Introduction

Welcome to the Global Employer Magazine 2020 Horizon Scanner.

We have drawn on the expertise of our Global Employment & Compensation team, consisting of over 700 lawyers, based in 46 countries around the globe, to present the most pressing trends and developments we expect to affect employers with a global or regional workforce in the coming year.

2019 was a year of economic uncertainty, resulting from ongoing geopolitical tensions and upheaval, creating difficulties for companies aspiring to make long-term plans. In 2020, trade tensions, uncertainties over Brexit, significant changes in the political landscape and unexpected global events such as the Coronavirus outbreak all present continued challenges for businesses hoping to plan for the future and remain competitive.

Legal trends in 2019 followed suit from 2018, with growing scrutiny in particular hot topic areas. Gender pay reporting regulations continue to emerge globally. With an increasingly engaged workforce demanding greater pay transparency and investors taking an active interest, global employers face increasing pressure in this area. At the same time, lawmakers across the globe are responding to the need to combat discrimination and harassment and diversity and inclusion is becoming a high priority for corporate governors, with many companies working hard to move the needle on this in a compliant way.

The thorny issue of misclassification and managing a contingent workforce also gained significant media attention in 2019, as workers took matters into their own hands through activism and campaigns for increased rights and recognition. Traditional employment models are undoubtedly shifting, but as governments across the globe slowly get to grips with this evolving workforce by responding in a gradual and piecemeal way, companies in 2020 can expect uncertainty to prevail for some time.

The relentless advance of technology has also continued to transform workplaces, creating an opportunity for growth and diversification for organizations across multiple industries. However, with evolution inevitably comes disruption and companies are having to keep pace by being proactive, increasing flexibility, streamlining, restructuring and adapting in the face of technological advancement, in the hope of protecting their most valuable resource — the workforce. Together with ongoing economic challenges, market changes and an ever-evolving global regulatory environment, employers in 2020 face a complex landscape.

Here we take a closer look at the key trends and developments that will affect businesses looking to manage their workforces in the coming year.

Navigating this publication: In this publication, we look at key employment law developments from each region that will impact businesses in 2020, under the themes of diversity and inclusion, the modern workforce, and managing business change and disruption.

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GLOBAL OVERVIEW

Creating a diverse and inclusive workforce has become a business imperative. A diverse workforce enables a wider talent pool, helping to plug skills gaps, drive innovation, enhance profitability\(^1\) and improve competitiveness. We are seeing a continued push by employees calling for greater transparency and action from businesses to eliminate inequality. Likewise, investors are becoming more focused on the issue and intensifying media attention is continuing to advance the global conversation around gender equality and discrimination issues. As a result, new and strengthened regulation is continuing to emerge globally and companies are examining how effective their strategies are in addressing inequality.

Particular trends that we are seeing include:

- **Tackling harassment:** More jurisdictions are introducing or improving their legal framework to ensure that employees are protected from sexual harassment in the workplace and to deal with perpetrators appropriately. In jurisdictions with established anti-harassment laws, we are seeing increased obligations being placed on employers and harsher penalties for non-compliance. In less developed jurisdictions, we are only just starting to see anti-harassment climbing up social and political agendas, meaning developed legislation may still be a way off.

- **Promoting a work-life balance:** Developed countries across the globe are increasingly adopting and augmenting paid family leave laws as well as promoting flexible working policies for employees. The EU has sought to modernize its legal framework in the area of family-related leave and flexible working arrangements and countries across Latin America and Asia Pacific are seeking to modernize their labor laws to protect working hours and allow more flexibility in working patterns.

- **Adjusting to the aging workforce:** As the global population experiences the benefits of longer life, governments are taking steps to manage the challenge of ensuring ageing workers can continue in employment and that retiring employees can enjoy sufficient retirement provision. In Japan, those aged 60 and over represent 30% or more of the population and by 2050, 62 countries will reach that milestone; while in the US, employees who are old enough to retire now outnumber teenagers in the workforce\(^2\).

Countries across the globe are adjusting retirement ages to account for the longer life of their populations, ensuring they can work longer and many are ensuring that better retirement provisions are in place. Employers will need to manage the opportunities and challenges afforded by an aging workforce. As global lawmakers move to create a fairer and more inclusive workplace in 2020 and beyond, employers will need to continue adjusting their strategy and internal standards to comply with changing legislation and meet shareholder and employee expectations, whilst making the most of the opportunities that a diverse workforce provides.

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“Working with our clients, it is evident that the #MeToo movement is much more than a moment, and it really is not limited to just eradicating sexual harassment in the workplace. Rather, it’s part of a much broader and bigger social trend towards equality in all forms (including pay equity, ethnic and racial equality, caretaker status equality and more). This is having a profound impact on the way companies operate, as well as how they shape their employee experience and build company culture”.

In North America, states across the US have continued to pass #MeToo-inspired laws to combat sexual harassment in the workplace, placing new requirements on employers, including specific training and notices to be given to employees. Legislation to improve pay equity has targeted the recruiting stage in the employment lifecycle through the imposition of salary history bans. 17 states and Puerto Rico have passed legislation prohibiting employers from inquiring into or considering a job applicant’s wage or salary history. Meanwhile, Canada has grappled with the treatment of older workers, whilst implementing more family-friendly rights, and Mexico made moves to ensure employee well-being, with measures towards a safer workplace. Across much of the region in Latin America, reforms to legislation are either in place or are being developed to address inequality in the workplace. Gender sensitivity has also gained priority in countries where it historically was not a priority, such as Colombia, although concrete plans are yet to be seen. Social security reform and family-friendly benefits are also on the agenda for countries like Brazil, in support of a more diverse workforce.

“The need to address the gender pay gap and combat sexual harassment is steadily climbing up the social and political agenda across the region. We are seeing an increase in workplace inspections and reforms to equality legislation, pushing employers to implement actions to ensure compliance. However there is a lot of uncertainty amongst employers in the region about the extent of their obligations and we are yet to see it becoming a significant priority at board level.”

Key developments

**USA** In Illinois, the Workplace Transparency Act is likely to be signed in the coming months. The act proposes changes to the coverage of confidentiality clauses, the arbitration of discrimination/harassment claims and employers’ mandatory reporting requirements. It also allows victims of sexual harassment to take leave for that reason. In addition, two other related acts are currently on the horizon: the Restaurant Anti-Harassment Act and the Hotel and Casino Employee Safety Act.

**Canada** A serious debate has arisen in Canada concerning the legality of reducing or eliminating employment benefits for older employees and this area of law continues to develop. Age discrimination is prohibited in human rights legislation in all Canadian jurisdictions, however, certain statutory exemptions apply for group insurance plans. Recently, the British Columbia Human Rights Tribunal held that providing reduced benefits to employees over the age of 65 under an employer-sponsored benefit plan was not contrary to the British Columbia Human Rights Code. However, the tribunal expressly declined to consider whether the scheme was contrary to the Canadian Charter of Rights and Freedoms (for lack of jurisdiction), and expressed serious concerns about whether the scheme was constitutional. The Human Rights Tribunal of Ontario held in 2018 that statutory provisions permitting employers to reduce or discontinue employees’ benefits after they reach age 65 is discriminatory and contrary to the Charter. Employers should act with caution given the legal uncertainty in this area.

