

International Employment Update

July 13, 2015

International Employment

USA: Same-sex Marriage Ruling to Alter Employee Benefits Landscape

The U.S. Supreme Court's landmark decision to legalize same-sex marriage across the U.S. is poised to have a reverberating impact on not only same-sex couples and state governments, but private employers around the world as well. The implications of the historic ruling in *Obergefell v. Hodges* - establishing a Constitutional right to same-sex marriage and requiring American states to recognize same-sex marriages performed in other states - are likely to alter the way employee benefits are distributed in the private sector.

Obergefell will result in a more uniform administration of benefits for married employees across the U.S., as the rules applicable to opposite-sex and same-sex spouses are now the same, and any employers that continue to provide coverage only to opposite-sex spouses face significant legal exposure under U.S. federal law. Tax benefits for married employees will also result in employees no longer having to pay federal income and Social Security and Medicare taxes for income imputed on the fair market value of benefits coverage for a same-sex spouse, for example.

However, some employers may be inclined to cut their employee health benefits program for unmarried partners. In fact, according to a recent ERISA Industry Committee survey, about 22 percent of surveyed employers stated that they would drop the benefits currently offered to domestic partners as a result of the Supreme Court ruling. In addition, some small-business owners or non-U.S. companies—particularly those that oppose same-sex marriage rights—may decide to eliminate spousal benefits for all employees rather than having to extend benefits to same-sex couples.

United Kingdom: Calculating Holiday Pay - the Latest Instalment

The Employment Tribunal ("ET") has ruled in *Lock v British Gas Trading Ltd* that the Working Time Regulations 1998 ("WTR") require that workers' remuneration during periods of annual leave should include commission pay that would have accrued had the worker not been on annual leave.

The decision follows a recent ruling by the European Court of Justice ("ECJ") that workers should receive their "normal remuneration" while on holiday, including any variable remuneration payments that are "intrinsically linked" to the performance of the tasks the worker is contractually required to perform.

However, the ET's decision to include commission within the calculation of holiday pay has already been appealed by British Gas. The appeal casts further uncertainty over what exactly constitutes holiday pay.

In light of the current uncertainty, many employers will be waiting to see how the case law develops (including whether the employment appeal tribunal reverses the ET's decision on appeal) before making changes to their policy of calculating holiday pay.

Germany: Liability Without Borders

Companies registered outside Germany and that have no employees in Germany may nevertheless face pay claims as a result of the new Minimum Wage Act ("MWA").

The MWA came into force this year and set the minimum wage at €8.50 per hour. Employers are now obliged to pay the minimum wage to employees working in Germany, regardless of whether the employer is registered in Germany. Further, and more controversially, under Section 13 of the MWA, companies are also liable to ensure that contractors (and subcontractors) pay at least the statutory minimum wage to any of their employees working in Germany.

An employer's failure to pay, or to procure that a subcontractor pay, the minimum wage to employees in Germany could result in a fine of up to €500,000.

In light of the MWA, it is advisable for employers to screen international service contracts to ensure they address the risks and costs linked to broad subcontractor liability for the German minimum wage. If they do not, then it may be wise to amend such contracts to apportion liability appropriately.

If you have any questions concerning the material discussed in this update, please contact the following members of our International Employment team:

United Kingdom

Christopher Walter	+44 20 7067 2061	cwalter@cov.com
Christopher Bracebridge	+44 20 7067 2063	cbracebridge@cov.com
Helena Milner-Smith	+44 20 7067 2070	hmilner-smith@cov.com

United States

Jeffrey Huvelle	+1 202 662 5526	jhuvelle@cov.com
Lindsay Burke	+1 202 662 5859	lburke@cov.com

People's Republic of China

Grace Chen	+86 10 5910 0517	gchen@cov.com
------------	------------------	--

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.