

**Baker
McKenzie.**

**The
Global EmployerTM
Magazine**

2018 HORIZON SCANNER

Introduction

“Welcome to the Global Employer 2018 Horizon Scanner.

As another year begins, we look at global and regional developments in employment and labor law to help equip you for the year ahead.

There’s no doubt that the pace and scale of change affecting all of us are unprecedented. The nature of work is changing due to the rise of contingent workers, increased demand for flexible working, changing skills requirements and talent pools. Companies are adapting their strategies to engage diverse talent and unlock future productivity. New technologies are transforming the workplace.

These changes pose significant challenges. However, we live in an exciting time full of opportunities. Together, we can come up with answers for the big social, environmental and economic challenges of our time and prepare our organizations to thrive.”

GUENTHER HECKELMANN, Partner, Global Chair, Employment & Compensation Group, Baker McKenzie

To note:

For the speed-reader, see our five key trends for global employers and our one-page overview of regional developments. For a more in-depth read, take a look at our global overview of key issues, including gender pay regulation and modern workforce models, as well as regional outlooks detailing trends, developments and checklists for the year ahead.

We have drawn on our global footprint of more than 700 employment lawyers, based in 47 countries around the globe, to present those trends and developments that we think will most affect employers with a global or regional workforce in the coming year. This is, of course, not an exhaustive account, but our selected highlights are set out here.

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GLOBAL OVERVIEW

2017 WAS A YEAR OF DRAMATIC POLITICS. Global markets are in an uncertain and precarious place as we await the outcome of Brexit negotiations, anticipate US President Donald Trump's next move, and witness numerous political shifts across the globe. With the world in flux, global employers must plan for an unclear future.

The first year of Trump's presidency was eventful, with numerous sweeping changes hitting the headlines. We saw (and are still seeing) the tightening of American borders, a roll-back of business and environmental regulations, the biggest US tax reforms in years and a fractious relationship with North Korea and China which could significantly impact global trade.

In Europe, we had a year of elections, bringing with it significant reforms in a number of countries, but political unrest in others. Nationalist, anti-immigration parties gained popularity, but in most cases failed in their bids for leadership. In France, after a hotly contested race to victory with anti-EU candidate Marine Le Pen, President Macron is attempting to bring in extensive, business-friendly employment law changes. Meanwhile, Germany, the UK and the Netherlands were among those countries left struggling with coalitions after tightly fought elections, and it remains to be seen how this will impact their employment law landscapes.

Meanwhile, with Brexit talks progressing in recent months, the impact on trade, employment and immigration is looking *more positive* than first anticipated. However, as Prime Minister Theresa May tries to get the best deal possible for the UK, it is uncertain whether the UK's Conservative government can come to an agreement that is sensitive to the needs of the wider British public, global business and the EU.

In Latin America, turmoil ensued from corruption and economic crises, but with election season just beginning, it might be time for significant change across the region. Following President-elect Piñera's recent success in Chile in December 2017, changes are already anticipated, and with Brazil, Colombia, Argentina and others set for elections in 2018, we expect more to follow.

For global employers, change is the norm, but the pace of change in 2018 could make this a particularly challenging year. In this magazine, we highlight those issues that employers need to know, and provide recommendations on dealing with those issues.

Nationalism and mobility

Last year, we anticipated a rise in protectionism and nationalist policies, but despite the unexpected results of the Brexit referendum, the looming threat of nationalism didn't quite come to pass. In Europe, nationalist candidate Marine Le Pen lost to liberal centrist Emmanuel Macron in the French presidential elections, and in Germany Angela Merkel managed to contain the anti-immigrant Eurosceptic party, Alternative for Germany, in the federal elections. However, while the majority of EU nationals still support immigration (both from inside and outside the EU), unrest from the far right and skills shortages in Eastern Europe could be a sign of things to come. It may still only be a matter of time before the tables turn.

While mobility looks a little more stable in mainland Europe, the US is another story. Trump's promise to keep "American Jobs for American People" saw him push through a ***controversial travel ban*** against six primarily Muslim countries. The administration has also said that it will increase its scrutiny of skilled-worker visas — signaling that employers may face a greater chance of being investigated. Despite this blow to immigration and mobility for US employers, other countries seem poised to accept the growing number of immigrants that will be banned from the US. Across Asia Pacific, Europe and beyond, countries are taking steps to further take advantage of international talent pools.

In Latin America, despite its traditionally progressive immigration policies, the crisis in Venezuela has resulted in many countries implementing stricter policies. A backlash against Venezuelan asylum seekers who have been forced to flee their country led Brazil to water down what was intended to be a very progressive set of immigration policies in May 2017. The Argentinian president also implemented a decree making it easier to deport immigrants and restrict their entry to the country. In Chile, a key campaign promise of President-elect Piñera was to revise its dated immigration legislation. Given the changing times, global employers will need to keep a close eye on their mobility strategies in 2018, monitoring the changes across the globe.



The gender pay gap

With the public disclosure of gender pay information by brand name organizations, and celebrities speaking out against gender pay gaps, public awareness of this issue has significantly increased across the globe.

Economic gender equality is viewed by the WEF and the IMF as critically important to global economic growth. With more than 1 billion women anticipated to enter the global economy in the next decade, it's hard to disagree, but the World Economic Forum's 2017 [gender gap](#) report suggests economic equality will not be achieved for another 217 years.

Governments and labor authorities around the world, global NGOs, workers and US shareholders are demanding transparency and accountability when it comes to gender pay and we expect the intensity of the focus on this issue to increase substantially in 2018. An increasing number of countries are introducing steps designed to help close the economic gap, but a patchwork of varying legal obligations makes compliance challenging.

From requiring companies to externally publish the percentage difference in mean and median hourly pay between men and women across the company (eg, the UK), to revealing salaries of comparable employees on request (eg, Germany), to banning questions about previous salary history (eg, California), the diversity in the methodologies for closing the gap is significant. As such, developing a global gender pay strategy requires a coordinated and comprehensive plan of attack which includes multiple stakeholders (HR and talent management, legal, the C-Suite, diversity and inclusion specialists, etc.), and applying a wide geographic legal lens.

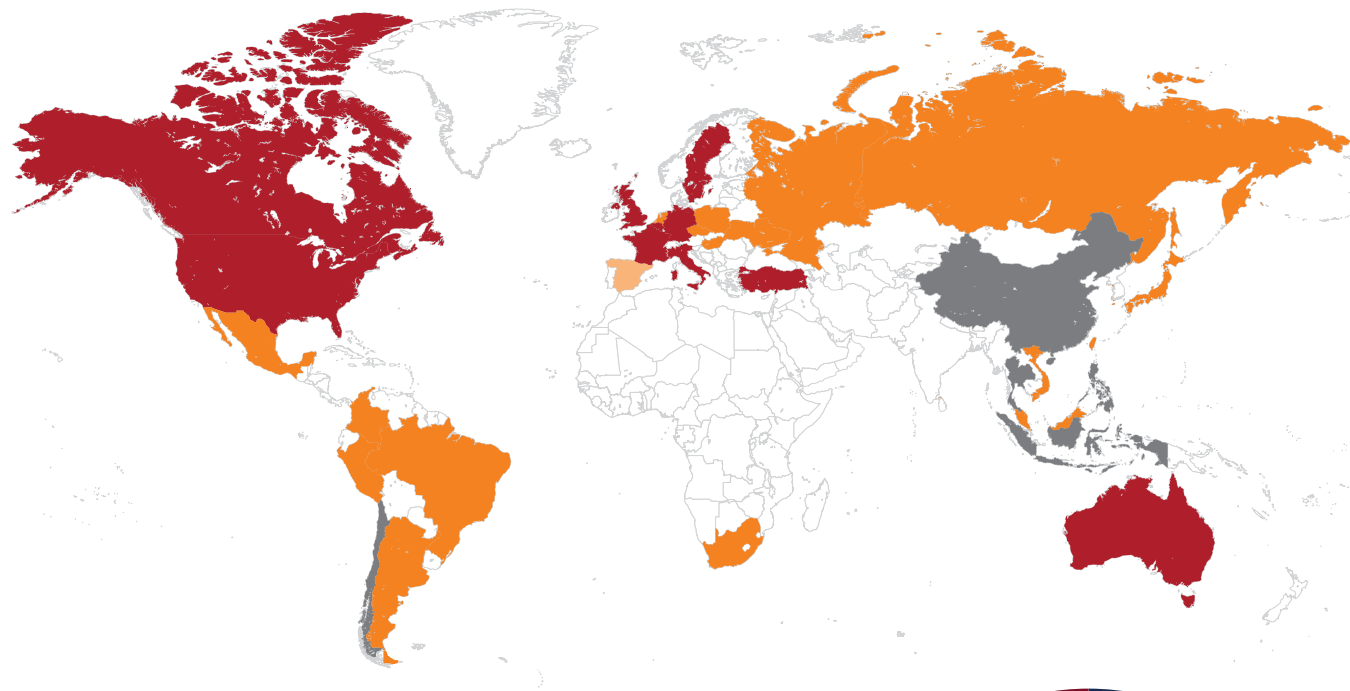


"The expectation is that companies will get into a competitive situation in the war for talent — evidence suggests employees are less likely to join companies perceived as not tackling this issue."

