.

The entitlement to the minimum wage cannot be waived by the employee in advance. But even after the claim has accrued, a waiver will only be valid if it is part of a court settlement. A forfeiture of the claim is excluded.

According to the MiLoG the minimum wage is payable at the latest on the banking day of the month following the month within which the work performance was provided which gives rise to the question as to which remuneration components can be credited against the minimum wage. The statutory due date indicates that only monthly irrevocable payments are to be considered.

In addition to the employer's liability towards his own employees, Section 13 MiLoG introduces an entrepreneur's liability for his subcontractors. As a consequence the employees of the latter can resort to the entrepreneur if the subcontractor does not pay the minimum wage.

It is of crucial importance that the requirements of the MiLoG are observed as even unintentional violations of the MiLoG involve significant liability risks. Any employer who does not pay the minimum wage or does not do so on time is acting illegally under Section 21 MiLoG. This is liable to punishment by an administration fine of up to €500,000.

HUNGARY

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Main changes in 2014

A new labour code came into force in 2012 (Act I of 2012, the "Labour Code"). The Labour Code has introduced several important changes aimed at increasing flexibility in the labour market. The changes include the introduction of further types of atypical forms of employment meaning that, beyond part-time and temporary employment, provisions on employment on call, job sharing and shared employment relationships. Another significant change was the less formal approach in respect of termination of employment.

After such significant changes, the new Civil Code of Hungary became effective in 2014, making the amendment of the Labour Code necessary. As a result of changes in the Labour Code, civil law elements became more important in employment law. For example, the general rules of the Labour Code are now in compliance with the Civil Code and the protection of personal rights in the employment relationship is also subject to the Civil Code. The rules relating to electronic documents were also modified to implement the relevant rules from the Civil Code.

Previously, in the case of executive contracts the parties had great freedom when agreeing the terms and conditions of their employment. However, after 15 March 2014, some rules, mainly relating to the protection of employees in connection with having children, the Labour Code will no longer allow the possibility for deviation from its mandatory provisions.

It is also worth mentioning that according to a decision of the Constitutional Court, the protection of employees expecting a baby was also strengthened in 2014.

Changes in taxation affecting employment relationships

Cafeteria

The new cafeteria rules will be effective from 1 January 2015. Employees will be taxed at the rate of 35.7% if the annual amount of the fringe benefits is under HUF 200,000 (approx. €645).

For benefits which fall into the next band of between HUF 200,000 and HUF 450,000, the rate of tax will be 51.17 % (with the exception of SZÉP-cards (electronic vouchers used for the payment of fringe benefits), where the tax rate will remain 35.7%).

New taxation rules in connection with temporary agency work and school cooperatives

About 130,000 people are employed through agencies under temporary work contracts and around 100,000 students work through school cooperatives in Hungary. The Government plans to change the VAT payment rules with respect to these forms of employment. From 1 January 2015, a reverse charge procedure will be introduced, which means that customers will be liable for the VAT-payment instead of the service providers. Such a change in the VAT-payment may be an effective tool for decreasing tax avoidance. Although this sector is not on the list of the VAT Directive (2006/112/EC) based on which a reverse charge mechanism may be applied, the Hungarian Government hopes to get a green light from the EU in this respect.

IRELAND

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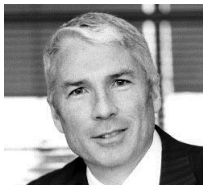

Workplace Relations Bill 2014

The objective of this Bill (which is expected to be enacted in 2015) is to reform workplace relations bodies in order to deliver a more effective and cost efficient model of redress. The main reforms proposed in the Bill are the establishment of a new Workplace Relations Commission ("the WRC") which will carry out the functions currently vested in the Labour Relations Commission, the Equality Tribunal, the Employment Appeals Tribunal (in the first instance), and the National Employment Rights Authority ("NERA"). The WRC will deal with workplace complaints in the first instance. The Labour Court will be the single appeal body for workplace relations appeals, including those currently heard by the Employment Appeals Tribunal. The Court will be expanded to deal with its new jurisdiction.

