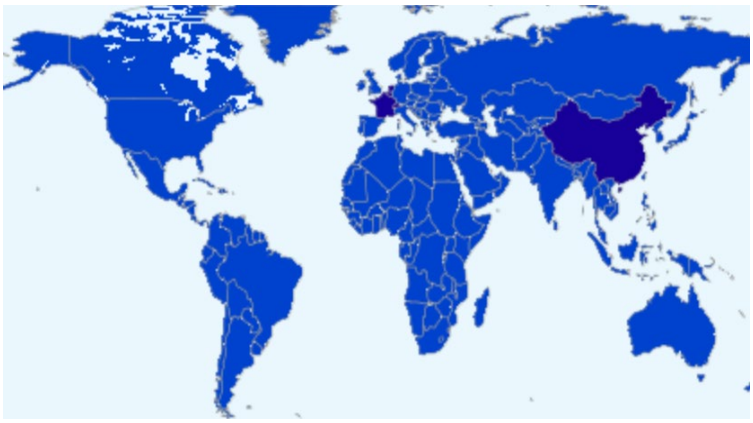
COVINGTON

COVINGTON & BURLING LLP

ADVISORY | International Employment Law Update

A summary of significant recent and forthcoming employment and labour law developments across the globe, including in:

- Belgium
- France
- Netherlands
- People's Republic of China
- Switzerland



October 15, 2013

BELGIUM

New Rules Bring Greater Flexibility to Temporary Work

Temporary work arrangements have historically been highly regulated in Belgium, though the market is now becoming more flexible. On 1 September 2013, a new 'inflow' justification for the use of temporary workers was introduced. It is now possible for companies to engage temporary employees if they can show that they intend to recruit the worker on a permanent basis on completion of the temporary assignment.

Certain conditions must be met. The regime only allows for a maximum of three attempts to fill each vacancy with 'inflow' temporary employees. A one month employment 'guarantee' must also be provided if the person concerned has terminated his or her previous employment contract in order to undertake the temporary contract. Trade union delegations must be informed and consulted on the reasons for making use of this justification.

Where successive daily contracts are used, a hirer of temporary workers will have to show that there is a real need for flexibility in the workforce because of the manner of work undertaken. If the hirer fails to demonstrate this need, the relevant agency for temporary employees will have to pay an indemnity equivalent to two weeks' wages - in addition to normal wages - to the employee.

Reforms to the Status of Blue-Collar and White-Collar Workers

In July, a final compromise proposal to eliminate certain differences in the treatment of blue-collar and white-collar workers was approved by the government. Legislative reform is expected in January 2014. The proposal would equalise notice periods, in general shortening those of white-collar employees. It also outlines a framework for compensation to take into account the seniority of employees acquired before 1 January 2014.

FRANCE

New Minimum Working Time Rules

From January 2014, new provisions will introduce a *minimum* working week of 24 hours. Exceptions may apply for students (under 26) or where an employee puts in a request to work fewer hours for personal reasons or holds several concurrent positions totalling 24 or more hours. Exceptions may also be provided for by industry-wide agreements (so long as these give employees certain guarantees, such as the implementation of regular hours). Prior to January 2014, it is likely that industry collective bargaining agreements will be renegotiated to ensure compliance with the new rules.

The new rules also provide for increased overtime remuneration. Overtime hours will be paid with an automatic 10% supplement. Overtime worked in excess of one-tenth of the working day provided for in the contract will be subject to a 25% increase unless an industry-wide agreement provides for a different rate of not less than 10%.

The rules will apply to all new contracts from January 2014 and to all contracts automatically from January 2016. Employers will need to check the applicable rules during the transitional period.

Job Security Laws Aim to Improve Labour Flexibility and Job Security

In effect from June this year, the new Job Security laws altered various employment rules.

- **Relocation of Employees Made Easier Under 'Internal Mobility Agreements'**

Before June this year, an employee in France could refuse to work in an alternative workplace unless his or her employment contract included an express "mobility" clause. Under the new rules, an employer will be able to enter into collective "internal mobility agreements" with representative unions to agree conditions for the mobility of employees. An employee will have no choice but to accept a relocation if it meets the terms of the relevant collective agreement. If an employee refuses to relocate, his or her employment may be terminated for economic reasons.

