COVINGTON

International Employment Law Update

September 2017

International Employment

Belgium

Flexible and Workable Work Law

On March 5, 2017, the Belgian parliament enacted the Flexible and Workable Work Law, which seeks to increase flexibility for both employers and employees. The key provisions of the new law are as follows:

- Flexible working schedules: employers can now select working schedules to suit the evolving needs of the company. Employers are no longer confined by the normal working schedule of a maximum eight-hour day and 40 hour week.
- Voluntary overtime: employers can now request employees to work overtime when required, provided the employee has given their written consent to the arrangement.
- Flexible hours: employees can choose when to start and end their own working days, subject to any mandatory core hours.

China

New Labour Arbitration Rules

On May 8, 2017, the Ministry of Human Resources and Social Security issued the amended Rules on the Handling of Arbitration Cases Involving Labor and Personnel Disputes and Rules of Arbitration Organizations for Dispute of Labor and Personnel. The new rules, which came into force on July 1, 2017, are intended to simplify the current arbitration procedures. Under the new rules, in cases where the facts are not in dispute and the value of the claims are relatively low, the parties may now use a truncated arbitration process. Further, arbitral awards shall be final in disputes concerning compensation in respect of breached non-compete agreements where the value of the claim does not exceed 12 months' pay. Finally, if the parties in a dispute reach a settlement privately, they can now apply to the arbitration commission and relevant mediation institute to approve the settlement agreement, who will do so if they consider it to be legally effective.

France

Macron's Labour Reforms

The wide-ranging labour law reforms announced by President Macron during his presidential campaign were adopted on September 22, 2017. They comprise four key developments:

1. The legislation will make it easier for French employers to make employees redundant. Under the current regime, when a French group company needs to make redundancies, it must demonstrate that the entire group is facing severe economic difficulties, even if other group companies operate in territories and markets outside French borders. This significant burden has typically acted as a deterrent to many French companies from making necessary redundancies. The new reform dilutes this burden and provides that economic hardship will be assessed only by reference to the group's business activity within France.
2. The new regime imposes caps on damages awarded for unfair dismissal (ranging from one month's pay to 20 months' pay, depending on length of service) to enable employers to better predict the cost of making dismissals.
3. Macron's regime consolidates the three main employee representative bodies in large companies. At present, works councils, health and safety working conditions committees, and staff delegates are all autonomous employee representatives. Employers are obligated to consult with them separately and, in some instances, on the same subject. The new regime provides that, in companies with at least 50 employees, these institutions should be consolidated to form a Social Economic Committee ("CSE").
4. A company with fewer than 11 employees will be able to propose a draft collective agreement to its employees, which will only need ratification by two-thirds of the workforce in order for it to become binding. For companies with 11-49 employees without trade union representatives, an employee mandated by a representative trade union organisation or an elected CSE member may now negotiate, conclude, or revise collective agreements.

Germany

New Law on Pay Transparency

The new Transparency of Pay Act, which came into force on July 6, 2017, encourages large companies to enhance pay transparency to promote gender equality. The law introduces three new requirements.

1. An individual in an organisation of 200 or more employees is now entitled to salary information of co-workers in similar roles and the procedure used to determine their own salary. If a company fails to provide the information within three months of receiving the request, it will bear the burden of proof in the event of any legal action.
2. Companies with more than 500 employees, which are already required to publish status reports under the German Commercial Code, will now have to combine these with public reports on gender equality and equal pay. Each report should describe measures the company has taken to promote gender equality and improve equal pay and the impact of those measures. Affected companies which are bound by collective bargaining

agreements must produce a report every five years, while all other affected companies must produce a report every three years.

3. Companies with more than 500 employees are encouraged to conduct internal audits to ensure compliance with their obligation to provide equal pay. If an audit reveals evidence of gender pay discrimination, the company must immediately take steps to eliminate the disparity. Although the audits are voluntary, a failure to conduct them may be used by claimants as evidence in discrimination proceedings.

UK

Supreme Court Rules Tribunal Fees Unlawful

On July 26, 2017, the UK Supreme Court held that the tribunal fees regime is unlawful on the ground that it prevents access to justice.

The Ministry of Justice stated that the government will take immediate steps to stop charging tribunal fees and reimburse those who have already paid them. The government expects that it will now need to refund approximately £27 million to thousands of workers who have paid fees since the regime was introduced in 2013. Employers who have paid the fees of successful claimants are also likely to push for reimbursement.

Following this landmark judgment, employers should prepare for an increase in the number of claims they are likely to receive in the short term. It is also likely that workers who were deterred from litigating due to the high fees, and who are now out of time, will attempt to return to the tribunals to bring their claims.

United States of America

Is Sexual Orientation Protected under Title VII?

On July 26 2017, the United States Department of Justice ("DOJ") filed an amicus brief in the Second Circuit case, *Zarda v Altitude Express*, arguing that Title VII of the Civil Rights Act 1964 does not protect employees from discrimination on the basis of sexual orientation. Title VII prohibits employment discrimination on the basis of race, colour, religion, sex, and national origin. Recently, the Seventh Circuit Court of Appeals became the first federal appeals court to hold that Title VII's sex discrimination prohibition also prohibits discrimination on the basis of sexual orientation, and the Second Circuit is now weighing whether to follow suit. However, the DOJ argued that this interpretation of Title VII would constitute an extension of the statute's anti-discrimination protections, which is a matter for Congress and not the courts. The DOJ's stance on the issue conflicts with an amicus brief filed by the Equal Employment Opportunity Commission ("EEOC"), which has taken a formal position since 2015 that sexual orientation discrimination does fall within the ambit of Title VII's sex discrimination protections. The EEOC's position is particularly relevant to private employers as the body responsible for enforcing Title VII.

Banning the Box

On July 1, 2017, Pennsylvania became the latest U.S. state to adopt a "ban-the-box" policy for all job applications made to state agencies. The policy prohibits employers from considering a job applicant's criminal record during the first stage of the hiring process, and variations of this policy have so far been adopted by over 150 cities and counties and 29 states. It is estimated that around 70 million people in the U.S. have records for arrests or convictions and that many of these individuals have job applications rejected, or are deterred from applying for positions altogether, due to the customary obligation to provide information about the applicant's criminal history on the application form. The bans are designed to prevent employers from discriminating against job applicants with criminal convictions that are not directly relevant to the applicant's ability to perform a particular job, freezing them out of the national workforce.

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

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