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Global Employment Lawyer

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WELCOME TO THE FIRST QUARTERLY EDITION OF OUR GLOBAL EMPLOYMENT AND LABOR REVIEW

2020 has been quite a year and one all of us will not forget. For employment and labor law developments, 2020 was unlike any other. We have seen rapid change and common themes emerge across the globe. One of the major themes has been the introduction of government subsidies to support employers and maintain employment across many countries. We have also seen an acceleration of remote and flexible working, and this has posed both opportunities and challenges for employers and employees alike. There has also been an increase in regulations that govern remote working. We expect these themes to continue in 2021. With the rollout of vaccinations programmes in many countries under way, there could be some legal developments in terms of employers who may want their workforces to be vaccinated before a return to the workplace. We are already advising clients on this area and a number of tricky issues arise. We also expect to see other issues such as misclassification of independent contractors, equality and diversity, and gender pay equity maintaining prominence in many countries.

In this review, we provide a brief summary of the key employment and labor law changes on a quarterly basis around the world that will have an impact on employers. As Dentons' global reach has expanded over the past few years, we have relaunched this newsletter with a new format and with the aim of covering key developments in more countries. Unsurprisingly, many of the developments reported in this issue relate to furlough, employment subsidies and measures taken to protect employment. We have also included a new 'In Conversation with' section where we introduce a member of the Dentons global employment and labor team, and feature a brief Q&A. We end the review with a round-up of relevant Dentons news and upcoming webinars or events that may be of interest.

If you have any feedback on the contents or suggestions for topics that we should cover in future editions, please do let us know. In the meantime, we hope you enjoy reading this edition and wish you a happy and healthy 2021.

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MOROCCO

Extension of the scope for using fixed-term contracts – For a long time the use of fixed-term contracts (the "FTC") was strictly reserved, in Moroccan law, to (i) the replacement of an employee by another in the case of suspension of the latter's employment contract (unless the suspension results from a state of strike); (ii) the temporary increase in the company's activity; (iii) the work is of a seasonal nature; and (iv) some sectors and certain exceptional cases, without being defined.

16 years after the introduction of the Moroccan Labour Code, a recent decree has specified the sectors (industry, trade, services, agriculture, and crafts) and exceptional cases for FTCs. Since the consequences of the pandemic have severely affected employment, this decree provides flexibility and encouragement to employees and employers.

Among the most important novelties, this decree allows employers to use a FTC (i) to replace an employee who quit his/her job after it has been decided that his/her position shall be terminated (on the basis that the FTC is non-renewable and its duration shall not exceed one year); and (ii) to hire a temporary employee before a permanent employee is taken on (on the basis the FTC is non-renewable, its duration shall not exceed one year, and is limited to one place of work).

Employers can also use FTCs in order (i) to carry out one-time activities that are not part of the company's usual activities and could not be carry out by the current employees, or (ii) to organize activities of a temporary nature, such as public exhibitions and entertainment activities.

Finally, among the major changes brought by this decree, employers are able to employ employees of 58 years of age and above who have lost their job in order to complete the insurance period required to benefit from the retirement pension.

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SOUTH AFRICA

Resignation and disciplinary action – The Labour Appeal Court has confirmed an employer's right to discipline an employee (including for any misconduct) during his/her notice period regardless of whether an employee has resigned with immediate effect. In case of allegations of harassment, discrimination and other serious offences by an employee, there is case law that goes further to establish a duty on employers to discipline such offenders, regardless of his/her resignation.

COVID-19 and furlough – In terms of the relief provided by the Unemployment Insurance Fund (UIF), a directive was issued under the Disaster Management Regulations in April 2020 to provide financial relief to employees who have been affected by the lockdown. Amongst other conditions, the employer must have closed its operations, or part of its operations, as a direct result of the COVID-19 pandemic for a period of three months or less. Employees may receive a percentage of their salary (between 38% and 60%) subject to a maximum threshold amount of ZAR 17,712. If an employee earns more than the threshold then the calculation will only be based on the maximum threshold amount. The Temporary Employee/Employer Relief Scheme benefit was withdrawn with effect from 15 October 2020, but may be reinstated in view of ongoing and increased lockdown restrictions.

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Asia

CHINA

Sexual harassment – The Civil Code of China provides that sexual harassment in the workplace shall be strictly prohibited (effective 1 January 2021). This means that:

- Employers need to consider making employees aware of the prohibition of sexual harassment by arranging training for employees.
- Employers may have to take legal responsibility for failing to take reasonable measures in relation to prevention and handling of complaints and investigations.

The new legislation broadens the protection of sexual harassment cover all employees rather than female employees only. This is a significant step in China to prevent sexual harassment in the workplace.

Data protection – The draft of the Personal Information Protection Law of China provides detailed rules on protecting employees' personal information which has been collected by the employers. This means that, in the near future, employers may have to:

- formulate internal management system and operational procedures.
- manage personal information by hierarchical classification.
- take corresponding technical security measures such as encryption and de-identification.
- reasonably determine the authority to process personal information and to conduct security education and training for employees on a regular basis.
- formulate and organize the implementation of emergency plans for personal information security incidents.

If an employer violates the provisions of processing personal information, both the employer and directly liable persons may be punished by competent authorities.

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HONG KONG

Hong Kong enhances anti-discrimination legislation (effective 19 June 2020), including:

- outlawing discrimination on the ground of "breastfeeding" (with effect from 19 June 2021), which covers the act of breastfeeding, the expression of milk and the status of being a breastfeeding woman; and
- protection to shield a person from racial discrimination by association in relation to, for example, his/her partners, friends and carers, which also covers situations where those prohibited behaviours are targeted at a person who is perceived (rightly or wrongly) to be of a particular race.

The new legislation expands the scope of protection from sexual, disability and racial harassment to benefit all "workplace participants", regardless of whether there exists an employment relationship. It also provides protection from racial and disability harassment between service providers and customers, including where such acts occur overseas but on Hong Kong registered aircraft or ships.

Hong Kong passed an amendment bill on 9 July 2020 to increase statutory maternity benefits (effective 11 December 2020), including:

- extending the statutory maternity leave period from 10 weeks to 14 weeks;
- providing for additional statutory maternity leave pay for the four additional weeks, which will be subsidised by the Government, subject to a cap of HKD80,000 per employee;
- reducing the period of pregnancy for the definition of "miscarriage" from 28 weeks to 24 weeks, so that a female employee whose child cannot survive after being born at or after 24 weeks of pregnancy may be entitled to maternity leave; and
- allowing a certificate of attendance issued by a medical professional to be presented as a proof for sickness allowance for a female employee's attendance at a medical examination concerning her pregnancy.

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MYANMAR

Social Security scheme extended to cover all employees – The Social Security Bureau distributed benefits to employees under the scheme who did not make any claims (including medical claims or claims pursuant to job loss) under the scheme. Employees were given 40% of their average monthly salary (subject to maximum salary of 300,000MMK). Under the social security scheme, employees can seek payouts for illness, job loss, loss of income whilst under quarantine etc.