When making decisions regarding employee transfers, employers will still be required to take into account certain considerations such as the employee's private and family life. How these mobility agreements will be interpreted and applied is uncertain, so employers may want to document consideration of such factors.

- **Amendments to Employment Litigation Rules**

The law reduces the period during which an employee may bring an employment-related claim before the French Labour Court. Previously, an employee had five years within which to file a claim. Under the new law, employees have two years where a claim relates to performance or termination of an employment contract, and three years where claims are related to salary.

New legislation also gives employers and employees the option (but not the obligation) to agree statutory fixed damages before a conciliatory board meeting of the Labour Court. If no agreement is reached, the amount of damages will be decided during the substantive court hearing.

- **Increased Participation for Employees on Boards of Directors**

Currently, where an employee's shareholding exceeds 3% of the total share capital of the company, or some members of the board have been elected by employee shareholders, two members of the works council may attend meetings of the board of directors without voting rights. In future, employee participation in board meetings will become compulsory in certain

additional circumstances, such as where a company has its registered office and a minimum of 5,000 employees in France.

NETHERLANDS

Supreme Court Ruling on Assignment of Employment Rights During Asset Transfer

The Netherlands Supreme Court recently ended an eight-year long battle between Heineken Nederland, the caterer Albron and the trade union FNV. The ruling suggests that, where employees are officially employed by one entity but are permanently assigned to a target company (which becomes the 'de facto' employer), the employment conditions of such employees may transfer even if they do not have an employment agreement with the target.

Heineken's personnel company (HNB) was responsible for assigning staff to companies within the Heineken group. Heineken outsourced catering functions to Albron. Some of the HNB employees were offered new employment contracts by Albron on less favourable terms. In line with the ECJ's earlier ruling, the Supreme Court determined that the employees were protected by the Acquired Rights Directive ("ARD") as rules on transfers of undertakings were applicable to employees who were permanently assigned to a target, but formally employed by a different undertaking within the transferor's group.

This decision suggests that, as in the UK, there may in future be a greater willingness on the part of Dutch courts to accept that outsourcing and secondment of staff may trigger a transfer falling under the ARD.

PEOPLE'S REPUBLIC OF CHINA

New Regulations Restrict Labour Dispatch

Newly amended regulations restrict the ability of companies to utilise 'labour dispatch' agreements, under which they recruit staff through employment agencies. Companies that recruit temporary agency staff are now limited to hiring only a certain number or percentage of their workforce through such agencies and must obtain a license from a local labour bureau in order to do so. Dispatch employees must also be paid the same as directly hired employees undertaking the same work.

Employers must bring their practice in line with the regulations. This may mean offering direct contracts of employment to some dispatch staff. Companies violating the provisions may be fined.

A more detailed analysis of the legislation can be found here.

SWITZERLAND

New Collective Redundancy Requirements Increase Burden for Employers

A new law due to come into force in October 2013 will introduce additional requirements for employers in collective redundancy situations. Previously, employees have not been entitled to a 'social plan' – i.e. an agreement to compensate or reduce economic disadvantages for employees in the event of a substantial change to their employer's business. However, under the new law, employers will be obliged to negotiate a social plan if the company employs more than 250 employees and intends to effect at least 30 redundancies over the course of 30 days.

Employers will now be obliged to negotiate a plan with employee associations party to a collective employment contract, or, if none exist, with elected employee representatives or directly with employees. The regulations will not apply to collective redundancies announced during bankruptcy or composition proceedings.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international employment practice group:

Christopher Walter	+44.(0)20.7067.2061	cwalter@cov.com
Christopher Bracebridge	+44.(0)20.7067.2063	cbracebridge@cov.com
Ning Lu	+86.10.5910.0502	nlu@cov.com
Lindsay Burke	+1.202.662.5859	lburke@cov.com
Helena Milner-Smith	+44.(0)20.7067.2070	hmilner-smith@cov.com
Robin Wolfenden	+44.(0)20.7067.2117	rwolfenden@cov.com