COVINGTON

International Employment Law Update

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International Employment

Brazil

New Outsourcing Law Expected to Ease Compliance Burden for Employers

A draft law currently under review by the Federal Senate will introduce a legal framework for outsourcing. At present, in the absence of any statute, the Labour Courts will generally find outsourcing a core business to be unlawful, or in some instances that there is an employment relationship between the end-user company and outsourced employee and that the employee is entitled to end-user company benefits. If the proposed law is passed, companies will be able to outsource both core and non-core activities, but may still be jointly liable for employment debts due to outsourced employees. The proposed law should reduce uncertainty and lawsuits.

Europe

When Is Travel Time Classed as Working Time?

The European Court of Justice (ECJ) has ruled that time spent travelling between a mobile worker's home and the premises of his/her first and last customers of the day is "working time" under the Working Time Directive. The directive defines "working time" as any period during which a worker is working at the employer's disposal and carrying out their activity or duties in accordance with national laws and/or practice, but is silent on whether travel to and from a place of work should be considered working time. The ECJ ruled that if a worker does not have a fixed place of work and is carrying out duties on journeys to and from customers, this must be regarded as working time, even if the journey starts or finishes at the worker's home.

The court suggested that employers are responsible for putting in place monitoring procedures to avoid potential abuse of this position. Following the ruling, employers should re-assess working time compliance of their mobile workers in Europe.

France

Hiring Disabled Employees

The recent Macron law will require employers with more than 20 employees to take further measures to address disability inequality in the workplace. Currently, in order to comply with the new law, employers must either: (i) ensure that 6 percent or more of employees are

disabled; (ii) enter into service agreements with companies hiring 100-percent disabled employees; (iii) comply with a collective agreement relating to the hiring of disabled employees; (iv) host disabled trainees on a regular basis (thereby forming at least 2 percent of the workforce); *or* (v) make a financial contribution to the state fund for the disabled (AGEFIPH) in lieu. From January 2016, if a company has only met one, or both, of the latter two requirements in the last four years, it may owe financial contributions for each disabled employee that should have been hired (but was not). It is not clear at this stage how this will be determined, but employers should be evaluating which, if any, of these requirements they currently meet and the potential exposure for failure to do so. Companies with more than 20 employees that do not comply with these requirements risk a substantial fine, calculated by multiplying the number of disabled employees that would form 6 percent of the workforce by a specific amount linked to the hourly minimum wage.

Germany

Draft Bill Tightens Restrictions on Hiring Temporary Employees

A new law expected to come into effect in January 2017 tightens restrictions on the use of temporary employees hired through third-party providers. Some of the most noteworthy changes include: introduction of a maximum hire term of 18 months (unless otherwise agreed in a collective bargaining agreement) with the effect that, if the 18 month hire term is exceeded, an employment relationship is deemed to arise; and after nine months, temporary employees will be entitled to pay equal to that of a comparable employee working for the host company. Following the introduction of the new legislation, hiring temporary employees will raise increased compliance challenges for employers, similar to those presented when contracting with third-party agency workers.

Italy

Relaxed Restrictions on Employee M

Changes to existing legislation have relaxed restrictions regarding monitoring of employees by employers in Italy. The reforms have removed the general prohibition on monitoring employee activity through equipment designed for that purpose. Audiovisual equipment and other tools that facilitate the remote monitoring of employees may be used exclusively for organizational and production needs, workplace safety, and the protection of corporate assets. Information gathered through appropriate use of a work tool can now be used for disciplinary purposes. New provisions also regulate the procedure for co-determination between employers and employee representatives on the installation and use of monitoring equipment.

United Arab Emirates

Greater Protection for New Employees from Abroad

From January 1, 2016, the Ministry of Labour (MoL) will introduce a template offer letter to be provided to all non-UAE nationals prior to their arrival to work in the UAE. The new offer letter will set out certain key terms to be included in the employment contract, such as salary, notice, annual leave, and termination provisions. The offer letter does not replace the

template employment contract that is currently issued by the MoL (MoL Contract) for all employees based "onshore" in the UAE (i.e. not in one of the free zones), but from the beginning of next year, the MoL Contract will need to be consistent with the terms of the new template offer letter and may not include additional terms that are inconsistent with MoL requirements. It is hoped that the introduction of the MoL offer letter will help to ensure that employees recruited abroad are no longer enticed to move to the UAE on terms and conditions which are not then honored when they arrive to take up work.

United Kingdom

New Whistleblowing Regulations for Financial Services Sector

The Financial Conduct Authority (FCA) will introduce new regulations that aim to encourage whistleblowing by workers at banks, building societies and certain credit unions, investment firms and insurers. Firms caught by the regulations will be required, among other things, to appoint a senior manager to the role of "whistleblowers' champion" by March 2016, establish an independent whistleblowing channel to manage disclosures and inform UK staff about the FCA whistleblowing services by September 2016. The announcement about the regulations came soon after the Employment Appeal Tribunal gave a broad interpretation to the circumstances in which a disclosure will be in the "public interest" and therefore protected under UK whistleblowing legislation (the EAT concluded that a disclosure regarding the overtime treatment of four employees was in the public interest).

United States

Gender Equality Developments in California and New York

Governor Jerry Brown recently signed the California Fair Pay Act into law, which includes a right for women in California doing "substantively similar work" as male counterparts to be on comparable salaries. The new law also protects the right of female workers to compare salaries with co-workers without fear of retaliation from employers. Considerations such as seniority and merit are still permitted grounds for pay differences.

In October, New York State Governor Cuomo signed a group of eight bills (the Women's Equality Agenda) which expand protections for women in the workplace, including expansions in equal pay requirements. The bills also introduced familial status as a protected category and an included an express requirement for employers to reasonably accommodate pregnancy-related conditions. These bills will become effective in January 2016.

NLRB Decision on Joint Employer Status

The National Labour Relations Board (NLRB) recently issued a decision (*Browning-Ferris)* which expands the scope and instances in which companies using third-party staffing agencies may be found liable as joint employers, implicating whether Union membership is appropriate for employees employed through staffing agencies. Going forward, the NLRB may find that a company is a joint employer if it: is an employer within the meaning of the common law (retaining the right to control the terms and conditions of the workers); and shares or co-determines matters governing essential employment terms and conditions for

the employees at issue. The NLRB suggested that a company need not actually engage in direct or immediate control over employment terms and conditions to be considered a joint employer; a company may be a joint employer even if it only indirectly controls setting conditions of employment such as shift times, wages and productions standards.

Employers with unionized workers who also use staffing agencies should be aware that the staffing agency's employees may also be considered eligible for union membership.

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

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