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Geida Sanlate, Littler Editor

Australia

New Gender Equality Law in Victoria

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler United States

The Victorian Government recently passed the Gender Equality Act 2020 (Vic), which will come into effect on March 31, 2021. Under the Act, "defined entities" (including Victorian public sector organizations with 50 employees or more) will be required to (1) undertake self-assessments and audits in relation to gender equality in the workplace; (2) prepare a "Gender Equality Action Plan" every four years, which must include data on gender equality and strategies for achieving workplace gender equality; (3) every two years, report progress of the Gender Equality Action Plan, based on gender equality targets and quotas per the regulations that will be published. The Public Sector Gender Equality Commissioner will be empowered to independently monitor compliance and issue notices for enforcement. Covered organizations should review and develop relevant policies and practices to comply with requirements under the Act.

JobKeeper 2.0 and Temporary Workplace Flexibility Arrangements

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler United States

The Australian Government has extended the JobKeeper Payment Scheme for an additional six months, until March 28, 2021, with some important changes. Under the JobKeeper 2.0, the fortnightly payment of $1500 per eligible employee will be replaced by a reduced, two-tiered payment system over Period 1 (September 28, 2020 to January 3, 2021) and Period 2 (January 4, 2021 to March 28, 2021). As of September 28, 2020, all employers will need to satisfy modified eligibility criteria and continue to meet their recordkeeping, reporting and minimum payment obligations. Among other eligibility criteria, entities will need to demonstrate a requisite decline in turnover over a specific period. The temporary workplace flexibility arrangements under the Fair Work Act 2009 (Cth) have also been extended for the same period, although these have also been modified and now employers must meet new criteria.

Queensland Criminalizes Wage Theft

New Legislation Enacted

Author: Naomi Seddon, Shareholder – Littler United States

Queensland has become the third Australian state (after Victoria and the ACT) to criminalize wage theft with the enactment of the Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Wage Theft Act), which penalizes employers who intentionally steal from their employees by failing to pay the legally required entitlements. The Wage Theft Act amends the Criminal Code by adding the new section 391(6A) to enumerate a range of non-payments or underpayments that are covered under the law, including unpaid or underpayment of hours; unreasonable deductions; unpaid superannuation; withholding entitlements; underpayment through contractor misclassification; among others. The Queensland Police Service is empowered to investigate such claims.

The Wage Theft Act also amends the Industrial Relations Act 2016 (Qld) (IR Act), by introducing a process for fair work claims and wage recovery claims in the Industrial Magistrates Court up to $20,000, as well as a requirement for employers to share employee information to a registered employee organization with the employee's consent. An employer will be liable for up to 27 penalty units for failing to provide the employee information. Employers should consistently audit their payroll practices and rectify any shortfalls, as well as review employment agreements, especially those paying all-inclusive salaries, to ensure compliance with any recent modern award changes.

NSW Seeks to Harmonize Modern Slavery Laws with Commonwealth Act

New Order or Decree

Author: Naomi Seddon, Shareholder – Littler United States

The New South Wales Government has announced its intention to align the NSW modern slavery legislation with the Commonwealth's Modern Slavery Act 2018 (Cth) (Cth Act). Whilst the NSW Act was passed, it has not yet been proclaimed to come into effect as there remain details to work out given the areas of overlap between the NSW law and the Commonwealth law. The NSW Government intends to work with the Commonwealth Government to seek harmonization of the consolidated revenue threshold for modern slavery reporting, as well as an agreement from the Commonwealth to adopt "$50 million consolidated revenue" as a national standard (rather than the "$100 million in consolidated revenue" threshold under the Commonwealth Act). The NSW Government has also signaled that it intends to bring the NSW Act into effect on or before January 1, 2021, include a statutory review mechanism in the Act, replace 'turnover' terminology with "consolidated revenue" throughout the Act, and specify a prosecuting authority for breaches of the Act. We will provide updates as further information becomes available.

Draft Modern Award Schedule on Work from Home Arrangements

New Regulation or Official Guidance

Author: Naomi Seddon, Shareholder – Littler United States

On August 31, 2020, the Fair Work Commission released the Draft Award Flexibility Schedule to address work from home arrangements under modern awards and provide employees and employers with greater flexibility. The Draft Schedule is proposed to operate for an initial period of 12 months. However, before the Draft is incorporated into any modern awards, a consultation process will occur with industry groups and other relevant parties. The Draft Schedule includes the following main points:

- Employers and employees may reach an agreement on a working from home arrangement that balances the personal and work responsibilities of the employee with the business needs of the employer;
- Full time and part-time employees may request a compressed work week, so that the hours are worked over a reduced number of days;
- An employer may change the span of hours in a workplace or section of a workplace with the agreement of 75% of its employees;
- An agreement may be reached to share a reduction in working hours in a workplace or section of a workplace with the agreement of 75% of employees, in circumstances where an employer cannot usefully employ all full time and part-time employees in a workplace or section of a workplace; and
- An employer may issue directions to perform all duties within an employee's skill and competency, to stagger starting and finishing times or to direct an employee to work at an alternative workplace, which may include a direction to work from home.

Canada

Ontario: Court of Appeal Decision on Calculating Reasonable Notice

Precedential Decision by Judiciary or Regulatory Agency

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel – Littler Canada

The recent decision of the Ontario Court of Appeal in *Manthadi v. ASCO Manufacturing*, 2020 ONCA 485, analyzed the common law approach to the calculation of reasonable notice when a vendor terminates a worker's employment in an asset purchase transaction, the employee signs a release and is hired by the successor employer, and the successor then terminates the employee's employment. The decision indicates that the employee's past service with the vendor may be a factor in the reasonable notice calculation, which involves weighing the experience the employee brings to the successor employer and does not involve "stitching together the employee's two terms of service." Furthermore, *Manthadi* establishes that in the context of an asset purchase transaction, when an employee releases the vendor from all liability in connection with the employee's employment, the employee will not be disentitled from making a wrongful dismissal claim against the successor, however other factors relating to the release may be relevant.

Supreme Court of Canada: Constitutionality of Challenged GNDA Provisions

Precedential Decision by Judiciary or Regulatory Agency

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel – Littler Canada

On May 4, 2017, the federal government enacted the Genetic Non-Discrimination Act, SC 2017, c 3 (GNDA). On July 10, 2020, in Reference re Genetic Non-Discrimination Act, 2020 SCC 17, the Supreme Court of Canada (SCC) rendered a split decision (5-4) holding that specific sections of the GNDA were constitutional because they were within the jurisdiction of Parliament over criminal law. Therefore, federally-regulated employers should note that the disputed sections of the GNDA continue to apply to them. Employers will be committing a criminal offence and subject to the GNDA's criminal sanctions if they use or demand genetic testing, or the results of genetic testing, as a condition of employment, or discriminate based on a refusal to provide consent.

Assessing Whether Medical Cannabis Users Can Safely Perform Their Jobs, Without Undue Hardship to the Employer

Precedential Decision by Judiciary or Regulatory Agency

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel – Littler Canada

On June 4, 2020, in *International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2020 NLCA 20, the Court of Appeal of Newfoundland and Labrador overturned the decision of the province's Supreme Court, which addressed an employer's obligation to accommodate medical cannabis use for workers in safety-sensitive positions. The Court of Appeal held that employers must conduct an individualized assessment of whether an employee can safely perform their actual job on their specific worksite despite their use of medical cannabis, without undue hardship to the employer. Employers that fail to conduct such an analysis will be discriminating against a disabled employee.

Ontario: Employers Must Screen Workers and Essential Visitors for COVID-19

New Regulation or Official Guidance

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel – Littler Canada

In response to the recent increase in COVID-19 cases in Ontario, the province imposed health screening obligations on employers. On September 25, 2020, the province's government filed Regulation 530/20, which was made under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020. Effective September 26, 2020, Regulation 530/20 amended Regulation 364/20: Rules for areas in Stage 3, mandating the person responsible for a business or organization that is open to operate it in compliance with the advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health on screening individuals. On September 25, 2020, the Ministry of Health issued Recommendations for screening (Version 1) (Recommendations), which indicate that the screening must be implemented for workers and essential visitors entering the work environment, and sets out three questions that they must answer.