International commercial flights remain suspended – All landing permissions by international commercial passenger flights at all Myanmar airports have been suspended until further notice. Only relief flights, all-cargo flights, medical evacuation flights and special flights are operating as of December 2020. All foreign nationals are required to present medical evidence of being tested negative for COVID-19. This must be issued no more than 72 hours prior to the time of boarding any aircraft landing in Myanmar. All visitors (including Myanmar nationals) will be subjected to mandatory quarantine for 14 days (facility/hotel & home quarantine) upon arrival and swab tests prior to the completion of quarantine. Completion of quarantine is subject to each individuals' testing negative for COVID-19. There is a closure of all border checkpoints to foreign tourists, which includes all land crossings with Thailand, China, India and Laos.

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SINGAPORE

Singapore issues Tech Pass to attract global top tech talent – As part of Singapore's multi-pronged approach to develop a strong base of technology companies and talent to ensure that Singapore remains globally competitive, the Singapore Economic Development Board and Ministry of Manpower (MOM) have launched the Tech.Pass programme, an extension of Tech@SG. The programme's objective is to attract established technology entrepreneurs, leaders and technical experts from around the world to Singapore to contribute to the development of Singapore's technology ecosystem. Tech@SG was launched in 2019, to anchor and support the expansion of high potential companies in Singapore. Both programmes aim to facilitate the entrance of fast-growing technology companies and established technology talent into Singapore. These companies and individuals bring with them their network and experience in the industry to benefit the local tech ecosystem.

Tech.Pass holders will be afforded the flexibility of participation of activities, such as starting and operating a business, being an investor, employee, consultant or director in one or more Singapore-based companies, mentoring start-ups and lecturing at local universities. Unlike the Employment Pass, the Tech.Pass does not require the sponsorship of a local employer, affording the Tech.Pass holder greater flexibility.

The Tech.Pass programme will be launched in January 2021 with an initial availability of 500 places, on a first come-first served basis. At first instance, the Tech.Pass is valid for 2 years and allows the holder to:

a. Start and operate one or more technology companies;

b. Be an employee in one or more Singapore-based companies at any time;

c. Transit between employers or to an entrepreneur;

d. Be a consultant or mentor, lecture in local institutions of higher learning, or be an investor and director in one or more Singapore-based companies;

e. Sponsor stay for spouse, children, and parents in Singapore on either a Dependant's Pass (DP) or a Long-Term Visit Pass (LTVP) issued by MOM; and

f. Renew for another two years, upon meeting renewal criteria.

Eligibility – In order to be eligible for the Tech. Pass, applicants must satisfy any 2 of the following conditions:-

1. Have a last drawn fixed monthly salary in the last year of at least S$20,000 (or equivalent in a foreign currency);

2. Have at least 5 cumulative years of experience in a leading role in a technology company with a valuation/market cap of at least US$500mil or at least US$30mil funding raised; or

3. Have at least 5 cumulative years of experience in a leading role (including major contributions to the design, development and/or deployment of a technology product) in the development of a technology product that has at least 100,000 monthly active users or at least US$100mil annual revenue.

Renewal – To be eligible for a 2-year renewal of the Tech.Pass, the pass holder must:

1. Have earned at least S$240,000 in assessable income based on the latest Notice of Assessment from the Inland Revenue Authority of Singapore (can be made up of salary and/or business income); and

2. Demonstrate total annual business spending of at least S$100,000; and (i) Employ at least one local professional, manager or executive who is a Singaporean or Singapore PR, earning a fixed monthly salary of at least S$3,900 and receiving CPF contributions for at least 3 months; or (ii) Three LQS (Local Qualifying Salary) employees who are Singaporeans or Singapore PRs, earning a monthly salary of at least S$1,400 and receiving CPF contributions for at least 3 months.

Please contact us if you have any enquiries and we will be able to assist with the application and related advice.

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KAZAKHSTAN

Amendments to the Labor Code (entered into force on May 16, 2020) – One of the frequently used grounds for termination of employment (contractual termination without written notice, but with the payment of compensation) was deleted. Terms of secondment of employees were amended. Earlier secondment meant the performance by an employee of work at another legal entity, now secondment also means working at branches/representative offices of another legal entity, as well as at branches/representative offices of the same legal entity.

Engagement of foreign labor (the rules that entered into force on May 2, 2020) – The submission of documents on paper for obtaining / renewing permits to engage foreign labor is no longer allowed. Now the submission should be carried out online only.

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SOUTH KOREA

Increased responsibility of CEO regarding employees' safety and health – The CEO (Representative Director) of a company with more than 500 employees or a company in the construction industry that is ranked within the top 1,000 in terms of its construction capacity in Korea must establish and report annual plans of the company's policy on its workers' health and safety for approval by the board of directors of the company (effective on 1 January 2021). The plan must include information on the cost, facilities, and number of workers in relation to the safety and health of the employees. Violation of the above may result in an administrative fine up to KRW 10,000,000.

Extended enforcement of the amendments in Korean labor laws – Some of the amendments to the Korean labor law in 2020 concerning holidays, work hours, etc. are effective in phases depending on the number of employees as follows:

- Public holidays for government offices will also be paid holidays for businesses with 30-299 employees (effective from 1 January 2021).
- Businesses with 30-299 employees must also grant the reduction in working hours for the reasons such as family care, employee's health conditions, preparations for retirement (for those who are 55

years or older) or schoolwork upon the employee's application. The reduced working hours should be at least 15 hours per week but less than 30 hours per week (effective from 1 January 2021).

- Although not an amendment, but please note that the 1-year grace period granted for small companies (50~299 employees) for compliance with the 52-hour workweek will be over (effective from 1 January 2021).

Increased minimum wage – The hourly minimum wage is KRW 8,720 in 2021, which is increased by KRW 130 (approximately 1.5%) from KRW 8,590 in 2020 (effective from 1 January 2021).

National Assembly passed several amendments on labor laws – On 9 December 2020, the National Assembly passed amendments including laws on collective bargaining, flexible working hours system, etc. These amendments will take effect within 3 to 6 months when enacted. Major changes include the following:

- The maximum term of the collective bargaining agreement will be extended to 3 years.
- The employer will be allowed to adopt a flexible working hour system, which allows exceeding the 52-hour workweek for certain weeks within the unit period, for a unit period up to 6 months (increased from 3 months) through a written agreement with the workers' representative.

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TAIWAN

Taiwan enacts middle-aged and elderly employment promotion scheme (effective on 4 December 2020) – The Act aims to boost employment and re-employment of middle-aged and elderly workers aged 45 or older.

- The Act applies to any of the following people reaching 45 years old: (1) Taiwanese citizens; and (2) foreigners who have obtained residency through marriage.
- The Act defines middle-aged workers as people aged 45 to 64 and elderly workers as those aged 65 and older.
- Employers can hire elderly workers using fixed-term agreements.
- Discrimination against middle-aged or elderly job applicants will be faced a fine of NT$300,000 to NT$1.5 million (US$10,600 to US$54,000).
- The Ministry of Labor provides subsidies to employers continuing to hire certain ratio employees who have reached retirement age.

