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Global PwC employment law network newsletter

May 2018

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Introduction

We are pleased to present the first Global PwC Employment Law Network newsletter, bringing you updates on what's happening in different countries across the PwC network.

In addition, you will also find a 'Focus on…' section highlighting the main employment laws in different countries. In this edition, you will see that we are focussing on Australia, China, Germany, the Netherlands and the UK.

We hope you find the newsletter interesting and insightful. Please contact anyone mentioned in the newsletter, or your normal PwC contact, if you have any queries or would like to discuss anything further.

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Part 1

Argentina

Recent modifications on Labor and Social Security Legislation

There have been relevant changes in the Social Security System that will be in force since February 2018. These modifications will take place on a gradual basis and will be completed by January 2022.

Most important changes are as follows:

- Unification of Social Security rate in 19,5% (currently there two rates in force: general rate at 17,5% and special rate at 20,7% that apply for companies whose main activity is commerce or services that invoice in the average of the last three years more than AR$ 48.000.000 - approx. USD 2.400.000-).
- Minimum amount not subject to Social Security Contributions of AR$ 12.000 (USD 600) monthly per employee (currently that amount is AR$ 2.400/USD 120).
- Progressive reduction of VAT Tax Credit derived from social security contributions (currently that credit does not apply to companies in the City of Buenos Aires or territory surrounding this city).

Also Labor Contract Law was modified increasing the age at which the employer might terminate the labor relationship of an employee without severance payment to 70 years. This does not mean a compulsory increase on the age to get a retirement benefit that will remain at 65 for men and 60 for women.

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Australia

Protecting Vulnerable Workers – Amendments to the Fair Work Act 2009

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) introduced a number of significant amendments to the *Fair Work Act 2009* (Cth) (**FW Act**) from September 2017. These changes included enhanced liabilities regimes for franchisors and holding companies in relation to their franchisees and subsidiaries respectively. The amendments also introduced a new class of 'serious contraventions' which carry significantly higher civil penalties for breach of the FW Act, new record keeping requirements and offences and increased information gathering powers of the Fair Work Ombudsman (**FWO**). A more detailed review of the amendments can be found here: https://www.pwc.com.au/legal/assets/legaltalk/new-changes-fair-work-act-12sep17.pdf

Introduction of labour hire licence requirements

Some State governments have sought to address the issue of worker exploitation through regulating labour hire agents. On 1 March, a new labour hire licensing regime commenced in South Australia, requiring that regulated providers are licensed from 1 September 2018. The Queensland equivalent is commenced operation on 16 April 2018, and it is anticipated that the Victorian scheme (presently in the form of a bill) will pass shortly.

Proposed Modern Slavery Laws

In December 2017, a government Inquiry into establishing a Modern Slavery Act in Australia recommended that Australia should adopt legislation to combat modern slavery, comparable to the United Kingdom's *Modern Slavery Act 2015*. As part of its 49 recommendations, the Inquiry suggested introducing legislation which established an independent Anti-Slavery Commissioner, transparency through mandatory supply chain reporting for entities operating in Australia, support for victims through a national compensation scheme and improved criminal justice responses to modern slavery. It is apparent that the introduction of modern slavery legislation has bipartisan support within federal parliament and it is likely that legislation will be passed later this year.

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Belgium

As from January 1, 2018, employers can distribute (part of) their profit amongst their employees via a so-called 'profit premium'

The profit premium allows employers to distribute (part of) their profits amongst their employees under a specific and advantageous tax and social security regime. The awarding of the profit premium does not grant employees any voting rights in the company.

The employers can choose between an identical profit premium (each employee is entitled to an equal amount or to an equal percentage of his/her remuneration) or a categorised profit premium (differentiation between different categories of employees, whereby the amount of the profit premium is dependent on an allocation key based on objective criteria, such as function, seniority, etc.).

The introduction of the profit premium is subject to the following conditions:

- The profit-sharing premium has to be awarded to all employees.
- The total amount of the profit premiums granted per tax year may not exceed 30% of the total gross wage sum.
- The profit premium may not be introduced to replace or convert another element of the employee's remuneration to which the employee is entitled on the basis of the individual or collective labour agreement, regardless of whether or not the element is subject to social security contributions.

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Brazil

A significant reform of Brazilian labour law entered into force on November, 2017

The new legislation changed several procedural rules and labor rights, such as:

Outsourcing – The companies allow the hiring of specialised service providers in all activities, including their core business activity. Employers may not dismiss outsourced workers and rehire them in less than 18 (eighteen) months.

The service provider shall be entitled to the same working conditions as employees of the hiring company, such as meals; healthy insurance and meals;

Withdrawing Partner – Partners who withdraw from the company will only be liable for labor obligations if the labor lawsuit is filed within two (2) years of the registration date of his or her departure. If the corporate change creates any type of fraud, the withdrawing partner will be jointly liable for any labor debt;

Home-office work setting – Working in a home-office setting must be included in the individual employment agreement, which will contain information on who will be responsible for the acquisition, maintenance and supply of the technological equipment and infrastructure necessary to provide remote work;

Compensation – The customary amounts paid as general allowances, food allowances (except cash payments), travel accommodation and bonus do not include the employee's remuneration and do not constitute the calculation basis for assessment of any labor and social security charges.

Termination – Possibility of employment agreement termination by mutual consent, in which case: (i) The 40% indemnity on the FGTS would be reduced to 20%; (ii) Prior notice would be reduced by half, to at least fifteen (15) days; (iii) The employee may withdraw 80% of the FGTS and (iv) May not have access to unemployment insurance;

Vacation – May be enjoyed in up to 3 (three) periods, one of them with at least 14 (fourteen) days and the remaining ones not less than 5 (five) consecutive days each.

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China

Tax bureau fully in charge of social insurance premiums collection

Along with the plan to combine the State Administration of Tax with local tax bureaus from the provincial level, the tax authority in China will be gradually in charge of tax and non-tax collections by the end of 2018. As a result, the premiums collection of the statutory pension insurance, the basic medical insurance, unemployment insurance, maternity insurance and work injury insurance would be under China tax bureau's management and supervision in due course.
We recommend companies in China pay attention to this change and ensure social insurance compliance by checking below points:

- Review employees' remuneration and welfare structure to ensure the understanding on social insurance calculation base is in compliance with the national law and local rules and regulations;
- Conduct compliance inspection over a specified number of years (at least 2) and determine preliminarily on the risk level and financial impact of underpayment;
- Communicate with employees to seek cooperation for potential back payment of underpayment, if any identified;
- For employees from overseas countries, China employer should comply with social insurance contribution obligations as it is explicitly required in most cities; and
- Shanghai employers who have not been making any contributions of statutory social insurance for foreign employees based on local practice should pay more attention to any change of local practice and any clarification from tax authority in Shanghai.

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Cyprus (1/2)
Recent employment law updates in Cyprus

Protection of Paternity Law of 2017 (117(I)/2017)

- As of 1 August 2017, an employee whose wife has given birth or he and his wife have had a child through a surrogate mother or he and his wife have adopted a child aged up to twelve (12) years old has the right to paternity leave for two (2) consecutive weeks, such leave to be taken within the first sixteen (16) weeks of the birth or adoption of the child.
- During the paternity leave, the employee shall be entitled to receive a paternity leave allowance from the Social Insurance Fund.

Social Insurance (Amendment) Law of 2017 (Law 115(I)/2017)

- As of 1 August 2017, an employee whose wife has given birth or he and his wife have had a child through a surrogate mother or he and his wife have adopted a child aged up to twelve (12) years old is entitled to receive a paternity benefit provided he satisfies the relevant social insurance requirements.
- The paternity benefit is payable for two (2) consecutive weeks within the first sixteen (16) weeks of the birth or adoption of the child.
- An employee does not have the right to receive the paternity benefit for any period during which he receives his basic salary from his employer.

Protection of Maternity (Amendment) Law of 2017 (Law 116(I)/2017)

- Law 116(I)/2017 introduced the concept of surrogacy
- As of 1 August 2017, both female employees who use a surrogate and surrogate mothers are entitled to maternity leave under the provisions of the Law. Subject to the provisions of the Law, a female employee who had a child through a surrogate mother is protected against dismissal from her employer

Social Insurance (Amendment) Law of 2017 (Law 115(I)/2017)

- As of 1 August 2017, a female employee who has had a child through a surrogate mother is entitled to receive a maternity benefit provided she satisfies the relevant social insurance requirements
- The maternity benefit is payable:
  - In the case of a female employee who has had a child through a surrogate mother, for eighteen (18) consecutive weeks within the period that starts two (2) weeks before the week of the expected birth or the week of the actual birth, whichever she chooses; and
  - In the case of a surrogate mother, for fourteen (14) consecutive weeks and may start two (2) weeks before the expected birth.
- A female employee does not have the right to receive the maternity benefit for any period during which she receives her basic salary from her employer.

Cyprus (2/2)
Recent employment law updates in Cyprus (cont'd)

Protection of Paternity Law of 2017 (117(I)/2017)

- Posting of Workers in the Framework of the Provision of Services and Other Related Matters Law of 2017 (Law 63 (I)/2017)
- A notification of the posting of a worker to Cyprus is required to be made to the competent authority i.e. Department of Labour, prior to the arrival of the posted worker in the instances stated in the Law.
- The employee can be an EU National or a Third Country National (TCN).
- The employee should have a valid employment contract with the company (established within the EU) making the posting and which covers the entire posting period. No need for a contract with the Cyprus Company. Upon completion of the posting, the employee will continue employment with the employer that he/she used to work before the posting.
- The maximum duration of the posted worker is 1 year.