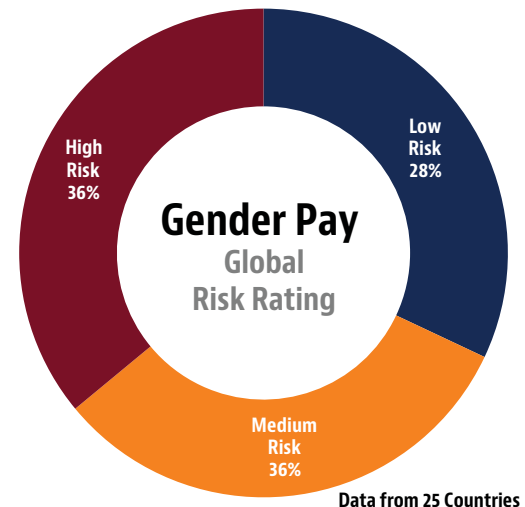
MONICA KURNATOWSKA
Partner,
Baker McKenzie

GLOBAL RISK OVERVIEW: In 2017, we asked our lawyers to tell us about the risks posed by gender pay reporting for businesses in their countries, taking into account reputational, regulatory, financial, operational and employee relations risk. Using the results from 25 countries, we found that risk levels currently vary greatly across the globe:

Gender Pay Reporting Regulation Heat Map



- Countries where there are gender pay reporting requirements
- Countries where there are no gender pay reporting requirements but gender pay is a hot topic or likely to be so in the next 5 years
- Countries where there are no gender pay reporting requirements and where gender pay is not a hot topic or likely to be so in the next 5 years
- Countries where no gender pay reporting information is available



How we can help

Given the proliferation of legal standards and requirements across the globe, not to mention shareholder pressure to make certain disclosures, navigating the complexities of pay equity can be quite the challenge for global employers. While much of the focus is on the gender pay gap — which is largely a reflection of demographics in the organization — employees are increasingly asking whether the gap is also partly influenced by discrimination and whether women are paid less for doing similar work to men, ie, unequal pay. We can provide:

- **Compliance support:** We can advise you on gender pay and equal pay obligations by jurisdiction and on the likely developments globally. We can help you identify hotspot countries — those with the highest reputational, regulatory, financial and employee relations risks of non-compliance. We can advise you on the nuances in each jurisdiction where the company has employees, from the types and forms of “compensation” to include in audits, to how to properly aggregate and share data in light of applicable data privacy regulations.
- **Internal equal pay audits and risk management:** We can undertake pay audits (including our own in-house analysis of data) to identify potential exposure, and advise on strategies to reduce legal risk. Our team has conducted dozens of legally privileged pay audits to determine whether unexplained disparities exist and whether they are justified; reviewed employer policies, procedures, and training materials to ensure compliance with applicable laws and regulations; and advised employers through employee communications and any necessary adjustments. We know confidentiality is paramount in this process. We take great care to protect the privilege of this process whenever possible.
- **Litigation and crisis support:** Our experienced employment litigators can assist clients in managing communications, as well as defend clients in individual/class actions and challenges to pay practices. We partner with our clients to develop a strategic, cost-effective approach to proactively minimize risk in the pay equity arena.

The rise of the modern workforce

The traditional employment model is now only one part of a more flexible and global workforce consisting of freelancers, temps, agency workers and crowd sourcing. This modern workforce is also evolving as the pace of technological change and need for agility increase — it is estimated that 1.3 million people are currently engaged in the “gig” economy in the UK¹, while 31 million workers in the US are predicted to be contingent by 2020².

Technological and digital advancements offer businesses many benefits, such as increased flexibility, reduced costs, reduced administrative burdens and quick access to high-level talent. Increasing numbers of highly skilled individuals have embraced freelance working and can be engaged “on the fly” to fulfill critical job functions. Indeed, the competitive business world, led by the major technology companies, doesn’t want to stop there, declaring a war on “friction”, which basically means the desire to remove any obstacles in the way of maximizing customer satisfaction and operational efficiency.

The desire for a so-called “frictionless environment,” however, comes with challenges and risks. For example, social and political pressure to increase employment protections for individuals working in the ‘gig’ economy is growing, and we are seeing governments taking steps to regulate and protect in this area. Whether governments will design robust legal frameworks that maintain flexibility, while ensuring individuals are protected, remains to be seen.

Global businesses also need to manage the risks posed by the rise of the modern workforce, one of the most significant being misclassification. The “employee/worker” versus “self-employed” debate has raged on in numerous lawsuits worldwide, with individuals seeking labor protections, additional benefits and the right to legally unionize. In the US, some of the big players have been hit with multimillion dollar settlements, while in the UK companies have been forced to grant additional rights to their workforce. In Germany, dawn raids are par for the course in investigating possible cases of misclassification, and the sanctions are severe. Recent reform there has restricted the use of temporary agency workers and increased sanctions in case of bogus self-employment and illegal temporary agency work. Elsewhere in Europe and in Latin America, misclassification of employees carries significant sanctions and liabilities. Other risks businesses need to manage in this area include co-employment,

¹ <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

² <https://gigeconomy.ey.com/Documents/Gig%20Economy%20Report.pdf>



“For many of our clients, new staffing models such as employee sharing and crowd employment are part of a drive to attract talent, not cut costs. Companies are going to need a strong internal HR compliance function in place to work with what is going to be a very different workforce that presents different risks and opportunities.”

SUSAN EANDI
Partner, Baker McKenzie

data privacy/protection, protecting intellectual property rights, cybersecurity breaches, employee loyalty and the potential for damage to company brand and reputation.

Creating a fit-for-purpose workforce while protecting your business requires knowledge across many areas of regulation, including employment, remuneration and benefits, mobility, data privacy/protection, tax and protection of confidential information/trade secrets. Nevertheless, the rewards of adopting new staffing models, be it crowd working, employee sharing, fixed-term staffing or other such models, can be considerable.

How we can help

We can help businesses introduce and maintain optimal modern workforce arrangements within the constantly changing legal and commercial environment. We can provide:

- **Compliance support:** We can advise you on modern workforce obligations by jurisdiction and on the likely developments globally. We can help identify countries with the highest reputational, regulatory, financial and employee relations risks of non-compliance.
- **Audits and risk management:** We can conduct global compliance audits to assess modern workforce risks in your business. We can advise and provide support to address the risks arising across multiple areas, such as employment, remuneration and benefits, mobility, data privacy, tax and protection of confidential information/trade secrets. Our audit service also enables us to provide practical advice to mitigate risk before a joint/related employer claim is brought.
- **Litigation and crisis support:** Our experienced employment litigators can provide rapid counsel, support and resource planning for misclassification claims, class actions, taxation authority challenges, joint/related employer threats, criminal allegations, dawn raids and information security breaches.

Data privacy moves up the compliance agenda

Nearly every company in the world is struggling to manage the broad range of legal and operational risks associated with data. Heightened regulatory scrutiny and more protectionist measures, such as the EU's General Data Protection Regulation ("GDPR"), which takes effect in May 2018, are making this even more challenging.

To get ready for what lies ahead, companies need to ensure they have an internal governance structure that fosters a culture of data privacy from the top down. This requires having adequate program controls to address key areas such as personal data inventories/records of processing activities, tailored privacy policies and notices, data breach handling procedures, and security and retention policies.

The GDPR will affect all companies handling the data of EU citizens, creating an onus on companies across the world to understand the risk they create for others and to mitigate those risks. The new legal requirements include privacy impact assessments and privacy by design, and companies will have to spot breaches and report them, or risk massive fines for non-compliance: EUR 20 million or 4% of global turnover (whichever is highest). Some of the highest-profile data breaches of the past year would have resulted in huge fines for the entities responsible under the GDPR.

Some of the GDPR's key requirements relevant for HR data include:

Accountability, which necessitates implementation of measures such as:

- Inventorying and maintaining a comprehensive record of all local and group HR data processing activities.
- Implementing a privacy program which includes sufficient training for HR data handlers at all levels on all new protocols (relevant employees should be trained in data intake and governance, security measures and breach management, data subject access requests, data privacy impact assessments (DPIAs), etc.).
- Conducting a DPIA if HR data processing activities may result in "high risk to individual rights and freedoms." For example, a DPIA should be conducted with respect to whistleblower hotlines which are likely to process sensitive personal data (eg, on criminal offenses), and systematic IT monitoring (which is subject to extensive legal limitations, some of which are country-specific).

Transparency: Employees (and others, such as candidates and contractors) must be provided with specific information on the use of their personal data. A privacy notice must specify, among other things: (1) contact details of the employer/Data Protection Officer (DPO) or privacy contact (if no DPO); (2) purposes and legal bases for the data processing; (3) categories of recipients; (4) description of non-EU transfers and safeguard mechanisms used; (5) retention periods; (6) data subject rights such as the right to complain to the DPA; (7) whether provision of data is required or optional and the consequences of failing to provide it; and (8) whether automated decision-making will take place.

Consequences: Serious data privacy violations/breaches may carry fines of up to the higher of EUR 20 million or 4% of the company's worldwide turnover. Non-compliance may also result in inability to use certain employee data as intended (eg, for investigatory or disciplinary purposes).

What our lawyers say:

"The greater focus on accountability means that there will be more pressure to have board room representation and privacy champions. Many companies have a legal obligation to appoint a data protection officer."

BRIAN HENGESBAUGH
Partner, Baker McKenzie

"Data privacy is becoming more important to employees as they increasingly take action to protect their privacy rights. The concept of privacy by design will be fundamental to managing regulatory compliance risk and maintaining the trust of the workforce."

JULIA WILSON
Partner, Baker McKenzie



Outside of the EU, the GDPR is the benchmark for privacy compliance. Countries and regions outside of the EU are taking action to enhance data privacy regulation, with some modelling their laws around the GDPR.

Global employers will need to prioritize data protection and privacy, navigating through varying and possibly conflicting national laws in this area.

How we can help

Today's rapidly evolving technologies have made it easier than ever for companies to collect, use and transfer data throughout the world. The regulation of data has expanded, imposing complex and often inconsistent privacy and data protection standards. At the same time, the legal and business risks associated with non-compliance have also escalated. We are advising numerous global clients and companies on all aspects of data privacy and more recently in the area of GDPR compliance.

Compliance and crisis: We can advise you seamlessly on your privacy and data protection needs and do so at every stage, including during a crisis, transaction, or daily operations. We can also help you prepare for new legislation. We can deliver GDPR readiness programs across a range of industries. Using our specialist expertise, global reach and project management approach, we can partner with you and support you on your journey at various stages of your GDPR programs from inception and design of the programs, to the audit of current practices, to risk prioritization and road mapping, to the implementation of changes required for GDPR readiness.