Federal Government Announced Canada Emergency Response Benefit

Proposed Bill or Initiative

Authors: Monty Verlint, Partner and Rhonda B. Levy, Knowledge Management Counsel – Littler Canada

To help Canadians through the next phase of recovery, on August 20, 2020, Canada's federal government announced that it would transition those receiving the Canada Emergency Response Benefit (CERB) to a more flexible and generous Employment Insurance (EI) program, provided they qualify. In preparation for this transition, the CERB was extended for four weeks to a 28-week maximum, ending on September 26, 2020. The government also introduced new legislation to support the implementation of the following benefits, which will be in effect for one year following the end of CERB payments: The Canada Recovery Benefit, the Canada Recovery Sickness Benefit, and the Canada Recovery Caregiving Benefit.

China

First Batch of Typical Cases of Labor and Personnel Disputes Released

Precedential Decision by Judiciary or Regulatory Agency

Author: Nancy Zhang, Special Counsel – Littler United States

The Ministry of Human Resources and Social Security and the Supreme People's Court jointly issued the first batch of 15 typical labor dispute cases, which are divided into four categories: epidemic-related, labor compensation, labor contract, and others. Among them, seven typical cases are related to COVID-19, including whether the labor contract can be terminated on the ground of force majeure due to the COVID-19 epidemic, how to understand the "payroll cycle" and how to deal with shared employee, etc. In addition, the 15 typical cases also include cases frequently encountered by employers, such as how employers exercise their labor autonomy to legally adjust employees' positions and locations.

Supreme Court: Guiding Opinions on Unifying the Application of Laws and Strengthening Precedents

Precedential Decision by Judiciary or Regulatory Agency

Author: Nancy Zhang, Special Counsel – Littler United States

The Guiding Opinions state that, for cases where there is a lack of clear judgment rules or no uniform judgment rules have been formed, the People's Courts should search for precedents for guidance. The judge shall identify and compare the similarity between the pending case and the searching results, determine whether it is within the same category, and explain the search results. If the precedents are similar with the pending case and provide guidance, the courts shall refer to them to make a decision. If the precedents are different from the current case, the court may use it as a reference for making a decision.

Special Support Plan for the Stabilization and Expansion of Jobs

New Regulation or Official Guidance

Author: Nancy Zhang, Special Counsel – Littler United States

In Shanghai, for enterprises who newly recruited "four types of key personnel" (such as individuals with employment difficulties, zero-employment family members, college graduates) within two years of graduation, and registered unemployed persons, the employer is entitled to a RMB 300 subsidy for training those new hires. The maximum subsidy period does not exceed six (6) months, and the maximum subsidy per person is RMB 1,800. The maximum subsidy to be paid to enterprises for job-related-training is not more than RMB 300,000.

Colombia

Extension of Public Health Emergency Impacts Various Employment-Related Measures

New Order or Decree

Author: Ángela Mora, Associate – Littler Colombia

The Health Ministry extended the state of public health emergency related to COVID-19 until November 30, 2020, and it may extend it again. During the state of emergency, employers are obligated to subsidize the connectivity of employees working from home; employees may apply for unemployment aid to compensate for reduction in their salary; and employers may send employees on vacation with a one-day notice. The extension of the state of emergency also impacts other measures that allow employers to have employees work from home without the implication of teleworking. These measures will be extended for as long as the sanitary emergency persists, unless authorities indicate otherwise.

Restrictions on Suspension of Contributions to Pension System

Precedential Decision by Judiciary or Regulatory Agency

Author: Ángela Mora, Associate – Littler Colombia

In Decision SL-25562020 of July 08, 2020, the Supreme Court of Justice held that whether or not the employee has complied with the pension requirements, the employer cannot suspend the contributions to the system without first informing the employee of the related advantages and disadvantages, so that the employee can make an informed decision. The employee may decide to continue making contributions to increase the pension amount or the savings.

Costa Rica

Dates to Observe Holidays

New Legislation Enacted

Author: Marco Arias Arguedas, Partner – BDS, Member of Littler Global

Law N°9875 was enacted to observe holidays on the following Monday depending on whether they fall on a given weekday. The law seeks to promote national tourism among Costa Ricans to alleviate the economic damage due to COVID-19, especially to the tourism industry. Under the law, which became effective on July 16, 2020, the July 25 national holiday (which fell on a Saturday) was observed on Monday, July 27. Under the law, five of 11 Costa Rican holidays will be observed in that way, until the end of 2024.

CCSS Expands Health Insurance Coverage to Furloughed Workers

Important Action by Regulatory Agency

Author: Marco Arias Arguedas, Partner – BDS, Member of Littler Global

On September 30, the Board of Directors of the Costa Rican Social Security Fund (Caja Costarricense de Seguro Social, CCSS) approved a temporary reform of article 58 of the Health Insurance Regulation, to extend CCSS (social security) coverage to furloughed employees. Due to the negative financial impact to companies brought about by the pandemic, employers have resorted to suspend labor contracts (furloughs), after seeking authorization from the Ministry of Labor. Without this extension, healthcare coverage for employees furloughed in March would be expiring now. With the extension, these employees will have CCSS coverage through December 2020.

Finland

COVID-19: Temporary Amendments Extended until December 31, 2020

New Order or Decree

Authors: Emma Mäkeläinen, Associate and Samuel Kääriäinen, Partner – Dottir Attorneys Ltd.

All the temporary amendments made to the employment legislation, such as shortening the cooperation consultations period from 14 days to five days, since April 1, 2020, remain in force until the end of 2020. The amendments have aimed to help businesses adjust to changes in demand for labor caused by the COVID-19 pandemic.

Supreme Court Ruling on Negotiation Obligation and Employees' Right to Be Heard and Informed During Cooperation Proceedings

Precedential Decision by Judiciary or Regulatory Agency

Authors: Emma Mäkeläinen, Associate and Samuel Kääriäinen, Partner – Dottir Attorneys Ltd.

According to Finnish law, the employer shall discuss the planned measures with all employee groups whose work may be reduced due to the measures. If the employer has planned separate measures that might affect several personnel groups, it may be appropriate to discuss such measures in one cooperation proceeding. However, there is no provision in law that would obligate the employer to discuss separate measures in the same cooperation negotiations even if the measures were arising from same ground or were planned at the same time.

On August 13, 2020, the Supreme Court assessed whether the employer had fulfilled its negotiation obligation when it had organized two separate cooperation proceedings. The Supreme Court ruled in favor of the company, stating that the employer had the right to organize separate proceedings. Further, the court stated that the employer was responsible for organizing the negotiations in such a way that the employees' representatives were informed and given the opportunity to express their views on the options for planned measures, also in so far as the negotiations raised issues related to both negotiations. In this case, the same employee representatives attended both negotiations so the personnel's right to be heard and informed was not endangered.

Supreme Court Ruling on Termination of Employment and Reassignment

Precedential Decision by Judiciary or Regulatory Agency

Authors: Emma Mäkeläinen, Associate and Samuel Kääriäinen, Partner – Dottir Attorneys Ltd.

Under the Finnish Employment Contracts Act, the employer may terminate an employment relationship only if there is an appropriate reason and may not do so without first considering whether the employee can be reassigned to another position. In a recent case, the employee worked as a financial secretary in the service of the city. The employee had been sentenced for aggravated embezzlement, which the employee had committed while acting in a position of trust in a trade union (e.g. during free time).

On September 30, 2020, the Supreme Court ruled in favor of the employer, noting where the lack of trust between the employee and the employer has been caused by the employee's criminal conduct, the seriousness, quality and manner of the crime must also be acknowledged in the assessment. Here, the employee's conduct constituted such a serious breach of employment that the employer could not reasonably be expected to continue the contract.

Noncompete Agreements: Extended Obligation to Pay Compensation

Proposed Bill or Initiative

Authors: Emma Mäkeläinen, Associate and Samuel Kääriäinen, Partner – Dottir Attorneys Ltd.

The Ministry of Economic Affairs and Employment of Finland has set up a working group to investigate the need to limit the unnecessary use of noncompetition clauses. The current employment legislation requires an employer to pay compensation to an employee in relation to the use of noncompetition agreement only if the period exceeds six months. Thus, the parties may agree on a post-employment noncompete up to six months without any compensation. In order to agree on post-employment noncompete, there must be a particularly weighty reason based on employer's need to keep trade secrets or to special training given to the employee as well as on the employee's position and duties.