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Denmark

On 25 January 2018, a new Danish Holiday Act was adopted that will fundamentally alter the Danish holiday system when coming into force on 1 September 2020

The Act introduces 'concurrent holiday', which allows employees to take paid holiday in the same year as the holiday entitlement accrues. In addition, the Act contains a transitional arrangement facilitating the transition from staggered holiday to concurrent holiday.

This means that new employees in the labour market can take paid holiday already during their first year of employment. Under the current Danish Holiday Act, new employees in the labour market and international employees have to wait up to 16 months from accrual of the holiday entitlement to their taking of the accrued paid holiday.

The change to concurrent holiday implies that the holiday year – The period in which holiday entitlement is accrued – Will run from 1 September to 31 August. The period in which the accrued holiday can be taken will be the same as the holiday year + 4 months, i.e. from 1 September to 31 December the following year, in total 16 months.

The employee will still accrue 2.08 days of paid holiday per month and, accordingly, 25 days of paid holiday per year.

The new Act will enter into effect on 1 September 2020, while the transitional arrangement will enter into effect on 1 January 2019.

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Finland

New provisions on variable working hours – New liabilities for the employer as of June 2018

- The provisions on variable working hours will be in force as of June 1, 2018. They concern working hour arrangements e.g. when the employee is responsible for performing the tasks whenever the employer offers tasks (so-called '*zero working hours*' or '*on-call working hours*') or when the working ho urs can vary between certain hour limits (e.g. 10-30h/week).
- The position of the employee having variable working hours improves because the employee is entitled to the salaries for the sickness and notice period. The employee can also resign or refuse without loosing the right to the unemployment benefit in case the employer does not offer more than 18 working hours within 12 calendar week unless the parties have agreed upon part-time working or in case the salaries are less than 1187 euros/month.
- The employer will have new liabilities, e.g. to provide the employee with a clarification on the working hours and to include the variable working hours to the roster, to estimate the circumstances when and how much there will be need for variable working hours, to inquire at least one week in advance whether the employee having variable working hours can perform more than minimum working hours.
- The Finnish Working Hours Act is also subject to a significant reform. The new legislative proposal concerning the new Act will be published in summer 2018.

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France

A significant reform of French labour law entered into force on 1 January 2018

This reform aims at amending social dialogue in French companies by widening the possibility of company collective negotiation, and at providing more flexibility to the employers.

The main aspects of the reform are the following:

- Dismissals/redundancies:
  - The damages ordered by the courts in case of dismissal judged as unfair are capped, depending on the employee's length of services (from 1 month to 20 months' salary). These limits do not apply in case of dismissal based on grounds such as harassment, discrimination, maternity, etc.
  - The grounds of dismissal and the perimeter of redeployment in case of redundancy are assessed at the level of the group companies in France only (not worldwide).
  - The statute of limitations to challenge a dismissal is reduced to 12 months (instead of 24 months).
  - It is possible to implement a collective amicable termination, through a collective agreement and without having to justify any economic difficulties.
- Collective negotiation:
  - Priority is granted to collective agreements negotiated at the level of the company. Industry-wide collective agreements prevail only on limited matters (minimum salaries, classifications notably).
  - The reform widens the possibilities to conclude collective agreements without unions intervention (e.g. it is now possible to conclude a collective agreement by referendum of the employees in companies of less than 20 employees)
- Staff representation: former staff representation bodies (staff delegates, works council, health and safety committee) are gathered into one single body, the economic and social committee (CSE). This committee has globally the same powers as the former bodies.
- E-working: e-working is encouraged and may be implemented by a collective agreement or a mere charter. If there is no agreement nor charter, the agreement between employer and employee may be formalised by any means.

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Germany (1/2)

Occupational pension 'BRSG – Betriebsrentenstärkungsgesetz'

The new law regarding the German occupational pension system the so-called 'Betriebsrentenstärkungsgesetz' (BRSG) took effect on 1 January 2018. It contains several fundamental changes compared to the existing rules. For example:

- Pure defined contribution (DC) pension plans are introduced, but new DC plans can only be set up under a collective agreement funded via a direct insurance ('**Direktversicherung**') or a pension fund ('**Pensionsfonds**' or '**Pensions-kasse**').
- Employers who are saving contributions to social security from the employee's Deferred Compensation are obliged to provide matching contributions of 15% of the employee's contributions.
- Collective agreements can include opt-out models for Deferred Compensation.
- For individuals with income below € 2.200 per month a tax subsidy will be granted on additional employer-financed contribution that the employer can claim from the tax authorities.

German Act to Promote Transparency of Pay Structures between women and men ('Entgelttransparenzgesetz')

German Federal Government enacts law to promote equal payment between women and men. The law came into force with effect of 6 July 2017.

Main aspects of the new law are:

- The new law defines main principles and concepts regarding the equal payment of women and men who perform the same work of work or equal value.
- For companies with more than 200 employees, the employee's individual right to information is embodied in law with the aim of verifying whether the law is being observed.
- Companies with more than 500 employees are urged to verify, by means of an internal review, whether their pay system and pay components are in compliance with the law.
- Companies with more than 500 employees, which are required to prepare management reports in accordance with section 264, 289 German Commercial Code, must likewise create a report on gender equality and the equal pay of women and men.

Germany (2/2)

Effects of Digitalisation on Employment: Influences on Employment Conditions and HR-Data under German Law GDPR and revised German Data Protection Act valid from 25 May 2018

Digitalisation leads to fundamental changes to be implemented for any branch or business with employees on German territory.

Especially the new regulations for protection of employees data applicable due to GDPR and the revised German Data Protection Act (will be in force from 25 May 2018) lead to the following to do's:

- Evaluation and identification of action required in terms of all HR-processes.
- Drafting and Negotiating new works council agreements (e.g. on use of IT/software/hardware), Home-Office and Cloud-based work.
- Review and new wording of most consent letters of employees for processing their data.
- Training of employees.

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Hungary

The Hungarian court procedure rules have significantly changed this year. The new rules apply to labour procedures as well. A labour court procedure now consists of two phases: in the first phase of the procedures, parties must submit all their claims and evidence within a strict and short deadline. The court then assesses the claim and all the relevant documents at the first hearing. After the assessment, the court advises the parties to either continue the procedure or to settle it mutually. If the parties decide to continue the court procedure (second phase), they may modify the claim or submit new evidence under strictly limited circumstances. The government expects that the new legislation will decrease the number of the court procedures and will shorten their duration as well.

As the GDPR will be mandatorily applicable in Hungary from the end of May, several companies have already started to amend their internal HR data flow in order to comply with the new regulation.

The local labour legislation has not been amended yet to accord with the requirements of GDPR, therefore there are still several contradictions between the local and the EU-wide legislation. The contradictions are expected to will be resolved in the second half of this year.

As of 1 January 2018, the statutory minimal wage has increased to EUR 450 (gross) for the blue collar workers and EUR 585 (gross) for the qualified workers. Although this increase is applicable in all industries, due to the lack of qualified employees, the market wages are already significantly higher than the newly-instated statutory minimal wage.

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India (1/2)

Background

Labour and employment laws are listed under the Concurrent List, which means that the Parliament and State Legislatures have co-equal powers to enact laws relating to all labour and employment laws in India.

Some of the key reforms/amendments have been brought in by the Indian Government under the following labour laws.

Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('EPF Act')

Under EPF Act, contribution known as provident fund (PF), is required to deposited monthly at a prescribed rate by both the employer and the employee, to an national fund which attracts interest per annum as stipulated by the Government of India from time to time.

The Maternity Benefit Act, 1961

The Maternity Benefit Act regulates the employment of women in establishments for periods before and after child-birth and to provide for maternity benefit to female employees working in an establishment.

Payment of Gratuity Act, 1972

The Payment of Gratuity Act provides for the payment of gratuity on fulfilment of certain term in an organisation upon cessation of employment of an employee.

Employees State Insurance Act, 1948

Employees State Insurance Act, 1948 provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

Recent amendments:

Employees Provident Fund and Miscellaneous Provisions Act, 1952

- International Workers to be paid provident fund and withdrawal benefit under Pension Scheme on the date of
- Social Security Agreement signed with several countries – to eliminate dual social security taxation, both in the home country and the country where an employee works.
- Inoperative EPF account- EPF accounts which lies idle for 36 months (i.e., no contribution deposited) will no longer be treated as inoperative and will continue to accrue interest until the employees retires at 55 years, on death of account holder or migrates abroad permanently and in cases of retirement and migration of employee, if no application for withdrawal of accumulated balance in his EPF account is made within 36 months.
- Principal Employer to ensure compliance for their outsourced/regular/contract/causal/daily.

India (2/2)

The Maternity Benefit Act, 1961

The Maternity Benefit (Amendment) Act, 2017 has been notified – **Key highlights**.

- Maternity leave (paid leaves) increased to 26 weeks from 12 weeks for working women with less than 2 surviving children.
- Provisions for work from home for nursing mother (depends on mutual consent from employee and employer).
- Mandatory provisions for establishments having 50 or more employees to have facility of crèche.
- Extension of 12 weeks of maternity benefits to the commissioning mother and adopting mother from the date the child is handed over and subject to the child being below 3 months old.
- Mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

Payment of Gratuity Act, 1972

Gratuity Limit has been enhanced from INR 10 Lacs to INR 20 Lacs by the Government of India. Gratuity paid up to INR 20 Lacs shall be tax free.