Amendment to Organisation of Working Time Act

The Government recently announced its intention to amend the Organisation of Working Time Act 1997 in relation to the accrual of annual leave to bring it line with the grounding European Directive. The proposal would mean that workers who have been sick during a leave year and were not able to take their annual leave entitlement will now be able to take such accrued annual leave within a 15 month period after the end of the leave year. The amendment is as a result of a number of decisions from the Court of Justice of the European Union ("CJEU"), which started with the Stringer/Schultz Hoff case in 2009, and authority for the proposition that sick leave cannot dilute the entitlement to annual leave. It was subsequently decided in the case of KHS AG v Schulte that national law could impose a cap on the unlimited accrual of annual leave during successive years of absence on sick leave with a 15 month carry over period deemed appropriate in this case.

Family Leave Bill

This Bill will consolidate with amendments all family leave legislation. It will include maternity protection legislation, adoptive leave legislation, carers' leave and parental leave legislation. Aside from the consolidation of legislation, it is unclear yet whether proposals for both paid paternity leave and shared maternity/paternity leave will feature in the new Bill.

The relevant Minister had indicated that she supports fathers having the right to two weeks of paid leave following the birth of their children. Currently, there is no provision for paid paternity leave in Ireland. The Minister has also indicated that she supports proposals for the sharing of maternity leave by mothers and fathers subject to certain conditions. Whilst supporting this in principle, details of how it would operate require further detailed consideration and as yet it is unclear whether these proposals will form part of the Family Leave Bill.

Industrial Relations (Amendment) Bill

This Bill will provide a new legislative framework to deal with the issues arising from the Supreme Court ruling in the case of McGowan and Others v Labour Court and Another [2013] IESC 21 which struck down Registered Employment Agreements ("REAs").

NETHERLANDS

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2015 brings important changes in Dutch employment as part of an extensive package of measures aimed at increasing flexibility in the Dutch labour market and simplifying rules on dismissals.

As of 1 January 2015, employers must notify temporary employees, in writing, on contracts of six months or longer, at least one month prior to the contract end date as to whether the contract is to be renewed and, if so, on what terms. Failing this, the employer must pay the employee an amount equal to the salary over the period during which the employer failed to notify. If no amendments of the terms are included in the notification, the contract is extended under the same terms.

As of 1 January 2015, temporary employment contracts for six months or shorter may no longer include probationary periods.

Temporary contracts

As of 1 January 2015, temporary employment contracts may no longer contain a non-compete clause, unless it is substantiated in the contract as to why the employer has a major business interest in such a clause. Any such interest must still be present upon the termination of the employment contract, failing which the non-compete clause cannot be relied upon.

The aggregate time period during which an employee may be engaged on a temporary basis is decreased from three to two years as of 1 July 2015. While the maximum number of consecutive temporary employment contracts remains three, the minimum interval period required to start a new chain of temporary contracts is extended from three to six months.

Dismissal and termination of employment

The dismissal system is drastically changed as per 1 July 2015. While employers may currently either give notice of termination after having received permission from the Labour Office or request a court to terminate the employment contract, the reasons for the termination will henceforth determine which route must be followed.

The Labour Office must be involved if the employment contract is terminated for business reasons or incapacity due to illness exceeding two years. The court must be addressed if termination is sought due to poor performance or other reasons related to the individual employee. The termination date will be roughly the same in both routes, whereby there must be at least one month between the notice or the termination decision of a court and the termination date. Appeal and cassation to the Supreme Court will be possible in both routes. Collective bargaining agreements may provide for a committee deciding on termination based on business reasons, whereby the selection criteria applicable to collective redundancies may be deviated from.

From 1 July 2015 onwards, an employment contract may be terminated by mutual consent either by means of a compromise agreement or by consent of the employee following a notice of termination (without prior permission of the Labour Office) of the employer. A mandatory two week reflection period will apply, during which the employee is entitled to revoke his consent. If the employer does not inform the employee in writing of this two-week reflection period, it is extended to three weeks.

A statutory severance pay (the "transitional fee") is introduced as per 1 July 2015 for employees who have been employed for two years or longer. The fee will amount to 1/6 gross monthly salary per six months of employment during the first ten service years and 1/4 gross monthly salary per six months thereafter, up to the higher of €75.000 gross or a gross annual salary. Until 2020, employees of 50 years or older who have been employed for ten years or longer will receive a higher transitional fee, unless the employer employs less than 25 employees. Alternative compensation may be agreed upon in a collective bargaining agreement, provided that it is at least equal to the transitional fee. No transitional fee is payable to (i) employees under the age of 18 if the working time did not exceed 12 hours per week, (ii) employees who have reached the pensionable age and/or (iii) employees who demonstrated severe culpability or negligence. Certain costs may be deducted from the transitional fee. If an employer has been severely culpable or negligent in relation to an employee, a court may choose to award additional reasonable compensation.