To support working parents, a longer parental benefit option was introduced under the federal Employment Insurance program. Parents now have the option of electing “standard” parental benefits (35 weeks at 55% of their earnings) or “extended” parental benefits (61 weeks at 33% of their earnings). Most jurisdictions have accordingly increased parental leave periods under their employment standards legislation. However, the length of the parental leave period varies by the jurisdiction and whether the employee has taken pregnancy leave. Employers therefore need to check the legislation in the applicable jurisdiction.

**Mexico** In October 2019, the Mexican Labor Ministry issued a regulation aimed at preventing mental health issues and psychological risk factors in the workplace. The regulation requires employers to put in place measures to prevent “psychosocial” risk factors in the workplace, such as implementing policies aimed at promoting a healthy workplace environment, providing support for employees exposed to psychosocial risk and investigating violations of policies regarding the workplace environment. Depending on the size of the company, employers may need to comply with additional obligations by October 2020. The government may impose penalties between USD 1,250 and 27,000 per affected employee. Developments on this must be closely monitored this year. In addition, employers are now required to implement a protocol to prevent discrimination in the workplace, including violence, harassment and sexual harassment. Employees should be given the opportunity to review and approve such a protocol. Failure to comply with this obligation may incur penalties, and employers will need to take steps to ensure compliance with this requirement in 2020.

**Brazil** This year will see the fruition of Brazil’s decades-long efforts to pass social security reform, which will alleviate public debt. The country is expecting to save BRL 800 billion over the next 10 years. The main change implemented is the creation of a retirement age: 65 years of age for men and 62 years of age for women. There may be corresponding increases to workers’ contributions and benefits calculations, but no impact to employers’ payroll taxes are anticipated until the reform is implemented this year. Other significant labor reform initiatives expected in 2020 include flexible working arrangements and extensions of parental leave entitlements.
from 2021 onwards. Preparations for upcoming changes may need to be done this year. Citizens by shifting retirement and social contributions policies, which may become effective by The broader momentum against workplace discrimination has found strength in recent decisions in Colombia. The country has experienced a beneficial shift towards diversity and inclusion through recent decisions by its constitutional court and the commitment of its president to address equity for women, ethnic groups, people with disabilities and the LGBTQI+ population. Recent case law extended protections against dismissal to: (i) employees with three years or less remaining before retirement; and (ii) the spouse, permanent companion or partner of a pregnant woman who is unemployed. An employer cannot terminate an employment agreement without cause in these situations. The application of this ruling will be determined by labor courts on case-by-case basis moving forward. Colombia’s National Development Plan may include the creation of a National Women System in 2020, which, from an employment perspective, would implement measures to promote occupational diversification in the country. This could significantly impact recruitment and retention practices. However, this plan is being held in abeyance due to recent protests and there is uncertainty over whether it will come to fruition. Employers will need to keep watch for developments.

Peru In July 2019, Peru started inspections in relation to compliance with its equal pay legislation. The objective of the legislation is to prevent salary discrimination sex and to protect employees against unjustified wage differentiation. Companies that do not comply with the legislation may be penalized with administrative fines of up to PEN 189,000. However, several companies have yet to develop a plan to comply with the requirements of the law either because addressing gender pay is not a priority or for lack of knowledge on how to comply. Employers will need to make this a priority in 2020. In addition, the Administrative Labor Authority has been actively conducting inspections for compliance with the sexual harassment regulation implemented in July 2019. There has been an exponential increase of sexual harassment claims despite the enforcement of this law. Employers must take caution and implement the necessary measures to comply with this regulation to avoid risk of sexual harassment cases and reputational damage.

In 2019, the region responded proactively to the #MeToo movement, passing various changes in legislation to prevent and deal with instances of sexual harassment in the workplace. With Vietnam providing sexual harassment as a ground for dismissal despite the enforcement of this law. In the workplace is stated as an additional ground for dismissal of an employee, provided it is clearly indicated in the internal labor regulations. In some cases, the application of this ruling will be determined by labor courts on case-by-case basis moving forward. Colombia’s National Development Plan may include the creation of a National Women System in 2020, which, from an employment perspective, would implement measures to promote occupational diversification in the country. This could significantly impact recruitment and retention practices.

China Following the global #MeToo movement, several provinces in China issued local regulations relating to preventing and handling sexual harassment claims. A draft amendment to the Civil Code aiming to provide a national definition for the term “sexual harassment” is currently in the works. Meanwhile, some notable discrimination cases demonstrated that the courts might be prepared to extend the scope of anti-discrimination protection in certain circumstances. In one case, the court held that a company had infringed on a job applicant’s equal employment opportunity rights by rejecting her job application due to the location of their hometown, even though China’s current anti-discrimination laws do not explicitly prohibit discrimination against someone based on hometown location. In another case, a court found that a company illegally terminated an employment contract because of the employee’s pregnancy, thereby infringing the employee’s equal employment rights by subjecting them to discriminatory treatment during their employment. Employers should continue to exercise care to avoid potential discrimination issues and should be mindful of the potential negative publicity that may result from discriminatory practices, coming to light.

Singapore Singapore is seeking to address its aging population and the problem of individuals needing to provide for their retirement. In August 2019, Singapore Prime Minister Lee Hsien Loong made his National Day rally speech in which he outlined, among other things, increasing the statutory retirement and re-employment ages from 62 to 65 and 67 to 70 respectively by 2030. He also outlined gradually raising the Central Provident Fund contributions for employees above age 55 year on year, starting from 2021 and continuing through to 2030. In 2020, organizations can start to be ready for the changes and ensure that they take measures to manage their employee population when they reach the retirement/reemployment ages.

Vietnam Under Vietnam’s new Labor Code, effective January 2021, sexual harassment in the workplace is stated as an additional ground for dismissal of an employee, provided it is clearly indicated in the internal labor regulations. In addition, the retirement age will be gradually increased to 62 years of age for males and 60 years of age for females. Employees performing heavy, hazardous or dangerous work may retire at a younger age but no less than five years earlier than the stated retirement age in normal working conditions. Certain jobs that are currently prohibited from being performed by female employees will be removed from the prohibition list under the new approach, on the basis that such a prohibition may actually amount to discrimination against female employees, rather than providing protection to them. Various decrees and circulars implementing the new Labor Code are expected to be released in the coming months, which need to be closely monitored. Substantial changes in contracts and policies will need to be done this year in preparation for the implementation of the new law.
EUROPE, MIDDLE EAST & AFRICA

As a region, EMEA has increasingly seen a range of responses to the challenge of achieving equality in the workplace. Much of the EU is seeing progressive legal developments aimed at addressing the gender pay gap, together with enhanced protections against discrimination and harassment. Beyond the EU, developing economies are also beginning to respond to the need to address inequality, and across the region, we are seeing a wave of family-friendly law reforms looking to provide more support for working parents.