The new legislation requires the central government to establish a retired human resources database and to update it periodically. Governmental agencies are also required to publish an employment plan for middle-aged and elderly workers at least every three years.

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Australasia

AUSTRALIA

Australia seeks to clarify casual confusion – recent high profile cases have reinforced the common law definition of casual employment meaning that a number of employees engaged as casuals are not casuals as a matter of law. The consequences of this have been longer term casual employees seeking payment of backdated entitlements such as annual leave, many as a part of large scale class actions.
The recent decisions have also restricted the ability of employers to set off additional payments made to casuals in the form of "casual loading" against entitlements reserved for non-casuals. The estimated cost to the Australian economy of additional payments to casual employees is up to $39 billion. The Federal Government has introduced a new bill attempting to settle the issue by expressly defining casual employment in the Fair Work Act 2009 (Cth) and introducing a formal mechanism for casual conversion to permanent employment. The changes will be part of a raft of proposed reforms in industrial relations in Australia, including:

- Introducing criminal charges for employers who, knowingly or recklessly, systematically underpay employees;
- Extensions to workplace flexibilities beyond March 2021 that were introduced as a result of COVID-19.

Parliament will debate the proposed reforms, but the changes are expected to be rolled out in early 2021. In the meantime, the High Court is expected to hear an appeal on the recent decisions regarding casual employment, which led to the controversy.

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NEW ZEALAND

COVID-19: Are employees entitled to full pay during lockdowns?
– A multitude of cases are before the Employment Relations Authority and the Employment Court examining the rights of employees during the recent Government imposed COVID-19 'lockdowns' when all but 'essential services' were forced to stop work. It remains unclear whether employees who were willing to work but unable to do so because of the Government restrictions were entitled to remuneration. Many employers chose not to pay staff during this period, so the approach the courts adopt will have significant ramifications not only for potential future lockdown and force majeure situations generally, but also in terms of back-pay claims.

Outlook from the NZ General Election – The Labour Party's victory at the NZ General Election in October saw the first ever absolute majority government since the establishment of the MMP system in NZ. This will undoubtedly have ramifications on the outlook for NZ employment law. Prior to the election, Labour indicated their intention to strengthen employee rights, by way of:

- Increasing statutory minimums for sick leave (from 5 to 10 days).
- A commitment to increasing the minimum wage to $20 per hour.
- Establishing industry-wide Fair Pay Agreements to protect vulnerable workers in certain industries by imposing minimum standards (similar to a compulsory awards system).

When a contractor is an employee – A recent Employment Court decision has confirmed the New Zealand courts will be more ready to find that individuals described as contractors are in fact employees, holding that a working relationship should be evaluated by its true substance, even if the representations made by the employer/principal of that relationship suggest otherwise. In this case, a courier driver was employed as a contractor. However, the court looked past this, considering that a number of relevant factors and especially the level of control exerted over the individual performing the work pointed to employment status.

Amending the Holidays Act 2003 – Additionally, the Holidays Act 2003 has been under review since 2018 to address high levels of non-compliance that have arisen due to the complexity of the Act, particularly when it is being applied to a non-standard working week. These complexities have operated largely to the detriment of employees who often fail to receive their full entitlements.

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Europe

CZECH REPUBLIC

A significant change to the Czech Labor Code took effect on 30 July 2020, with selected parts entering into force on 1 January 2021. The amendment contains the following important changes:

- **Calculating paid leave and carry over** – From the beginning of 2021, the method of calculating paid leave (vacation) will change completely. It will be calculated based on worked hours, not days. This should eliminate the unfairness of the current method, for example in relation to employees with shorter or unevenly distributed working hours. In addition, employees shall be entitled to request a carry-over part of their paid leave exceeding the statutory minimum of four weeks to the next calendar year.
- **Service of documents between employer and employee** – The amendment simplifies the delivery of documents between the employee and employer. Although a personal handover to the employee at the workplace remains the primary method of delivery, the amendment allows the employer to immediately proceed with alternative forms of delivery, including by post, if delivery at the workplace is not possible.
- **Automatic transfer of employment** – The amendment also introduces a new regulation on the transfer of rights and obligations from employment relationships (also known as the automatic transfer of employees which derives from the Acquired Rights Directive), which follows the case law of the European Court of Justice. In principle, an employee transfer should only take place if, subject to certain specific conditions set out in the Czech Labor Code being met, activities of one employer are being transferred to other employer. Most cases of outsourcing, insourcing or change of supplier would not trigger an automatic transfer of employees from one employer to another.
- **Job sharing** – Finally, an important new provision of the amendment is the explicit regulation of job sharing, effective from the beginning of 2021. These new rules will allow the employer to set up one work position with a weekly working time of 40 hours and assign to it two or more part-time employees who will alternate performing the role and schedule work on their own. This is to introduce further flexibility in employment relationships.

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FRANCE

Share purchase and informing work councils – In a company of at least 50 employees, the Social and Economic Committee (SEC) (formerly known as works councils) will need to be consulted in good faith before transactions are concluded which have a material impact on the organisation of the company or the economic or legal structure. The employer should provide all relevant information to allow the SEC to understand the transaction and any impact on its employees. In a recent judgment by the Paris Court of Appeal, the Court ruled that in the context of a share purchase of another company, the SEC was entitled to provide its opinion on the deal. Failure to consult with the SEC resulted in a breach of consultation obligations and the Court ordered the suspension of the transaction until the necessary information was provided to the SEC. This type of decision by the courts is rare but serves as reminder of the potential consequences that can arise where there is a failure to inform and consult the SEC in such circumstances.

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GERMANY

Home working legislation initiative blocked – A highly contentious piece of draft legislation introduced by the German Federal Ministry of Labor was blocked by the Chancellery in October. The centrepiece of the proposed law provides that every employee be entitled to 24 days of home working (known as teleworking in Germany) per year. German employers' associations are lobbying against the draft bill naming it a "bureaucratic monster". It remains to be seen whether the Ministry of Labor, led by a Social Democrat, will continue to push for this draft legislation to be introduced.

German Federal Labor Court rules that Crowdworkers might be regular employees – "Crowdworking" appeared to be a viable option to make workforces more flexible, i.e. the employer places orders online that potential freelancers can choose to accept. If they accept the offer made by the employer, they provide their services without any further instructions being issued in relation to how, when and where those services should be performed. The Federal Labor Court found that "crowdworkers" can be regular employees if the employer structures the orders in a way that forces the crowdworker to accept more orders to earn a higher level of income. In this particular case, the crowdworker had accepted approximately 3,000 "micro-jobs" in 11 months in order to reach a higher level of income that in turn allowed him to obtain further micro-job offers.