Employees State Insurance Act, 1948

Under the Employees State Insurance Act, 1948, the wage ceiling has been increased from INR 15,000- to INR 21,000.

General

- Ministry of Labour and Employment, Government of Inia has taken steps for simplification, amalgamation and rationalisation of Central Labour Laws and replacing them with 4 Labour Codes. The 4 Labour Codes have been categorised as:
  - Labour Code on Wages;
  - Labour Code on Industrial Relations;
  - Labour Code on Social Security and Welfare;
  - Labour Code on Occupational Safety, Health and Working Conditions
- Migration to One Unit One Identifier- Labour Identification Number (LIN)- Government of India has taken initiative to do away with all employer codes being issued by separate Labour Enforcement Agencies such as Employees State Insurance Corporation (ESIC), Employees Provident Fund Organisation (EPFO), Office of Chief Labour Commissioner [O/O ClC(C)] and Directorate General of Mines Safety (DGMS) etc. by replacing them with new Labour Identification Number (LIN).

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Ireland

Gender pay

On 25 October 2017 the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill (the 'Bill') passed the Committee Stage of the Seanad, following a floor debate. The Bill seeks to improve upon the Anti-Discrimination (Pay) Act, 1974 and to close the existing pay gap of 13.9% between men and women in Ireland. If passed, IHREC, which already has the power to require an employer to carry out an equality review, will be given the further ability to oblige companies with 50 employees or more to publish the results of such a review.

Sectoral Employment Orders (SEOs)

The first SEO was implemented on 19 October 2017 for the construction sector, which fixes the statutory minimum pay, pension and sick pay entitlements for a number of categories of employees working in the construction industry.

Collective redundancy

Changes in legislation means notification of collective redundancy must be directed to the Minister for Employment Affairs and Social Protection (not the Minister for Jobs, Enterprise and Innovation).

Significant cases

There have been three High Court cases this year in Ireland, which delivered judgements within a number of weeks of each other, all dealing with the issue of fair procedures in an investigation or disciplinary process - the cases are *Lyons v Longford Westmeath Training and Education Board; The EG v The Society of Actuaries in Ireland; NM v Limerick and Clare Education Board*.

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Italy (1/2)

The new law regarding Performance Bonus and Welfare in Italy took effect on 1 January 2018 ('Budget Law 2018')

Budget Law 2018 introduced and increased solutions aimed at supporting a facilitated productivity plan and the social wellness, with tax and social security advantages.

According to Budget Law 2018, 'Performance bonus' related to the increase of company's performance regarding productivity, profitability, quality, efficiency and innovation are subject to tax and contributory advantages.

In more detail, the workforce 'Performance bonus' paid by cash are subject to a 10% tax rate, up to a maximum amount of **€3.000** for employees having a maximum annual gross income up to **€80.000**.

In case of equal employees' involvement, social security charges are decreased for the first **€800 bonus**.

There is opportunity for employees around the replacement and the transformation of the 'performance bonus' paid by cash into 'welfare services', provided to the employees by the company. If there is a transformation of the bonus into welfare services, there is a provision for full de-taxation and de-contribution paid in such welfare.

The Implementation of Performance bonus requires negotiation with Unions, which usually requires strong support from tax and labour experts.

Italy (2/2)

The new law regarding Whistleblowing took effect on 29 December 2017

This Law aims to protect those public and private sector employees who report misconduct that occur within the workplace, and to regulate the employer's obligations in order to facilitate the whistleblowing process.

According to the new law, the company must draw up a whistleblowing procedure, setting forth clear rules and processes useful for both people making report and the employer, including:

- A specific, independent and autonomous channel of reporting;
- Identification of the management process and the person in charge of the overall system;
- Protection of the person making the report against retaliation and, in any case, unfair behaviour arising from having made the report;
- A guarantee of the confidentiality of the personal data of the person supposedly responsible for the breach, subject to the rules governing the investigations or the proceedings brought before the judicial authority in relation to the facts reported; and
- The procedure must be adequately publicised, above all through training sessions organised by the company.

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Japan

Conversion of Fixed-Term Employment Contract to Employment Contract with No Definite Term

1. Amendment to Labor Contract Act came into force on 1 April 2013

The amendment to the Labor Contract Act that came into force on 1 April 2013 grants to an employee with a fixed-term contract a right to convert a fixed term contract to the one without a definite term when the following two requirements are met:

- The employee's employment contract has been renewed; and
- The employee will have been continuously employed by the same employer for more than five years upon the expiration of the current contract.

This five-year period applies to fixed-term contracts entered into or renewed on and after 1 April 2013. Therefore, fixed-term contract employees whose employment meets the requirements above will begin becoming eligible to apply for indefinite-term contracts from 1 April 2018.

When an employee exercises the right to convert a fixed-term contract to one without a definite term, employers cannot prevent the exercise of the right by the employee.

Additionally, the labor conditions of the converted, indefinite-term contract are to be the same as the labor conditions (excluding the contract term) of the currently effective fixed-term labor contract in principal.

2. Key takeaways

Employers need to determine whether they wish to renew the fixed-term contracts of employees who are not yet eligible to apply for conversion (i.e., employees who do not satisfy the two conditions above). Should the employer determine that they would prefer not to convert a particular employee's fixed-term contract into an indefinite-term contract, the employer must stop fixed-term contract renewal with that employee by establishing objectively reasonable reasons for non-renewal before the length of employment reaches the five-year threshold.

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Madagascar

Expatriate staff employment and payment of wages conditions

Expatriate employment contract which is intended to be executed in Madagascar must be approved beforehand by the Ministry of Labor. The approval process objective is to ensure the compliance of the contract provision's with the applicable labor law in Madagascar.
As regards legal obligations relating to payment of wages, labor law provides that any wage for employment carried out in Madagascar shall be entirely paid in Madagascar in the locally lawful currency (article 62 of the Labor Code). The lawful currency is the Ariary.

Given the above, wages must be paid by the employer directly into the employee's bank account in Madagascar and in Ariary. The employee is thereafter authorised to transfer immediately his/her wage abroad.

In spite of the above, and to avoid paying bank charges, many expatriation contract provide the opportunity for the employee to receive a local wage and an offshore wage. In this case, the offshore wage is directly paid by an affiliated offshore entity into the employee's offshore bank account, and is recharged to the local employer under an intercompany agreement.

There is no provision prohibiting such practice, however, to the best of our knowledge, this has not yet been challenged by the tax authorities as long as the total salary (offshore and local) is reported in Madagascar and corresponding taxes have been paid.

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The Netherlands

Minimum wages, an increase of the statutory severance and extension of paternity leave

Minimum Wage and Minimum Holiday Allowance Act (WMM)

As per 1 January 2018 the WMM is amended regarding the following:

- As per 1 January 2018 the minimum wage for the age of 22 and above is set at € 1,578 gross per month.
- As per 1 January 2018 the WMM applies for persons working on the basis of a service agreement if the following conditions have been met:
  - The activities are personally performed;
  - For at least three months;
  - For 5 hours on average a week; and
  - The person involved does not work for two more companies.
- The minimum wages do not apply for freelancers (with their own business).
- Until 1 January 2018 there was no obligation for an employer to pay minimum wage in the event of overtime (i.e. if the employee worked more than the agreed normal working hours). As of 1 January 2018 the employer is obliged to pay the minimum wage for overtime. As an alternative for payment of overtime, the employer may introduce time for time compensation.
- The employer is obliged to pay 8% holiday allowance over the overtime hours.

Statutory severance payment

A maximised statutory severance payment applies of 1/3 of gross monthly salary per service year until the 10th year of service and ½ of gross monthly salary afterwards. The cap per 1 January 2018 is € 79,000 gross or 1 gross annual salary. The minimum requirements are 2 years of service and termination initiated by the employer or the non-renewal of a definite term contract (incl. after sickness or expiration of a definite term contract.

Retirement age

Until 2013 the retirement age was set at 65 years. The retirement age increased by 1 month as per 1 January 2013. The retirement age increases in steps to 66 years in 2018 and 67 years in 2021. As per 2022 on the retirement age is linked to life expectancy. In 2022 the retirement age will be 67 years and 3 months. In 2023 the retirement age will remain 67 years and 3 months.

Paternity leave

After the mother has given birth, the partner is entitled to two days of paid paternity leave. This parental leave will be extended up to five paid days. This regulation will become effective per 1 January 2019.

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Norway

Notion of employer – Aviation

Borgarting Court of Appeal ruled in a case concerning inter alia the notion of 'employer'. One of the questions was whether the parent company Norwegian Air Shuttle ASA (NAS) was in fact the employer of crew that were formally employed in subsidiaries Pilot Services Norway AS (PSN) and Cabin Services Norway AS (CSN).
The employees argued that through its corporate decisions, NAS in effect made several decisions that had effect on their employments in PSN and CSN. The Court of Appeal discussed previous case law and emphasised that:

- The parent company had not decisive influence on the employees' salary and pension terms;
- The employees were not obligated to comply with the directives provided at all time from the management of the parent company; and
- The parent company did not indirectly have the right to terminate the employees.

None of the above was not the case for NAS, and consequently NAS was not considered to be an employer.

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Romania (1/2)

New legislation regulating the teleworking activity

At the beginning of April 2018 the law on the regulation of the teleworking activity entered into force. Some of the main provisions are the following:

- Employees working with information and communication technology have the possibility to perform their activities elsewhere than the place organised by the employer (either from their home or from another place). An express provision in the individual employment agreement is necessary for the activity to be carried out in this manner.
- The employee is entitled to refuse the performance of such work, the employer being prohibited to unilaterally amend the employment agreement or to impose a disciplinary sanction.
- The employer is required to provide for all the necessary conditions in order for the teleworker to perform his work (e.g. internet connection, computer etc.), unless the parties agree otherwise, and to train the employee on matters of health and safety at work.
- A series of obligations is also laid down for the teleworker, including the obligation to provide information on the working equipment used and the working conditions and, at the same time, the obligation to allow the employer access to the place of work, as far as this is possible.