According to the initiative, the noncompetition regulation does not fully reflect the changes in the working life and the parties quite often agree on the noncompete even if there is no such reason. Such noncompete would not be valid but cause unnecessary uncertainty. The working group has been preparing the necessary draft provisions in order to extend the obligation to pay compensation to all noncompetition agreements. The proposal will be submitted to the Finnish parliament during the autumn 2020.

France

Long-Term Partial Activity Scheme to Prevent Dismissals

New Order or Decree

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

The partial activity scheme allows an employer facing economic hardship to reduce employees' working time while also receiving remuneration from the French government. The Law n°2020-734 of June 17, 2020, sets a new scheme of "long term" partial activity (APLD) to support companies facing a long period of decrease in business. Under Decree n°2020-926 of July 28, 2020, the "long term" partial activity scheme, which may last until June 30, 2022, will provide support businesses and employees in relation to indemnification for working time reduction and commitments for job protection and training. This new APLD scheme is more generous than the standard furlough scheme.

Use of Private Social Media Account to Support a Dismissal

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

On September 30, 2020, the French Supreme Court held that the law on evidence can, under certain circumstances, justify presenting information obtained from an employee's private social media account to justify a dismissal, provided evidence is essential to the case and any infringement of privacy is proportionate to the procedural purpose. Here, an employer in the fashion industry dismissed a project manager for gross misconduct after she published pictures of a new and confidential collection on her private social media account, allowing competitors to see it. The French Supreme Court for the first time found that using the information from social media was not an infringement to the employee's right to privacy because it was obtained through legal means (i.e., another employee who had subscribed to the social media account had provided it). Further, the Court ruled that any infringement to the employee's privacy was proportionate to the procedural purpose, which is to protect the company's legitimate interests, especially the confidentiality of its business.

Evidence of Bad Faith in Allegations of Bullying

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

According to French case law, an employee alleging harassment or bullying cannot be terminated for those reasons, except if the employer can establish that the employee made such allegations in bad faith. On September 16, 2020, the French Supreme Court confirmed the decision of a court of appeal, which had ruled that an employee had made allegations of workplace bullying in bad faith, being fully aware that the allegations were unfounded. This bad faith resulted from the employee's contradictory behavior: While the employee had expressed a willingness to discuss the issue with the employer, in actuality, the employee had aborted the employer's different attempts to reach a solution. The Supreme Court also ruled that the absence of any reference to bad faith in the dismissal letter was not an obstacle to the demonstration of bad faith before a court of justice.

Discrimination Based on Physical Appearance

Precedential Decision by Judiciary or Regulatory Agency

Author: Guillaume Desmoulin, Partner – Fromont Briens | Littler

On July 8, 2020, the French Supreme Court rendered a decision on a dismissal based on the employee's beard shaved in a way that represented a political or religious perspective. The employer claimed that the employee's physical appearance endangered its American clients' security in Yemen. Without specific internal rules or a contractual clause restricting employees' physical appearance, the high court noted that the dismissal was discriminatory based on the employee's political or religious belief and not on a professional requirement. Further, the Court noted that professional requirements must be based on objective job duties or working conditions, rather than on subjective grounds, such as the employer's desire to satisfy customers' expectations. The Court further ruled that the legitimate interest to protect staff and customers can justify restricting employees' rights and freedoms, and thus can allow a neutral appearance requirement if the employer can demonstrate it is necessary to protect staff and customers from actual danger.

Guatemala

Restriction of Movement Based on State of Public Calamity

New Order or Decree

Author: Marco Antonio Cruz, Associate – BDS, Member of Littler Global

A new presidential decree, issued on July 26, 2020, due to the public health crisis and that came into force on September 18, imposes restrictions on movement and activities within the Republic of Guatemala, based on whether the nature of the activity relates to family, social or recreation. National and international flights duly authorized will be allowed.

30-Day Extension of State of Public Calamity

New Regulation or Official Guidance

Author: Marco Antonio Cruz, Associate – BDS, Member of Littler Global

On August 27, 2020, the Congress of the Republic of Guatemala ratified Government Decree 17-2020, which became effective September 10, 2020. Said Decree extends the term of the State of Public Calamity for thirty more days from September 5 to October 4, 2020. People over 60 years of age must be treated preferentially at the time of making any type of procedure. The only exception for the prohibitions on meetings or activities applies to religious celebration services.

Hungary

Amendment of Labor Code Concerning Posting of Workers

New Legislation Enacted

Author: Zoltán Csernus, Attorney-at-Law – VJT & Partners Law Firm

Directive (EU) 2018/957 amended the Labor Code concerning the provision of services by posted workers, by extending the rules of salary, accommodation and cost reimbursement under Hungarian law to apply for posted workers. Collective bargaining agreements for the given sector also shall apply. If the posting period is longer than 12 months, the Hungarian Labor Code shall apply to the employment with the exception of rules of establishment and termination of employment and the noncompetition agreement. The employer can apply to the authorities to extend the 12-month period by six months. If the employer substitutes the employee with another employee doing the same tasks, the period of posting of both employees will be calculated jointly. If the foreign temporary staffing agency lends employees, its client must inform the agency on the working conditions and salaries.

Release from Working Obligation Due to Adoption of a Child

New Legislation Enacted

Author: Zoltán Csernus, Attorney-at-Law – VJT & Partners Law Firm

Further to an amendment to the Labor Code, an employee intending to adopt a child is entitled to be released from working obligations for a maximum of 10 working days to be able to meet the child. The employee can exercise such right with a five-day notice and supported by a certificate from the adoption organization. The employee is entitled to an absentee fee for this period (calculated as an average of the basic salary for the previous six months, plus any overtime payment). This rule applies to contracts of all employees and neither party can waive this right under contract.

India

The Industrial Relations Code, 2020: Codification of Labor Laws

New Legislation Enacted

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

On September 29, 2020, Indian government enacted the Industrial Relations Code, 2020 (IR Code), to replace the individual laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes (i.e., the Industrial Disputes Act, 1947, Trade Unions Act, 1926, and Industrial Employment (Standing Orders) Act, 1946).

Key changes that the IR Code introduces include: (a) increasing the threshold for applicability of standing orders from industrial establishments employing at least 100 workers to those with at least 300 workers; (b) increasing the threshold for applicability of retrenchment and layoffs in factories, mines and plantations without seeking prior government approval from establishments with at least 100 workers to those employing 300 workers; (c) increasing the wage ceiling for exclusion of supervisors from the definition of "workers" (earlier workman) from INR 10,000 per month (approx. USD 135) to INR 18,000 per month (approx. USD 245); and (d) introducing the concept of recognition of trade unions in the central statute. The effective date of the IR Code has not been announced.

The Code on Social Security, 2020: Codification of Labor Laws

New Legislation Enacted

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

On September 29, 2020, the Indian government enacted the Code on Social Security, 2020 (SS Code), to replace the individual laws relating to social security (including the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Employees' Compensation Act, 1923, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972).

Key changes that the SS Code introduces include: (a) recognition of "gig workers" and "platform workers" and provisions for payment of social security for such workers; (b) payment of gratuity to fixed-term employees on a pro-rata basis; and (c) limitation period of five years for initiation of inquiries and two years for concluding inquiries under the employees' provident fund scheme. The effective date of the SS Code has not been announced.

OSH Code, 2020: Codification of Labor Laws

New Legislation Enacted

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

On September 29, 2020, the Indian government enacted the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code), to codify the individual laws regulating the occupational safety, health and working conditions of employees (including the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970, the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996).

Key changes that the OSH Code introduces include: (a) single registration and licensing mechanism; (b) the applicability thresholds for factories running with power is increased from those employing 10 employees to 20 employees, and for factories without power, from 20 to 40 employees; (c) the applicability threshold on contract labor is increased from establishments engaging at least 20 contract laborers to those engaging at least 50 contract laborers; and (d) employment of women in establishments (including factories) between 7 pm – 6am has been permitted with employee consent, subject to conditions relating to safety, holiday, working hours and other conditions as may be prescribed. Although the OSH Code has been enacted, its effective date has not been announced.