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Changes expected in 2015

There are two important developments on the horizon in 2015. These look at the minimum wage, and the requirement for medical certificates.

The Council of Ministers regulation of 11 September 2014, established a new minimum wage for work, effective as of 1 January 2015: PLN 1,750.

The Act on Facilitating Commercial Activity of 7 November 2014 (Journal of Laws 2014, item 1662) extends, as of 1 April 2015, the circumstances in which employers do not need to refer employees for initial medical examinations. This will apply to an employee starting work at a new employer within 30 days of the termination or expiry of previous employment. The employee will have to provide a valid medical certificate confirming ability to work in the specified position and the new employer will have to confirm that the employee will work under the same conditions. Nevertheless, this will not apply to workers employed in particularly hazardous work.

Works in progress

A number of draft proposals are undergoing public consultation. These proposals include, among others:

Limitations on definite-term employment contracts.

The draft provides a maximum limit of 33 months for definite-term contracts, irrespective of breaks between such subsequent contracts. Also, the draft limits to three the total number of definite-term contracts which an employee may hold with a firm. If the total period of employment under definite-term contracts exceeds 33 months, or if the parties conclude more than three of these contracts, the employment contract would immediately convert to indefinite-term. Currently, the law does not provide any maximum period for which a definite-term employment contract may be concluded. Also, the provisions on the permissible number of definite-term contracts are, at the moment, less stringent.

Unification of termination notice periods.

The draft provides unified termination notice periods of between two weeks and three month for all types of employment contracts depending on an employee's length of service at a given employer.

Elimination of specific task employment contracts.

The Polish Labour Code currently in force envisages the following types of employment contracts: indefinite-term contract, definite-term contract, contract to perform a specific task, contract to substitute an absent employee, probationary period employment contract. Attempts are made to eliminate the specific-task employment contract.

Possibility of releasing an employee from work.

The draft envisages that employers would be entitled by law to release employees from work during a notice period, while employees would retain the right to receive remuneration.

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Changes expected in 2015

The changes in Portuguese Employment Law are focused on pursuing measures already in place in 2014.

Firstly, it is expected that, in 2015, the active employment measures in place will be further developed in order to improve employment, professional training and vocational rehabilitation. These measures are being put into place by providing financial support to employers who are net job creators. The main target will continue to be young people under 30 years' old and the unemployed. Parents may also become new beneficiaries of the changes to employment law under a planned new programme which may enable them to opt for part-time employment.

In addition, there are two bills, which have not yet passed through their initial stage. These are intended to amend the Portuguese Labour Code. Bill no. 648/XII aimed at preventing forced labour and other forms of exploitation. Bill no. 680/XII is intended to add "gender identity" to the factors which cannot impact equal opportunities in access to employment, thus enhancing the level of protection by including transgender people.

A further Bill – no. 668/XII – is currently in its reading stages and relates to the legal rules for childminders.

Finally, it is worth noting certain employment and social security related matters that may be subject to change as a result of the Portuguese State Budget Bill for 2015. Notably, the chargeable base of the "Extraordinary Solidarity Contribution" may be reduced for pensions exceeding €4,611.42. This contribution was created in 2011 and it reverts entirely to the social security system. It is currently payable by retirees in receipt of pensions of over €1,350.00, with rates varying according to the value of the pension.

SPAIN

GARRIGUES

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In light of the recently approved bills awaiting final adoption, some Spanish labour legislation will be amended slightly in 2015. General elections are expected to be held in Spain in late 2015 to elect the Prime Minister, meaning that any employment law reforms are likely to be presented as part of the candidates' manifestos.

The bill for the 2015 General State Budget Law was laid before Parliament on September 30 2014 and is expected to receive final approval by the end of December. The proposed measures are mainly targeted at creating jobs, as a continuation of the Spanish 2014-2016 Employment Activation Strategy. The regulations for the common services portfolio of the National Employment System are being prepared, which will guarantee access for all workers to a common employment services base. There is also a decision to promote the 2013-16 Enterprise and Youth Employment Strategy targeted at improving employability, increasing job quality and stability, promoting equal opportunity access to the job market and fostering entrepreneurial spirit. Lawmakers are currently working on amendments to the Self-Employed Work Statute as regards organising and harmonising incentives for self-employed work and the social economy in order to provide greater legal certainty through improved social protection and representation for self-employed workers.