Romania (2/2)

Changes to social contributions legislation as of January 2018

As of January 2018, substantial amendments to the Romanian tax legislation were introduced. Among the most significant changes we mention:

- The so called 'shift' of social contributions computed on the gross salary from the employer to the employee, meaning that the quota of social contributions payable by the employer until 31 December 2017 was removed and at the same time a similar quota, payable by the employee, was introduced as of 1 January 2018.
- Subsequently, a new government ordinance was issued introducing new rules for computing social contributions for employees benefitting from income tax exemption (i.e. IT developers, individuals carrying out research-development and innovation activities, individuals carrying out activities based on employment contracts concluded for periods of 12 months with Romanian legal entities performing seasonal activities and severely disabled individuals), aiming to reduce the impact that the shift of social contributions from the employer to the employee would have had on the net salaries of these categories in 2018, compared to 2017. Thus, it was decided that the State would bear the difference of social contributions such as to achieve a neutral impact both on employer's expenses and net employee income, provided that certain conditions are met. These new rules are applicable until the end of 2018.

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The Russian Federation

From 1 January 2018 Russian authorities apply a risk-based approach during employment law audit

According to the risk-based approach, the form and frequency of employment law audit is based on the severity of any adverse consequences and risks that may be caused in case of the employer's failure to comply with the existing requirements.

The frequency of inspections is determined in accordance with an employer's risk category. The five levels of risk are:

1. High risk (an inspection is conducted every two years).
2. Significant risk (an inspection is conducted every three years).
3. Medium risk (an inspection is conducted no more than once in a five-year period).
4. Moderate risk (an inspection is conducted no more than once in a six-year period).
5. Low risk (no planned inspection).

The State Labour Inspection (SLI) conducts inspections using checklists which include questions covering the most important requirements of the employment legislation. The number and types of checklists are subject to the employer's industry. Such checklists are publicly available.

By the moment Russian authorities have established 107 checklists. For certain companies such checklists apply from 1 January 2018, and for most of the companies the checklists will be applied from 1 July 2018.

The main consequences for employers are:

- The checks will be focusing on the most significant, potentially dangerous areas.
- The subject of scheduled inspection is limited to questions included into the checklist.
- The information on the risk category assigned to employer and date of next inspection is available in the internet page of the SLI or may be received within 15 working days upon a request filed to the SLI.
- The approach allows companies to make self-examination before the inspections of SLI and conduct a preliminary review of documents against applicable checklists in order to ensure that they comply with all requirements of Russian employment law and prepare to future inspections of SLI.
- Employer may apply for assigning a lower risk category.

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South Africa

National Minimum Wages Bill

South Africa announces details relating to National Minimum Wage

In January 2018, the President revealed the following in respect to the minimum wage rate in South Africa:

- The wage rate will be R20.00 per hour which translates to R3,500 per month for workers on a 40 hour week and R3,900 per month for a 45 hour week;
- The regulations are currently in bill form and are yet to be enacted. The Act is expected to come into effect from May 2018;
- The wage rate will be adjusted on an annual basis, and will be handled by a national minimum wage commission;
- Businesses and so called fragile sectors who will have difficulty complying with the national minimum wage will get assistance in order to mitigate job losses; and
- Sectoral determinations, collective agreements, bargaining council agreements and individual contracts of employment must comply with the new Regulations.

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Ukraine

Penalties for violating employment law went up

On 1 January 2018, the minimum salary in Ukraine went up to UAH 3,723 (current equivalent of approximately EUR 120) gross per month.

Financial sanctions for violations of the employment legislation are linked to the amount of the minimum salary and, therefore, they went up as well. In particular, the following are the main financial penalties that can be imposed on Ukrainian employers:

- UAH 111,690 (current equivalent of approximately EUR 3,490) for the following violations for each employee who:
  - Works without an employment agreement in place;
  - Works full-time while the employment agreement is concluded for a part-time job;
  - Receives his/her salary without of accrual and payment of unified social contribution and taxes.
- UAH 37,230 (current equivalent of approximately EUR 1,160) per employee if the employer fails to comply with minimum state guarantees for remuneration of labour (for example, failure to pay the minimum salary or for overtime work, work at night, etc.).
- UAH 11,169 (current equivalent of approximately EUR 350) for the following types of violations:
  - Violation of the established terms for payment of salary and other employment related payments stipulated by labour legislation for more than one month;
  - Failure to pay salary and other remuneration in full.
- UAH 3,723 (currently approximately EUR 120) for other employment law violations.

In light of the above, ensuring the compliance with the employment legislation becomes even more important for Ukrainian employers.

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United Arab Emirates (1/5)

- Significant and important changes have been proposed to the DIFC Employment Law. A consultation paper closed for public comment on 22 March 2018. Key proposed changes include: an express concept of constructive unfair dismissal; expansion of the 'protected grounds' for discrimination to include age, pregnancy and maternity; remedies and financial penalties for breach of the Law; whistleblowing protections; recognition of alternative employment structures (e.g. secondments and part-time work) and a widening of the territorial reach of the Law itself.
- The Ministry of Human Resources and Emiratisation enacted a new law permitting eligible 'onshore' based employees to take on one or more part-time jobs, subject to certain qualifying conditions. Relevantly, consent from the original employer is no longer required (which was a requirement under the previous system of part-time work). Generally, therefore, eligible employees have the ability to commence work with a competitor employer in the UAE.
- The UAE Cabinet recently approved a draft law on equal wages for men and women. The draft law has not yet been published and still needs to be approved at the federal level. Gender parity remains a key agenda item for the UAE Government, with it having set up in 2015 a dedicated Gender Balance Council to improve workplace gender imbalances.

United Arab Emirates (2/5)

Kingdom of Kuwait

- The Kuwaiti Labour Law has been amended to expressly clarify that weekends, public holidays, and sick leave days shall not be counted as part of an employee's 30 day annual leave entitlement. Additionally, upon termination, an employee is entitled to a full end-of-service indemnity without deductions for the contributions the employer made towards the Public Institution for Social Security.
- A ban has been introduced on recruiting nationals from Bangladesh. The decision to ban Bangladeshi workers is believed to be attributable to irregularities and abuses by traffickers in work and residency permits for Bangladeshis whose numbers have increased remarkably following the recent lifting of a ban on their recruitment. The new ban has no implications on permits already issued for renewals of existing Bangladeshi residents in Kuwait.
- Expats in Kuwait suffering from 22 non-contagious illnesses such as cancer, diabetes, high blood pressure, kidney failure, and vision/eyesight problems will no longer be eligible to obtain a residency visa due to an increase in pressure on the healthcare industry in Kuwait.

United Arab Emirates (3/5)

Sultanate of Oman

- As of 21 March 2018 expatriates are now required to procure an e-visa prior to their travel to Oman. As per the announcement, it has been made clear that the 'on arrival' counter will not be permanent at the New Muscat International Airport and expats will need to plan well in advance for their trips to Oman. Business travellers going to Oman need to be mindful when scheduling meetings on short notice.
- Employers operating in the oil and gas sector in Oman will soon require pre-approval from the Ministry of Oil and Gas before filing labour clearance requests at the Ministry of Manpower to hire expatriates. The effective date of this new rule has not been announced. Those companies recruiting foreign workers in the oil and gas sector, including contractors, operators and service providers, will have to complete specific steps prior to submitting a labour clearance request to the Ministry of Manpower including advertising jobs for a specific period of time period.

United Arab Emirates (4/5)

Kingdom of Saudi Arabia

- The KSA authorities had previously confirmed that, effective 1 April 2018, they would begin issuing tourist visas to nationals of select countries, as part of an increased drive to promote its tourism sector and position itself as a leading Middle Eastern hub for foreign trade and investment. As at April 2018, no such visas have yet been issued and it remains to be seen when this initiative will be fully implemented by the KSA authorities.
- High on the KSA government agenda and part of its overarching 2030 Vision strategy remains its Saudisation programme, with increasing rules being put into place to ensure Saudi nationals are being appropriately and adequately staffed in the private sector. The KSA Ministry of Labour has introduced additional Saudisation rules, prohibiting expatriate employment in 12 additional industry sectors/work areas including automobile and mobile phone shops, medical equipment stores, optical stores, sales outlets and ready-made garments, electrical and electronics shops, watch shops, and shops selling home furniture and ready-made office materials. The prohibition will operate on a phased basis, from September 2018 onwards.

United Arab Emirates (5/5)

State of Qatar

- The Qatari government has introduced, as a means of facilitating greater and swifter access to justice, a law which seeks to establish a new labour dispute resolution committee (the 'LDRC'), which is intended to simplify employment disputes (whether arising under the Qatar Labour Law or the employment contract) to the confines of a more specialised and bespoke body and reduce the time-frames for overall employment dispute resolution. It is unclear when the LDRC will be formed but the new law mandates, in the context of employment disputes, the utilisation of the LDRC as part of the overall pre-court process.
- As of 24 April 2018, citizens of 33 approved countries (including the USA, UK, Canada and Australia) may apply for a joint tourist visa, which allows them to travel freely between Qatar and Oman. It is issued upon arrival at the airport or border of Qatar for one month and can be extended for another month. Travelers may apply online for the visa ahead of time. If the visa is granted by Oman, the foreigner must complete the application form with a stamp on his passport in a form that will allow him to enter Qatar. The visa fee is free of charge if coming from Qatar provided that there is a seal indicating that it is a joint visa.