Transgender Persons (Protection of Rights) Rules, 2020

New Legislation Enacted

Authors: Ajay Singh Solanki, Leader and Archita Mohapatra, Associate – Nishith Desai Associates

On September 25, 2020, the Transgender Persons (Protection of Rights) Rules, 2020 (Transgender Protection Rules) under the Transgender Persons (Protections of Rights) Act, 2019 have been notified and made effective. The Transgender Protection Rules introduce certain obligations for private establishments including: (a) to provide a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including infrastructure adjustments, recruitment, employment benefits, promotion and other related issues; (b) to publish an equal opportunity policy for transgender persons and display such policy on website or at conspicuous places in the premises; (c) for employers to ensure that the policy contains details of infrastructural facilities, measures and amenities to be provided to the transgender persons to effectively discharge their duties, applicability of all rules and regulations of the employer regarding service conditions and maintenance of confidentiality of the gender identity of the transgender employees; and (d) to appoint a complaint officer to handle complaints from transgender persons.

Ireland

Order Allows WRC to Hold Virtual or Remote Hearings

New Order or Decree

Author: Emmet Whelan, Partner – ByrneWallace

The Irish Government has signed an order allowing the body hearing employment claims at first instance, the Workplace Relations Commission, to convene virtually or remote hearings without the consent of the parties. The order came into operation on September 24, 2020. Up to now, not many such hearings were listed, as the listing required the agreement of all parties. It is hoped that this change will allow more listing of remote hearings and reduce the significant backlog of claims before the WRC.

Order Extends Suspension on Redundancy Rights until End of November

New Order or Decree

Author: Emmet Whelan, Partner – ByrneWallace

The Irish Government has extended the suspension of the application of section 12 of the Redundancy Payments Act 1967 for a fourth time. That provision entitles an employee to trigger their own redundancy after a prescribed period of time on layoff or short-time. This provision was originally suspended in March 2020 to assist employers retain employees during an "emergency period" and the suspension has now been extended until November 30, 2020.

Labor Court on Refusal to Allow Employee to Return to Work

Precedential Decision by Judiciary or Regulatory Agency

Author: Emmet Whelan, Partner – ByrneWallace

Refusing to allow an employee to return to work when declared medically fit to return, and refusing to pay the employee wages, will result in an unlawful deduction from wages under the Payment of Wages Act 1991, the Labor Court has determined. An employer is not allowed to refuse to pay wages "as leverage in a contractual dispute, unless the worker is acting contrary to the terms of their contract or there is a statutory basis for doing so."

Italy

COVID-19: Short-time Work

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

To address the COVID-19 pandemic, Italy enacted various short-time work programs that allow employers to reduce employees' working hours down to zero hours per week while the employee receives up to 80% of the lost salary (with a cap of approx. EUR 1,100 monthly) paid by the Social Security Authority (INPS). In August, these programs were modified to provide an additional 18 weeks of short-time work, starting July 13 through December 31, 2020. The first nine weeks are available to employers at no cost to cover short-time work after July 12, 2020. The additional nine weeks are available to employers for whom the first nine weeks had already been fully authorized and require a social contribution of up to 18% for each covered employee's salary. Employers who registered a downturn of 20% or higher in revenues during the first quarter of 2020 compared to the same period in the previous year can tap into the additional nine weeks of short-time work at no cost.

COVID-19: Exemption to the Social Security Contribution

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

Under a new Decree No. 104/2020, employers may be exempted from paying mandatory social security contributions for employees as an alternative to the short-time work programs. Specifically, employers who benefited from the short-time work programs during May and June 2020 but do not seek to use additional short-time weeks before December 2020, can apply for this exemption. Employees subject to this measure are still eligible to receive their full social contribution benefits from the Italian Social Security Authority (INPS).

COVID-19: Individual and Collective Dismissals

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

At the onset of the pandemic, Italy enacted a dismissal ban covering individual and collective dismissals based on economic reasons, effective March 17 through August 17, 2020. Decree No. 104/2020, issued in August, extended the dismissal ban, except that it modified the duration depending on the use of short-time work programs. Specifically, the dismissal moratorium lasts until the employer is able to use the 18 weeks of short-time work or receive an exemption from the social contribution. If an employer does not use either of these measures, the dismissal ban would extend through December 31, 2020.

COVID-19: Fixed-Term Contracts

New Order or Decree

Authors: Carlo Majer, Partner and Nicola Comelli, Associate – Littler Italy

Under Decree No. 104/2020, which was passed in August 2020, employers can renew or extend fixed-term employment contracts until December 31, 2020, even in the absence of the specific "causes" that would otherwise be mandatory in these cases. Such contracts can be extended only once and for a maximum of 12 months, without prejudice to the maximum total duration of 24 months. The objective of this measure is to support restarting business activities to recover from the COVID-19 health emergency.

Japan

Guidelines on Calculating Working Hours When Employees Have Side Jobs

New Regulation or Official Guidance

Author: Aki Tanaka, Of Counsel – Littler United States

On September 1, 2020, the government issued guidelines for calculating working hours when employees have side jobs. Under the guidelines, when an employee works two different jobs with two different employers, statutory working hours (i.e., eight hours per day, 40 hours per week) add up into a sum total. Therefore, if the total working hours exceed the statutory limit, one employer can be liable for overtime premium even if the employee's working hours with that employer were less than the limit. The guidelines also explain how to calculate working hours between both employers to determine the maximum overtime hours.

Malaysia

Recovery Movement Control Order (RMCO)

New Legislation Enacted

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

The Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) (Extension of Operation) (No.6) Order 2020 was published on August 29, 2020, and extends the RMCO in Malaysia from September 1, 2020 to December 31, 2020.

Law on Workers' Minimum Standards of Housing and Amenities

New Legislation Enacted

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

Under the Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019, which became effective on September 1, 2020, employers from all sectors who provide accommodation to their employees must comply with various requirements, including: (1) obtaining a Certificate for Accommodation from the Director General of Labor Department Peninsular Malaysia; (2) ensuring that every accommodation provided for employees complies with minimum standards and that decent and adequate amenities are provided; and (3) collecting rental charges from an employee for the accommodation provided by the employer or any centralized accommodation provider. Additionally, various regulations to complement this law also are effective as of the same date.

RMCO Standard Operating Procedures

Precedential Decision by Judiciary or Regulatory Agency

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

All businesses open for operations must comply with the SOPs for the Recovery Movement Control Order (RMCO), issued by the National Security Council, and also the sector-specific SOPs where applicable.

Bill to Implement Temporary Measures to Reduce Impact of COVID-19

Proposed Bill or Initiative

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

Both the Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate) approved the COVID-19 Bill. If it receives the royal assent, the Bill will remain in place for two years and modify various provisions impacting employment and industrial relations, to reduce the impact of the COVID-19 pandemic in Malaysia.

Kita Prihatin Initiative

Important Action by Regulatory Agency

Authors: Selvamalar Alagaratnam, Partner and Sareeka Balakrishnan, Associate – Skrine

Prime Minister Tan Sri Muhyiddin Yassin announced that the government will implement several initiatives and additional assistance under the RM10 billion Prihatin Supplementary Initiative Package (Kita Prihatin) in line with its efforts to boost economic recovery. Families and single Malaysians in the B40 group will receive RM1,000 and RM500 respectively, while those in the M40 group will receive RM600 and RM300, respectively. Based on the Department of Statistics of Malaysia in 2020, the B40 group consists of households earning below RM4,360. The M40 group refers to households earning between RM4,360 - RM9,619; and the T20 group refers to those earning more than RM9,619.

Under Wage Subsidy Programme 2.0, RM2.4 billion will be allocated to help companies that are still affected by the pandemic. This initiative will be implemented from October 1 to December 31, 2020 at a rate of RM600 per month for each employee up to a maximum of 200 employees. The government has agreed to reopen applications for PRIHATIN Special Grant commencing October 1 through October 31, to assist micro-entrepreneurs.