FIVE KEY ISSUES FOR GLOBAL EMPLOYERS IN 2018

Gender pay reporting requirements are on the increase globally, and gender pay is increasingly under scrutiny from shareholders and investors, with calls for greater transparency and equality. Efforts to close the gap will likely expand from reporting salary data to other measures such as hiring practices, board representation, working time, pension benefits, maternity, paternity and family leave entitlements.



Discrimination and harassment: combating gender inequality and sexual harassment in the workplace remains a priority, with recent prominence given to these issues by the #MeToo and #TimesUp campaigns. Increased regulation is expected in this area.



Changes and challenges to **global mobility:** while Trump's government is restricting US borders, other countries are actively encouraging foreign workers to join their economies through more flexible regulations and increased quotas.



Data protection changes will come into effect under the GDPR, affecting any organization which is processing personal data about EU citizens. Personal data will be more tightly regulated, placing a bigger burden on organizations processing that data. As consumers and individuals become more aware of their privacy rights, data privacy regulation and scrutiny will increase across the world.



Managing the modern workforce: while it can be beneficial to engage staff through alternative, modern workforce models, the legislative regime for such models is uncertain, and open to challenge. In some countries, misclassification gives rise to severe risks, including criminal liability of board members. Many employers who engage workers via third-party suppliers are now finding themselves liable for the legal entitlements of the suppliers' employees. Some working models also pose risks to loyalty, brand, trade secrets and more. Regulation and scrutiny is intensifying across the globe.

REGIONAL OUTLOOKS

Regional outlooks — speed read

Each of the regional outlook sections below contains a regional perspective on how two of the trending global employment law issues are playing out in the region.

ASIA PACIFIC

Trending employment law issues:

- Enhanced family-friendly rights
- Stricter regulation of working hours
- Increased anti-harassment regulation
- More compliance audits
- Increasing recognition of LGBTQ rights

Countries to watch: Look out for **Vietnam's** eagerly anticipated labor reforms and the development of the TPP and EVFTA; how will **China's** new Cybersecurity Laws impact on data privacy for employers; and how will **Philippine** reforms change employers' use of atypical workers?

NORTH AMERICA

Trending employment law issues:

- Modern workforce risks – joint/related employer liability
- Anti-harassment measures take centre stage
- Legalization of recreational marijuana use in Canada and parts of the US
- Gender pay and equal pay measures on the rise

Countries to watch: **Canada's** significant changes to employment laws and closer scrutiny on alternative working arrangements will present challenges; the gig economy continues to grow exponentially, despite legal challenges; and how will **Mexico's** general election in July affect its relationship with the **US**?

EUROPE, MIDDLE EAST AND AFRICA

Trending employment law issues:

- Brexit — the war for talent and uncertainty around mobility
- Gender pay and equality — increasing regulation
- Modern workforce/atypical workers — severe risks of misclassification
- GDPR
- Sexual harassment
- Skills shortages in Eastern Europe
- Qatar crisis
- Pensions regulation and compliance

Countries to watch: With elections across **Italy, Russia** and **Sweden**, employment law developments are likely to be afoot; in **Germany** and **Spain**, gender pay legislative reforms will create new obligations for employers; **South Africa** will see increased scrutiny of anti-corruption measures; and meanwhile how will Brexit negotiations play out for the **UK** and **EU** alike?

LATIN AMERICA

Trending employment law issues:

- Modern workforce/atypical workers — increased outsourcing regulation
- Terminations
- Harassment
- Compliance audits and measures

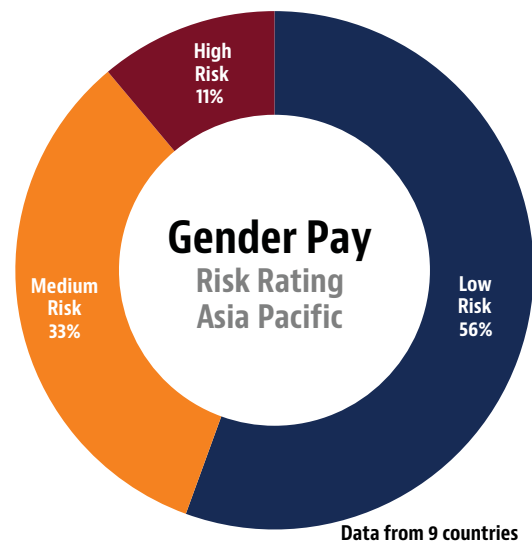
Countries to watch: Election season has begun! While **Chile's** President-elect Piñera faces a struggle to bring about reform, it remains to be seen how any new leadership across **Colombia, Brazil, Venezuela, Paraguay, Cuba, Costa Rica** and **Honduras** will affect the employment law landscape.

ASIA PACIFIC — global trends

Here's the regional perspective on how two of the trending global employment law issues are playing out in the region:

Gender pay

As a region, Asia Pacific has been slow to address the gender pay gap. There are currently no reporting regulations in **China, Singapore, Hong Kong, the Philippines** or **India**. However, **Australia** is a world leader in this area.



Since 2012, all non-public sector employers in Australia with over 100 employees must report on workplace gender equality, including remuneration between men and women, and the gender composition of the workforce and the governing bodies. The report is submitted to the Workplace Gender Equality Agency and is available for public use.

In the meantime, we are seeing other measures across Asia Pacific to address gender inequality in the workplace, such as increases in parental leave arrangements. 2018 is set to bring more changes in these areas and employers will need to be ready to address these.

Modern workforce

Japan, the Philippines, Singapore and **Taiwan** are beginning to recognize modern working arrangements. We are seeing increased regulation of fixed-term and outsourced workers to ensure these workers are treated fairly, for example, providing equal pay for equal work for fixed-term employees. In the Philippines, we expect to see further significant employment law reforms on use of atypical employment including outsourced services and contract workers, following on from the reforms of 2017. There will also be more compliance audits by regulators, meaning employers will need to be certain about their arrangements and obligations with atypical workers.

Asia Pacific Regional Outlook:

CHINA

In 2017, employers experienced greater difficulty in implementing **collective dismissals** in relation to restructurings due to the courts taking a stricter position on when companies are allowed to implement such redundancies.

Implementing rules for the **Cybersecurity Law** are being drafted, and these may impact how employers handle employee personal data in 2018.

AUSTRALIA

New **compliance obligations** for franchisors came into effect from September 2017. The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 has important operational implications for franchisors.

Changes to **whistleblower protections** in the corporate, public and not-for-profit sectors were recommended by the Parliamentary Joint Committee on Corporations and Financial Services. If implemented, these recommendations would significantly increase the protections and rewards available for whistleblowers. The Federal Government is expected to implement changes to the whistleblowing laws by 30 June 2018.

The new **data breach notification** law comes into effect in February 2018.

Asia Pacific Regional Outlook:

HONG KONG

In 2017, we saw an increase in **sexual harassment claims**, **new immigration rules** relating to speakers and presenters in Hong Kong, and new case law on rights for **same-sex visas** and **spousal benefits**.

Increased **paternity leave** is likely in early 2018 (from three to five days). This will benefit employees and may lead to increased costs/ planning for employers.

Progress is expected on several potential changes, such as the MPF off-set mechanism, reinstatement and re-engagement, and regulation of working hours. Although actual legislation to enact changes is unlikely in the near future, more detail on the nature and timing of the changes is likely to come in 2018.

Employees' out-of-work conduct, including on **social media**, is likely to remain a key issue for employers.

PHILIPPINES

2017 ushered in stricter regulations on use of **atypical employment** (such as fixed-term employment) and use of **outsourced services** or **contract workers**. Accompanying such stricter regulations was increased compliance audits by regulators.

In 2018, there may be significant employment law reforms still on use of **atypical employment** and outsourced services or contract workers. There will also be more compliance audits by regulators.



JAPAN

There were growing public concerns relating to **excessive overtime issues** in 2017 and the labor authorities reacted to these concerns by more actively enforcing employment law compliance surrounding excessive working hours.

There were notable legal developments relating to **fixed-term contract employees** (including an amendment to the Labor Contract Act and some relevant new court precedents that followed). Companies were required to revisit relevant policies and operations surrounding fixed-term contract employees.

In 2018, we expect to see a continued trend of labor authorities **monitoring excessive overtime** issues more strictly.

In addition, an amendment to the Labor Standards Act relating to overtime regulations and such other matters has been deliberated, and is pending.

The government is also debating the introduction of the **same work same pay** principle to broadly apply, not only to fixed-term contract employees but also part timers or dispatch workers. It is still unclear as to whether and when this will come into force.

Asia Pacific Regional Outlook:

SINGAPORE

In 2017, enhanced legislated **maternity and paternity leave provisions** were introduced, to allow parents to better manage their work and family commitments and to encourage fathers to play a more active role in caring for their children

We also saw an expansion in labor legislation and policies to include Professionals, Managers and Executives (“PMEs”), by the tripartite partners (the Ministry of Manpower, National Trades Union Congress and the Singapore National Employers Federation). These addressed issues including PME’s retrenchments and **slower rate of workforce re-entry for older PME’s**; introduced the **new Employment Claims Tribunal** to provide adjudication for all workers for PME’s salary-related employment claims; and **tightened foreign manpower measures** to level the playing field for the local workforce.

New Standards on **Flexible Work Arrangements** were released by the tripartite partners in the expectation of a growing “**gig economy**” and corresponding increase in **freelance workers**.

We also saw the prioritizing of economic activities and sectors for which companies are hiring — the Ministry of Manpower, together with the Ministry of Education and SkillsFuture Singapore focusing efforts in helping workers acquire the **skills** for these new jobs.

In 2018, employers should expect the continued implementation of similar polices as seen in the 2017 legislative changes and the new tripartite standards to promote a **better work-life balance** for employees, impose stringent policies around the authorization of foreign nationals to work in Singapore, and support fair employment practices in the key areas of leave benefits, notice periods and training.