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The United Kingdom

Contingent workers and the gig economy

The Government announces an important consultation on 'Good Work' around employment rights in the UK economy

The consultation is likely to be the start of fundamental changes to the way businesses engage with contingent, flexible and agency workers with potential additional cost and greater compliance obligations.

The key changes announced are:

- Having a statutory test for determining when someone is self-employed, employed or (a middle status) a 'worker';
- Introducing a premium rate of National Minimum Wage for those with uncertain hours of work;
- Enforcing correct holiday pay arrangements through a governmental body; and
- Greater rights for agency workers and those on zero hours contracts.

All businesses engaging significant numbers of flexible or contingent workers in the UK should be aware of these developments and get involved in the consultation which closes in June 2018.

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Part 2

Focus on employing people in Australia (1/3)

Is it necessary to register a branch or company to employ people in your country?

No. A foreign employer can employ persons working in Australia. However, Australian labour laws will apply, and the foreign employer will have local withholding, tax and other related obligations. Employing individuals in Australia may also create local corporate tax liabilities (that is, a 'permanent establishment') for the foreign employer entity. As such, it is recommended that employees are employed through locally registered entities (including foreign registered entities).

Can we carry out pre-hire checks such as medical background and use of social media?

Yes, with consent and where the information to be collected is reasonable and necessary for recruitment activities. Some sensitive information may be collected. Employers must be careful not to use that information for unlawfully discriminatory purposes in making hiring decisions. In some instances, it may be unlawful to ask questions and/or seek information about some protected grounds under anti-discrimination laws.

Do we need to register employees with any government body?

No. However, employers must collect and register information with the Australian Tax Office when an employee commences employment for the purposes of withholding and remitting taxes.

Can we hire employees on a fixed-term or temporary basis?

Yes. Employees can be hired on a fixed term basis. Although, where this occurs for a lengthy period of time, or for multiple successive periods without break, a Court may deem the relationship to be one of permanent employment.

Employees can also be hired on a casual basis, meaning that they have no guarantee of ongoing work or a minimum number of hours of work. Casual employees are not entitled to minimum notice of termination, paid leave and some other minimum statutory benefits. However, casual employees must be paid a casual loading on top of minimum wage rates to compensate for lack of these benefits. The current federal minimum default casual loading is 25%.

Do we need to issue a written contract of employment and does that have to be in the local language?

There is no requirement to have a written contract of employment, although an employer must issue a 'Fair Work Information Statement' to all new employees. The Fair Work Information Statement is available from the Fair Work Ombudsman's website at: https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/fair-work-information-statement and summarises key statutory minimum terms and conditions of employment.

Whilst it is not compulsory to have a written contract, Australian courts will still recognise the existence of a contract between employer and employee at law. Courts will imply certain terms into contracts in the absence of written terms (for example, in relation to reasonable notice of termination). As such, it is strongly recommend to have written contracts of employment in order to avoid implication of onerous terms at common law.

Written contracts should be in English.

Focus on employing people in Australia (2/3)

Can we include post-termination restrictive covenants in a contract of employment?

Yes, post-termination restrictive covenants are a common component of employment contracts in Australia. Some recent high profile cases have also demonstrated an increasing willingness of some State Courts to enforce post-termination restrictive covenants. However, in order to be enforceable in Australia, restrictive covenants must be reasonable and necessary to protect the legitimate interests of an ex-employer.

Are there rules on minimum rates of pay?

Yes. The Fair Work Commission sets a baseline federal minimum wage pursuant to the Fair Work Act 2009 (Cth) (Fair Work Act), which is reviewed from year to year (with any increase commencing from 1 July in a given year). The current federal minimum wage for the period 1 July 2017 to date is $18.29 per hour or $694.90 per week (gross, before taxes).

Minimum rates of pay for specific industries and occupations are also set out in instruments called Modern Awards. Modern Awards are quasi-statutory instruments made under the Fair Work Act that apply to particular industries and occupations, and contain additional safety net provisions above and beyond minimum statutory entitlements. For example, it is common for Modern Awards to create entitlements to overtime, penalty rates, loadings and allowances for particular classes of employee. Not all employees are covered by Modern Awards, and it is important for Australian employers to consider and seek advice about Modern Award application.

Modern Award rates are also reviewed on an annual basis, in line with the federal minimum wage review.

What are employees' rights to rest breaks and paid holiday?

The Fair Work Act contains National Employment Standards that encompass universal paid annual leave rights for 4 weeks per year of service. Accrued, unused annual leave accumulates from year to year.

Employees may also be entitled to take paid leave on gasetted public holidays that fall on their usual days of work. Some employees may be required to work on public holidays, but are usually entitled to additional benefits for working on a public holiday. For example, many Modern Awards prescribe penalty rates for work on public holidays. Alternatively, employees may be entitled to paid days in lieu of a public holiday.

State legislation also provides employees with access to 'long service leave', being paid recreational leave that accrues after a qualifying period of service (e.g. in NSW, employees are entitled to 2 months' paid leave after 10 years of service, and a further 1 month's paid leave for every subsequent 5 years).

There is no universal right to rest or meal breaks in federal or State law. However, Modern Awards and other industrial instruments commonly provide for rest breaks in particular industries including manufacturing, retail and hospitality.

Focus on employing people in Australia (3/3)

Are employees entitled to pay during sickness absence?

Yes. The National Employment Standards provide a universal right to paid personal leave (which may be taken as sick or carer's leave) of 10 days per year of service (pro-rated for a part-time employee).

In addition, all employees, including casual employees, are entitled to 2 days of unpaid carer's leave each time an immediate family member or household member of the employee needs care and support because of illness, injury, or an unexpected emergency.

What employee benefits are mandatory?

The employee benefits contained in the National Employment Standards are mandatory for all non-casual national system employees. Casuals have limited rights to some of the below benefits (e.g. unpaid carers' leave and in some instances unpaid parental leave). The employee benefits in the National Employment Standards include.

- Right to request for flexible working arrangements.
- Unpaid parental leave and related entitlements.
- Paid annual leave.
- Paid personal (sick and carer's) leave.
- Unpaid carer's leave.
- Paid compassionate leave.
- Community service leave (which may be paid in limited circumstances).
- Paid public holidays.
- Minimum notice of termination (other than for serious misconduct or other serious breach)
- Redundancy pay upon termination for redundancy

Employees may also be entitled to long service leave under State legislation.

Modern Awards also provide other benefits such as allowances, penalty rates, and additional leave types.

What family type employment rights exist, including during pregnancy and maternity?

The National Employment Standards provide parental leave and related entitlements. Parental leave entitlements include maternity leave, paternity and partner leave, adoption leave, special maternity leave, right to a safe job, no safe job leave, and a right to return to one's old job.

Employees also have protections under workers' compensation laws following a workplace injury.

Aside from this, Australian labour laws extend to prohibitions on termination and other adverse action under anti-discrimination laws, and anti-retaliation (non-retaliation) laws that protect employees who have exercised workplace rights, including in relation to taking parental leave, requesting flexibility or taking personal leave.

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Focus on employing people in China (1/2)

Is it necessary to register a branch or company to employ people in your country?

Yes, it is required. For representative offices, China employees would be hired through a staffing company registered in China, such as FESCO, CIIC, China Star, etc.

Can we carry out pre-hire checks such as medical background and use of social media?

Background check is allowed in China and it is not restricted on using social media as long as it is publicly available information. Common practice is to ask employees to provide medical check results before hiring.

Do we need to register employees with any government body?

No. But the company is required to maintain the employee roster for checking.

Can we hire employees on a fixed-term or temporary basis?

Yes, the company is allowed to enter into the fixed-term employment contracts twice consecutively, followed by the open term contract. Temporary basis employment normally refers to either a very short term contract or the part time employment under which working time cannot exceed 4 hours per day and 24 hours per week.

Do we need to issue a written contract of employment and does that have to be in the local language?

Yes, a written employment contract is legally required, otherwise the employer will face double salary or open term contract as the results of breach. Local language (Chinese) is not compulsory but it is highly recommended to prepare a bilingual version by employers to protect its own benefits because government authority and judicial system only recognise the Chinese version.

Can we include post-termination restrictive covenants in a contract of employment?

Yes. Post-termination non-compete obligation is required the monthly compensation paid to former employees. Others do not require payment.

Are there rules on minimum rates of pay?

Yes. Local government issues the minimum wage on an annual basis.

What are employees' rights to rest breaks and paid holiday?

Employee is entitled to at least one rest day of each week, and 5 to 15 paid statutory holidays in a calendar year according to the accumulative working experience after graduation.

Are employees entitled to pay during sickness absence?

Yes. Each province or city sets out its own local rules on sick leave payment.

Focus on employing people in China (2/2)

What employee benefits are mandatory?

Social insurance and housing funds are mandatory to all Chinese employees and only social insurance is required to foreign employees with very few exceptions. Mandatory social insurance includes the statutory pension insurance, the basic medical insurance, maternity insurance, work injury insurance and unemployment insurance.

What family type employment rights exist, including during pregnancy and maternity?

Female employees is protected from unilateral termination during pregnancy, maternity leave and nursing period (12 months after a child is born). All employees are entitled to marriage leave, pre-natal checks/maternity/paternity leave, and bereavement leave.