Short-time working – COVID-19 related regulations governing short-time working arrangements have been extended to 2021. Short-time working refers to a temporary reduction in normal working hours under a government subsidised scheme. The extended arrangements covers the following changes:

- Short-time work allowance will be extended until 31 December 2021 for all companies which have commenced short-time work by 31 March 2021. Instead of at least one third, only at least 10% of a company's workforce must be affected by a loss of pay, and there must be no buildup of negative working time balances.
- The overall period for short-time work allowance has been extended up to 24 months (until 31 December 2021) for companies that have started short-time work by 31 December 2020.
- Employers' social security contributions in connection with short-time work will be fully reimbursed until 30 June 2021. Thereafter, 50 per cent of social security contributions will be reimbursed until 31 December 2021 (for all companies that have started short-time work by 30 June 2021).

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ITALY

Health and Safety measures – Workplace health & safety measures have been adopted in compliance with COVID-19 measures on a national and regional level. In order to provide a safe workplace, recent Italian Decrees have provided for some strict measures relating to personal protective equipment and health and safety. In particular, it is recommended that: (i) there is social distancing of at least 1 metre; (ii) hand sanitiser is available; and (iii) masks and gloves are used. Specific measures have been introduced for some industries/sectors and failure to comply with published protocols or guidelines could result in the suspension of the activity until safety conditions are met.

General ban of dismissals and redundancy funds – The general ban on dismissals for economic reasons for all Italian employers has been extended until 31 March 2020. The ban applies to all collective and individual dismissals for justified objective reasons (i.e. economic, technical, organizational or production-related reasons) until 31 March 2020. This prohibition on economic dismissals does not apply only in the following specific cases:

- dismissals due to a service supply agreement termination (employees of the previous supplier are entitled to be hired by the new supplier on the basis of a so-called social clause);
- termination of the company's activity following liquidation, provided that there is no transfer of undertaking under the Italian Civil Code;
- where terminations are agreed under company-level bargaining agreements, entered into by the certain Trade Unions at a national level;
- bankruptcy of the company.

The Government has also provided for special redundancy funds which guarantee the payment of a part of the regular income to employees during a period of suspension or reduction of working hours. In addition, in certain circumstances, an alternative measure enables employers to be exempt from the payment of social security contributions for a maximum period of 8 weeks, which can be used before 31 March 2021.

Remote working – Remote working is applicable for the entire duration of the state of emergency (i.e. until 30 April 2021) even in the absence of the necessary individual written agreement between employer and employee. Therefore, remote working can be activated by the employer in a simplified manner and with a simple written communication sent to the employee, and without any need of his/her consent in the period of emergency. However, employees with children under 14 years of age in quarantine and employees most at risk of contagion have the right to work remotely even in the absence of individual agreement, provided that this is compatible with the characteristics of the work performance.

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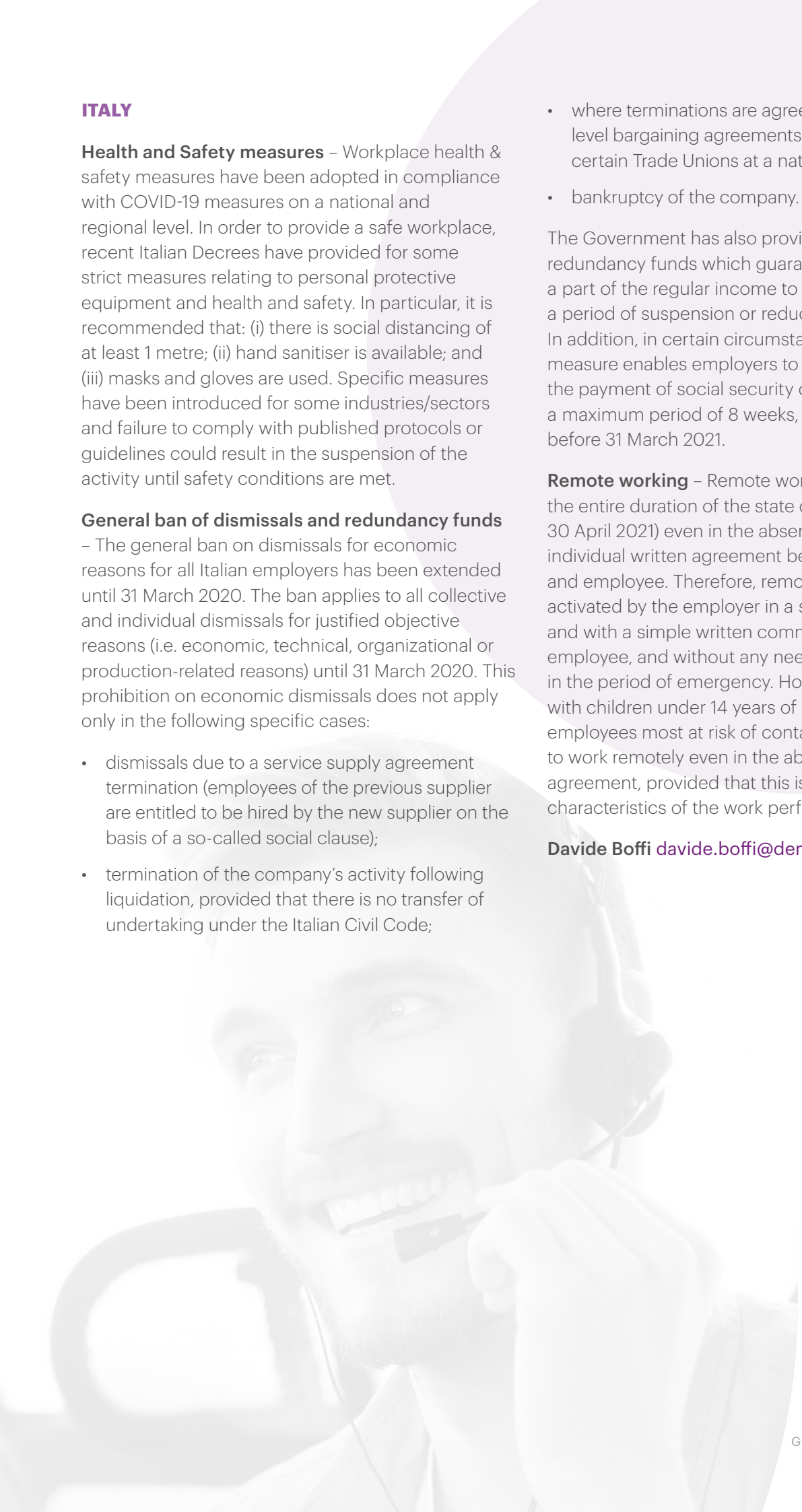

NETHERLANDS

Independent contractors and employment status assessments – Under the Deregulation Act (in Dutch: "Wet Deregulering Beoordeling Arbeidsrelaties" (DBA Law)), companies and self-employed persons are jointly responsible for the labor relationship they enter into. They must ensure that their legal relationship is clear and prevent it eventually being considered a paid employment relationship.

There has been a recent amendment to the DBA Law and the Dutch government has introduced a pilot web module containing an online questionnaire for companies and contractors to provide an indication of the relationship between them. The pilot will probably last six months.