The Ministry of Manpower is also expected to increase the stringency in enforcing labor regulations and will continue to expect employers to ensure that all hiring processes for foreign professionals (conducting job interviews, reviewing job advertisements and application forms) are fair, inclusive and merit-based, with a **continued focus on strengthening the Singaporean core in the workforce**.



TAIWAN

The enactment of the Amendments to the Labor Standards Act (effective from 1 January 2017) was a significant challenge for employers in 2017, causing difficulty and uncertainty. The changes included a newly defined rest day, an overtime pay overhaul, national holidays, annual leave, mandatory encashment for unused annual leave once per annum, shift breaks and other revisions that **generally favored employees**.

Overtime issues: The revisions caused an overall rise in overtime costs, creating reluctance among employers toward paying overtime, with some choosing to hire contingent workers as a cost-saving alternative. However, the hiring of contingent workers actually increased total HR costs for employers. Not only did overtime costs rise after the enactment of the Amendments, but the prices of consumer goods were simultaneously raised to make up the difference for higher labor costs.

Uncertainty: There remains uncertainty around the applicability and enforcement of the 2017 Amendments, which has inconvenienced employers throughout 2017. As we understand, the labor authority is not actively inspecting employers for non-compliance.

Due to the substantial public backlash from employers and employees over some of the changes, the current administration back-tracked on the previous Amendments to the Labor Standards Act and has declared that a new set of Amendments is on the way for 2018.



SPOTLIGHT ON VIETNAM

2017 witnessed further developments around the revision of Vietnam’s legal framework of labor and employment law, which was necessary for implementing Vietnam’s commitments under international trade agreements including the Trans-Pacific Partnership Agreement (“TPP”) and the European Union Vietnam Free Trade Agreement (“EVFTA”).

The uncertain future of the TPP slowed the process of change — it is unlikely to take effect until this year. However, despite the uncertain future of the TPP, a change still could come as early as 2019 as a result of the ratification of the EVFTA, which is expected to happen soon. Baker McKenzie Lawyer Trung Khuat attended a EuroCham Vietnam delegation to visit the EU Parliament in the capacity of Vice Chair of EuroCham Vietnam’s Human Resources & Training Committee earlier this year, to promote the ratification and entry into force of the EVFTA.

According to Vietnam’s commitments under the EVFTA, it is required to revise its Labor Code to fully reflect the International Labor Organization’s standards, resulting in the emergence of multiple unions representing employees in Vietnam as a norm. Labor and employment commitments under the agreement require that each Party reaffirms its commitments to respect, promote and effectively implement the principles concerning fundamental rights at work, namely:

- the freedom of association and the effective recognition of the right to collective bargaining
- the elimination of all forms of forced or compulsory labor
- the effective abolition of child labor
- the elimination of discrimination in respect of employment and occupation

2018 Checklist:

AUSTRALIA

- Be familiar with obligations under the new **data breach notification** law. View our notification [flowchart](#)
- Consider the adequacy of **whistleblowing** policies and procedures in light of impending regulation; align workplace culture and practices to best meet these obligations



CHINA

- Update company policies on **data privacy** and **sexual harassment** as employees become more concerned about these issues



HONG KONG

- Look out for increased **paternity leave benefits**
- Review **working hours** in light of proposals around standard working hours being put to Legislative Council
- Be prepared to manage **social media workplace risks**
- Be proactive in managing **sexual harassment and discrimination** risks with policies and training



“With the unpredictable fate of the TPP, much remains to be seen in the years to come. The Vietnam government invested a lot of political will and power, including a commitment to wholly reform Vietnam’s employment and labor law, in order to get the TPP signed and ratified before the US election. At the moment, Vietnam is still committed to proceed with the reform, which includes liberalization of the union system in the country, but, as we can foresee, at a slower pace and with far less aggressiveness. In any event, we are in the middle of substantial changes.”

THUY HANG NGUYEN, Partner, Baker McKenzie



2018 Checklist:

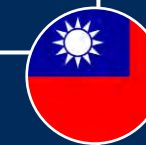
JAPAN

- Ensure that **overtime regulations** are followed, particularly in view of the labor authority's stricter monitoring of this issue
- Watch for developments in **overtime regulations**
- Revisit how **fixed-term** employees are being used in the organization and how they are being treated in light of the relevant legal developments



TAIWAN

Wait and see how the 2018 Amendments to the Labor Standards Act are received before engaging in **material changes to employment/ labor practices**



PHILIPPINES

- Revisit headcount models, to prepare for **employment law reforms** requiring more regular employees
- Be prepared for **compliance audits**, and conduct internal due diligence in preparation



VIETNAM

Keep an eye on developments concerning the EVFTA and TPP, and anticipate **significant changes to employment and labor law**



SINGAPORE

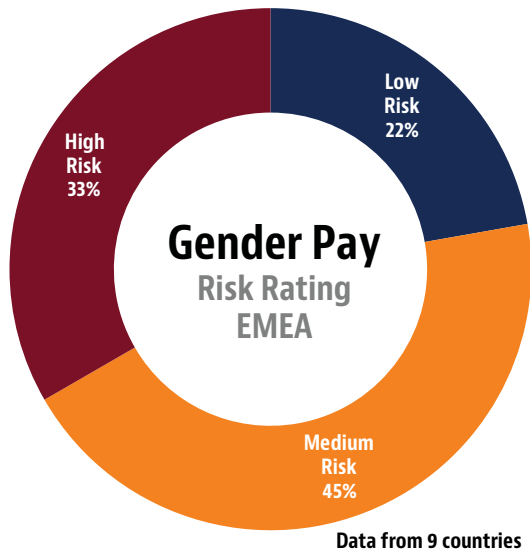
Be familiar with amended employment legislation and the newly introduced tripartite standards, particularly the new standards applicable to retrenchments and the hiring of certain employees, such as **"gig" or contract workers**, foreign professionals and older employees



EUROPE, MIDDLE EAST AND AFRICA — global trends

Here's the regional perspective on how two of the trending global employment law issues are playing out in the region:

Gender pay



In 2017, the **UK's** gender reporting regulations took effect. By April, all covered UK employers will have to report gender pay gap data by uploading it to a government website that can be searched by the public. There are no civil or criminal penalties for employers who fail to publish their reports, although the UK Equality and Human Rights Commission has said that it has the power to take enforcement action. In practice it is likely to be pressure from employees, unions, the media, customers and investors that drives compliance among major multinationals. Employers can publish a narrative alongside the data on their website. This is an important opportunity both to explain the issues driving the gap — and

what the company is doing to address this.

In **Iceland**, new legislation requires that employers with more than 25 employees certify every three years that they are paying their employees equally for equal work, regardless of gender, ethnicity, sexuality, or nationality, or risk fines. In **Germany**, the new "Transparency of Pay Act," effective as of January, provides information rights for employees relevant to pay structures, and implements specific review and reporting procedures pursuant to the German Commercial Code. New proposed draft legislation requiring gender pay reporting is pending in **Ireland**, and in **Sweden** employers must conduct salary reviews every year in order to identify gender pay gaps. All employers with 10 or more employees must create written action plans for achieving equal pay.

A bill to compel employers with at least 25 employees to publicize the results of their audit is pending. Meanwhile, in **Spain** new regulations drafted by the Ministry of Employment might establish the obligation of companies to disclose pay by gender; the **Russian parliament** is discussing the adoption of a Gender Equality Law, which may help to regulate the gender pay gap (the bill clarifies the main guarantees and actions for the employer to be taken to avoid gender discrimination); and the UAE is now starting to take steps to address the gender gap in its workforce. 2018 looks set to be a year of progress in this area in EMEA.

Modern workforce

This year, we will see more public scrutiny of workforce models, particularly in the **UK**, with both political pressure and more tribunal litigation over the status of workers and contractors. We will see tighter control over labor leasing in **Germany** including dawn raids and audits. Increased regulation to enforce equal pay between contractors, fixed-term workers and permanent employees is a recurring theme across the region, including in **Spain**. Other countries such as **Italy** and **Hungary** are seeing greater use of flexible and atypical working models to increase employment levels among particular skills or demographics and encourage work-life balance. With new regulations introducing more certainty around such models across the region, the modern workforce might be easier to approach in 2018.

Europe, Middle East and Africa Regional Outlook:

FRANCE

President Macron was quick to bring in his **employment law reforms** in 2017, which included business-friendly measures providing small to medium-sized employers with more flexibility around negotiating and a simplification of employee representative bodies.

The 2018 Finance Bill, **effective 1 January 2018**, impacts personal income tax, wealth tax and employee benefits. In brief, the 2018 Finance Bill (1) imposes a 30% flat tax on all investment income, **including the sale of employee shares**, (2) increases the CSG social tax rate on all income, (3) **modifies** the French wealth tax with a new real estate wealth tax, and (4) introduces additional changes to the **tax-qualified RSU** regime in France.

HUNGARY

2017 continued to see **significant labor shortages** and, in 2018, employers will continue to face the increasing challenge of recruiting and retaining key skills in their workforce. Engineers, IT and medical workforces are particularly suffering.

In the meantime, employers have been providing and benefitting from flexibility through **atypical employment** relationships, while having to contend with a general trend of **salary increases**.



ITALY

2017 saw:

- a focus on work-life balance, with the entering into force of a new law on **flexible working**
- **outsourcing/supply chain** compliance issues
- **freelance work** and **flexible working** contracts, with enforcement of new regulations on both topics
- new law on **whistleblowing procedures**
- reorganizations and restructurings, with collective dismissals
- internships and apprenticeships as a means for the **young workforce** to access the job market

For 2018, there is great uncertainty as to who will lead the new government in 2018, following the general election set for 4 March. This may have an impact on new employment and labor regulations going forth.

Pensions is currently a hot topic, after the raise of pension age, and more changes are likely to occur in the future. The implementation of the **GDPR** is and will be a major topic this year. We should expect additional measures to support employment of the younger workforce and other disadvantaged employees, for example those who are located in economically depressed areas of the country.