“Most developed economies in the region now have equality laws, but there is still some way to go. Equality legislation is not yet globally consistent and employers play a key role in ensuring equality in relation to pay and opportunity and respect and inclusion more generally.”

Key developments

EU The European Commission announced a new directive to address work-life balance and women’s underrepresentation in the labor market in 2019, which has since been adopted by the European Council and is now in effect. Across the EU, the overall rate of employment of women is 11.5% lower than that of men and it is estimated that the economic loss due to the gender employment gap is around EUR 300 billion per year. The European Commission's directive aims to set new minimum standards for EU Member States and “modernize” the existing EU legal framework in the area of family related leaves and flexible working arrangements. The directive introduces compensated parental leave, strengthens the existing rights to parental leave, introduces carer’s leave and extends the right to request flexible working arrangements. To complement the directive, amongst other things, the commission proposes to make “better use of European funds to improve provision of formal care services (childcare, out-of-school care and long-term care)” and to remove “economic disincentives for second earners which prevent women from accessing the labor market or working full-time.” Member States have until 2 August 2022 to adopt the necessary laws to comply with the directive and European employers will need to begin reviewing their practices in readiness for the implementation of the enhanced rights.

France 2019 saw the introduction of an obligation to inform employees of legal regulations regarding sexual harassment and sexist actions and of the contact information for the relevant authorities. Employers must also designate a sexual harassment contact person when there are at least 250 employees. Sexual behavior imposed on a person in a humiliating and degrading way, attempting to undermine the person’s dignity or creating an intimidating, hostile or offensive situation could lead to imprisonment or a EUR 45,000 fine. Discrimination in terms of remuneration, training, redeployment, qualification or classification (for example) will also lead to the same sanctions. In addition, France introduced a new gender pay gap reporting practice. Employers are now subject to a gender pay gap evaluation system involving the evaluation of specific pay gap indicators, the publication of their scores on these indicators and a financial penalty in the event that they do not meet the required level within three years. From 1 March 2020, the index on professional equality between men and women will be extended to companies with 50 to 249 employees and companies with more than 250 employees will have to publish their results for the second time. 1 March 2020 is also the date when companies that have not reached a professional equality score between men and women will be extended to companies with 50 to 249 employees and companies with more than 250 employees will have to publish their results for the second time. From 1 March 2020, the index on professional equality between men and women will be extended to companies with 50 to 249 employees and companies with more than 250 employees will have to publish their results for the second time. 1 March 2020 is also the date when companies that have not reached a professional equality score of at least 75% may be punished and may be sanctioned. Employers in France will need to act now to evaluate their score and determine appropriate action to improve their score, if needed.

Germany Employers will need to prepare to adjust their policies and practices to accommodate changes in the law in relation to sick leave and pay in 2020. As the German Federal Labor Court has recently clarified, the statutory entitlement to remuneration in the event of illness remains limited to a period of six weeks even if, during an existing incapacity to work, a new illness based on another basic illness occurs which also results in incapacity to work (principle of the unity of the case of prevention). In its judgment in December 2019, the German Federal Labor Court held that a new entitlement to continued payment of remuneration for illness would only arise in the event that the first sickness-related incapacity to work had already ended at the time when the further illness led to incapacity to work. Employees have the burden of proof in this regard.

In November 2019, the German Federal Council passed a bill under which employees who are members of the statutory health insurance no longer have to submit to their employer a paper document certifying their incapacity to work when their incapacity for work lasts longer than three calendar days. The employee still must be examined by a physician who has to notify the health insurer when an employee is unable to work due to sickness. Upon receipt of the notification from the physician, the health insurer must prepare an electronic notification for the employer that contains the data on the name of the employee, the beginning and end of the incapacity for work, the date of issue and the information whether it is an initial or a subsequent incapacity to work. This development will only come into force on 1 January 2022.

Netherlands In 2019, employers’ and employees’ associations agreed on preliminary terms to better retirement, which are set to be incorporated into the Dutch pension system in the coming months and years. The agreement involves slowing down the increase in retirement age over the course of five years up to 2024. Until 2021, the state pension age will remain at 66 years and 4 months. It will rise to 66 years and 7 months in 2022, to 66 years and 10 months in 2023, then to 67 years in 2024. Moreover, as of 2021, early retirement will not be penalized for a period of five years subject to certain conditions. Employers will need to factor this into their talent retention planning.

South Africa In November 2019, partial provisions from the Labor Laws Amendment Act came into effect, specifically regarding employees’ right to parental benefits from the Unemployment Insurance Fund. Further amendments to parental and adoption leave may come into force this year and employers will need to be prepared for additional leave being taken by parents.

In addition, affirmative action measures to address dissatisfaction with the pace of progress towards achieving diversity in the workplace are still awaited in 2020. The Employment Equity Amendment Bill of 2018 proposed to empower the Minister of Labor to identify national economic sectors for the purposes of the Employment Equity Act and set numerical targets for designated groups that can be the subject of affirmative action measures, in each economic sector. This is a significant change from the current employment equity regime, which allows designated employers to set their own numerical targets and to take measures to achieve those self-set targets. The Department of Labor no longer views these self-imposed targets as sufficient and employers will need to keep an eye on this in 2020.

Spain Specific regulations regarding gender pay equality were brought in under a Royal Decree Law in 2019. They concern urgent measures to guarantee equal treatment and opportunities for women and men in employment and occupation. The law established specific measures to ensure the effective fulfillment of the equal pay principle, including an obligation for companies to keep a wage register of the mean monthly earnings and gender that should be available for employee representatives for review at least once a year and to the employees themselves through their employee representatives.

In addition to this, before the Royal Decree Law came into effect, only companies with more than 250 employees had to implement an equality plan to ensure achievement of equal treatment and pay between women and men. With the new regulations, this is now mandatory for companies with more than 50 employees and deadlines for completing equality plans are set to fall during 2020, 2021 and 2022, depending on the size of the employer. Employers will need to note the applicable deadlines for completing their plans and start taking action in this regard.

In addition, paternity, adoption and guardianship leaves are to be further enhanced in 2020 and 2021 in Spain. From 1 January 2021 onwards, those leaves will have the same duration as maternity leave (i.e., each parent will enjoy 6 mandatory weeks of parental leave, together with 10 voluntary weeks to be taken on a continuous basis or divided into one-week periods).

**Sweden**
As of 1 January 2020, employees in Sweden may now remain in their role until the age of 68 years (i.e., until the end of the month when the employee reaches 68 years of age), rather than the previous age of 67. Fixed term employment is no longer permitted for employees of 67 years of age unless it is for seasonal work or as a cover for another employee. Fixed term employment or employment for seasonal work will no longer automatically become permanent if the employee reaches 67 years of age, despite being employed for two years or more within the previous five years. Employers will need to adjust their talent succession planning in light of this change.