With respect to social security matters, the bill for the law on measures for the settlement and payment of social security contributions was published on 5 September 2014, partially amending various articles of the General Social Security Law, approved by Legislative Royal Decree 1/1994, and the Labour and Social Security Infringements and Penalties Law, approved by Legislative Royal Decree 5/2000. The most important changes aim to establish a new settlement model for contributions, which will be done directly by the social security general treasury, under a system characterised by the individual calculation of the contribution relating to each worker.

Other planned new developments include those contained in the bill amending the revised General Social Security Law in relation to the legal regime for occupational accident and disease mutual insurance companies in the social security system, published on July 25 2014. Most notably, the bill amends the management of temporary incapacity for common contingencies so that mutual insurance companies can play a role in, and monitor, the benefits from the first day of leave, meaning that the medical inspectors attached to the public health service must notify the mutual insurance companies and the Social Security Institute within five business days of the grant or refusal of leave. In other words, it improves coordination between the two bodies by introducing reasoned proposed declarations of fitness for work, and establishes a procedure with shorter time periods in order to obtain a quicker response.

Also worth mentioning is the bill amending the Corporate Enterprises Law to improve corporate governance, dated 30 May 2014. The envisaged measures include enhanced powers of the shareholders' meeting and improved shareholder rights, the composition and liability regime for corporate managing bodies, directors' compensation and the requirement to disclose information in the financial statements on the average payment period to suppliers.

SWEDEN

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There are no anticipated changes of Swedish employment legislation during 2015. Thus, for the majority of employers, it will continue to be 'business as usual'. Therefore the existing principles of Swedish employment legislation, as summarised below, will continue to apply.

Basic principles of Swedish employment law

According to the "Swedish model", most rules governing employment are regulated by collective bargaining agreements. The scope of discretion which is given to the actors on the labour market is noteworthy. Most of the provisions are mandatory in that you cannot deviate from the legislation to the employee's disadvantage. However, a great number of regulations are semi-dispositive under Swedish employment legislation (i.e. a regulation may be altered in collective bargaining agreements). For example, there are no regulations regarding minimum wage in law but it is most often regulated in collective bargaining agreements.

Types of employment

The general principle under Swedish law is employment for an indefinite term. Probationary employment may be used for an initial period of no more than six months preceding indefinite-term employment. A probationary employment may be terminated without objective grounds for the full duration of the probationary period. A general fixed-term employment entitles the employer to limit the term of employment, without any specific grounds, for up to two years. The general principle is that general fixed-term employment cannot be terminated. It ceases automatically at the expiration of the term.

Termination

As a general rule under Swedish employment law, an employer is free to organise its business as the employer finds appropriate and at its own discretion even if it results in a redundancy situation. A dismissal of an indefinite-term employee by the employer must be based on an "objective reason". Such an "objective reason" can be established either due to redundancy or due to circumstances relating to the employee personally. Before the employer can give notice of termination, a number of rules for the protection of the respective employee need to be observed. For example, in a redundancy situation the employer needs to offer any vacant position available, and comply with provisions regarding order of priority. Further, should the affected employee be a member of a trade union, the employer is required to consult with the employee's trade union before the redundancy can be effected.

Benefits due to mandatory law

An employee is entitled to 25 days of vacation every year under the Annual Leave Act. With respect to parental leave, a parent is entitled to full leave for the care of a child until the child reaches 18 months, irrespective of whether the parent receives parental benefit.

Prohibitions against discriminatory actions

An employer is prohibited from discriminating directly or indirectly against a person who is an employee, enquiring or applying for work or traineeship or is available to perform work as a temporary or borrowed labourer. The grounds on which discrimination could be found are based on the same principles as the European legislation and the European Convention on Human Rights.