China does not have a comprehensive legislation for anti-discrimination yet. In general, employees are protected under the equal employment opportunity. Under no circumstance, a company can discriminate on the basis of race, nation, origin, sex, religion, age, gender, etc. for recruitment, employment and its termination.

Do we need to recognise a trade union or enter into a collective agreement?

The basic rule in China is that a company cannot limit the employee's right to establish a union if employees wish so. In practice, if a union is set up either by employees or upper level union, the company cannot refuse to enter into the negotiation for a collective agreement. Normally, China's collective agreement only recites the basic rules and employees rights addressed in laws and regulations without too many particular details.

Do we need to establish a works council?

No. Works council is not a concept recognised in China. State owned entity may have an employee representative committee which is a similar concept to works council. For most of wholly-foreign-owned enterprises, if the number of employees is large enough, they may set up a company level trade union, rather than an employee representative committee.

What rights do employees have on termination of employment?

Employees may resign with proper notice (3 days in probation or 30 days after probation). Employees may also unilaterally terminate the employment if an employer fails to pay salary, social benefits, protection at workplace, etc. with the entitlement of statutory severance.

Meanwhile, employees are protected from unilateral termination with/without advance notice unless a solid and strong statutory termination ground can be proven by the employer. If a wrongful termination is ruled, the employee is entitled to request for reinstatement or double statutory severance.

Except for unilateral termination with fault, employees are entitled to statutory severance.

In what circumstances is collective consultation necessary?

When the company formulates its policy that is significantly related to the employees' benefits and interest, employee consultation process is required before the policy becomes effective and enforceable.

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Focus on employing people in Germany (1/5)

Is it necessary to register a branch or company to employ people in your country?

No. It is also possible to employee an employee in Germany under a foreign employment contract without a registered branch or company. However, depending on the services performed by the employee, the number of employees or the power of attorney the employee (s) has/have, a permanent establishment (PE) might be created. A PE or foundation of a company always has corporate tax consequences and financial statements are required.
Before employing someone in Germany, we highly recommend to review the business case, the intention of the employer, and the corporate tax consequences of foreign employees.

Generally, a foreign company with its registered seat and head office outside Germany can employ employees in Germany as formally registered under some corporate identity, typically a branch, representative office or subsidiary (affiliated company). A branch office can be a suitable business form for foreign investors wanting to establish a presence in Germany for the mere purpose of initiating business and getting in contact with local partners.

Can we carry out pre-hire checks such as medical background and use of social media?

The process of recruitment and interview underlies important compliance requirements which must be observed by the employer, e.g. the collection, processing and use of personal data within employment relationships is restricted in the Federal Data Protection Act.

The employer must not collect persona data of applicant without a special justification, especially neither health data nor private details published in social media.

In general, the employer may not check of applicants:

- Marital status
- Sexual orientation
- Pregnancy
- Plans of having children
- Job of partner
- The health situation such as the current health status
- An existing disability
- Past illnesses
- Serious illnesses within the family
- Religion and confession, party and trade union membership

However, the employer may ask for personal details in the job interview if they have a connection with the exercise of the employee's duties (such as applicants may be asked whether they have a criminal record where this could have a relevance to the intended employment relationship, e.g. as a bookkeeper). Furthermore, any background checks in regard to the sexual orientation, pregnancy, plans of having children, race/ethic origin and religion would be an indication for discrimination if the applicant is rejected.

According to the section 1 and 7 General Equal Treatment Act nobody must to be discriminated on grounds of racial origin or ethnic origin, gender, religion or belief, disability, age or sexual identity. In the case of non-compliance, there is a risk of compensation claims of the rejected applicant.

Focus on employing people in Germany (2/5)

Do we need to register employees with any government body?

Companies have to register their empoloyees for social security purposes (e.g. for the statutory health, nursing, accident, pension and unemployment insurance).

Can we hire employees on a fixed-term or temporary basis?

Yes. An employment contract with a limited term according to the calendar or limited by purpose ends at the expiration of the agreed period or upon achieving the purpose, but no earlier than two weeks after delivery of the employer's written notification to the employee on the time the purpose was achieved, section 15 para. 1 and 2 Part-Time and Limited Term Employment Act (TzBfG).

Limited employment contracts give a high flexibility because with limited employment contracts it is not necessary to make a long term commitment. However, there are strict formal requirements.

In order to be effective, a limited term to an employment agreement must be in written form, section 14 para. 14 TzBfG. If a term is invalid only because it was not limited in written form, the employment agreement runs for an unlimited time.

Fixed term agreements are only valid if the term is justified on objective grounds such as operational need for only temporary work, the employee is hired to fill in for another employee. Without objective grounds a limited term according to the calendar may be extended no more than three times up a total term of two years. The conclusion of a limited employment agreement is not valid for an employee who has already worked for this company at any time in the past.

However, for the first four years after a foundation of a company, fixed-term agreements are also valid without any objective grounds for a period of four years.

Please note that the Coalition Agreement of the German Government of 2018 includes plans to change this rules within the next years as follows:

- The limitation of an employment contract without a factual reason shall be only permissible for a period of 18 instead of 24 months
- Any prolongations of the duration shall be admissible only for one-time instead of a three-time extension of the fixed-term contract.

Do we need to issue a written contract of employment and does that have to be in the local language?

Legally, the company may agree also orally on a standard employment contract (with unlimited term and without post-contractual non-competition clauses)-and signs the employment conditions within three months (Sec 2 NachwG/German Proof Act).

If the company infringes this duty this may lead to a reversal of the burden of proof in a court procedure. In practice, most companies and employees only start employment relationships after signing employment contracts to avoid uncertainties. Furthermore, all German courts and authorities require documents in German language.

Can we include post-termination restrictive covenants in a contract of employment?

Yes, but the company must promise a compensation of at least 50% of the last salary. Further, it may not last longer than for two years after the end of employment.

Focus on employing people in Germany (3/5)

Are there rules on minimum rates of pay?

Yes, a general statutory minimum wage went into effect in Germany on January 1st 2015. The statutory minimum wage establishes a lower limit for wages. All employees performing work in Germany have to receive at least the minimum wage except for some specific employee group such as interns, trainees, apprentice and so forth. The current general minimum hourly wage is at €8.84 gross. For several industries, the German government declared a slightly higher amount as minimum wage (e.g. building industry. labour lease, nursing).

What are employees' rights to rest breaks and paid holiday?

After more than six hours of working, the employee must have 30 minutes of a break. After more than nine hours, the employee must have forty-five minutes of a break (section 4 of the Working Time Act).

Upon completion of the daily working time, the employee must have at least eleven hours of a continuous resting period (section 5 of the Working Time Act). Section 5 subsections 2 and 3 of the Working Time Act regulate exceptions for shorter resting periods.

Assuming a six-day week, the minimum statutory holiday (paid vacation) entitlement amounts to 24 working days. Working days in this regard are all calendar days which are neither Sundays nor public holidays (section 3 of the Federal Vacation Act). Proportionately, in the case of a more common five-day week, the minimum statutory holiday entitlement amounts to 20 working days. This comes to a four-week minimum holiday.

The purpose of holidays is to give the employee an opportunity to relax and restore his energy. The employee may be granted more than the legal holiday in the case it is regulated in the employment contract or in an applicable collective agreement.

Are employees entitled to pay during sickness absence?

The employer must pay remuneration in the amount of 100 percent for the first six weeks of an employee's illness (section 3 subsection 1 of the Continuation of Remuneration Act). The employee only has a right to continued remuneration in the case that the employment relationship lasted longer than four weeks. The employee has a right to six weeks of sick pay again if the illness is not due to the same underlying illness. Furthermore, the sick pay will recommence after six months have elapsed since the end of the last sick leave or one year has elapsed since the beginning of the first sick leave (section 3 subsection 2 of the Continuation of the Remuneration Act). After six weeks, the employee receives sickness allowance paid by the health insurance scheme. The sickness allowance amounts to 70 percent of the employee's wage. The maximum period of sickness leave is 78 weeks.

What employee benefits are mandatory?

All minimum protection standards of German employment law, e.g. as the minimum wages, the minimum paid leave, the maximum working hours and so on.

Focus on employing people in Germany (4/5)

What family type employment rights exist, including during pregnancy and maternity?

Pregnancy and Maternity leave

Women are not permitted to perform certain tasks during pregnancy. During the six weeks before birth, the mother is subject to a general employment ban (section 3 subsection 2 of the Maternity Protection Act). This means pregnant women are able to work if they explicitly declare their willingness to do so. There is a possibility to revoke such a declaration at any time (section 3 subsection 2 of the Maternity Protection Act). During the eight weeks after birth, the mother is subject to an absolute employment ban and therefore is absolutely forbidden to work. The mother is entitled to be paid maternity leave during these fourteen weeks of maternity leave equivalent to her monthly remuneration.

The health insurance pays a maximum of 13 Euros per day.
The employer is obliged to pay the difference between the sickness benefit of the health insurance and the regular remuneration paid by the employer.

The pregnant woman must inform her employer of her pregnancy and the expected delivery date as soon as she is certain about it. Furthermore, the pregnant woman enjoys extra protection against dismissal.

Parental leave during Maternity/Paternity

The parental benefit is paid by the State. Both - the father and the mother - are entitled to a maximum of fourteen months of parental benefits whereby one parent is entitled to at least two and a maximum of twelve months of paid parental leave. Parental leave can be taken by the father or the mother or together.

The employee must request parental leave in writing seven weeks beforehand (section 16 subsection 1 of the Act on Parental Benefits and Parental Leave) to provide a clear situation for both parties.