**United Arab Emirates**
The UAE is paving the way in the Middle East towards globally sound employment policies with the implementation of the new Dubai International Financial Centre (DIFC) employment law in 2019. Employees now enjoy improved employment standards from the provisions on parental leave and pay and anti-discrimination policies. The law now includes broader protection against discrimination and termination of a worker’s employment on the ground of pregnancy.

The UAE is seen to be making consolidated efforts to narrow the gender gap and support the advancement of women in society. In particular, there have been several key developments including the establishment of the UAE Council for Gender Balance, a proposal for a longer maternity leave and most recently, the adoption of a new package of national legislation, policies and initiatives towards the Strategy for the Empowerment of Emirati Women.
GLOBAL OVERVIEW

Technological advancement coupled with a growing appetite for agility and flexibility has undoubtedly led to the recent transformation of traditional employment models, known as “the modern workforce.” 2019 saw an even greater move away from the typical 9-5 office work existence, in favor of contingent, temporary, platform-based and crowd working. As the use of automation and AI accelerate in the workplace, there has never been a more critical time for companies wishing to stay competitive to innovate and revolutionize their working practices.

However, traditional employment laws are lagging far behind and failing to keep up with the rate of change:

- **2018** was a year of litigation, with contingent workers fighting hard to claim recognition and rights for a status that falls outside the typical employment paradigm.
- Misclassification claims increased with varied outcomes and mixed messages, highlighting the need for regulatory and legal reform across the globe.
- In **2019**, a slow and gradual response to the problem emerged, particularly across EMEA and the US, with legislation and regulations introduced to simultaneously encourage innovation and flexibility whilst also avoiding worker exploitation and recognizing change.
- In **2020**, it remains to be seen how much further these developments will progress, but with ongoing political and economic uncertainty across the globe, companies should not expect major legal reform any time soon.

REGIONAL DEVELOPMENTS

THE AMERICAS

“Alternative working models are becoming more commonplace across North America and the rest of the world. As the way people work continues to evolve, the legal landscape also continues to develop and companies should expect this to be an area of focus for legislatures, regulators and courts in 2020 and beyond. Companies should review their employment and service arrangements as well as their equity award documentation and analysis to ensure that they are engaging individuals and, where relevant, offering them equity awards in a manner that complies with applicable law and minimizes risks for the company.”

Key developments

**Canada** Employers in Canada are increasingly using modern workforce arrangements, particularly arrangements that permit flexible staffing, with this trend expected to continue in 2020. However, employers should be aware that express legislative protections against misclassifying workers as non-employees are now in place in Ontario and the federal jurisdiction. In Ontario, the worker bringing the claim must establish that they are an employee, whereas in the federal jurisdiction, the employer must show that the worker is not an employee. Class actions have also emerged in which contractors claim employee status and seek minimum standards entitlements, two of these claims have been certified. In addition, supplied worker arrangements can involve risk since separate legal entities may be treated as one employer if they carry out associated or related activities or businesses. Shared labor relations obligations may also result.

**USA** Contracting arrangements are likely to remain a hotbed for litigation in 2020 and various types of legislation at the state level are being introduced to address misclassification of contingent workers. California’s Supreme Court’s landmark Dynamex ruling in April 2018 made history by laying out, for the first time, a rigid ABC test for determining whether an individual is an employee, with a presumption of employment status for the purpose of wage orders. This has resulted in the introduction of a “Gig Worker Bill” in California. Assembly Bill S is designed to regulate companies that primarily hire gig workers (with certain industry exceptions) and protect these workers from misclassification, ensuring they are afforded minimum protections. This bill goes further than the Dynamex decision; it will not only apply to minimum wages and will provide a full range of employment rights. Other states are following suit. For example, New York, Washington, Oregon and Illinois are proposing similar legislation to that introduced in California, or at least will extend certain protections to gig economy workers. Massachusetts has also enacted an independent contractor law with the presumption of employee status for the purpose of wage laws, with a strict ABC test to overcome the presumption.

New Jersey is, however, going one step further by introducing dramatic changes to the state employment code that broadly redefine many independent contractors as employees, creating a presumption of employment without the industry-specific exceptions set out in the California bill. Not all states are moving with the pro-employee tide. A bill in Arizona, which came into effect in August 2019, takes a different approach, by introducing a “declaration” for workers to sign that states the existence of an independent contractor relationship and renounces rights to employment benefits. “In Texas, the agency responsible for determining classification of status for the purpose of assessing unemployment taxes, adopted a rule in April 2019, stating that workers hired through digital apps will be treated as contractors for unemployment insurance purposes. In Tennessee, a bill came into effect in January 2020 rejecting the strict ABC test and instead adopting a 20-factor test to determine employee status.

“Despite the acceleration in the use of digital platforms, the changing political landscape across much of Latin America continues to dictate developments in the modern workforce in the region. The future of employee rights might be in the hands of newly appointed presidents in Argentina and Brazil, and with long awaited hope for stability in Venezuela, much needed clarifications to the meaning of certain provisions of labor reform introduced in 2012 should be on the horizon.”
**Mexico** A bill was introduced in October 2019 to modify subcontracting provisions currently in force under Mexico’s federal labor and social security laws. Under the bill, companies will only be permitted to subcontract services that are not related to the company’s primary business activity, and certain instances of subcontracting will be considered “sham” arrangements subject to criminal sanctions. Companies operating under a dual corporate structure, or engaging services from third party companies, may need to make significant operational changes to comply with this bill. It also voids subcontracting agreements when the contractor has a direct professional, employment or economic relationship with the beneficiary of the services. Moreover, a National Registry of Subcontracting Companies will be created and only enrolled companies will be permitted to render subcontracting services. Penalties between USD 2,225 and 44,550 may be imposed by the authorities per affected employee.

As of January 2019, the Value Added Tax Law established a new obligation for the contracting party to withhold and pay 6% VAT calculated on the value of the consideration actually paid to the contractor and 3% if such services are provided in the northern border region. This obligation applies when personnel services are available to a contracting party, or to one of its related parties, either in its premises, or outside of the same and whether or not such services are provided under the direction, supervision, coordination or dependence of the contracting party, regardless of the title given to the contract. The status of contingent workers remains a contentious matter in Mexico. With the issue high on the current administration’s agenda, companies should expect heightened inspections by the Labor Ministry Board and social security and tax authorities seeking to stamp out misclassification of employment.

**Argentina** While app-based companies continue to operate in Argentina, the judiciary and legislators are expected to take a hard line against digital platform companies on the ground that they are attempting to conceal employment relationships through contractor arrangements. The appointment of Argentina’s new president in December 2019 is only likely to reinforce this position. Alberto Fernandez has declared his defense for more traditional and hierarchical models over more “unstable” gig arrangements. While increased flexibility for home working is expected, the expansion of the modern workforce, or introduction of rights for contingency workers, is highly unlikely.