Under the pilot scheme, contractors and the company hiring the contractor can obtain more clarity about whether an assignment may be carried out "outside an employment relationship" with an online questionnaire. If the assignment does fall outside an employment relationship, a contractor's statement will be issued. Parties hiring a contractor then have the certainty that the employment agreement does not exist from a civil law perspective and that they do not have wage tax and employee insurance obligations, on the assumption that the questionnaire on the web module has been completed truthfully.

In the meantime, at least until October 2021, the Dutch tax authorities will not levy additional assessments or fines if, in an uncertain case, the contractor is later qualified as an employee. Obvious cases will be monitored by the tax authorities and they will levy assessments and fines there in cases of wilful misconduct. To be fully prepared for re-enforcement of the DBA Law by the Dutch tax authorities, we recommend closely reviewing your contracts with self-employed persons.

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POLAND

Independent contractors and registration of certain contracts for services – In Poland, a company or entity could conclude a contract for services with a contractor (who is not its employee) on the following basis:

i. a contract mandating the provision of certain services; or

ii. a contract for the performance of a specific task; or

iii. a contract for the provisions of services of any kind (this would apply where the contractor operates as a business and provides business to business activity – for example, a service provider or supplier that has its own employees).

Social security contributions do not need to be made by the contractor under contracts entered into for the performance of a specific task (i.e. under (b) above), provided that the engaging entity is not the employer of the contractor. This type of contract should only be reserved for circumstances where the contractor undertakes a task that result in the creation of a new product or service. However, due to this social security exemption, this type of contract has been widely used by companies in Poland. This type of contract has attracted considerable scrutiny from the Social Security Institution (ZUS). As a result, a new law was introduced requiring companies that engage such contractors to register these types of contracts with ZUS with effect from 1 January 2021. Companies will be required to register any such contract within 7 days of the contract being concluded. This new requirement will provide ZUS with an opportunity to inspect such contracts and assess whether they have been incorrectly classified and thereby result in social security contributions being due. Companies are therefore advised to audit their contracts and assess the risks of misclassification and social security exposure.

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SPAIN

Termination of employment and suspension of employment/reduction of working time – As a result of the COVID-19 crisis in Spain, regulations had been enacted which enabled employers to suspend employment contracts or reduce working time of employees. Under this measure, any salaries paid may benefit from exemptions or reductions on social security contributions. However, in such circumstances, the employer is required to maintain the employment contract for a period of at least six months. Otherwise, the employer will be required to pay the social security contributions that were exempted or reduced. The Spanish authorities recently confirmed that if employers do not maintain employment for such employees for a minimum of six months, they will be required to reimburse all social security relief that had been received for all employees (as opposed to only the relevant employee) plus surcharges and interest.

Threshold for collective redundancy process – In order to assess whether an individual or collective redundancy process must be carried out it is necessary to assess the number of terminations that will be carried out taking into account every termination undertaken within the last 90 days. In this context, the European Court of Justice, recently ruled that the 90-day period rule must be applied taking into account terminations carried out 90 days before and after the collective dismissals have taken place. Moreover, and according to the Spanish Supreme Court, every type of termination (even terminations of temporary employment contracts and terminations carried out in a probationary period) must be taken into account for this calculation.

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RUSSIA

Unified electronic visas – Unified e-visas will allow a single visit to Russia for up to 16 days as a tourist or on a guest or business visit. Attending some events such as scientific, cultural, and sporting events will be allowed as well. Duration of the visit must not exceeding 16 days after entering the country. Unified e-visas will be available to citizens of all of the European Union nations, the Vatican, Monaco, some Balkan states, China (including Taiwan), Japan, Mexico, and the Persian Gulf countries (other than Iraq). Not on the list are the United Kingdom and the United States. However, due to the spread of the novel coronavirus, the Russian authorities introduced a moratorium on entry for foreigners (with some exceptions). Therefore, it will only become possible to get a unified e-visa after the moratorium is lifted.

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TURKEY

Ban for employers to terminate employment contracts – Within the scope of measures taken due to the COVID-19 pandemic, a ban of termination of employment was introduced in April 2020. In this regard, employers are prohibited from terminating employment contracts for any reason except in the following circumstances:

- if an employee engages in conduct that would be in breach of ethical rules and principles, and acts in bad faith;
- expiry of the term under a fixed term employment contract;
- closing down of the workplace and ceasing of activities for any reason; and
- ending of on-going construction works or ending of certain works that have been procured under legislation.

The termination ban was extended until 17 January 2021, which is expected to be extended gradually until 30 June 2021. During the termination ban period, employers are entitled to place employees partially or wholly on unpaid leave. The employees who are placed on unpaid leave are provided with wage support by the state, subject to certain conditions.

Extension of application for short-term working allowance – Employers whose businesses have been adversely affected by the COVID-19 pandemic were granted the right to implement a "short-term working" regime and file an application for the short-term working allowance to the Turkish Employment Institution until 30 June 2020.

As a result of the employer's application, the government pays:

- a monthly short-term working allowance directly to the employees; and
- social security contributions for general health insurance to the Social Security Institution.

A Presidential Decision was published on the extension of the application deadline for the short-term working allowance to 31 December 2020. In this regard, employers who did not apply for short-term working allowance before 30 June 2020 but who are willing to implement a short-term working regime had until 31 December 2020 to apply to the Turkish Employment Institution.

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UNITED KINGDOM

Extension of UK furlough scheme – The government has extended the UK furlough scheme relief for employers until 30 April 2021. In broad terms, this means that:

- Employees will continue to receive 80% of their wages (up to the £2,500 cap) for hours not worked. There will be no minimum period of furlough.
- From 1 November 2020, employers will only have to cover employer social security and pension contributions.

Dismissals without following a procedure – A recent decision by the Employment Appeal Tribunal (which is binding on employment tribunals) confirmed that a dismissal in the absence of any procedure will not necessarily be unfair. In the UK, an employer must follow a 'fair' process prior to dismissing an employee that has more than 2 years' service otherwise an employee could have a valid claim for unfair dismissal. However, in this recent decision, the court ruled that where there is an irretrievable breakdown in a working relationship, a complete lack of any procedure may not render a subsequent dismissal unfair. Despite this decision, employers should proceed with caution before dismissing without following any procedure. Situations where dismissing without following a procedure will be fair are likely to be rare and advice should be sought in advance.

Social media and the workplace – A recent Scottish court decision concluded that an employer was entitled to use WhatsApp messages as a legal basis for bringing misconduct proceedings against chat members. This case involved the Police Service in Scotland. The messages, that a reasonable person may describe as being sexist and degrading, racist, anti-Semitic, homophobic, mocking of disability and included a flagrant disregard for police procedures by posting crime scene photos of current investigations, were found on a police officer's phone during an unrelated criminal investigation.

This case serves as a warning to those who are required to comply with professional and regulated standards as employers may now be able to take action against messages which the sender/recipient assumed were private, especially if the private messages are discovered through a legitimate means.