According to section 15 subsection 4 of the Act on Parental Benefits and Parental Leave, the employee may be employed part-time for a maximum of 30 hours per week. The employee may claim twice for the reduction of their working time (section 15 subsection 6 of the Act on Parental Benefits and Parental Leave).

What forms of discrimination are prohibited?

According to the section 1 and 7 General Equal Treatment Act nobody must to be discriminated on grounds of racial origin or ethnic origin, gender, religion or belief, disability, age or sexual identity.

Do we need to recognise a trade union or enter into a collective agreement?

Since no employer in Germany is obligated to join an employers' association, the application of collective bargaining agreements can be avoided beside the applicability of general binding collective bargaining agreements. However, it can still be useful to make reference to a collective bargaining agreement in an employment agreement. The result of such a reference clause is the application of the collective bargaining agreement referred to the employment relationship even if the employer is not a member of an employers' association and the employee is not member of a trade union.

Focus on employing people in Germany (5/5)

Do we need to establish a works council?

The implementation of a works council is tied to the size of a company's establishment. The implementation of a works council is not mandatory, but subject to the initiative of a trade union or of the employees. Employees have a right to implement a works council in establishments, which regularly have at least five employees eligible to vote, of whom three have to be eligible for election (section 1 subsection 1 sentence 1 of the Works Constitution Act). An employer may not prevent the election of a works council. If a company consists of several establishments, it has to form a joint works council. In addition, a corporate group may form a group works council if the group has more than one joint works council.

What rights do employees have on termination of employment?

Employees may file an action to the labour court against unfair dismissal within three weeks after the termination notice.

In what circumstances is collective consultation necessary?

The rights and duties of works councils, joint works councils and group works councils are regulated by the Works Constitution Act. In the Works Constitution Act, several codetermination and information rights of the works council are laid down which apply especially when it comes to measures affecting the business organisation or operational issues.

The works council has a codetermination right when it comes to the following topics:

- **Structuring of jobs** e.g. renovation and expansion of production areas, technical installations, work procedures and routines or work places (see sec. 90 87 Works Constitution Act)
- **Social matters** e.g. overtime work, introduction and use of information technology with which the employees' conduct can be monitored (sec. 87 para. 1 Works Constitution Act).
- **Personal matters**, in particular in regard to the hiring and transfer of employees (Sec. 99 Works Constitution Act).
- **Dismissals:** Before every dismissal the works council has a right to be informed and consulted, otherwise the dismissal will be invalid (Sec. 102 Works Constitution Act).The works council has to object to the dismissal within a period of one week. The employer then has to wait until the expiration of this period before he gives the employee notice of dismissal. In the case of a dismissal for cause, the works council only has three days to state its position.
- **Economic matters** e.g. restructuring or shut down of the establishment, including the preparation of mass dismissals, (Sec. 102 Works Constitution Act).

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Focus on employing people in the Netherlands (1/4)

Is it necessary to register a branch or company to employ people in your country?

It is not necessary that the employer of an employee working in the Netherlands is registered in the Netherlands. Thus an employee working in the Netherlands can have an employer which is registered abroad. If an employee is working in the Netherlands in order to represent a foreign company in the Netherlands, it is recommended to register a branch or company at the Dutch Chamber of Commerce.

Can we carry out pre-hire checks such as medical background and use of social media?

This depends on the nature of the pre-hire checks. Background checks, e.g. in social networks referring to profession, used to be basically admissible. Recently, this has become debatable. Research pertaining to private social networks is restricted. Medical examination of employees or job applicants may only be carried out under special circumstances if the duties require specific physical or mental skills. To the extent personal data are being processed (e.g. an official pre-employment screening), this must always take place on specified and justifiable grounds (e.g. financial institutions) and may never be excessive. The data may only be used for the purposes for which it was initially collected.

Do we need to register employees with any government body?

Yes, employees need to be registered by the Dutch tax authorities because of e.g. personal income tax.

Can we hire employees on a fixed-term or temporary basis?

It is possible to conclude an employment contract for a definite period of time or an indefinite period of time.

If a chain of employment contracts for a definite period exceeds a period of 24 months, the most recent employment contract shall be deemed to have been concluded for an indefinite period. If more than 3 employment contracts for a definite term have been concluded, the 4th employment contract shall be considered as a contract for an indefinite period.

Do we need to issue a written contract of employment and does that have to be in the local language?

No, an employment contract does not have to be agreed upon in writing, a verbal agreement is also valid. In the event of a verbal agreement, the employer is obliged to provide the employee with a written statement of a number of details, e.g. start date and the duration of the agreement, within one month after the start of the employment.

The employment agreement does not have to be in the local language. If the employee does not understand the language in which the employment contract is written, it is up to the employer to explain the content of the employment contract by e.g. an English translation.

Focus on employing people in the Netherlands (2/4)

Can we include post-termination restrictive covenants in a contract of employment?

Yes, the main post-termination restrictive clauses are a non-competition clause, a non-solicitation clause and a business relations clause. The 'nature' (e.g. scope, duration, geographical scope and underlying substantiation) and enforcement of these restrictive clauses are determined by (case) law and the situation at hand. Under Dutch law, there is no requirement to provide a payment in relation to the period of restraint.

Are there rules on minimum rates of pay?

Based on the Minimum Wage and Minimum Holiday Allowance Act, employees aged 22 and over are entitled to at a minimum monthly wage of € 1578 (since 1 January 2018).

What are employees' rights to rest breaks and paid holiday?

Rest breaks: In general, employees are entitled to a break of at least 15 minutes. If employees work more than 5.5 hours per working day, a break of at least 30 minutes must be taken. A break of at least 45 minutes must be taken in the event of a working day of more than 10 hours.

Paid holiday: Employees are statutory entitled to 20 holiday days per calendar year based on a fulltime working week. It is market practice to offer 25 holiday days per calendar year based on a fulltime working week. Employees retain their right to wages during their holiday. Next to that, employees are entitled to a statutory minimum holiday allowance of 8 percent of the annual gross base salary per year.

Are employees entitled to pay during sickness absence?

Yes, but limited. During the first 2 years of illness employees are entitled to 70% of their last earned salary, with a minimum equal to the monthly statutory minimum wage of € 1578 gross (during the first year and if older than 22 years) and a maximum equal to 70% of the maximum daily wage. It is market practice that employers supplement this amount to 100% of the normal salary of its employees during the first year and 70% of the normal salary of its employees during the second year.

What employee benefits are mandatory?

The key benefits are described under questions 7 (statutory minimum wage), 8 (paid holiday), 9 (payment during sickness), 11 (family type leaves) and 15 (benefits in case of termination). Furthermore, employers are obliged to enable employees to follow training necessary for the performance of the position of the employee, and in so far as reasonably required, for the continuation of the employment agreement in the event the position of the employee ceases to exists or if the employee is no longer able to fulfil the position.

Focus on employing people in the Netherlands (3/4)

What family type employment rights exist, including during pregnancy and maternity?

Pregnancy and maternity leave: Employees are entitled to at least 16 weeks of pregnancy and maternity leave. The employee can take pregnancy leave from six weeks (not later than four weeks) before the date the baby is due. This period can only be extended if the delivery date will be later than envisaged. During the periods of pregnancy and maternity leave the employee will be entitled to payment of social security benefits to a maximum of the statutory day wage from the Dutch social security institution.

Paternity leave: After the delivery of a child by the employee's spouse, registered partner or person with whom the employee cohabits, or the person whose child the employee acknowledges as their own, the employee will have the right to take two days paid leave within a period of 4 weeks.

Parental leave: Employees are entitled to take unpaid parental leave for their own child, a child of whom the employee has acknowledged parentage, an adopted child, or a child who is accommodated at the same address as the employee and is cared for by the employee. Parental leave may only be taken until the child is 8 years old. The maximum duration of parental leave is 26 times the number of hours the employee works during a regular working week (i.e. 1040 hours for an employee who works 40 hours a week).

Adoption leave: Employees are entitled to unpaid leave in relation to the adoption of a child. The period of the adoption leave may not exceed a maximum period of 4 consecutive weeks and may be taken within a period of 26 weeks. Employees may begin the period of adoption leave no earlier than 4 weeks before the actual date of adoption.

Other: Employees are entitled to take various kinds of leave (i.e. emergency, short-care leave, long-term leave etc.) Depending on the underlying reason for the leave, this will be paid or unpaid.

What forms of discrimination are prohibited?

Discrimination on the grounds of e.g. race or ethnic origin, gender, religion or belief, age, sex orientation, duration of contract and number of working hours is prohibited. In limited situations exceptions to this rule are (objectively) justified.

Do we need to recognise a trade union or enter into a collective agreement?

Trade union: Trade unions represent employees and can be party to a collective labour agreement (CLA). In case a CLA is applied in a company, the company indirectly recognises the involved trade union(s).

Collective labour agreement: When the activities of a company fall within the scope of a CLA which has been declared general applicable ('mandatory CLA') for a certain period, the employer is obliged to apply the mandatory CLA to her employees for the same period. CLA applicability also occurs when the employer is member of the employer's organisation which is a party to the CLA. A company can also enter into a CLA on a voluntary basis.

Focus on employing people in the Netherlands (4/4)

Do we need to establish a works council?

A company with 50 employees or more is required to establish a works council. Depending on the size of the company and/or the business units at a company, works councils can be established on a different level. A company below 50 employees can establish a staff representation.

What rights do employees have on termination of employment?