**Brazil** Many believe the election of new Brazilian president Jair Bolsonaro has polarized the country, but he has undoubtedly already made bold moves towards economic and labor reform in Brazil. Bolsonaro has committed to making laws more pro-employer and more flexible while reducing labor costs, with the ultimate goal of creating more jobs and attracting investment.

Amongst the changes introduced by the new Law of Economic Reform is the obligation to only track employee working time in companies with over 20 (rather than the previous 10) employees, potentially moving away from the traditional “punch in punch out” system for recording working hours. Executive Order 905 has also been introduced and contains a number of employer-friendly initiatives including “green and yellow” contracts designed to generate low-paid jobs for young workers aged between 18–29 years old and increased flexibility for Sunday and holiday working. These provisions will remain in force at least until March 2020, this being the latest date by which the Executive Order can be voted into a new law (otherwise it will lose its validity).

**Colombia** Colombia’s labor legislation has remained unchanged since the beginning of the 20th century and is failing to keep pace with the evolution of modern working practices. 2020 is unlikely to bring about major changes to employment models and thus reduce labor claims. Notwithstanding, debate is growing about how to regulate these new working arrangements and ensure individuals working under the gig economy avoid being exploited, are able to earn sufficient income and contribute to the social security system.

**Venezuela** With the country embroiled in a major political crisis for a number of years, the major focus has been on political changes rather than labor reform and the protection of workers. Labor reform was introduced in May 2012 and employers are still waiting for interpretations of key concepts, ie outsourcing limitations. However, there is hope for change as the political situation shows positive signs of improving, with the National Assembly working on legal steps to appoint a new National Electoral Council with a view to holding elections in 2020. Watch this space for movement in Venezuelan labor reform.

**Asia Pacific**

“Technological change across Asia Pacific is gathering pace at an unprecedented rate, and as companies scramble to keep up, the implications for the evolving workforce are often overlooked. China is taking steps to reward employees for technical innovation, and across the region, we are seeing changes at a legislative and judicial level to provide clarification and define employment concepts whilst offering further rights and protection to workers.”

**Key developments**

**China** Beijing’s top law-making body issued regulations to boost the commercialization of technological achievements (effective as of January 2020).

Under the regulations, companies that own “technological achievements” are to reward and remunerate their technical personnel who contribute significantly to the creation or transformation of technological achievements. As for the method, amount and time limit of the reward and remuneration, companies can adopt their own policy in accordance with the law or reach an agreement with the technical personnel. If there is no company policy or agreement on such matters, companies should reward and remunerate the technical personnel in accordance with the Law on Boosting the Commercialization of Technological Achievements, most recently amended in 2015. Companies, especially small and medium-sized ones, will receive preferential treatment for commercialization of technological achievements. It is worth noting that the new law covers not only patented inventions, but also technological achievements that may not be protected by IP laws. In light of the regulations and existing laws, it is advisable for companies to formulate a reward and remuneration policy for their technical personnel. Companies should also note that the introduction of implementing rules in Beijing might increase awareness among employees in Beijing of their right to compensation.

**Japan** Changes are being introduced across Japan to accommodate a developing and flexible workforce. These include:

- Amendments to the flexitime system, allowing employers to deal with work fluctuations more easily through changes to averaging flexi work for recording/payment purposes.
- Rest breaks and intervals between workdays have been amended, requiring employers to make efforts to secure certain break times between work.
- Amendments to tracking of working hours have been introduced, requiring employers to track working hours of all employees.
- Strict overtime limits have also been introduced.

Businesses will need to adjust their practices to ensure compliance with these requirements.
Philippines Modern workforce and gig economy issues continued to be a challenge for businesses in 2019 as laws and regulations favor the more traditional employment relationship. Misclassification remains a hot topic as the Philippine Department of Labor and Employment is expected to continue its enforcement actions against improper use of contractors. Although the president vetoed a bill in 2019, broadening the scope of prohibited forms of contractor arrangements, there is mounting pressure to enact laws mandating indefinite term employment relationships across a number of services.

Singapore In July 2019, the Singapore High Court clarified that a multi-factor approach is to be taken when deciding whether a person should be classified as an independent contractor or an employee. The Singapore courts will also be obliged to have due regard for the parties’ intentions rather than rigidly applying a set of factors when making its determination. Even if the presence of certain factors could evidence a relationship which is different from what the parties intended, the court will examine if there is a practical or business reason behind the arrangement. It is worth noting that the factors taken into account are not exhaustive. The Singapore court will take a practical, commercial view when assessing whether a particular worker is an employee or an independent contractor.

Taiwan In April and May 2019, the Labor Standards Act was amended to officially regulate “labor dispatch” arrangements with third-party engagements. The amendments define the concepts related to labor dispatch and regulate these arrangements. For example, labor dispatch workers cannot be engaged on fixed-term contracts that can be easily terminated, end user companies can be jointly liable for the agency’s failure to pay wages and the end user is prohibited from interviewing and selecting dispatched workers.

Vietnam Vietnam’s new Labor Code is due to take effect from 1 January 2021 and includes changes that potentially provide more regulation to modern working arrangements, such as:

- The expansion of the scope of application of certain regulations to "workers without labor relations," which is defined as workers who are working on a non-employment basis.
- In addition, the definition of an employee has been broadened. In particular, any person working under an agreement who satisfies the following three factors: (i) having a job; (ii) getting paid; and (iii) working under the supervision of an employer, will be considered to be an employee under the scope of the new Labor Code, regardless of the name and form of the relevant agreement.

The new Labor Code recognizes the validity of labor e-contracts that are established in the form of data messages in accordance with e-transactions laws. There are now only two types of labor contracts: definite-term labor contracts, with terms of 36 months or less and indefinite-term labor contracts.

For details of further changes, see our Managing Business Change and Disruption section below.

...with ongoing political and economic uncertainty across the globe, companies should not expect major legal reform any time soon.
Italy In January 2019, a landmark decision in the Turin Court of Appeal declared gig economy riders to be independent contractors. Following this decision, Italy has taken increased steps to regulate these evolving relationships and these are likely to continue into 2020. In April 2019, the Lazio region approved a regional law to regulate gig economy riders through improving health and safety measures, increasing transparency and ultimately avoiding exploitation. In May 2019, a Florence-based food delivery company entered into a shop agreement, acknowledging riders as employees and in September 2019, a new decree was enacted calling for the introduction of a presumption of employment relationship with an entitlement to minimum pay, insurance and health and safety protection. A new law introduced in November 2019 means that there is also a greater risk of freelancers or contractors being found to be employees unless certain statutory criteria are met. Businesses will need to be alert to the increased regulation of modern workforce relationships in 2020.

