

International Employment Law Update

December 2014

International Employment

France: New Information Rights for Employees Prior to Sale of Company in France

Under a new French law that took effect on November 1, 2014, companies employing fewer than 50 individuals will have to inform employees of an intent to sell at least two months in advance of the completion of the sale in order to provide the employees with the opportunity to make an offer to purchase the company. For companies employing 50 to 249 individuals, the right to be informed will be triggered only if the company's turnover / business revenue is less than €50 million or the company's assets are worth less than €43 million. Failure to comply with the new law may lead to a substantial fine and could even result in the sale being nullified by a court order.

Previously, only works councils had a right to be informed in advance of a potential sale (works councils are mandatory in French companies employing 50 or more individuals). The new law, however, entitles employees to receive information directly and applies to smaller companies without works councils - so heightening concerns about the employer's ability to protect the confidentiality of divestment plans.

Exclusive negotiations with a potential buyer for the sale of a business by a contract concluded prior to November 1, 2014 will not be subject to the employees' right to receive information pursuant to the new law.

China: Removal of a General Manager by the Board of Directors Does Not Automatically Trigger Termination of Employment

The Shanghai Hongkou District Labour Dispute Arbitration Committee has recently drawn a distinction between the removal of an employee from his position as general manager and the termination of his employment. In its ruling, the Committee found that, while removing a general manager can be done in accordance with company law provisions and the company's articles of association, the termination of an employment relationship requires compliance with employment legislation.

In this case, the company's outside auditor reported that there were material compliance issues. As a result, the company removed the general manager who was responsible for internal compliance. However, the general manager passed the performance review conducted by the

board of directors in January 2014 and the Committee held that there was no serious dereliction of duty and no proper grounds to terminate the employment contract. As a result of this decision, employers are advised to comply with both company and employment law when dismissing senior employees such as general managers.

Germany: Limited Extensions of the Contract of Employment beyond Statutory Retirement Age

A German law that came into force on July 1, 2014 as part of a series of statutory changes regarding retirement and pensions offers employers and employees the option to agree fixed-term extensions of employment contracts after the employee has reached the statutory pension age of 65.

If an employment contract provides for the end of employment upon reaching the statutory pension age, the parties to the employment contract can agree to postpone the end of the employment relationship. If necessary, it can be extended several times. This new law increases the flexibility to employ older employees for fixed periods. However, the law does not specify whether and to what extent additional changes to employment terms and conditions are also permitted upon renewal. Absent a decision of the court on this issue, simultaneous changes to employment conditions should be avoided.

Ukraine: Shareholders' Right to Dismiss CEO

A Ukrainian law that came into force on June 1, 2014 gives shareholders the right to dismiss their CEO and other members of executive and controlling bodies of the company through the revocation of their powers. CEOs who are so dismissed are entitled to receive a severance payment equivalent to six months' salary. Shareholders may also suspend a CEO on a temporary basis at any time.

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