There are 3 methods to come to a termination:

(i) Mutual consent formalised by a settlement agreement. Employees have two weeks to reconsider after signing the settlement agreement. Employers need to inform the employee about the two weeks consideration in writing.

If no mutual consent can be reached, employers can choose the following formal routes:

(ii) File a termination request based on individual reasons (e.g. inadequate performance) at the district court; or

(iii) File a termination request based on economic and/or organisational grounds or long-term sick leave at the public authority.

Under (ii) and (iii) a careful and thorough preparation/documentation of the reasoning is required. Prior to the request for termination, the employer must try to re-employ the employee into another suitable position within a reasonable term. Employees can go into (higher) appeal to the request to terminate the employment agreement. Among others a hearing can he held and/or a written defence can be submitted.

A maximised severance payment applies of 1/3 of gross monthly salary per service year until the 10th years of service and ½ of gross monthly salary afterwards with a cap of € 79,000 gross or 1 gross annual salary ('transition allowance'). The minimum requirements are 2 years of service and termination initiated by the employer or the non-renewal of a contract (incl. after sickness or expiration of a definite term contract). Only in special circumstances the court may award higher severance payments.

In certain cases, an employee can challenge the termination of the employment contract. The employee can request the district court for annulment of the termination or for restoration of the employment contract. Instead of annulment of the termination or restoration on the employment contract, the employee may request a fair compensation based on e.g. the (unreasonable) method of termination and actual damages.

In what circumstances is collective consultation necessary?

Works councils and trade unions are representatives of employees.

On case of secondary employment conditions, a works council and/or trade union can negotiate with the employer (or the involved employers' association) about amending secondary employment conditions. Depending on the nature of the secondary employment conditions, consent of the works council and/or trade union is required.

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Focus on employing people in the UK (1/4)

Is it necessary to register a branch or company to employ people in your country?

No. A foreign entity can employ people in the UK, subject to business and corporate tax planning considerations. However, the employer must comply with its requirements under UK employment law.

If the entity is registered outside the UK, local UK employees will benefit from all UK employment law rights. Assignees to the UK will immediately be entitled to a range of rights from day one, including national minimum wage, paid holiday, maternity leave and equal treatment for part-time workers and fixed-term and temporary staff.

Hiring a UK employee may trigger a requirement to register a legal presence of the foreign entity at UK Companies House.

Can we carry out pre-hire checks such as medical background and use of social media?

Yes, as long as they are proportionate and reasonable to the role and not discriminatory. As best practice, any checks should be made only once a successful applicant has been chosen, as a condition of any offer of employment. For example criminal record checks are required and permissible for certain limited occupations (e.g. solicitors and chartered accountants) and/or in a field that requires one (e.g. with vulnerable people or security) and health checks are permissible if required by law or the role (e.g. eye tests for commercial vehicle drivers).

There is currently no restriction on reviewing applicants' social media accounts but there are some legal risks in doing so. For example, the General Data Protection Regulations (coming into force on 25 May 2018) requires employers to have a legal justification before checking current or prospective employees' social media accounts.

Do we need to register employees with any government body?

Yes. You need to register as an employer with HM Revenue and Customs (HMRC) up to four weeks before you pay your new staff.

The following links contain steps new employers should take from a tax perspective:

https://www.gov.uk/employing-staff

https://www.gov.uk/paye-for-employers

Can we hire employees on a fixed-term or temporary basis?

Yes. However, it is important to note that fixed-term employees should not be treated less favourably than a comparable permanent employee in relation to their contractual terms or subject to any detriment because of their fixed-term status (unless the treatment can be objectively justified).

Employees who have been continuously employed for four years or more on a series of successive fixed-term contracts are automatically deemed to be permanent employees unless the continued use of a fixed-term contract can be objectively justified.

Do we need to issue a written contract of employment and does that have to be in the local language?

There is a legal requirement to issue employees with a written statement of particulars within two months of commencement of employment. However, it is best practice for employees to enter into a written contract of employment prior to commencement of employment. This contract will normally contain a number of business protection provisions, including a duty of confidentiality and intellectual property provisions. Although there is no statutory requirement to this effect, all documents should be in English.

Focus on employing people in the UK (2/4)

Can we include post-termination restrictive covenants in a contract of employment?

Companies have to register their empoloyees for social security purposes (e.g. for the statutory health, nursing, accident, pension and unemployment insurance).

Are there rules on minimum rates of pay?

Yes. Minimum wage rates as of April 2018 (£):

- 25 years old or over - 7.83
- 21 - 24 years old - 7.38
- 18 - 20 years old - 5.90
- 16 -17 years old - 4.20
- Apprentices - 3.70

What are employees' rights to rest breaks and paid holiday?

Holiday – statutory minimum entitlement of 5.6 weeks' paid holiday per year (28 days for a full time employee). Many employers provide more contractual holiday than the statutory minimum.

There have been a number of recent cases dealing with the inclusion of pay elements in calculating statutory holiday pay, for example commission and overtime.

Rest breaks – most workers are entitled to:

- 20 minutes' rest break if the working day is longer than six hours;
- 11 hours' consecutive rest per day; and
- either an uninterrupted 24 hours without any work each week or an uninterrupted 48 hours without any work each fortnight.

Are employees entitled to pay during sickness absence?

Employees who meet certain qualification requirements may be entitled to statutory sick pay (SSP) when absent due to sickness for more than four or more working days in a row. The rate is fixed currently at a maximum of £92.05 per week.

It is common for employees to have contractual rights to receive additional sick pay over and above SSP. Alternatively, employees might receive sick pay on a discretionary basis.

What employee benefits are mandatory?

All employers must automatically enrol staff into a workplace pension scheme if they are above age 22, earn £10,000/year or more, are a 'worker' and ordinarily work in the UK. The employer must pay a minimum of 2% of a worker's earnings into the scheme (increasing to 3% from April 2019) and the employee must pay 3% into the scheme (increasing to 5% from April 2019). Employees can opt out of the workplace scheme.

Employers must obtain Employers Liability Insurance of at least £5 million as soon as they become an employer. An employer can be fined £2,500 a day if they are not properly insured.

Focus on employing people in the UK (3/4)

What family type employment rights exist, including during pregnancy and maternity?

Maternity - 52 weeks' leave, pay for 39 weeks (90% of pay for first six weeks followed by current statutory rate of £145.18 per week or 90% of pay if less for the remaining 33 weeks). Right to time off for antenatal care (appointments and parental classes) paid at normal rate.

Paternity - two weeks' paid leave at birth (at current statutory rate of £145.18 per week, or 90% of pay, if less). Right to unpaid time off work to attend two antenatal appointments.

Shared Parental Leave - subject to eligibility, a mother may end maternity leave after two weeks and share the remaining 50 weeks of parental leave with the other parent (paid at current statutory rate of £145.18 per week or 90% of pay if less).

Parental Leave - parents can take 18 weeks of unpaid parental leave per child (limit of four weeks per year, unless the employer agrees otherwise).

Right to return to work - employees have the right to return to the same job they held if they take up to 26 weeks' maternity leave or shared parental leave, paternity leave, or up to four weeks' parental leave. If the employee takes more leave than this, they will have the right to return to the same job or a similar job (if it is not possible to give them their old job).

What forms of discrimination are prohibited?

Direct and indirect discrimination, discrimination arising from disability, victimisation and harassment. Employers are also under a duty to make reasonable adjustments for individuals with disabilities.

Protected characteristics – race, colour, nationality or ethnic origin, age, sex, religion or religious belief, sexual orientation, gender reassignment, pregnancy and maternity, disability, part-time status; and fixed-term employment status.

Do we need to recognise a trade union or enter into a collective agreement?

Trade unions are prevalent in certain sectors (e.g. manufacturing, transport and the public sector) but many businesses have no union or other worker representation. Collective agreements are less common in the UK private sector than in the public sector.

Where an independent trade union wishes to seek recognition as being entitled to conduct collective bargaining on pay, hours and holidays on behalf of a group of workers, it must follow a statutory procedure, of which the first stage is making a written request for recognition direct to the employer.

Focus on employing people in the UK (4/4)

Do we need to establish a works council?

No. Works councils are uncommon in the UK.

What rights do employees have on termination of employment?

Notice - employees entitled to a statutory minimum period of notice (initially this is one week, where the employee has been employed for two full years, this then rises to two weeks and continues to increase by one week per year up to a maximum of 12 weeks). Compensation may be paid instead of giving notice.

Unfair dismissal - employees who have been continuously employed by an employer for two years or more have a right not to be unfairly dismissed. In certain circumstances, claims may be brought before the employee has achieved this minimum period of service. Unfair dismissal claims may be brought where a dismissal is not for a statutory 'fair reason' or fair procedures are not followed in carrying out the dismissal.

Redundancy - employees who have been continuously employed by an employer for two years or more are entitled to a statutory redundancy payment (calculated by reference to age, length of service and pay). Pay is capped for this purpose at £508 per week and length of service at 20 years.

Discrimination - claims may be brought where the reason for the termination is discriminatory, as described above.

In what circumstances is collective consultation necessary?

Redundancy - strict information and consultation rules apply where 20 or more employees are to be made redundant within 90 days or less.

Pension - when an employer proposes to make changes to its pension scheme it must notify 'affected members' or their representatives in advance of making the change.

Transfer of Undertakings – when a business or part of a business is taken over by another employer as a result of a merger or transfer, there is a requirement for the transferor and transferee to inform and (if appropriate) consult with recognised trade unions or elected employee representatives in relation to any affected employees.

Health and Safety - employers have a duty to consult with their employees, or their representatives, on health and safety matters.

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180425-145316-LM-OS