Netherlands Misclassification remains a hot topic for the Dutch government. Drafting of a new law to replace the existing Deregulation of Labor Relations Act is under way. For now, there exists something of a legal “limbo,” as the existing law is suspended pending the new law coming into force, currently expected by 1 January 2021. This means, with the exception of cases of malicious intent, the government will not enforce the law against companies who hire independent contractors. The government could, however, give instructions to companies regarding its contractors, with which any such company should comply.

Spain The use of contingent workers (particularly in relation to outsourcing) remains common practice in Spain. An expansion of outsourced workers’ rights is under discussion, with potential for the equalization of working conditions between employees of subcontractors and those of client companies. Regulation (and limitation) of fixed-term contracts is also possibly on the horizon to curb the violation of the limits on these types of contracts. The new government also plans to limit outsourcing to non-core business activities. The increase in more precarious gig work also continues to be an issue across Spain. However, Spanish labor courts have taken a mixed approach to determining the legal status of workers in the gig economy and it is predicted that the Supreme Court will take some time to come up with a single solution. The issue is firmly on the political agenda. With a recent election and change in government in January 2020, there are plans to tighten the Labor Inspectorate’s control of this issue through stricter imposition of sanctions to prevent an erosion of employment rights and increased misclassification claims as a result of the expanding gig economy.

UK There has been a continued rise in flexible staffing arrangements and unconventional working practices. However, with Brexit dominating the UK political agenda, there has been little progress in developing the legal framework for those working under these emerging workforce models. After a landslide victory in the late December election, Prime Minister Boris Johnson declared that UK judges will be given powers to overturn ECJ rulings, meaning employers may have the ability to challenge protections for workers originally introduced by the ECJ. In the meantime, uncertainty is continuing for gig economy drivers in the UK, following the loss of a license to operate in London because of a pattern of regulatory failures due to drivers’ ability to manipulate the lack of strict vetting procedures. This issue highlights where innovation and regulation may be increasingly at odds and where regulatory reform of the evolving industry is vital to its existence. Meanwhile, a landmark decision from 2019, which was found in favor of worker status, is due to be challenged at the court of appeal in July 2020. Separately, changes are afoot for employers who hire self-employed contractors through an intermediary company. From April 2020, they will be responsible for determining whether the IR35 rules (legislation aimed at tax avoidance that enables the collection of additional payments where a contractor is an employee in all but name) apply to the arrangement, instead of the intermediary itself. If the rules do apply, the self-employed contractor should be taxed via the employer’s payroll.
GLOBAL OVERVIEW

With worldwide economic uncertainty and the risk of global recession looking set to continue into 2020, and the recent Coronavirus outbreak impacting the global economy and causing operational challenges, many multinationals are looking for ways to bolster stability and maximize flexibility. Global employers are increasingly considering strategic restructurings, layoffs and/or furloughs to maximize efficiencies, minimize exposure to risk and reduce labor costs in response to economic pressures. When employers are forced to consider these difficult workforce changes, they must consider a framework of numerous and constantly evolving employment laws. When contemplated on a global scale involving multiple jurisdictions, the complexities only increase.

Particular trends that will affect business change in 2020 include the following:

Employee activism: We saw an increase in employee activism in 2019, along with a trend in changes to collective bargaining and trade union regulation across a number of jurisdictions worldwide. Countries are seeking to clarify the framework for collective bargaining and collective action, to ensure unions and employers can work together effectively. Meanwhile, workers have been organizing themselves with walkouts, protests, crowdfunding and online campaigning, for example, creating increased public scrutiny on businesses and putting pressure on them to do more about issues such as social and environmental causes. In 2020, employers need to be ready to handle themselves in the spotlight, anticipating any potential disruption when planning significant change.

Combating skills shortages: While there had been a trend toward protectionist immigration policies in some parts of the world, more jurisdictions are now taking steps to encourage labor immigration by relaxing entry requirements for non-national employees. For some countries, there is a need to address acute labor or skills shortages. Other measures being taken include offering incentives to businesses working in specific sectors to encourage and support the development of skills in those areas. Companies will need to factor in these challenges and requirements when planning for expansion or workforce mobility in 2020.

Managing employee data: Another legal issue affecting cross-border transactions and business change is the changing status of the law in relation to personal data transfers outside of the EU. The EU’s highest court, the Court of Justice of the European Union, is evaluating the legitimacy of the EU standard contractual clauses (SCC), which have been the bedrock of cross-border personal data transfers outside the EU for many years. Given the very wide use of SCCs in many global organizations’ compliance plans, companies will now need to prepare to evaluate the adequacy of their existing data transfer agreements in protecting data subjects’ rights, bearing in mind that they are subject to scrutiny by national data protection regulators. Companies must also be prepared to evaluate alternative grounds and approaches to addressing the cross-border transfer issue if necessary. Global employers also need to pay close attention to the increased regulatory focus on data protection that is spreading across jurisdictions worldwide.

THE AMERICAS

The North American transactional market has been bucking the global downward trend, according to our Global Transactions Forecast for 2020. Still, we anticipate a pause in transactions this year, due to a slowing US economy, the fact that 2020 is a presidential election year, continuing trade policy tensions, and a looming equity market correction.

“Businesses in North America should be prepared for anything and everything in 2020. Trade tensions, political uncertainty, increasing employee activism, changes in data privacy, and more, will all affect workforce planning and shape strategic decision making in the coming year.”

In Latin America, labor reform and changes in political leadership have been key themes, aiming to bring about more stability for businesses and investors in the region. The EU and Mercosur free trade agreement looks set to bring about legal reform within the Mercosur countries — including Argentina, Brazil, Paraguay and Uruguay — in order to keep pace with the EU, and external pressures are starting to bring about change in other countries. Local governments will need to adapt their tax, labor and fiscal regulation to keep their economics competitive and we are already seeing developments taking place.

“The shifting political and economic landscape is gradually beginning to stabilize across the region. We are seeing governments taking proactive measures to protect their economies, such as the emergency measures in Argentina and new labor reform proposals in Brazil. Businesses in the region will need to be prepared to be flexible in 2020 as more measures are introduced.”

USA In the US, immigration law and policy remains at the forefront of American politics. The enforcement of employment-based immigration changed significantly and came under particular scrutiny in 2019. This includes petitions for non-immigrant status, particularly H-1B, attempted entry at the US border or ports of entry and applications for visas of all types at a US embassy or consulate abroad. There has been a dramatic increase in the issuance of Requests for Evidence for all US Citizenship and Immigration Services filings and widespread reports of increased denials at the US border and US embassies and consulates abroad. Employers can expect continued scrutiny in 2020. In California, the Consumer Privacy Act (CPA) took effect on 1 January 2020, imposing a wide range of new requirements for the collection and processing of personal data of California residents. The act provides a temporary and limited reprieve for employee data, to a certain extent, until 31 December 2020. However, the CPA requires entities to provide a CCPA-compliant privacy notice to employees in California as of 1 January 2020 and the information must take a look back to 1 January 2019, i.e., companies must disclose how they collected and used employee information in 2019.