Europe, Middle East and Africa Regional Outlook:

POLAND

Tax reform changes will impact the taxation of equity awards in 2018. The Polish government amended Poland's income tax laws (personal and corporate) effective 1 January 2018. These amendments include provisions affecting the taxation of equity compensation awards granted to award recipients in Poland. Under the new legislation, income tax on equity awards will not be due until the time the underlying shares are sold (at which time a flat 19% rate will apply). Specific requirements for the tax deferral apply; where these are not satisfied and taxation is not deferred until sale, the legislation allows any taxes paid at exercise/vesting/purchase to be deducted at sale.

RUSSIA

In 2017, President Putin **abolished the ban** against employing Turkish citizens, allowing Turkish organizations to render services in the territory of the Russian Federation. 2017 also ushered in increased fines for violating **personal data legislation**, depending on the type of violation (eg, processing personal data without the consent of the personal data subject, the operator failing to ensure the security of personal data if it has led to unlawful access to personal data). Maximum fines are RUB 75,000 (approximately USD 1,325) for a company and RUB 20,000 (approximately USD 353) for officers. Amendments to the Russian Labor Code were made regarding **part-time work** giving more clarification and flexibility around part-time working arrangements.

In 2018, we expect to see:

- Greater **compliance auditing** measures: The State Labor inspectorate will carry out labor inspections of companies according to their risk category (eg, for high-risk companies — once every two years, for substantial risk companies — once every three years). Companies whose operations are classified as low risk are not subject to planned inspections. Inspections will be based around 107 checklists, available on the Rostrud site, beginning this year.
- The Russian parliament is discussing the adoption of the **Gender Equality Law**, which may help to regulate such issues as the gender pay gap (the bill clarifies the main guarantees and actions for the employer to be taken to avoid gender discrimination).
- A new law has been proposed under which certain employment documents can be filed or acknowledged by regular employees electronically.
- The Russian Ministry of Labor issued recommendations on certain measures or adjustments that an employer may take to ensure the **protection of disabled employees' labor rights** (eg, organization of working time and adaptation of facilities and equipment for the needs of disabled employees).
- **Anti-corruption** measures may be enhanced. The Russian Ministry of Labor is reviewing a draft bill imposing additional obligations on employers with regard to protecting persons reporting corruption, eg, the obligation to ensure whistleblower confidentiality and to ensure compliance with the special employment procedures with regard to whistleblowers.
- **Tightened migration** measures will be applicable during the FIFA World Cup 2018 within the territories of particular cities from 25 May 2018 until 25 July 2018.



Europe, Middle East and Africa Regional Outlook:

SOUTH AFRICA

Sexual harassment, anti-corruption and money laundering were key themes for 2017; economic difficulties led to **strike action**; and companies were subject to **employment equity** reviews by government labor department inspectors and found wanting.

For 2018, these themes will continue, and we will see:

- a continued focus on efforts to prevent **sexual harassment** in the workplace
- a clamp down on misconduct relating to **corruption** and **anti-money laundering** — employers will need to evaluate existing policies, awareness and training programs to eradicate these issues
- **increased strike action** as workers bear the brunt of inflation — rises in the price of food and transport will lead to more strike action
- **increases in dismissals** for operational requirements — poor economic climate and changes to approaches in transferring services are likely to see an increase in such dismissals in 2018
- the Department of Labor continuing to clamp down on **enforcement of employment equity** obligations, with hefty fines likely to be applied
- enhanced **paternity and adoption rights** — employers may soon be required to start taking the ***new paternity and adoption leave bill*** into consideration when granting leave to employees, taking into account not only paternal fathers but also those employees who are adoptive and surrogate parents, regardless of gender



SPOTLIGHT ON SPAIN

Recording daily working hours:

In 2016, the Labor Inspectorate and the National Court established the employer's obligation to record the daily work hours of their employees, while traditionally the obligation was to only record overtime. In 2017, the Supreme Court revoked such obligation to register daily working hours if no overtime is performed. However, it is expected that regulations may change in 2018.

Severance pay for fixed-term employees:

Following the ECJ judgment in the De Diego Porrás case, several Spanish appellate-level labor courts have held that various types of fixed-term employees are entitled upon termination of their contracts to the greater severance compensation that Spanish Law provides for indefinite-term employees in case of redundancy (20 days' severance versus 12 days' severance). It is expected that further judgment from the ECJ will clarify this issue and the Spanish Supreme Court will issue doctrine on this subject.

Termination of employees on sick leave

may be null and void due to discrimination. Following the ECJ judgment in the Daouidi case, there is a

debate on the concept of disability and its impact on the classification of a dismissal as merely unfair or as null and void.

However, the general rule remains that the termination is not null and void unless there are discriminatory grounds.

Paternity leave increase is postponed:

Paternity leave was increased from 13 days to four weeks from January 2017. It was expected to increase by one additional week in January 2018 but this has been postponed by the government.

Gender pay reporting: New regulations drafted by the Ministry of Employment might establish the obligation of companies to disclose pay by gender.

Possible classification of independent workers as employees:

following a decision made by the Labor Inspectorate. The final decision will be made by the Courts.

Equality of pay rights

between employees of contractors and employees of client companies, if they render services corresponding to the client's core activity and perform the same job as employees of the client, is currently under discussion in parliament and may be introduced in 2018.

Europe, Middle East and Africa Regional Outlook:

SWEDEN

Employers have been focusing on the implementation of the **GDPR**, in the context of HR-related data processing.

As a part of the **#MeToo anti-harassment campaign**, which has been a very big issue in Sweden, many employers have initiated various interviews or soundings among female staff to assess any pending harassment cases and prepare policies against harassment and victimization. Across the country, employers are focusing on **gender pay regulations and diversity in the workplace** more generally.

Due to the economic boom in Sweden and the **shortage of competent labor**, pressure is growing on employers to hire and retain skilled employees.

Far-reaching reforms in employment law, such as the redundancy rules, are deemed to be an important question in next year's Swedish general election to be held in September 2018.

TURKEY

Employers have tried to adapt to the changes in employment legislation regarding **agency workers, new types of maternity, adoption and paternity leaves, as well as changes in the immigration legislation** in terms of work permits and other work authorizations.

In addition, the new law on labor courts has introduced various amendments in terms of employment litigation, such as **compulsory mediation** before applying to courts. The new law on labor courts will play an important role in Turkey in terms of employment law. Courts and the judicial system, as well as individuals and employers, will be trying to adapt themselves to this new legislation and the **compulsory mediation** requirement. Stakeholders will also have the chance to have a first glimpse of whether compulsory mediation actually helps diminish the workforce of labor courts.

An amendment in the law in terms of **statutory seniority** compensation is also expected.

Last but not least, the Ministry of Labor is expected to issue a regulation regarding the implementation of the new law on work permits, which entered into force in August 2016, and a regulation regarding telecommuting.

UAE

Encouraging UAE nationals to enter the private sector continues to be a significant and developing topic. In 2017, the UAE government launched a new Emiratization program to encourage recruitment of UAE nationals in the private sector. A number of new Emiratization regulations were also introduced with regard to employing UAE nationals in health and safety and data processing roles. This will continue to be an important topic this year and we expect to see more developments in this space.

The political and economic boycott of Qatar continues to have a significant impact on trade in the Middle East and has caused significant disruption to supply chains and mobility of personnel in the region.

Significant changes to the DIFC Employment Law are expected to be introduced early this year, including developments in the areas of **equal pay** and **family-friendly leaves** in light of the government's increasing focus on the equal treatment of women and encouraging their participation in the workplace.



Europe, Middle East and Africa Regional Outlook:

UK

Brexit — with the UK triggering the Article 50 process for leaving the EU, there was concern and uncertainty in 2017 around the status of nationals from other EU states currently employed in the UK.

Gender pay gap legislation took effect in April 2017, requiring all companies with 250 or more employees in Great Britain to publish details about their gender pay gap on an annual basis.

We saw an outbreak of claims over whether companies are misclassifying their workers and several government and independent inquiries on the issue of employment rights and taxation in the modern workforce. In 2018, we may not see much legislative reform on the **gig economy/contingent workforce**, mainly because parliamentary time in the UK is almost entirely taken up with Brexit, but we expect the wave of misclassification claims to continue and political/public pressure on this topic to intensify.

The UK will implement the **GDPR** in May 2018. Employers need to be prepared for a tougher data protection regime and more significant penalties for not respecting data protection rights.

Tribunal claims: The number of employment claims may generally increase as a result of the Supreme Court's decision that the introduction of tribunal fees in 2014 was unlawful.

Pensions compliance: In the wake of a number of pension scandals, the UK Pensions Regulator has said that it will be tougher in how it regulates defined benefit (DB) plans and we have already seen evidence that it is seeking opportunities to show its new approach. The UK government is also due to publish a White Paper in early 2018 which could lead to legislative changes and increased financial risks for clients with UK DB plans.

EU WIDE

New EU Prospectus Regulation: this new regulation will become effective in July 2019, eliminating prospectus requirements for offerings under employee share schemes.

From 21 July 2019, issuers will no longer need to prepare an EU prospectus for the approval of the securities authorities in the issuer's home member state for employee equity offerings in Europe; provided the issuer provides employees with an abbreviated offering document containing basic information about the issuer and the offering. However, until then, companies making stock plan offerings in Europe that currently trigger the requirements under the EU Prospectus Directive (ie, offerings that are treated as public offerings of transferable securities) should continue to comply with those requirements.