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North America

CANADA

Accessibility legislation and penalties for non-compliance – A global employer operating in Canada needs to be aware of Canada's accessibility legislation. There are various financial penalties which can be imposed in the event of non-compliance. Canada ratified the United Nations Convention on the Rights of Persons with Disabilities in 2010. Due to Canada's constitutional division of powers, implementation of the country's response is largely a provincial legislative matter. While all Canadian jurisdictions have longstanding laws prohibiting discrimination on the basis of disability, implementation of the U.N. Convention goes further. To date, the provinces of Ontario, Manitoba and Nova Scotia have passed accessibility legislation. Under the umbrella legislation, the provinces are developing or have already issued accessibility standards relating to: customer service; employment; information and communications; public transportation; education; and design of public spaces.

Website accessibility deadline on January 1, 2021 – The province of Ontario's accessibility standards are all in force and a key deadline is approaching. As of January 1, 2021, private sector employers with at least 50 employees located in Ontario (which includes cities such as Ottawa and Toronto) are required to ensure that their public-facing websites meet accessibility standards. Specifically, websites and content published after January 1, 2012 must conform to Web Content Accessibility Guidelines (W.C.A.G.) 2.0 Level AA (other than live video captioning and pre-recorded video audio descriptions). WCA Guidelines are designed to make web content accessible to those with low vision, deafness, hearing loss, blindness, learning disabilities, limited movement, photosensitivity, and other access to information limitations. Examples would include alternate text for images and making a website navigable with just a keyboard.

Off shore customer service affected – While Ontario's legislation is provincial in scope, it does have a global reach, for example, in the case of outsourcing. Because the legislation is focused on access for a consumer located in Ontario, it is necessary to train call centre, tech support and other employees located outside of Canada on how to provide accessible customer service when dealing with consumers or customers in Ontario. Similarly, an Ontario organization can remain liable for the acts of third parties to which it has outsourced various services, such as repairs and IT help desk functions.

Future legislation – Canadian employers governed federally (e.g. telecommunications, banks, interprovincial/international trucking, railroads and shipping) will be governed by the newly passed Accessible Canada Act. It appears that the first standards to be developed federally are likely to cover outdoor spaces (built environment), emergency egress (built environment), employment and plain language. Three other provinces to watch are British Columbia, Newfoundland & Labrador and Saskatchewan, all of which had initiated plans for public consultations, which have now been put on hold during the global pandemic. Accessibility laws impose a number of obligations on employers,

including training staff on how to provide accessible customer service to members of the public who have various impairments, creating accommodation plans and return to work plans for employees with disabilities, and providing standard customer and employee information in alternate formats and/or with communication supports.

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UNITED STATES

Sexual orientation and gender identity discrimination – The United States Supreme Court handed a big victory to the LGBTQ community when it issued a landmark 6-3 ruling in Bostock v. Clayton County, Georgia and held that the federal statutory prohibition of discrimination on the basis of sex in the workplace extends to discrimination on the basis of sexual orientation and/or gender identity. Although many US states and localities already include such a prohibition in their anti-discrimination laws, many do not. This decision therefore had a significant impact on a number of employers throughout the US who operate in states without an express prohibition against discrimination on the basis of sexual orientation and/or gender identity.

Misclassification of contractors – The laws around independent contractor classifications faced significant changes at the state and federal level in 2020. California led the way with its landmark AB 5 law, which requires putative employers to prove that a worker meets the "ABC" test before categorizing the worker as an independent contractor (replacing a decades-old multi-factor test). This new law was amended in October 2020, and challenged by a number of groups, including those in the trucking and ride share industries. On November 3, 2020, Californians voted to exempt ride-share drivers from coverage under the law, prompting a number of other states to follow suit. At the federal level, the US Department of Labor has proposed a change in the independent contractor rule under the Fair Labor Standards Act, which remains pending.

Presidential election – The election of Joseph Biden as 46th President of the United States of America means there is likely to be a greater focus on labor and employment enforcement at the federal level, and a more lenient view on immigration policies and enforcement. Whether and to what extent the new administration reverses all or substantial pieces of the regulatory regime set up by the Trump administration in the employment and immigration space remains to be seen.

Privacy and employment – On November 3, 2020, California voters passed the California Privacy Rights Act (CPRA), which amends the California Consumer Privacy Act of 2018 (CCPA). The CPRA, and the CCPA which remains in effect until the CPRA becomes effective in 2023, require covered employers to provide their employees, job applicants, independent contractors, owners, directors, and officers with notice at or before the point of collection of their personal information, and to secure their personal information in a reasonable manner. On January 1, 2023, covered employers will need to extend the full panoply of CCPA rights to their employees, job applicants, independent contractors, owners, directors, and officers.

Pay reporting – On September 30, 2020, California enacted a law that requires employers with 100 or more employees to report pay and hours-worked data by job category and by sex, race, and ethnicity to the California Department of Fair Employment and Housing (DFEH) by March 31, 2021, and annually thereafter. By creating a system in which large employers report pay data annually to the DFEH, the Legislature is seeking to encourage such employers to assess their pay disparities along gender, racial, and ethnic lines in their workforce, and promote voluntary compliance with equal pay and anti-discrimination laws. These new requirements are similar to pay data reporting obligations that the Obama administration attempted to impose on employers in 2016, resulting in several years of litigation and administrative battles over whether such obligations would be enforced or revoked; currently, there are no active requirements to submit pay data at the federal level.

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Central And South America

ARGENTINA

Extension of the original prohibition of dismissals and suspensions – The Government has extended the prohibition of dismissals without cause - dismissals and suspensions due to lack or reduction of work and/or due to force majeure reasons, until 29 April 2021. Violation of this prohibition results in the maintenance of employment contracts and the measures will have no effect. These restrictions were imposed by the government in March 2020 as a means of protecting employment during the pandemic.

Extension of doubling of severance compensation – In December 2019, the Government imposed an obligation to pay additional compensation in the event of termination without cause. This compensation has been capped at ARS 500,000 (c. USD 5,500 at the current exchange rate). This protection was created due to impact of the pandemic on employment and has been extended until 31 December 2021. This measure applies to employees hired prior to 13 December 2019.

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COSTA RICA

Remote working for companies operating under the Free Trade Zone Regime – Costa Rica has a strong and prosperous Free Trade Zone area. Many companies have established their operations in the country as a result of a benign tax regime that allows them to defer tax payment, in exchange for investing and employing Costa Rican local workforce. One of the conditions set forth by the authorities to grant tax benefits to these corporations is that they must maintain a certain level of employment "in their premises". However, due to the COVID-19 crisis, many companies had to opt for remote work. This created a legal vacuum, as the emergency COVID-19 regulations conflicted with the Free Trade Zone employment regime. As a result of this, the Costa Rican Government has issued new regulations that allow free trade zone regime-based companies to operate remotely and to keep their employees safe while still being able to perform their jobs.