Netherlands

NOW 3.0: Applications and Compensation

New Legislation Enacted

Author: Dennis Veldhuizen, Partner – Clint | Littler

The Emergency Fund Bridging Employment (known in Dutch as NOW) has been extended for the third time (NOW 3.0). Under the iterations of the NOW program, companies with a substantial revenue loss due to the COVID-19 pandemic can receive compensation for wage costs. NOW 3.0 covers three phases of three months between October 2020 and July 2021 and for each phase employers can decide whether to apply for compensation. With each phase, the government will gradually reduce the support: starting with coverage of wage costs at 80% (in case of 100% revenue loss) in the first phase; 70% in the second phase; and 60% in the third phase. Currently, employers are eligible for NOW when their expected revenue loss is at least 20%, but this threshold will be raised to 30% as of January 2021. Furthermore, employers continue to have an obligation to do their best to maintain employment (e.g., through re-training), but they will be able to reduce their wage cost to a certain extent without it affecting compensation.

Additional Birth Leave, Effective July 1, 2020

New Legislation Enacted

Author: Dennis Veldhuizen, Partner – Clint | Littler

As of January 1, 2020, partners of women who gave birth are entitled to birth leave of one time the weekly working hours, during which the employer must continue full payment of the salary. As of July 1, 2020, partners are entitled to an additional birth leave of five times the weekly working hours. During this leave, the partner is entitled to a benefit of the Dutch Employee Insurance Agency (UWV) of 70% of their wage. The employer will request the benefit and receive it from the agency, after which the employer will pay it to the employee. The additional birth leave can be taken only once the "standard" birth leave is taken, but must be taken within six months after the birth.

Increase to Statutory Minimum Wage, Effective July 1, 2020

New Legislation Enacted

Author: Dennis Veldhuizen, Partner – Clint | Littler

Twice a year, in January and July, the government adjusts the Dutch statutory minimum wage. As of July 1, 2020, the monthly minimum wage increased from 1,653.60 EUR to 1,680 EUR. The daily and weekly wages were adjusted, accordingly.

Norway

Change in the Employer's Duty to Pay Salary During Temporary Layoffs

New Legislation Enacted

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

According to the Obligation to Pay Wages During Temporary Redundancy Act, when laying off an employee, the employer is obliged to pay layoff compensation and other remuneration for a specified number of days (the employer's period). After this, the employer is exempted from payroll obligations for 52 weeks. As a result of the COVID-19 pandemic, the Norwegian government changed the employer's period from 15 to two days. As more people return to work, the government has now increased the employer-financed period from two to 10 days.

Temporary Increase to Unemployment Benefit Rate Through End of Year

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

Due to COVID-19, the government has implemented several measures to secure jobs, boost the labor market and ensure predictability for the work force in these uncertain times. The unemployment benefit rate typically amounts to 62.4% of the applicant's previous income up to 6 G. As a temporary measure, in March 2020, the rate was increased to 80% of the income up to 3 G and 62.4% of the income between 3 G and 6 G. This temporary amendment, which originally applied until October 31, has been extended to December 31, 2020.

Extension of Temporary Layoff Period

New Regulation or Official Guidance

Author: Ole Kristian Olsby, Partner – Homble Olsby | Littler

Due to the COVID-19 pandemic, the government has extended the temporary layoff period from 26 to 52 weeks, effective November 1, 2020. This means that the period during which the employer is exempted from the wage obligation during temporary layoff is extended from 26 to 52 weeks. Likewise, the period during which temporarily laid-off employees may be entitled to unemployment benefits was extended from 26 to 52 weeks.

Panama

COVID-19: Temporary Employment Protections

New Legislation Enacted

Author: Irma Marcela Montenegro Vásquez, Associate – BDS, Member of Littler Global

Law 157, which became effective on August 3, establishes various temporary measures. The law covers companies that closed their operations, totally or partially, from the beginning of the State of National Emergency through December 31, 2020. Among other things, under Law 157, companies that suspended employee contracts may proceed to reinstate them and cannot hire new employees to replace those suspended employees.

Further, companies may maintain the suspensions of labor contracts until December 31, 2020, and request to extend them month to month. Prior to the temporary suspension, companies must present the employee with a proposal of mutual agreement, giving him or her two business days to respond. Otherwise, the proposal will be considered rejected. Additionally, under Law 157, a different formula is applied to calculate seniority, maternity leave and compensation.

Peru

Support for Employees with a Minor Child Suffering from Cancer

New Legislation Enacted

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On September 2, Congress enacted Act 31041 to establish various measures to guarantee the early detection and treatment of cancer in children and adolescents. Under the Act, an employee with a minor diagnosed with cancer can receive an oncological subsidy, amounting to two legal minimum wages disbursed throughout the treatment. These employees also are eligible for a one-year leave, compensated for the duration of the year. The employer will cover the first 21 days of the leave compensation; EsSalud (Peru's National Social Security Institution) will cover the remainder. The subsidy is limited to one per home and employees can take the paid leave only once.

Economic Benefit for Eligible Suspended Employees

New Order or Decree

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

Supreme Decree 017-2020-TR, published on July 13, establishes an economic benefit for eligible suspended employees. To receive the benefit, employees must work for an employer with 100 employees or less, have a monthly salary of 2400 PEN or less, and must not be a recipient of other government program designed to address poverty or vulnerability.

Administrative Procedure for the Authorization of Adolescents' Work

New Order or Decree

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

Supreme Decree 018-2020-TR, which was published on August 25, 2020, establishes an administrative procedure to hire adolescents. This procedure is free and requires the employer or the adolescent's parents to submit a request, in person or via mail, before the Ministry of Labor and Promotion of Employment. For the application to be approved, the terms and conditions of the job cannot interfere with the adolescent's school attendance, and cannot require a night shift nor exceed the working time allowed under the law, among other criteria. If approved, the authorization period will last the duration of the employment contract, unless the parties' request for an extension is approved.

Extension of the State of Public Health Emergency

New Order or Decree

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On August 28, the Ministry of Health issued Supreme Decree 027-2020-SA, extending the Public Health Emergency for 90 days, through December 6, 2020. This means that labor measures enacted only for the duration of the state of emergency are automatically extended. These measures include the telework regime, including the obligation to keep at-risk employees (due to their age or clinical factors) performing remote work or, if that is not possible, grant them a paid leave subject to later compensation. Other measures include the authorization to modify work schedules and suspend work, as well as the ability to receive a government subsidy for employees diagnosed with COVID-19.

Authorization for Late Filing of Medical Certificates

New Regulation or Official Guidance

Author: César Gonzáles Hunt, Partner – Philippi Prietocarrizosa Ferrero DU & Uría

On September 22, EsSalud (Peru's National Social Security Institution) issued Resolution of General Management 1063-GG-ESSALUD-2020, which allows employees and employers to make late filings of medical certificates, in order to receive the subsidies (in case of employees) or reimbursement (in case of employers) for medical and maternity leaves. The general rule requires the certificates be presented within 30 business days after their issuance. The Resolution creates an exception to accept certificates issued from January 30 onwards and throughout the public health emergency.

Philippines

Payment of Wages and Monetary Benefits through Transaction Accounts

New Regulation or Official Guidance

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

On August 3, 2020, the Department of Labor and Employment (DOLE) issued Labor Advisory No. 26, which provides guidelines on payment of wages and monetary benefits through transaction accounts, afford employees access to formal financial services, reduce the costs and risks of physical cash disbursements, and promote digital payments as a safer alternative to physical exchange of bills and coins. Employers in the private sector are highly encouraged to explore several initiatives in support thereof, such as (1) assisting employees in opening transaction accounts; (2) providing employees who have existing transaction accounts the option to receive their wages and benefits therein; and (3) ensuring that usage of such transaction accounts do not result in diminution of wages.

Supplemental Guidelines on Workplace Prevention and Control of COVID-19

New Regulation or Official Guidance

Author: Emerico O. de Guzman, Managing Partner – Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

To supplement previous guidelines on the same issue, on August 14, 2020, the Department of Labor and Employment (DOLE) and the Department of Trade and Industry (DTI) issued further guidelines on COVID-19 workplace prevention and control. The new agency guidelines address health and safety concerns on possible COVID-19 transmission in the workplace. In particular, the guidelines cover rules on workplace safety and health, contact reduction, testing, management of cases, notification and reporting, disinfection and closure of buildings/workplaces, leave of absences, and compliance monitoring and enforcement.