Meanwhile, employers across the US will need to be mindful of several new state laws aimed at limiting the enforceability of non-compete agreements with low-wage employees. This includes laws in Maine, Maryland, Oregon, Rhode Island and Washington. Crucially, while the protection of low-wage worker job mobility is a key driver of these new state laws, each has its own unique nuances and one-off requirements, further complicating employer efforts to protect their legitimate business interests when key employees leave. Some of the new laws became effective in 2019 while others take effect in 2020 and there is additional new proposed federal legislation currently pending before the Committee on Small Business and Entrepreneurship. Employers will need to audit their non-compete agreements to ensure compliance with state specific legal requirements in light of these new laws.

Canada The Ontario government recently took steps to lower business costs and enable Ontario employers to be more competitive, including the following:

- No approvals needed for excess hours/overtime averaging: employers are no longer obliged to obtain regulatory approval to make agreements to either: (1) permit employees to exceed 48 hours of work in a work week; or (2) allow averaging of an employee’s hours of work for the purpose of determining entitlement to overtime pay.

- Changes to averaging agreements: employers may average the employee’s hours of work in accordance with the terms of an averaging agreement between the parties over a period that does not exceed four weeks. Existing overtime-averaging agreements in unionized workplaces would continue to be effective until a subsequent collective agreement comes into effect.

- Deemed non-construction employers: designated employers (including municipalities, school boards, hospitals, colleges and universities) are deemed “non-construction employers”, thereby releasing them from the labor relations law applicable to the construction sector, including collective agreements negotiated on a sector-wide basis.

Employers can enjoy more flexibility as they adapt to these changes in 2020.

Mexico Significant labor reforms announced in 2019 by the pro-employee leadership under President AMLO are now partly in effect, while some will not come into force until later in 2020 or beyond. Changes include developments relating to collective bargaining and freedom of association, aimed partly at combatting companies using ‘white unions’ or non-operating unions to prevent strike calls. Unions were not previously required to prove representation of employees. Under the reforms, unions are now required to obtain a certificate of representation to prove they represent at least 30% of employees covered by CBAs, and labor boards will have to approve the contents of CBAs. These changes align with the USMCA treaty.

In addition, new labor courts will be introduced, as well as a new authority for conciliation and labor registration. Conciliation centers are expected to operate in the next three years. Meanwhile, procedures for individual and labor disputes have been shortened to expedite labor enforcement. Employers will need to factor in these new requirements when planning to implement changes in the workforce.

Argentina Following President Alberto Fernández assuming the executive branch on 10 December 2019, he swiftly enacted an Urgency Decree on 13 December 2019, applying a penalty to employers who dismiss employees at any time over the next six months (i.e., the penalty will cease on 10 June 2020). The penalty consists of paying double severance, i.e., an additional 100% of all statutory severance items due to employees upon their dismissal. Argentina’s unemployment rate is at 9.7% and has not moved much over the past 10 months. Employees hired after 13 December 2019 are not eligible to receive the penalty under this Urgency Decree if they are dismissed.

On top of the difficult economic situation in Argentina, where inflation was around 50% at the end of 2019, this decree has discouraged employers from continuing to analyze possible investment and instead caused them to concentrate on managing the challenges of a difficult business environment. Meanwhile, the Argentinean Executive has modified the terms of admission of foreign workers in Argentina. This will benefit certain foreign visitors to Argentina, provided they are from certain countries and subject to specific conditions.8

Brazil Brazil has seen significant labor reform over the past year, much of which provides more flexibility to employment contracts and allows for more negotiation between parties. Those that could have particular impact on employers looking to do business in Brazil in 2020 include the introduction of Executive Order 905, which contains a number of employer-friendly initiatives, including changes to profit sharing plans, making terminations less costly by ending 10% FGTS social security contributions on termination payments, revocation of fines for the lack of timely annotation to the Labor Booklet within 48 hours and a change to the requirement to record working hours, which is now only required for companies with 20 or more employees.

Businesses in Brazil will need to ensure compliance with the new Executive Order 905 and keep watch for further developments.

Colombia Employers planning to use foreign workers in Colombia in 2020 will need to be aware of new and anticipated changes in immigration laws. In October 2019, the Special Administrative Unit of Migration in Colombia enacted a new resolution that defines the conditions to allow the entry of foreign workers for temporary stays, permanence and exit of foreign visitors to Colombia. This resolution also gave discretionary powers for immigration officials at the port of entry to require foreign visitors to provide documentary evidence of the activities to be performed in Colombia during their stay. This evidence includes, for example, invitation letters, travel itinerary, return tickets, accommodation and economic solvency. The resolution also introduced new classifications of the different visa waiver permits available to citizens of non-restricted countries under specific situations, such as short-term business visits and the urgent provision of specialized technical assistance. This change should be considered by employers when issuing invitation letters for temporary foreign business visitors.

In 2020, it is likely that more developments in immigration law will take place, following the Ministry of Foreign Affairs’ draft bill on a possible immigration reform in 2019, aiming to create more rigorous visa application processes and requirements.

In the meantime, there has been a recent and widely publicized proposal to reduce the maximum number of working hours per week (currently 48 hours). A bill amending the law is being studied by Congress and the chances of it being approved are quite uncertain. There is a lot of resistance to the change and employers will need to watch for developments on this in 2020, while reviewing the potential impact on their business if this change is brought in.

Venezuela The political situation in Venezuela is starting to show positive signs, after having been in crisis for some years. With the National Assembly working on the legal steps to appoint a new National Electoral Council, some are anticipating possible presidential elections for 2020. Further labor reform may be on the way, following the previous labor law reforms that began in May 2012, which have not yet been fully interpreted by the judiciary. Meanwhile, governing bodies have been making efforts to implement and expand Productive Workers Councils, which are a relatively new concept in Venezuela. These councils are mandatory for employers and the government is expected to continue to put pressure on companies to implement these councils on a sector-by-sector basis. Companies doing business in Venezuela will need to monitor the situation in 2020 and create nimble and flexible managerial and operational structures in order to be responsive to change.

8 Labor and Immigration Alert: https://danslechange.com/en/9150247b68a9f180/1/03155862/Maizalz8yih4vldy-4c4d952c
In our Global Transactions Forecast for 2020, we found that transactional activity in APAC cooled during 2019, partly reflecting the reduction in Chinese outbound deals due to government restrictions on outward investment, along with the broader loss of economic momentum across the Asia Pacific region linked to the slowdown in global demand. Meanwhile, according to our C-Suite survey of 600 business leaders across Asia Pacific, tech disruption is affecting every industry in the region at an accelerating pace and businesses are struggling to adapt and compete against new entrants arising from the online era.

“2019 saw significant labor law developments across the region, with governments looking to improve employee protections and keep their economies competitive in light of new trade deals and market pressures. In 2020, businesses in Asia Pacific will need to continue adapting to the developing labor law regimes across the Region, whilst remaining competitive amid the slowing economy.”