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PERU

Employment subsidies – As a measure to revert the impact of the COVID-19 pandemic in the labor market, the Government has issued regulations that encourage employment. These regulations will benefit companies that have been severely affected by the economic crisis, whose revenues from April and May 2020 are less than 20% in comparison to revenues from April and May 2019.Companies that comply with this prerequisite, as well as other formal requirements, could receive a subsidy that ranges from 17.5% to 55% for every new employee with a salary under S/ 2,400.00 (approximately USD$ 685). The amount of the subsidy varies depending on the age of the employee (employees aged 18 to 24 receive a higher percentage) and the nature of the employment relationship (indefinite term employment contracts will receive a higher percentage in comparison with fixed term employment contracts). The subsidy is applied to all new hiring from November 2020 to April 2021, and its payment will be of up to six months for every employee hired.

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URUGUAY

Ratifications of Violence and Harassment Convention 2019 (No. 190) – Uruguay has ratified the ILO C190 Violence and Harassment Convention and is the first country that approved this ILO Convention. It re-states Uruguay's commitment to follow international standards on labor rights.

Regulation and limitations on strikes – A recent law has granted the right of employees to perform strike action by peaceful means, the right of employees to access and work in the employer's facilities, and the right of employers to direct their business and access their facilities. Strikes involving disruption in the workplace and picketing that restrains the free circulation of persons and goods will not be permitted. Employers would be eligible to request the intervention of the Ministry of Labor and Social Security in the event that there is a strike involving disruption in the workplace.

Partial unemployment insurance – The Government has created a special unemployment insurance regime under which employees are allowed to reduce their worktime (and receive a subsidy through this insurance which partially compensates the loss of salary. This regime allows the employees to continue their work activities on a reduced basis and retain their jobs. The government has announced its extension until March 31, 2021.

Subsidies for reinstating or hiring employees – A decree has been issued fixing a subsidy to employers that reinstate or hire employees (USD 120 for each employee that is reinstated or hired) between July 1 and September 30, 2020, under certain conditions. New subsidies and social contribution exemptions have been announced by the government for the tourism sector (mainly, hotels and restaurants).

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Middle East

UAE

A recent decree (effective 25 September 2020) made the following legal changes which provide positive news for working parents and female employees, and reflects the UAE's position as a modern and forward-looking jurisdiction with a keen focus on workplace equality. The changes apply to employees employed by all onshore and free zone private companies, other than employers based in the DIFC or ADGM financial free zones, which each have their own employment regulations.

Paternity leave for private sector employees:

- Male private sector employees in the UAE will receive paid paternity leave of five working days.
- Entitlement applies for six months from the child's birth.
- UAE joins the Kingdom of Saudi Arabia as the only GCC countries to provide paid paternity leave to private sector employees, with the UAE having the most generously paid paternity leave policy.
- The entitlement to five paid days of paternity leave is now generally aligned for private sector employees across the UAE and all of its free zones.

Status of equal pay:

- Female employees are to be paid the same as male employees for the same work or for other work of equivalent value.
- The UAE Cabinet will issue a resolution, based on the proposals of The Ministry of Human Resources and Emiratisation, which will set out the procedures, limitations and standards required to evaluate work of equivalent value.

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SULTANATE OF OMAN

A new law (effective from 10 February 2021) simplifies the litigation process of certain disputes, including employment disputes, which have a value of USD 181,800 (OMR 70,000) or less.

Elimination of the right to appeal to the Supreme Court and set up of separate Judicial Circuits – This law significantly changes the legal landscape for employment claims of this value. Such litigants will no longer be entitled to have their cases reviewed by the Supreme Court as a third judicial stage. Instead, judgments of the appeal circuit will be final and binding. In addition, one or more new judicial circuits will be established at every primary court, and one or more appeal circuits will be established at every court of appeal. Each primary court will establish separate enforcement departments to enforce the related judgments. Objection against enforcement will no longer hinder enforcement procedures unless the enforcement judge decides so.

Faster litigation process – The new law shortens the duration of adjudication, and introduces a restriction on claims that litigants may appeal. The new law requires the primary circuits to issue their judgments within a maximum of 60 days. The deadline for filing an appeal is also reduced to 15 days instead of 30 days. Claims for less than USD 5,000 (OMR 2,000) are not appealable.

Use of technology for serving judicial notices – For the first time in Oman, the new law embraces the use of technology for serving judicial notices to litigants. Notices can be served by SMS or other verifiable electronic means, such as emails. This represents a positive development on the previous conventional paper-based notification method.

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QATAR

Cancellation of exit permissions – An Interior Ministry decision (effective 16 January 2020) provided that the following categories of workers and employees are now able to exit Qatar temporarily or permanently without needing to obtain a specific exit permission from their employer:

(i) officials working in ministries and other government agencies, public authorities and institutions, except for workers in military agencies; (ii) workers in the oil and gas sector and its subsidiaries; (iii) workers in marine media in the waters of the State of Qatar; (iv) workers in agriculture and grazing; and (v) employees of private offices.

Abolition of employer no-objection certificate (NOC) regarding expatriate employment transfer – A recent decree (effective 9 September 2020) has removed the previous requirement for an employer to provide a NOC before an expatriate employee may transfer employment to another employer. This decree also now specifically provides that it is prohibited:

- for any natural or legal person to employ expatriates without entering into an employment contract; and
- to recruit expatriates with the purpose of arranging for them to be employed by other employers.

Introduction of minimum wage – In August 2020, a non-discriminatory minimum wage of 1000 Qatari riyals (around USD 275) per month was introduced. In addition, unless otherwise provided by the employer, the following monthly amounts must also be provided by employers to their employees:

- QAR 500 (around USD 137) for accommodation expenses; and
- QAR 300 (around USD 82) for food.

Employers are required to adjust employee pay where salaries falls below the above minimums.

Amendments to the Labor Law – Amendments to the Labor Law (effective 9 September 2020) touch upon various key elements of the employment relationship, including:

- Probation Period: During the probation period an employer must provide an employee with at least a one (1) month notice period.
- Termination: Any provision in an employment contract providing for an undertaking by the employee to work indefinitely (for life) for the employer shall be deemed null. This provision is not new in essence, but it has now been codified to provide clarity.
- Non-competition: If during the course of employment, the employee has been privy to certain clients or trade secrets, the employer may include in the employment agreement a non-competition clause for the same field of work for a period not exceeding one (1) year from the date of termination of employment.

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In conversation with...

IN THIS EDITION, WE TALK TO **DAN BEALE**, DENTONS' CO-HEAD OF THE US REGION EMPLOYMENT AND LABOR PRACTICE GROUP.

Tell us a bit about yourself.

I work in the Atlanta, Georgia office of Dentons. I have been at a legacy firm of Dentons my entire career (since 1993), formally joining into Dentons in 2015. My practice covers a wide range of employment litigation, counselling and transactional support. I have been the Employment & Labor practice leader for Dentons US for nearly two years. I have three children (oldest 23, and 18-year-old twins); during the pandemic they have all been at home with my wife and me, so we have had some good quality time (and plenty of disagreements about what to watch on Netflix). Our mixed-breed rescue dog has greatly enjoyed the extra attention of having five people constantly in the house.

What is it that you like about Dentons?