Portugal

COVID-19: Extraordinary Incentive for Business Regularization

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Associate – Garrigues Portugal SLP Sucursal

Ordinance no. 170-A/2020 of July 13 has been approved and regulates the attribution of financial support to companies during the returning phase of its employees to normal work provision and normalization of business activity. This incentive aims to support the maintenance of employment and to reduce the risks of unemployment for employees working for companies affected by the business crisis as a result of the pandemic caused by the COVID-19. Therefore, companies which have benefited from the measures provided for in Decree-Law no. 10-G/2020, of March 26, may accede the extraordinary incentive for the normalization of business activity: (1) Extraordinary support for the maintenance of employment contracts (simplified layoff); AND (2) Extraordinary training plan.

The award of this incentive gives rise to the following obligations: (1) Companies accessing this incentive will not be able to proceed with redundancy based terminations (individual or collective redundancies and dismissal caused by inadaptability), nor will they be able to initiate the corresponding procedures as set out in articles 359, 367 and 373 of the Portuguese Labor Code; and (2) Companies accessing the extraordinary incentive in the amount of Euros 1.270,00 (corresponding to two minimum monthly wages) shall have to maintain the same level of employment as that which existed in the last month of implementation of the measures concerning the extraordinary support for the maintenance of employment contracts (simplified layoff) or the extraordinary training plan.

Remote Work Regime as Contingency Measure

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Associate – Garrigues Portugal SLP Sucursal

The Portuguese Official Gazette (*Diário da República*) published the Resolution of the Council of Ministers nº 70-A/2020, of September 11, which declares the contingency situation throughout national mainland territory and orders the adoption and, in some cases, the renewal of exceptional measures for combatting COVID-19. These measures include changes in the remote work regime and how work is organized.

Although the remote work regime continues to depend on agreements between the parties, it is mandatory (independently of any agreement) if the job duties, together with the physical space and organization of the work, do not allow compliance with the public health guidelines if all employees worked on site. When choosing which employees should do remote work or work on site, companies should rely on objective, measurable and nondiscriminatory criteria. Where remote work regime is not adopted, within the maximum limits of the normal work period and respecting the right to daily and weekly rest established by law or in the applicable collective bargaining agreement, companies should implement measures for the prevention and mitigation of risks.

Renewal of Labor Measures as Part of Contingency Situation

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Associate – Garrigues Portugal SLP Sucursal

The Portuguese Official Gazette (*Diário da República*) published the Resolution of the Council of Ministers No. 81/2020 of September 29, which has renewed the declaration of the contingency situation throughout Portuguese territory. Therefore, all exceptional measures that were introduced by the Resolution of the Council of Ministers No. 70-A/2020 of September 11 remain in force and are extended through October 14, 2020.

Exceptional and Temporary Work Reorganization to Minimize Risks of Transmission

New Legislation Enacted

Authors: Ricardo Grilo, Senior Associate and Gonçalo Machado dos Santos, Associate – Garrigues Portugal SLP Sucursal

Decree-Law No. 79-A/2020, of October 1, published in the Portuguese Official Gazette (*Diário da República*) establishes an exceptional and temporary regime of work reorganization and minimization of risks of COVID-19 transmission. Among other things, the regime applies to companies with workplaces with 50 or more employees, in the territorial areas where the epidemiological situation so justifies, as defined by the Government through a Resolution of the Council of Ministers. Covered employers must organize the hours of entry and exit from the workplace in a delayed manner, guaranteeing minimum intervals of 30 minutes (up to 1 hour) between groups of employees.

Additionally, the employer shall adopt technical and organizational measures aiming to ensure the physical distance and protection of employees (as has been done by many companies, as a way to combat this pandemic). To meet this obligation, employers may modify rest breaks, implement telework regime, among other changes. Employers must follow various procedures, including consulting with the workers' council or union delegates, before implementing changes to work schedule.

Puerto Rico

Puerto Rico Enacts Law on Workplace Harassment

New Legislation Enacted

Authors: Anabel Rodríguez-Alonso, Capital Member and Alberto Tabales-Maldonado, Associate – Schuster Aguiló LLC | Littler

On August 7, 2020, the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, signed into law the "Act to Prohibit and Prevent Workplace Harassment in Puerto Rico," previously known as House Bill No. 306. The primary purpose of the Act is to prohibit and prevent abusive conduct against employees in the workplace that affects worker performance, alters workplace peace, and threatens the dignity of employees. The Act provides a non-exhaustive list of conduct that can be considered workplace harassment, such as: injurious, defamatory or damaging expressions about the person, with the use of profanity; hostile and humiliating comments about an individual's professional incompetence in the presence of co-workers; public comments or ridicule directed at the employee about physical appearance or dress; among other examples.

Employers will be held liable for the actions of their supervisors or other employees for conduct that is considered workplace harassment, if they knew of the harassment taking place and did nothing about it. On the other hand, if the employer can establish that it took immediate and appropriate action to remedy and stop the workplace harassment, then the employer will not be held liable. The Act requires that employers adopt and implement internal rules and policies to eliminate or reduce the occurrence of workplace harassment, establish the procedure to investigate claims of workplace harassment, and impose sanctions against those who violate these policies.

New Law Extends Maternity Leave to Mothers Adopting Children Ages Six and Older

New Legislation Enacted

Author: Anabel Rodríguez-Alonso, Capital Member – Schuster Aguiló LLC | Littler

On August 8, 2020, Puerto Rico Governor Hon. Wanda Vázquez Garced signed into law House Bill No. 2424 (Bill No. 2424), to amend the Puerto Rico Working Mothers Protection Act, otherwise known as Act 3 of March 13, 1942 (Act No. 3-1942). The purpose of Bill No. 2424 is to extend the right to maternity leave to working mothers who adopt children six years of age and older. Pursuant to Act No. 54 of March 10, 2000, which amended the Working Mothers Act, female employees were entitled to adoption leave only if they adopted a child age five or younger who was not yet enrolled in school. Under the previous amendment, employees were entitled to the same eight-week maternity leave benefit granted to birth mothers. The new law amends Section 2 of Act No. 3-1942 to add that working mothers who adopt children six years of age or older will be entitled to up to five weeks of maternity leave.

New Electoral Code Creates Two Hours of Paid Voting Leave

New Legislation Enacted

Authors: Erika Berríos-Berríos, Capital Member and Ana B. Rosado Frontanés, Capital Member – Schuster Aguiló LLC | Littler

On June 20, 2020, Puerto Rico Governor Wanda Vázquez signed into law Puerto Rico's new Electoral Code, Act No. 58 of June 20, 2020 (Act No. 54-2020). The Electoral Code, among other things, provides that all public- and private-sector employees who are registered voters, scheduled to work on a voting date, and whose schedules coincide with the opening hours of the polling places, have a right to request the opportunity to vote by mail or in a voting center that allows individuals to vote in advance. Employees who cannot anticipate their work schedule on a voting date prior to the deadline to request such voting in advance will be entitled to a two-hour paid leave during the workday to vote. Under the Electoral Code, "voting" includes primaries and other electoral events.

Supreme Court of Puerto Rico Rules "Ex-Offender" Is Not a Protected Category

Precedential Decision by Judiciary or Regulatory Agency

Author: Anabel Rodríguez-Alonso, Capital Member – Schuster Aguiló LLC | Littler

In *Garib Bazain v. Hospital Espanol Auxilio Mutuo de Puerto Rico,* 2020 TSPR 69, the Supreme Court of Puerto Rico considered whether a person's prior conviction is a protected classification under the constitutional clause prohibiting discrimination based on social status. In a 5-3 decision issued on July 27, 2020, the Court ruled that the status of ex-offender is not a protected category under the Constitution or under Puerto Rico's general antidiscrimination statute (Act. No. 100 of June 30, 1959) (Act 100).

Updated Risk Classification Manual with Important Modifications

New Regulation or Official Guidance

Authors: José J. Santiago, Special Counsel and Sashmarie Z. Rivera-López, Associate – Schuster Aguiló LLC | Littler

On July 1, 2020, the Puerto Rico State Insurance Fund Corporation (SIF) announced the automatic extension of the deadline for employers to file the Payroll Statement for fiscal year 2020-2021, from July 20 to August 4, 2020. The SIF is the government agency that provides workers' compensation benefits in Puerto Rico. The SIF also published the Risk Classification Manual (Manual) applicable for this payroll year, which includes significant modifications that are of particular interest to those employers that plan to have employees telework during this policy year.

