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International Employment Update

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International Employment

USA: SEC clamps down on confidentiality agreements that may stifle whistleblower activity

After repeated warnings, the U.S. Securities and Exchanges Commission (SEC) issued its first order addressing the permissible limits of employee confidentiality obligations under the regulations implementing the Dodd-Frank Act's whistleblower provisions on 1 April 2015. KBR, Inc., the global technology, procurement, and engineering firm based in Houston, was penalised for including improperly restrictive language in confidentiality agreements used during internal investigations. The SEC said the agreements had the potential to impede whistleblowers from reporting potential violations of the securities laws. This was despite the fact that the SEC was unaware of any instances in which a KBR employee was prevented from communicating directly with SEC staff.

KBR agreed to pay a penalty of US $130,000 to settle the SEC's charges, without admission of liability. KBR also agreed to amend its confidentiality agreements to make clear that its employees could report potential violations to the SEC without fear of termination or retribution and without prior approval from company lawyers.

In light of the SEC's action, companies should review confidentiality provisions - potentially included in employment agreements, share and bonus plans, severance and non-disclosure agreements, codes of conduct, and so on - to ensure that they do not have the purpose or effect of restricting employees' ability to report violations and to communicate with the SEC.

Italy: "Jobs Act" reforms introduce new rules on unlawful dismissal remedies

The "Jobs Act", which came into force on 16 December 2014, introduced a number of different reforms including changes to the remedy for unfair dismissal.

Reinstatement, which was historically the sole remedy for unfair dismissal, will largely disappear as an available remedy for newly hired employees and will be replaced by an award of damages - except in the most serious cases of unlawful dismissal, such as dismissal due to discrimination. Damages will be equal to 2 months' remuneration for each year of employment, subject to a minimum of 4 months and a cap of 24 months.

Thailand: Class Action Legal Proceedings are now available

The National Legislative Assembly of Thailand has passed a bill (effective from December 2015) that will allow class action legal proceedings for the first time in Thailand.

The new rules (similar to those in the US) include the right for groups to bring lawsuits in relation to breaches of contracts, labour law, consumer protection, trade competition and irregularities on the stock exchange. The courts will have the power to consider whether to allow class actions, to define the scope or characteristics of a class and to inquire into and

terminate a class action. Class action members can also opt-out of the class action and pursue individual claims instead.

United Kingdom: European Court of Justice (ECJ) decision in *Woolworths* collective redundancy case

On 1 May 2015, the ECJ clarified that the scope of the collective consultation requirement that is triggered when an employer proposes 20 or more redundancies within 90 days at one establishment.

The ECJ held that the term 'establishment' means "the entity to which the workers made redundant are assigned to carry out their duties". Accordingly, separate premises will likely be treated as separate establishments in determining whether 20 or more redundancies are proposed in a 90 day period. The ECJ's judgment reverses the controversial decision of the UK Employment Appeals Tribunal (EAT) in *Woolworths,* which has created significant problems for employers managing multi-site redundancy exercises.

United Kingdom: EAT decision on the public interest test in whistleblowing

The EAT's decision in *Chesterton Global Ltd v Nurmohamed* has provided the first appellate guidance on the new public interest test for whistleblowing that was introduced in 2013.

In this case, the employee bought a whistleblowing claim alleging that his employer was deliberately misrepresenting its accounts, with the result that he and 100 of his fellow managers received lower commission than was their entitlement. The EAT found in the employees' favour and accepted that a group of 100 people could constitute 'the public'.

Unfortunately for employers, this case confirms that the public interest test is a relatively low hurdle for whistleblowers to satisfy.

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