Dentons has a vision about how to be the law firm of the future, and the firm fearlessly leans into that vision. We have lots of very experienced lawyers, but the nature of Dentons is constant change, so we are unafraid to try new and innovative approaches. Most of all, I like the opportunity to be able to work with smart, responsive and friendly colleagues all over the world.

What developments do you expect to see in 2021?

From the perspective of US employment law, there will be several cross-currents that will affect US employers. The incoming Biden presidential administration will likely result in increased enforcement of existing laws and the development of more employee-protective regulations. In light of the closely-divided Congress, it is unlikely that new labor laws will be enacted at the federal level. Some states, however, will attempt to fill the vacuum and will enact additional employee-protective laws. This will result in an increasing patchwork of laws across the US which will make it more complex for employers operating in multiple states. And of course, the continued pandemic and issues about vaccine administration and return to physical offices will dominate employers in 2021.

From the perspective of Dentons in the US, we will continue our geographic expansion, with the goal of being the first truly national full service law firm. We have already tripled the size of our employment practice in the US in just one year, and that expansion will continue in 2021.

What activity is at the top of your 'Bucket List'?

Post-pandemic, I would like to visit every city in which Dentons has an office. Realistically, that will be quite a challenge, given the breadth of Dentons' current footprint and our continued expansion into additional places. But there are so many interesting places around the world with friendly Dentons lawyers, and I would like to see as many as possible.

What do you enjoy doing outside of work?

My main pastime is music, including piano and choral singing. For many years, I have participated in a church choir with a large Atlanta church; we have travelled internationally, and in the summer of 2018 we served as the choir in residence at Westminster Abbey in London for a full week. One of the many consequences of the current pandemic is that choral singing is particularly risky, so our choir has not been able to convene since March; I look forward to being able to resume this activity at some point in 2021.

Dentons news and events

CHANGES TO CANADIAN EMPLOYMENT & LABOUR LAW: 2020 YEAR IN REVIEW TOOLKIT

This toolkit provides a recap on the year that was in Canadian employment and labor law and sets the stage for what's to come in 2021. Please click here to download the Changes to Canadian employment & labour law: 2020 year in review toolkit.

COVID-19 EMPLOYMENT HUB

Please click here for access to the latest country developments on COVID-19 and employment law.

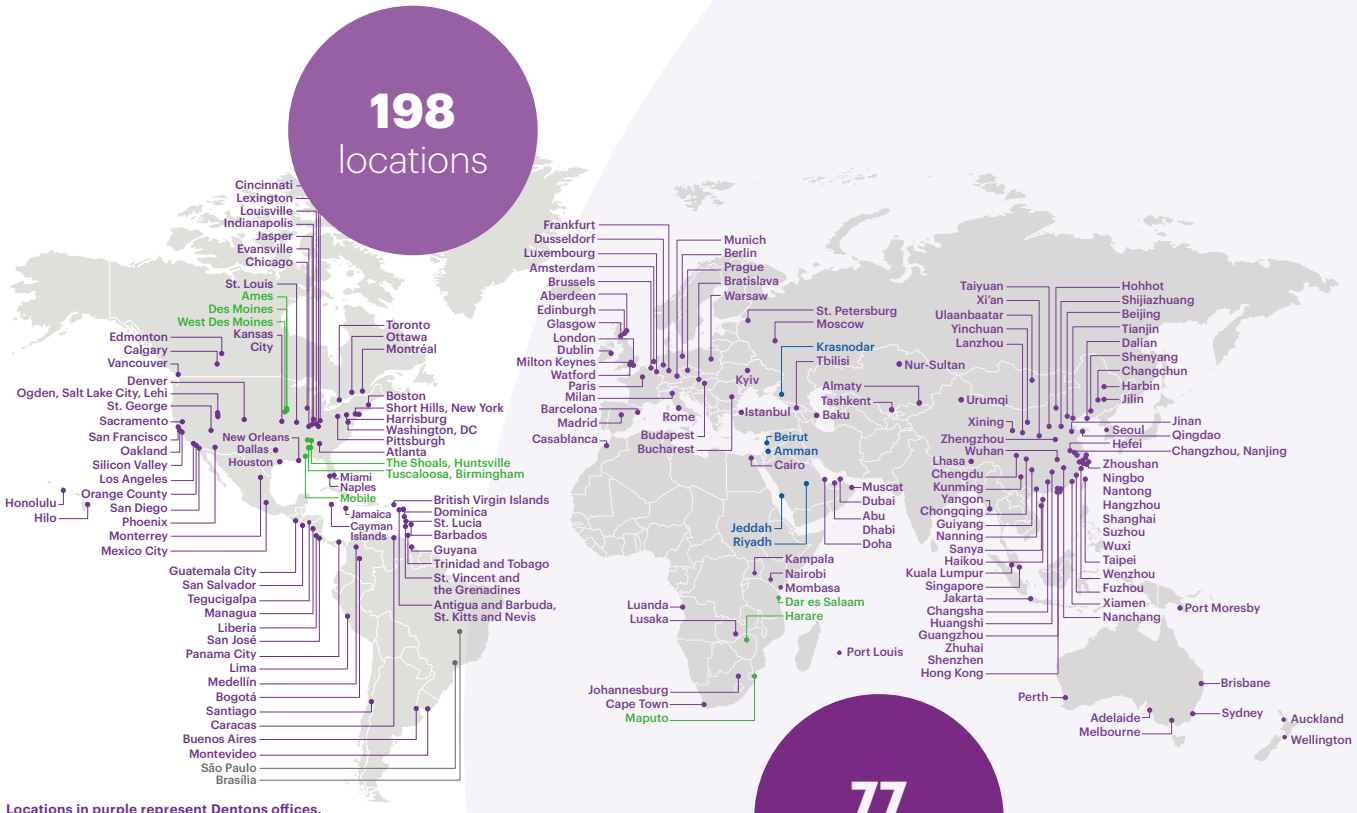
DENTONS COMBINATION IN ALABAMA, UNITED STATES

On the heels of Dentons' recent announcement of its future combination with Iowa's Davis Brown, Dentons and leading Alabama law firm, Sirote & Permutt announced today a future combination. Please click here for more details.

DENTONS LAUNCH IN ZAMBIA

Dentons has launched a previously announced combination with leading Zambian law firm, Eric Silwamba, Jalasi and Linyama Legal Practitioners, as part of its strategy to scale across Africa. Please click here for more details.

Dentons Employment and Labor Practice has over 450 employment, immigration, and benefits lawyers operating in all our offices around the world. Our coordinated legal strategy is specifically designed to help multi-national businesses maintain a consistent corporate culture and comply with local employment and labor laws, while avoiding the need to hire separate counsel in each jurisdiction. As a result, multi-national businesses in all industry sectors regularly engage and rely on Dentons' lawyers to create and implement policies and strategies designed to ensure compliance with local employment and labor laws, advance and facilitate the corporate culture of the organization, and help minimize the risk of costly employee disputes.



11,000+
total number of lawyers

19,000+
Total number of people

14,000+
All timekeepers

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ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

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