Acknowledging that remote work will now be the "new normal" for most employees, the SIF modified approximately 20 risk classifications to cover teleworking. Pursuant to the current Manual, auditors, accountants, lawyers, system analysts and the office personnel identified in the description of multiple classifications are covered, even when working remotely, without requiring the employee to consider remote work as an additional risk on its Payroll Statement. Nevertheless, the employer will need to report to the SIF those employees who will be working remotely. On the other hand, if the employer has employees teleworking whose risk classifications do not contemplate remote work as part of their risk classification description, then the employer must consider including remote work as an additional risk in its policy.

Saudi Arabia

Saudization Requirement for Engineering Profession

New Legislation Enacted

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law – Clyde & Co.

Under the Minister of Human Resources and Social Development Decision No. 686 of 1442 H, the minimum saudization requirement for the engineering profession is 20%, for establishments employing five engineers or more. Employers in violation of this requirement may face penalties, as set out in the procedural manual issued pursuant to the Decision. The Decision came into effect on 01/06/1442 H (corresponding to August 25, 2020).

Social Insurance Extension of the SANAD Program

New Order or Decree

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law – Clyde & Co.

On April 3, 2020, the Kingdom of Saudi Arabia (KSA) announced a furlough program for the private sector, where employers may apply to the General Organization for Social Insurance (GOSI) to cover 60% of KSA national employees' salaries, up to a maximum of SAR 9,000 per employee through the SANAD program (unemployment benefit program). If the employer has five employees or less, then all of them will be covered; otherwise, up to 70% of the employer's KSA national workforce may be covered through this initiative. The government has recently announced an extension of the program from November 2020 until January 2021.

Administrative Sanctions for Violations of COVID-19 Restrictions

Important Action by Regulatory Agency

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law – Clyde & Co.

On June 25, 2020, the Ministry of Human Resources and Social Development issued a notice of fines that apply to public sector employees violating the COVID-19 restrictions. Violations include holding gatherings, moving between work areas without cleaning hands, handshaking, not complying with social distancing, not complying with temperature checks, failing to wear face masks, not using paper cups, attending work with a suspected infection or having COVID-19 symptoms, as well as many others. The document sets out the consequence of a first offence and any subsequent offences, with the consequences being more severe for those senior employees of a particular grade and above. Sanctions range from warning notice, deduction in salary, withholding of a periodic bonus, to a legal penalty.

New Ministry of Human Resources and Social Development Unified Workplace Regulations

Important Action by Regulatory Agency

Authors: Sara Khoja, Partner and Sarit Thomas, Attorney-at-Law – Clyde & Co.

The Ministry of Human Resources and Social Development issued unified workplace regulations pertaining to the work environment and facility requirements within the private sector. The new requirements include:

- Nondiscrimination between employees with regards to sex, age, performance of work, salaries for the same job position between men and women;
- Compliance with the health and safety regulation at the workplace;
- Providing adequate prayer rooms separate for men and women;
- Providing offices and chairs for all the employees working at the workplace;
- Establishing a regulation for work uniforms requirements in a manner that does not conflict with the provisions of Sharia; and
- Providing security guards at the workplace's main entrances or electronic security system (CCTV) to ensure security of the employees.

Singapore

Key Changes to Work Injury Compensation Act

New Regulation or Official Guidance

Author: Benjamin Gaw, Director – Drew & Napier LLC

From September 1, 2020, key changes to the Work Injury Compensation Act came into effect. As announced by the Ministry of Manpower (MOM), these include: (a) the requirement that employers must report any instances of leave arising from work injury, including light duties; (b) claims are considered made when the employer is notified of the accident; (c) compensations can be based on a multiple of basic monthly salary; (d) compensation can be based on current incapacity assessment; (e) employers are liable to compensate for shortfall in earnings when their employees are on light duties; (f) the MOM may allow for doctor-switching for current or permanent incapacity assessment; (g) greater recourse for employers to recover compensation paid out on basis of error or fraud; and (h) increased penalties for offences.

COVID-19: Reciprocal Green Lane and Periodic Commuting Arrangement Schemes

New Regulation or Official Guidance

Author: Benjamin Gaw, Director – Drew & Napier LLC

The Reciprocal Green Lane (RGL) and Periodic Commuting Arrangement (PCA) schemes have been implemented to address the needs of different groups of cross-border travelers between Malaysia and Singapore. The RGL enables short-term cross-border travel for essential business and official purposes between both countries, up to a maximum of 14 days' stay. Travelers under the RGL scheme are expected to undergo pre-departure and post-arrival COVID-19 PCR tests, abide by a pre-declared controlled itinerary during their visit, and download and use TraceTogether for their entire period of stay.

The PCA allows Singapore and Malaysia residents, who hold valid work passes in the other country, to enter that country for work. Travelers to Singapore under the PCA scheme are expected to serve a Stay-Home Notice (SHN) and undergo a COVID-19 PCR test before the SHN period ends. After at least 90 days in their country of work, they may return to their home country for short-term home leave, and thereafter may re-enter their country of work to continue work for at least another 90 days.

Tightening of Work Pass Requirements

New Regulation or Official Guidance

Author: Benjamin Gaw, Director – Drew & Napier LLC

From September 1, 2020, the salary requirement for Employment Passes (EP) will be raised to $4,500 for all new applicants. The new salary criteria for EPs that take effect from September 1, 2020, will equally apply to the Financial Services sector. However, from December 1, 2020, the minimum qualifying salary for EPs in the Financial Services sector will be further raised to $5,000 for new applicants. The qualifying salaries for older and more experienced EP candidates in all sectors in their 40s will be raised correspondingly and will remain around double the minimum qualifying salary for the youngest applicants. For renewal applicants, these new salary criteria will come into effect on May 1, 2021.

The S Pass minimum qualifying salary will be raised to $2,500, with qualifying salaries for older and more experienced S Pass candidates revised accordingly. The changes to S Pass qualifying salaries will apply to new applicants as of October 1, 2020, and to renewal applicants as of May 1, 2021. In evaluating EP and S Pass applications, MOM will consider whether the employer has (i) kept up support of local professionals, managers, executives and technicians (PMET) in their employment and (ii) been responsive to government efforts to help them recruit and train more Singaporean PMETs. Conversely, they will also consider whether the employer has discriminated against qualified Singaporeans. Other measures concerning job advertising will be implemented.

Updates to Updated Advisory on Salary and Leave Arrangements

New Regulation or Official Guidance

Author: Benjamin Gaw, Director – Drew & Napier LLC

The updated advisory on salary and leave arrangements, which was issued on June 9, 2020, was updated again on July 17, 2020. The advisory was issued by the Tripartite Partners, comprising of the Ministry of Manpower (MOM), the National Trades Union Congress and Singapore National Employers Federation, and is intended to guide employers and employees on salary and leave arrangements post-Circuit Breaker.

Broadly, the advisory: (a) discusses the Jobs Support Scheme, which provides employers with support in relation to local employees, and details of the Foreign Worker Levy waiver and rebate, which provides employers with support in relation to local employees; (b) discusses the continuing notification requirements in relation to cost-saving measures involving salary reductions where certain thresholds are reached; and (c) provides recommendations on salary and leave arrangements, to both employers whose businesses are operating and employers who cannot yet resume operations, and in relation to both local and foreign employees. In particular, local and foreign employees who continue to work fully must be paid their prevailing salaries, including the employers' contributions to the Central Provident Fund.

Sweden

Stricter Rules on Posting of Workers

New Legislation Enacted

Author: Anna Jerndorf, Partner – TM & Partners

On July 30, 2020, stricter rules on posting of workers entered into force, thereby implementing the revised posted workers directive (Directive 2018/957). The new rules mean, among other things, that the remuneration that employee organizations may require in collective bargaining agreements is no longer limited to the minimum level, meaning that posted workers shall be entitled to a remuneration equivalent to that of locally employed workers in a comparable situation. Workers on long-term postings shall be entitled to the same terms and conditions of employment as apply to locally employed workers with only some exemptions.