SWITZERLAND

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Based on the so called "Minder initiative" the Federal Council has enacted an ordinance against excessive compensation, until a Federal law is enacted. The first draft of the new law has been published but it is expected that it will be intensively discussed in parliament. The relevant employment rules are applicable to the board of directors and the top management of Swiss stock corporations which are listed on a stock exchange (in Switzerland or abroad). In summary, these rules are the following:

- prohibition of sign-on bonuses
- prohibition of severance payments
- 12 maximum term for fixed-term agreements
- 12 months maximum notice period
- approval of the compensation (including bonuses, pensions, non-compete considerations, shares, options, etc.) by the shareholders' meeting
- minimum representation of 30% of each gender in the board of directors and the top management
- maximum term of 12 months for paid non-competition undertakings

This new regime, to the extent enacted, will change the employment relationship of the board of directors and the top management of listed Swiss stock corporations. Non-compliance of certain provisions will also constitute a criminal act. Consequently, it will be key to amend employment agreements and compensation structures in order to make them compliant.

On 9 February 2014, Switzerland voted in favour of the 'initiative against mass immigration'. The new provision in the constitution intends to cap immigration into Switzerland, to re-introduce quotas for foreigners and calls for the renegotiation of the Agreement on Free Movement of Persons between Switzerland and EC/EFTA. The federal council now has three years to implement a new law based on the constitutional provision. Currently, there is discussion on how the initiative against mass immigration will be implemented. However, it is expected that the new regime will be enacted in a way that allows companies to bring required talent to Switzerland.

A further legislatory proposal aims to regulate whistleblowing in more detail. Critics say that the proposed new law (which is already approved by one chamber of the Swiss parliament) will actually limit the rights of whistleblowers substantially: the new law underlines the duty of loyalty that employees have towards their employers, and the draft says that potential whistleblowers must first report wrongdoings to the employer before informing the authorities. Any response from the authorities – even a decision not to investigate – would nullify a whistleblower's right to go to the media. We expect that the draft law will be amended during the further discussions in parliament. However, any companies in Switzerland should appoint an internal whistleblower hotline as soon as possible in order to comply with the coming regulatory requirements.

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January 2015 - Clawback of bonuses in the financial sector

From 1 January 2015, Prudential Regulation Authority (PRA) authorised firms will have to amend their employment contracts to ensure that variable remuneration that has vested can be clawed back from individual employees for a period of at least seven years from the date on which it is awarded. The clawback requirement will only apply in relation to variable remuneration awarded on or after 1 January 2015. Also, the grounds for applying clawback have been narrowed, and will only apply if (a) there is reasonable evidence of employee misbehaviour or material error; or (b) the firm or relevant business unit suffers a material failure of risk management.

April 2015 - Shared Parental Leave

A new system of shared parental leave will be available to parents of children due to be born or placed for adoption on or after 5 April 2015. This will allow mothers to share up to 50 weeks of their maternity leave (and 37 weeks of their maternity pay) with their partner.

Key cases

Collective redundancy consultation

The 'Woolworths case' (USDAW v Ethel Austin Ltd (in administration)) arose when this retailer went into administration triggering the closure of its stores across the UK. The case changed the UK law on collective redundancy consultation. The Employment Appeal Tribunal considered whether or not there were 20 or more employees at risk of redundancy (which triggers collective consultation obligations in the UK) and ruled that it was no longer necessary to consider whether or not redundancies were at a 'single establishment'.

Employees working in stores where fewer than 20 employees were redundant still had the right to be consulted collectively. The case has been referred to the Court of Justice of the European Union ('CJEU') by the UK Court of Appeal. The CJEU should address two issues: (1) the construction of the EU Collective Redundancies Directive (including the meaning of 'establishment') and (2) whether the Directive has direct effect in the UK. The CJEU began hearing the case in November 2014, and it is hoped a decision will be issued within the next six months.

Calculation of holiday pay

On 22 May 2014, the CJEU held that holiday pay must not be limited to basic salary and must include commission where this forms part of normal remuneration. The case is likely to return to the UK tribunal to consider the compatibility of this decision with domestic legislation.

In October 2014, the Employment Appeal Tribunal delivered a landmark decision on whether overtime payments should be included in the calculation of holiday pay. The EAT held that they should, provided that the overtime was carried out regularly and therefore amounted to the employee's 'normal' remuneration. In certain cases, UK employers are facing substantial claims for historic incorrect payments as a result of the decision. However, liability will be limited where there is a break in the chain of incorrect payments of more than three months (for example where an employee has not taken a holiday for a period of three months). It had initially been expected that an appeal would shortly follow and many claims have been sisted by the tribunals in anticipation of this. However, early indications are that the unions are unlikely to lodge an appeal.

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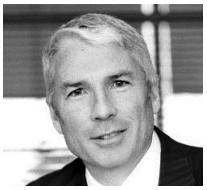

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