2018 Checklist:

FRANCE

- Consider opportunities to negotiate **in-house collective agreements**
- Reconsider **settlement indemnity** practices in view of the reforms relating to unfair dismissal damages
- Watch out for next **professional elections** (one single employee representative body)
- Implement a policy/collective agreement regarding **teleworking**
- Keep apprised of key elements of the 2018 Finance Bill by reading our [October 2017 client alert](#) and noting the following recent clarifications:
 - The employer social tax due at vesting of qualified RSUs granted under the new French-qualified RSU regime is due at a rate of 20% (reduced from 30% under the Modified Macron regime, and the same as under the Original Macron regime)
 - Shares acquired under an employee share plan could, in theory, be subject to the new real estate wealth tax, but only if the company issuing the shares directly or indirectly holds real estate. Even in this case, for shareholders who own less than 10% of the share capital of the company, it may be possible to obtain an exemption from the wealth tax liability. Therefore, in most situations, the real estate wealth tax will not apply to shares issued under an employee share plan



HUNGARY

Utilize all options provided by the Labor Code to **encourage retention in the workforce**, such as:

- providing fringe benefits
- concluding study contracts
- imposing termination penalties



ITALY

- Be on the lookout for new laws and regulations likely to be implemented on hot topics such as **pensions, flexible working, outsourcing, social shock absorbers** and more
- Be compliant with new laws — check internal policies and regulations
- Take advantage of tax/social security relief available for **hiring of the young workforce**



2018 Checklist:

RUSSIA

- Comply with legislative requirements mentioned in Rostrud checklists and carry out an internal audit to **monitor compliance**
- Monitor the status of bills, especially regarding **gender equality**, the protection of **whistleblowers** and electronic documents, and if the bill is adopted as law, comply with its requirements
- Check whether the company is classified as high or substantial risk, monitor the 2018 planned inspections schedule and, if necessary, make timely preparations for any planned State Labor Inspectorate inspections
- Ensure compliance with obligations in the area of **civil defense** and make an official inquiry at the appropriate Russian Ministry of Emergency Situations' department at the company's location to check whether a company has been assigned a civil defense category
- Ensure compliance with **data privacy** obligations, namely, obtain written consent from data subjects to process personal data, notify Roskomnadzor of personal data processing activities and ensure the safety of personal data



SOUTH AFRICA

A **sexual harassment policy** is essential in any workplace, but even more important is how the employer gives effect to it. Employers should:

- ensure that some level of induction or training on harassment and discrimination is provided to employees, especially newly hired staff
- create an audit trail of complaints lodged and steps taken
- consider appointing a senior executive or manager as the organization's public champion in complaints of discrimination or harassment
- Re-evaluate existing workplace policies, awareness and training programs to **eradicate corruption and money laundering**
- Be familiar with the statutory duty to consult with affected parties when contemplating **dismissals for operational requirements** (retrenchments or redundancies), explore creative solutions that will avoid or mitigate the terminations
- Prepare for and anticipate **strike action**, ensuring effective communication strategies
- Take meaningful steps to limit the impact of a strike including regularly updated strike contingency plans, keeping a strike diary, maintaining an updated list of active staff, and updating standard forms that may be used during a strike
- Ensure **employment equity compliance** and be prepared for increased enforcement efforts in this area
- Update policies and implement training in anticipation of the new **paternity and adoption leave** bill



2018 Checklist:

SPAIN

- Be aware of the legislative and judicial developments, especially on **gender pay reporting obligations** and the obligation to **register daily work hours**



SWEDEN

- Get familiar with the implications and the changes the **GDPR** brings. Review the current privacy notices for the data you store and prepare to change them for the GDPR
- Make sure that the company works actively against **unlawful discrimination** and has a policy and established routines for combatting harassment, sexual harassment and reprisals



TURKEY

- Watch for the secondary legislation regarding the new law on **labor courts**, the new law on **work permits** and the amendments in the law with regard to **telecommuting**



UAE

- Data privacy compliance:** Ensure employment contracts and handbooks are up to date and also reflective of best practice with regards to data protection and privacy considerations



UK

Make sure you are GDPR-ready

Expect **increasing external scrutiny of your employment practices**, in particular:

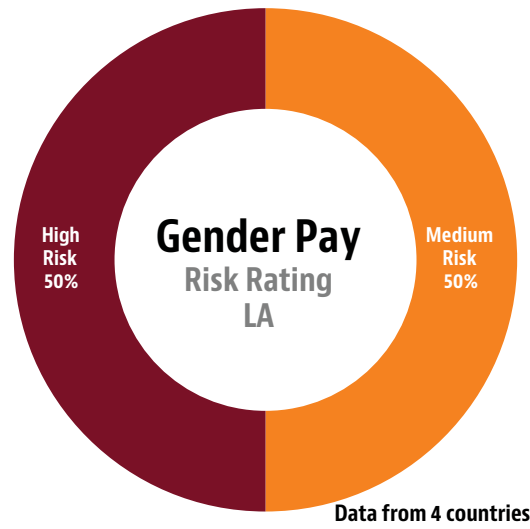
- **scrutiny of gender pay** issues is likely to intensify as more companies report their gender pay gap data
- the Equality and Human Rights Commission is currently engaging with large-scale employers about their policies and procedures for dealing with **sexual harassment**
- we are likely to see increasing media interest in employment practices throughout the **supply chain**
- scrutiny over **contingent/gig economy workers** likely to continue
- **scrutiny of DB plans** by the UK Pensions Regulator is set to increase



LATIN AMERICA — global trends

Here's the regional perspective on how two of the trending global employment law issues are playing out in the region:

Gender pay



While there are no public gender pay reporting requirements in the region, there is a growing trend toward taking measures to close the gap. In **Colombia**, employers must maintain an internal report that includes remuneration by gender, whilst in **Peru**, a newly introduced Equal Pay law aims at reducing the 30% national gender pay gap in the country. **Argentina's** constitution provides for the principle of equal pay for equal work, and its legislation specifically prohibits any discriminatory practice based on sex along with a number of characteristics. Argentina is also a member of the International Labor Organization and has approved several international labor conventions, including in

relation to anti-discrimination and equal remuneration measures. **Chile** has equal pay laws but women still earn around a third less than men. President-elect Piñera's political program has promised changes in this regard and although there are no specifics at this stage, global employers can expect a bill addressing this issue in the future. In **Brazil**, although there is no gender pay gap reporting requirement, discrimination based on gender in the workplace (which includes gender-based pay gaps) has been seriously punished by Brazilian labor courts. Employers may be demanded to pay significant amounts as indemnification for moral damages, plus salary differences. In addition, employers are subject to fines/penalties imposed by labor authorities (auditors from the Ministry of Labor) and class actions filed by the Labor District Attorney. That said, claims of unequal pay based on gender are rare because this type of discrimination is not very visible among employees.

Modern workforce

Misclassification of employees and failure to comply with strict outsourcing regulations carries important economic sanctions and liabilities across the region. We are seeing progressive changes toward alternative workforce models, such as clarification around remote working and greater recognition of other flexible working models. In **Argentina**, proposed changes in employment law have introduced a new category of "independent worker", which could benefit employers. In **Brazil**, greater flexibility around remote working and outsourcing is proposed, but not without challenge. At the same time, we are seeing significant regulation and restriction of outsourcing arrangements as a continuing theme across the region, including in **Argentina, Peru** and **Colombia**. Outsourcing can pose significant risks of sanctions and liabilities. With the majority of countries facing elections across the region in 2018, only time will tell whether these themes will continue, or whether new leadership will bring change in this area.

Latin America Regional Outlook:

ARGENTINA

Compliance issues (such as internal investigations, anti-corruption practices, etc.) are ever-expanding in Argentina, and became even more of a challenge in Latin America in 2017 due to corruption matters arising in Brazil (such as the Petrobras and Odebrecht cases), which resulted in an extension of fiscalization by the authorities in Argentina, posing new challenges to many industries.

In 2018, **significant employment law reforms are expected**, which could benefit employers. Social organizations and unions are keeping pressure on the government to implement better social-oriented policies, negotiate sufficient salary adjustments to beat inflation and have some influence in the upcoming reforms.

The proposed employment law reforms are due to be discussed in February. It is not yet known if enactment will fully reflect the terms of the bill. The **atypical working reforms** are significant — subject to specific regulation and statute, the reforms will specifically govern the “independent worker” case, which could be beneficial to employers.



BRAZIL

More than 100 changes to the 1943 Brazilian labor code took effect in November 2017, including: more flexibility to negotiate employment rights; termination by mutual agreement with reduced severance permissible; more flexibility for employers around **outsourcing** and new regulations on **remote working arrangements**; union association dues no longer being mandatory; and arbitration for employment matters.

The new rules have been challenged on the grounds of constitutionality, including the remote working and outsourcing regulations. Changes may be made in 2018 as a result of these challenges.

Chances of **labor assessments** by governmental authorities (from the Ministry of Labor, Social Security and Federal Revenue) may increase in 2018. This is because of eSocial, a combined project from the Brazilian Federal Revenue Department, the Labor and Social Security Departments and the Federal Savings Bank, to optimize the digital exchange of information between the taxpayers and the government agencies, related to compliance with tax, social security and employment obligations.

Latin America Regional Outlook:

PERU

New Equal Pay Law: A big trend in 2017 was **equal pay and gender equality at work**, and several equal pay bills were submitted to congress. Despite this, it was not until 27 December 2017, that an equal pay act was finally promulgated. The aim of the new act is to prevent salary discrimination as well as to guarantee the right of employees to perceive the same salary for equivalent services, not only for identical ones. Obligations under the act include elaboration of the staffing table by salary categories and elaboration of a salary policy.

Outsourcing: Employers had to deal with new criterion issued by the Supreme Court on the outsourcing of core activities. According to the Supreme Court, core activities cannot be legally outsourced. The decision is controversial as it reduces the scope of legal outsourcing, contravening existing outsourcing regulations and creating uncertainty.

Employees' right to privacy when using corporate mail accounts was confirmed by the courts — as a consequence, employers must use authorization forms to inspect the use of such mail accounts.

The courts also ruled on the payment of **additional severance** as punishment to the employer in cases of labor accidents. Employers will be ordered to pay an additional severance if they did not give medical aid to an affected employee.