Furthermore, employers must report the posting to the Swedish Work Environment Authority and appoint a contact person in Sweden no later than the date the posting begins and provide documentation to the recipient of service in Sweden that the posting has been reported. If the recipient does not receive any documentation from the employer, the recipient has an obligation to notify the Swedish Work Environment Authority.

Labor Court: Probationary Period May Be Extended under Certain Circumstances

Precedential Decision by Judiciary or Regulatory Agency

Author: Anna Jerndorf, Partner – TM & Partners

On September 30, 2020, the Labor Court ruled in a case where an employer had decided that a probationary employment would not be transferred into a permanent employment because the employer had not been able to assess the employee's performance as he had been on parental leave for most of the probationary period. The reason for the parental leave was mainly that his wife had suffered from postpartum depression. The case concerned whether the employee had been subjected to discrimination based on sex, or disadvantaged in violation of the Parental Leave Act.

The Labor Court held that the employee had not been discriminated against since the employer's decision was unrelated to the reason why the employee took parental leave. However, the Labor Court found that the employee had been disadvantaged due to his parental leave in violation of the Parental Leave Act. In its ruling, the Labor Court clarifies that the Employment Protection Act does not hinder an employer and an employee, in a situation where the issue of terminating the employee's probationary employment has been raised due to the employee being absent from work during large parts of the probationary period, to agree to extend the probationary period with a period corresponding to the absence.

Stalling of Negotiations on Modernization of the Swedish Labor Law

Proposed Bill or Initiative

Author: Anna Jerndorf, Partner – TM & Partners

On June 1, 2020, a special investigator presented its inquiry on a modernization of the Swedish labor law. The proposed bill has been widely criticized by both employee organizations and the Social Democratic Party (Socialdemokraterna) and the Left Party (Vänsterpartiet). The parties of the labor market were given a chance to work out an agreement before September 30, 2020, that would apply instead of the bill, but the negotiations have now stalled. However, the government seems open to the idea of the parties continuing their negotiations before going forward with the proposed bill.

Switzerland

New Data Protection Law

New Legislation Enacted

Author: Ueli Sommer, Partner and Head of Employment – Walder Wyss, Ltd.

On September 17, 2020, the National Council deliberated on the remaining differences of the revised Data Protection Act (revDPA) and on September 25, 2020, the Federal and the National Council approved it. Under the revDPA, all genetic data shall be considered sensitive personal data. Further, express consent for profiling is necessary only when processing sensitive personal data in case of profiling by federal authorities and, for high-risk profiling by private persons. Notably, the revDPA does not provide an explicit right of objection to profiling. The revDPA will most likely enter into force on January 1, 2022.

United States

States Enact Laws Limiting COVID-19 Liability

New Legislation Enacted

Authors: Jim Paretti and Michael J. Lotito, Shareholders – Littler United States

As infection rates continue to increase nationally, lawmakers in Iowa, Kansas, Louisiana, Massachusetts, North Carolina, Oklahoma, and Wyoming have adopted laws that limit liability for employers and others from claims relating to COVID-19 exposure. While they vary in their details, these laws generally provide immunity from liability for claims of exposure to, or infection from, COVID-19 where an employer is acting in good faith in accordance with federal, state, or local guidance, and is not intentionally or recklessly negligent. Some laws cover all employers broadly, while others are more limited (providing immunity to, e.g., health care providers). Others require notice of the liability limitations, or allow for businesses to expressly waive liability by way of tickets or receipts.

While these protections may assist employers in defending cases alleging exposure to COVID-19 from customers, vendors, and employees, they fall short of guaranteeing protection for other COVID-19-related claims, particularly from employees. Such claims may range from wage and hour claims relating to COVID-19 testing, or working from home; denial of leave benefits under state and local laws; discrimination based on age, disability, pregnancy, or other factors; and a host of other potential allegations. Moreover, while employee claims of injury on the job related to COVID-19 (such as contracting the virus at the employer's worksite) are generally limited to claims under workers' compensation laws, creative plaintiffs' attorneys are already attempting to bypass these laws by way of novel legal theories, many of which are yet to be tested in courts.

Executive Order Limits Federal Contractors' Use of Foreign Labor

New Order or Decree

Authors: Jorge Lopez, Shareholder and Shireen Karcutskie, Associate – Littler United States

On August 3, 2020, the White House issued an "Executive Order on Aligning Federal Contracting and Hiring Practices with the Interests of American Workers," directing federal agencies to contract with those who prioritize the hiring of U.S. citizens and green card holders over foreign workers for contract positions. The order requires that each federal department and agency review, "to the extent practicable, performance of contracts (including subcontracts) awarded by the agency in fiscal years 2018 and 2019" and assess whether they "used temporary foreign labor for contracts performed" in the United States. If they did, the agencies are directed to evaluate "the nature of the work performed by temporary foreign labor on such contracts" to determine "whether opportunities for United States workers were affected by such hiring; and any potential effects on the national security caused by such hiring." There is no clear guidance how this this process will be implemented.

New EO Seeks to Regulate Diversity Training by Federal Contractors and Grant Recipients

New Order or Decree

Authors: David Goldstein, Jim Paretti, and Michael J. Lotito, Shareholders – Littler United States

On September 22, 2020, the White House released a new executive order, "On Combating Race and Sex Stereotyping," which among other things, instructs government contracting agencies to add provisions to government contracts prohibiting the use of any workplace training "that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating." The executive order lists a number of prohibited concepts—most of which are not commonly emphasized in workplace diversity training programs but some of which are at least related to concepts of implicit bias or the history of systemic racism—that may be included in such programs.

The language of the order is very broad. It seems possible—but not at all certain—that some elements of some diversity training programs could be interpreted as falling within these prohibited categories. The order also requires contractors to impose the same prohibition on its subcontractors and suppliers and to provide notices to labor unions regarding the employer's commitments under the executive order. The executive order provides that government agencies begin to include the new contract clauses in contracts entered into 60 days after the date of the executive order.

SEC Amends Whistleblower Award Program Rules

New Regulation or Official Guidance

Authors: Edward Ellis and Kevin Griffith, Shareholders – Littler United States

On September 23, 2020, the Securities and Exchange Commission (SEC) approved several amendments to rules governing its Whistleblower Program. The purpose of the amendments, according to the SEC, is "to provide greater clarity to whistleblowers and increase the program's efficiency and transparency." One of the key new amendments includes a mechanism for whistleblowers with potential awards of less than $5 million to qualify, subject to certain criteria, for a presumption they will receive the maximum statutory 30% award amount. Since the Program's inception, nearly 75% of all whistleblower awards given out have been for $5 million or less. Specifically, the SEC is adding Exchange Act Rule 21F-6(c) to "provide a presumption that the Commission will pay a meritorious claimant the statutory maximum amount where none of the negative award criteria specified in Rule 21F-6(b) are present, subject to certain limited exceptions." The goal of this amendment is to increase the pace with which the SEC processes smaller awards. Largely criticized by whistleblower representatives, the amendments become effective 30 days after publication in the Federal Register.

DOL Issues Return-to-Work Guidance under FFCRA

New Regulation or Official Guidance

Authors: Jim Paretti, Shareholder and Sebastian Chilco, Knowledge Management Counsel – Littler United States

On July 20, 2020, the U.S. Department of Labor issued additional guidance on return-to-work issues under the Families First Coronavirus Response Act (FFCRA). Enacted at the end of March, the FFCRA provides emergency paid sick leave, and paid family leave under the Family and Medical Leave Act (FMLA) for certain workers affected by COVID-19. In general, employers of fewer than 500 employees are required to grant up to 80 hours of paid sick leave to workers exposed to COVID-19, required to quarantine, or unable to work or telework because of the closure of their child's school or place of care (the rate of pay is capped). Parents of children whose place of care is closed may also be eligible for up to 12 weeks of FMLA leave, 10 of them paid (again, subject to statutory caps). The DOL previously issued guidance as to employees' rights to leave for school or other child care closures during the summer months. Paid leave under the FFCRA is fully paid for by the federal government by way of refundable tax credits.