COLOMBIA

Trends for 2017 included increased **outsourcing/labor leasing** arrangements; labor intermediation activities; collective relations/increasing unionization seeking more benefits; UGPP — more **audits** from government entities; IFRS (NIIF) financial reporting; termination of employment agreements of employees with medical conditions (ie, different decisions made as between the Supreme Court of Justice and the Constitutional Court); and new protections against **dismissal** (including employees with three years or less to access their pension; fathers of newborns).

Law reforms tend to provide more benefits to employees to improve the ones they already have, such as **paternity rights**. For 2018, we expect to see increases in **union relations and collective negotiation**, and structural modification to the **pension** regime.



SPOTLIGHT ON CHILE

The recent Chilean labor and employment landscape has been dominated by the recent Labor reforms, focusing around unions and collective bargaining. The new Piñera government (conservative) will focus on economic growth. From an employment perspective, this could mean

regulations around gender equality, home office working (telework) and schedule flexibility. A lack of a majority in Congress will force the government to negotiate its agenda.

Laws already due to come into effect this year include:

- new prohibition of any discrimination against disabled people
- new rights to unpaid leave for parents of children with serious health conditions aged up to 18

Significant issues that the New Government will be faced with include:

- **Immigration:** With Chile becoming an attractive destination for immigrants, especially from other Latin American countries, it desperately needs an update to its immigration legislation. In his previous government, Piñera sent a bill on this matter to Congress, which was then discarded by the Bachelet administration. We expect the issue to continue to be discussed in Congress and ideally to result in some simplification of the visa process.

- **Fixing labor reform:** The labor reform bill was one of the current government's key bills. It was a controversial bill which strengthened unions and their collective bargaining power. Piñera has said his government will introduce a bill that will: (i) fix certain technical issues which have led to serious interpretation problems; and (ii) facilitate non-union groups of employees to bargain collectively with the employer. Without a majority in Congress, this will be a hard bill to pass for the Piñera administration.

- **Wage and gender equality:** The current legislation has proven to be insufficient in practice. After years of the law requiring equal pay for men and women, the difference still amounts to approximately one-third less wages for female employees. Piñera's political program has promised changes in this regard. Although no specifics have been set out to date, global employers can expect a bill addressing this issue in the future.

- **Home office working (telework):** Current legislation includes little in the way of home office or telework rules. The only current specific rule provides that employees that work from home are exempt from the weekly schedule rules (a maximum of 45 hours per week). This very simple rule leaves many a door open to interpretation. The new government's political program includes a specific reference to home office working, stating that it will create a special employment agreement for those employees who work from home. The objective is to promote the combination of work with family and other personal activities. This could be interesting for employers who have struggled in the past with the strict rules on weekly schedules.

2018 Checklist:

ARGENTINA

- Focus on **compliance matters**, especially internal investigations and anti-corruption practices
- Review and maintain **anti-discrimination and anti-harassment** practices
- Hold **dismissals** up to the labor reform which could also provide a better scenario for termination indemnities
- Watch for the opportunity of enrolling in a social security amnesty for regularizing personnel who might not be duly recorded, which will be very beneficial for employers — another proposal of the labor reform bill



COLOMBIA

- **Adapt** — labor legislation is not static, rather dynamic. Employers must adapt so as not to be left behind
- Invest on building **productive relations with unions**
- **Be compliant** — audits tend to increase. Review how things were handled in the past to mitigate adverse decisions in the future
- Implement **gender-oriented human resources** practices



BRAZIL

- Review employment and payroll practices in light of the recent reforms and anticipated **increase in labor assessments**
- Watch for changes to the reforms as a result of the recent challenges



PERU

- Beware of increasing risk related to **outsourcing** due to the Supreme Court's decision that: (i) core activities cannot be legally outsourced; and (ii) if it were verified that a company has outsourced a part of its core activities, the outsourcing will be deemed distorted. To reduce chances of distortion, be extra careful when dealing with outsourcing arrangements
- Take measures to ensure compliance with the new obligations stated in the **Equal Pay Act**
- Keep up to date with the new criterion issued by the Supreme Court on different labor matters as these criterion are generally used as guidance by inferior labor courts



CHILE

- Train personnel and update procedures in light of new prohibition of any **discrimination against disabled people**
- Be prepared for the impact of **new rights to unpaid leave for parents** of children with serious health conditions



NORTH AMERICA — global trends

Here's the regional perspective on how two of the trending global employment law issues are playing out in the region:

Gender pay

Gender pay is a high-risk topic for employers in North America.

In August 2017, the **US** federal government "stayed" the gender pay reporting requirements through a revised EEO-1 Form for the time being. Individual states, however, are coming forward with their own measures aimed at combating the pay gap. California, Delaware, Oregon and Massachusetts have all prohibited employers from seeking salary history information about applicants for employment in an effort to prevent unequal pay from following women from job to job.



In **Canada**, certain jurisdictions have pay equity legislation and employers are required to take steps to achieve pay equity. While there are no specific ongoing reporting obligations, audits are carried out in some provinces and employers must be ready to demonstrate compliance.

In **Mexico**, gender pay is considered a hot topic and compliance with equal pay legislation is monitored. However, specific legislation requiring gender pay reporting is yet to be considered.

Modern workforce

In the past decade, North American corporations have accelerated their move away from exclusively permanent long-term employment. Initially, temporary workforces were employed to avoid layoffs due to business cycles. Increasingly so, companies utilize a number of alternative workforce arrangements with independent contractors, sourcing firms and other third-party vendors. Joint/related employer liability is a minefield for the unwary and is a growing concern in all three North American jurisdictions. Employers in North America who engage in otherwise legitimate "contracting out" or "contracting in" with a third-party supplier may unwittingly step into the shoes of the employer for the subject workers despite the fact that the workers were retained by the supplier. In **Canada**, many employers right-sized to employ fewer "traditional" employees in the wake of the 2008 global recession. Outsourcing and insourcing arrangements are now increasingly prevalent. Employers in Ontario, for example, face many new challenges due to recent amendments to employment standards and labor relations legislation, including misclassification complaints and equal pay complaints by part-time, casual, temporary and seasonal employees.

In the **United States**, federal agencies and courts have been particularly aggressive in scrutinizing alternative workforce arrangements and have broadened their definition of an "employer" to include many common business relationships. With more and more entities now considered to be the employer, there has been a substantial change to the risk paradigm for alternative worker arrangements.

In **Mexico**, the federal government is seeking amendments to the Mexican Federal Labor Law to make the outsourcing regime more protective of employees. Global regulations tend to make this regime particularly onerous. Some employers are non-compliant as a result, and this can have a resulting negative impact on their investors.

“Offering cash awards in place of equity awards as part of the long-term incentive program has been trending for a while and continues to do so, as companies deal with regulatory issues in countries abroad and share pool pressures at home making equity awards difficult.

The other general trend is companies employing people in alternative working arrangements; besides the host of traditional employment law issues with some of these arrangements, some of these situations can be really challenging for companies granting equity because there are a number of securities and tax implications of granting equity awards to someone who is not a more traditional employee.”

DENISE GLAGAU, Partner, Baker McKenzie

North America Regional Outlook:

UNITED STATES

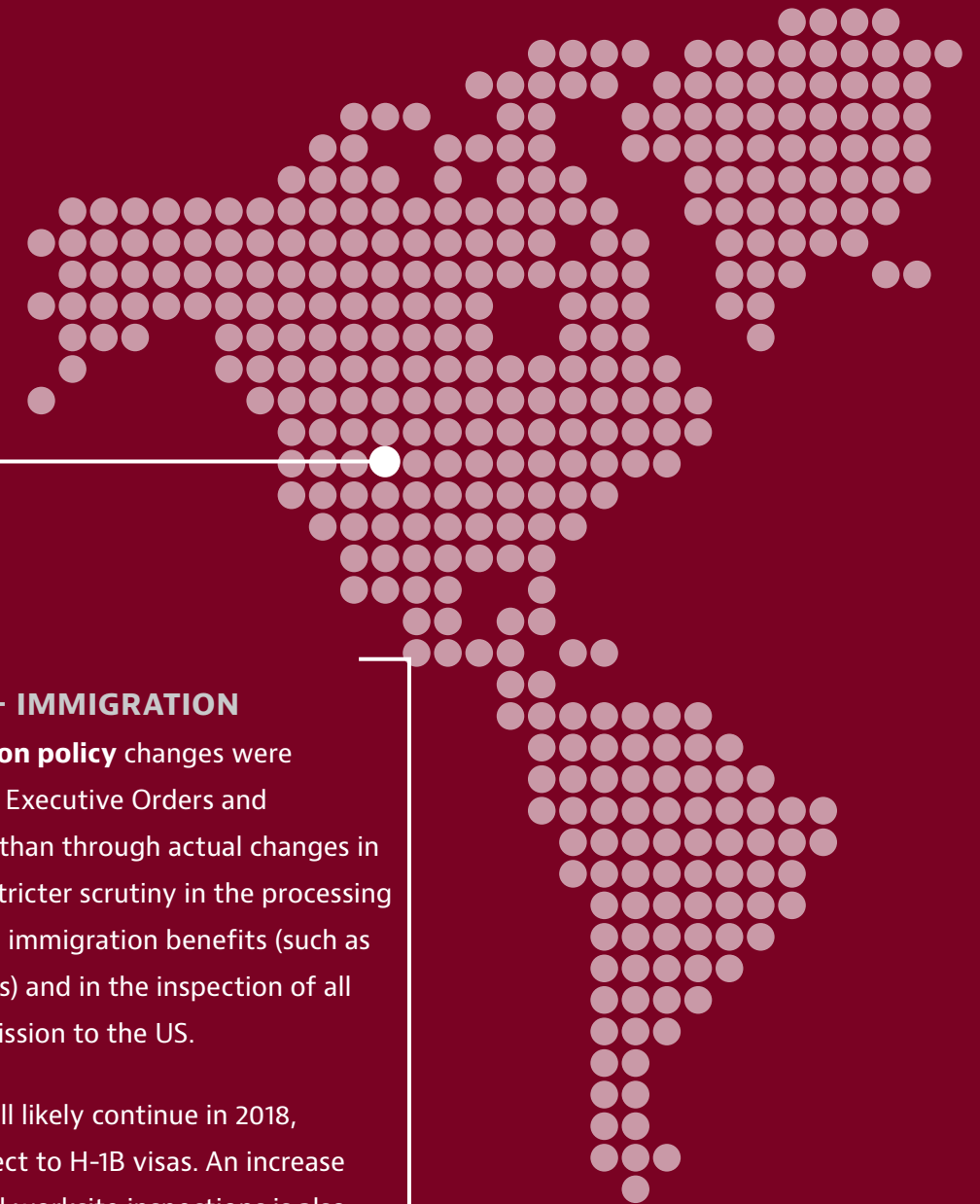
2017 saw an increase in sexual harassment investigations and claims in light of the **#MeToo** campaign on social media. At the same time, a number of jurisdiction-specific salary history bans aimed at reducing the **gender pay gap** were introduced across the US (eg, **California**, Oregon, Delaware, New York City). We also saw:

- continuing independent contractor **misclassification risks**
- new state legislation providing for paid and protected **leave** (eg, sick leave, family leave, etc.)
- the NLRB and the DOL showed signs of becoming **more employer-friendly** than in recent years (eg, the increase in salaries for exempt employees never materialized, federal collection of salary data by gender paused, Browning-Ferris joint employer analysis reversed, etc.)
- protectionist **immigration** changes
- labor-intensive preparation of required **public disclosure** of the ratio between CEO and median employee compensation in the 2018 proxy season, including subsequent media scrutiny and concerns about the impact on employee morale and retention

- **tax reform** legislation and its impact on the design of employee compensation arrangements, including tax planning to accelerate compensation deductions into 2017 and earlier years when such deductions would be more valuable

In 2018, we expect to see:

- a continued spotlight on combatting **sexual harassment** in the workplace (see **#TimesUp**), with the possibility of new laws prohibiting arbitration of sexual harassment claims and related regulations aimed at increasing transparency
- more states and counties passing legislation **prohibiting salary history inquiries** to combat the gender pay gap
- trend of **expanding workers' rights** at the state and local level likely to continue
- New **class action risks** (eg, **biometric data**, family leave, etc.)
- continuing scrutiny of **independent contractor status** in particular states (eg, California)
- loosening regulations related to **marijuana use** likely to create **complications in the workplace**



UNITED STATES — IMMIGRATION

In 2017, **US immigration policy** changes were implemented through Executive Orders and Proclamations (rather than through actual changes in the law), resulting in stricter scrutiny in the processing of employment-based immigration benefits (such as H-1B and L-1 work visas) and in the inspection of all travelers seeking admission to the US.

Strict adjudications will likely continue in 2018, particularly with respect to H-1B visas. An increase in immigration-related worksite inspections is also anticipated, given the announcement in late 2017 that the US Immigration and Customs Enforcement plans to hire 10,000 new officers.

“With the Trump administration, there’s clearly a lot of uncertainty. But plaintiffs’ lawyers are still going to file employment lawsuits. States are still going to pass employee-friendly laws. And state agencies are still going to bring enforcement actions. There may be less federal regulations and enforcement actions under the new administration but I don’t see my practice changing significantly over the next three years.”

ARTHUR ROONEY, Partner, Baker McKenzie

North America Regional Outlook:



MEXICO

2017 saw constitutional reform in Mexico, including:

- the transfer of Labor Boards from the Executive Branch to the Judicial Branch; stricter norms in **Collective Bargaining Agreements**, Labor Union Registries and procedures for **strikes** and labor polls
- stricter norms regarding **outsourcing**; increased obligations on companies providing the outsourcing service to comply with labor and tax laws
- a new system allowing employers to self-report labor and **health and safety compliance**

For 2018, there is uncertainty until the official amendments regarding judicialization of labor justice are published on the Federal Official Gazette. The upcoming presidential elections may affect the labor situation in a positive or negative way. In the meantime, Mexican courts are expected to begin to interpret Article 15-A of the Mexican Labor Law, which regulates outsourcing.

CANADA

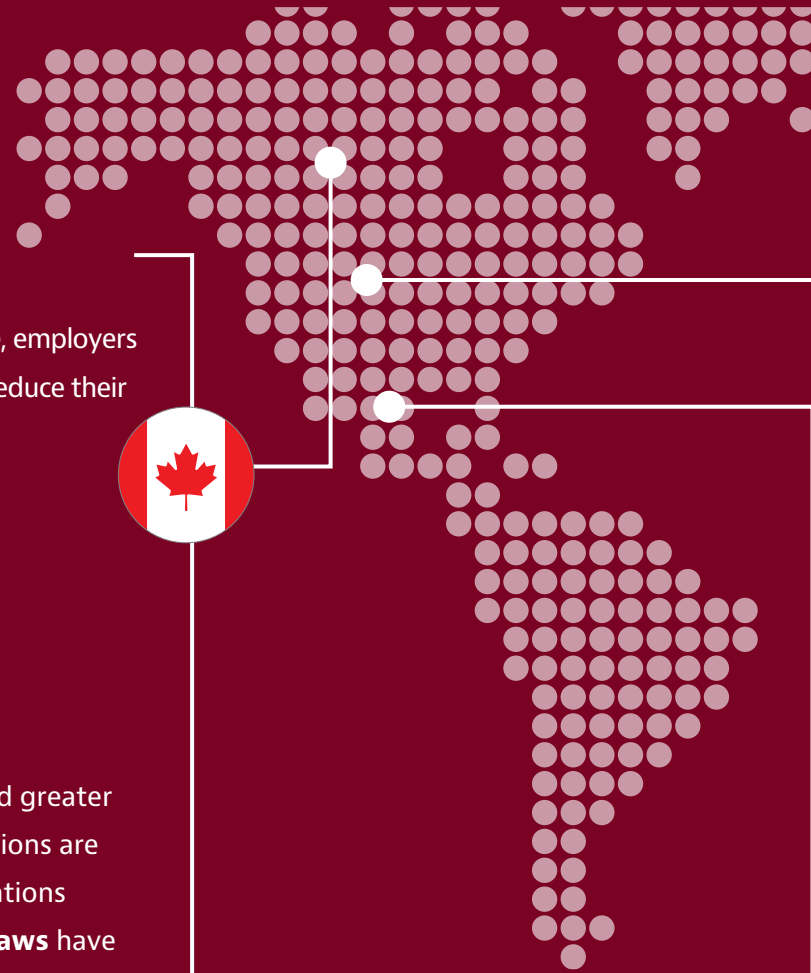
Canada saw significant reforms in 2017, with an overall theme of giving increased protection to employees. These included **greater employment standards** and changes to labor relations legislation benefiting unions introduced in Alberta and Ontario; and greater **family-friendly rights**, including increases in maternity, parental and caregiving benefits.

In 2018, Ontario employers face many new challenges due to recent amendments to the province's employment standards and labor relations legislation, including:

- **misclassification** complaints (onus is on the employer to prove that the complainant is not an employee)
- **equal pay complaints** by part-time, casual, temporary or seasonal employees
- greater risk of a **related employer** determination due to the new simplified test
- increased payroll costs (due to minimum wage increase, enhanced vacation pay, new three-hour and on-call pay rules)
- **workforce continuity** issues due to longer leave entitlements
- greater **risk of unionization** due to various amendments supporting certification efforts

Workplace harassment, including sexual harassment, issues have become increasingly prevalent for many employers. New workplace issues could also arise out of the forthcoming **federal legalization of recreational marijuana use.**

2018 Checklist:



CANADA

In view of the legislative amendments above, employers should take proactive steps to identify and reduce their risk exposure in the following key areas:

- misclassification
- equal pay for equal work
- related employer
- union avoidance

In addition, more robust investigations and greater attention to prevention and corrective actions are essential in view of how employers' obligations under Ontario's **workplace harassment laws** have taken shape.

Read more about these developments with our [***Canadian Labour and Employment Law blog***](#).



MEXICO

- Keep employment and payroll practices under review and ensure **compliance with labor laws** to prevent sanctions
- Improve relationships with **labor unions**
- Keep track of **new reforms** which could affect the management and administration of companies, for example, the amendments regarding judicialization of labor justice



UNITED STATES

- **#TimesUp:** Renew, refresh and refocus on anti-sexual harassment training and policies
- **Salary history bans:** Update employment applications and hiring practices to comply with the new salary information bans sweeping the country
- **Pay equity:** Conduct internal pay equity audits (under privilege)
- **Class waivers:** Stay tuned for the USSC decision on the legality of class waivers in arbitration agreements, expected in 2018
- **Executive pay and compensation:**
 - **CEO pay ratio disclosures:** Train HR and managers on responding to employee questions on CEO pay ratio disclosures. Prepare talking points to address media questions and train investor relations
 - Exercise caution in amending **executive performance awards** that were outstanding on 2 November 2017, as they may qualify for tax reform transition relief if not materially modified
 - Work with HR to **redesign executive pay-for-performance programs** which no longer need to be structured to ensure tax deductibility
- **Tax reform:** Notify employees of the potential impact of **tax reform** on their personal tax liability and their need to review their tax withholding amounts. Passage of tax reform legislation in December 2017 will require:
 - updates to tax withholding rates on employee compensation
 - reconsideration of design of executive performance-based compensation programs in view of elimination of deduction for certain performance-based pay
 - review of employer-provided fringe benefits, which may no longer be tax deductible
- HR education on non-deductibility of settlements or other payments related to sexual harassment or sexual abuse if subject to a non-disclosure agreement
- **Immigration:** Review policies for verifying employment eligibility of all new hires, as well as record keeping practices related to I-9 forms, Labor Condition applications for H-1B and E-3 non-immigrants and PERM applications.
- **Read more** with our [***New Year's Resolutions***](#) for California-based multinationals; keep up to date with our US blog, the [***Employer Report***](#); and keep a watching brief on the US Tax Reforms via our [***Compensation Connection blog***](#)



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