Key developments

Australia
As part of Australia’s Fair Work Commission’s ongoing review into the effectiveness of modern awards, the payment of annualized salaries is the latest change affecting employers in the country’s professional services industry. Paying an annualized salary has often been seen as a way to avoid meticulous compliance with modern award clauses, including those dealing with hours of work, overtime, allowances and annual leave loading. Many employers rely on these arrangements assuming they are legally compliant. From 1 March 2020, this will no longer be the case. Employers will face a broad range of new obligations1 that they must comply with in order to ensure that these annualized salaries meet the legal requirements. The new changes amend certain modern awards and could see employers who pay an annualized salary exposed to fines of up to AUD 63,000 per occasion, potential underpayment claims and significant reputational damages. Businesses affected by this change will need to adjust to new recording-keeping and notification requirements, among other things, by 1 March 2020.

Malaysia
Employers looking to conduct dismissals in Malaysia in 2020 will need to ensure compliance with the changes brought about by the Industrial Relations Amendment Bill2, which was passed by the Dewan Rakyat in October 2019 and by Dewan Negara in December 2019. In part, the changes are expected to result in a floodgate of unfair dismissal claims at the Industrial Court, following the removal of the minister’s discretion to filter out ‘frivolous’ and unfair dismissal claims. As a result, employers will need to be sure to implement stringent processes when implementing terminations, to ensure they are done for a “just cause or excuse.” In addition, the bill includes changes to union procedure and collective bargaining, such as changes to the procedure for determining which union has sole bargaining rights, broadening the scope of matters that unions can raise questions about during collective bargaining and an increase in the penalties for a contravention of Malaysia’s Industrial Relations Act. The Industrial Relations Amendment Bill is not yet in effect but is anticipated to be published soon. Employers will need to factor in these new obligations when planning workforce change in 2020.

Vietnam
Following the signing of the EVFTA (EU Vietnam Free Trade Agreement) in June 2019, Vietnam has undergone significant developments in its labor and employment laws, consistent with its commitments to the sustainability and improvement of workers’ rights and labor standards. The EVFTA is said to be the most ambitious free trade deal ever concluded with a developing country and will ultimately open up Vietnamese services and public procurement markets to EU companies. The ratification of the EVFTA is expected to be considered and voted on by the European Parliament in early 2020. The new Labor Code, which our team has been deeply involved in the amendment process of, is due to take effect from 1 January 2021 and includes changes such as:

• the use of probation clauses in labor contracts
• changes to forms and types of labor contract
• more bases for both employers and employees to unilaterally terminate labor contracts
• an increase in the monthly overtime cap from 30 hours to 40 hours
• employees’ right to set up their own representative organizations (to date, Vietnam’s only representative organization of laborers has been the Vietnam General Confederation of Labor).

Employers will need to spend time in 2020 preparing to adapt to these changes, along with others2, under the new code.

**EUROPE, MIDDLE EAST & AFRICA**

**France** Among President Macron’s reforms, the merger of the historic employee representative bodies (i.e., employee delegates, works council and CHSCT) into one single body, known as the Economic and Social Committee (Comité Social et Economique or CSE) is now in full effect. As of 1 January 2020, the CSE replaced the previous employee representative bodies in all companies that employ at least 11 employees over a consecutive 12-month period. Arguably, this streamlines the process of managing employee relations for employers.

Other changes now in effect include Macron’s law related to business growth and transformation, the “Loi Pacte” dated 22 May 2019. It harmonizes and simplifies certain obligations that were to be triggered when the headcount threshold was reached are now exempt from social charges (for which the rate is 20%). The Loi Pacte also created a headcount below 250 and participation for entities with a headcount below 50 employees, are further delayed. The threshold must be reached or exceeded during a five-year period (against 12 months before) and the period will be reset when the threshold has not been reached for one year. For instance, a mandatory profit-sharing plan (so-called “participation”) is only required as of the sixth year after the threshold of 50 employees is reached.

Meanwhile, non-mandatory profit-sharing plans (so-called “intéressement”) for entities with a headcount below 250 and participation for entities with a headcount below 50 employees, are now exempt from social charges (for which the rate is 20%). The Loi Pacte also created a new pension scheme product that can be implemented on an individual basis. It is now possible to implement a company pension plan, or “PERCO,” without having a company savings plan in place, and the social charges rate for the PERCO can be binned to 16%.

**Germany** The German government simplified the conditions for the acquisition of German work-related residence permits for non-EU nationals, in line with its aims of stimulating economic growth and combating labor and skills shortages. Until now, skilled workers without a university degree from third countries were only allowed to work in Germany if they were employed in a so-called shortage occupation, such as nursing care for the elderly.

From 1 March 2020, all skilled workers — regardless of their occupation — will be allowed to do so if they have a job offer, a recognized vocational qualification and language skills. Employers can adjust their talent planning in 2020.

**Spain** Following the recent election and change in government in January 2020, significant labor reform is anticipated in the coming year. In particular, reforms could create greater liability for employers in terms of social security and salary costs. For example, social security costs are expected to be increased for highly paid employees and the government recently announced an increase in the national minimum wage, bringing the total increase in the minimum wage over the past two years to almost 30%. Changes in the legal justification for dismissals are also expected, with the aim of restricting the grounds that can justify a redundancy.

Meanwhile, changes in collective bargaining arrangements may come into effect, including a switch to a situation where sector-level CBAs can be replaced by company-level CBAs in relation to certain issues (including salary amount, working hours and overtime, among others).

In addition, the new government plans to lengthen the expiration period of CBAs (currently one year from the day any of the signatory parties contest the CBA, unless otherwise agreed). The new government plans to lengthen the expiration period of CBAs (currently one year from the day any of the signatory parties contest the CBA, unless otherwise agreed). The new government plans to lengthen the expiration period of CBAs (currently one year from the day any of the signatory parties contest the CBA, unless otherwise agreed).

In the meantime, the obligation of unions to conduct a secret ballot before engaging in a strike or lockout was clarified by the Labor Court in 2019. This provides more certainty to employers and registered trade unions alike. The Labor Court considered the lawfulness of a strike that is not preceded by a secret ballot of its members and held that a trade union (or an employer’s organization in respect of a lockout) must conduct a secret ballot of its members before engaging in a strike. This requirement applies to trade unions that have already included the requirement of a secret ballot in their constitution as well as those that have not yet included such a provision. Unions that do not comply with this provision may not engage in a strike and employers may interdict any strike undertaken in these circumstances. The same applies in respect of employer’s organizations.

In relation to immigration policy, the Department of Higher Education released a draft list of critical skills in 2019 for public comment that was much shorter and more restrictive than the previous critical skills visa list released in 2014. It is expected that the new list will be finalized and released in 2020. Businesses will need to review their arrangements with non-national employees in light of the amended list.

**United Arab Emirates** In the DIFC, significant changes were made to the existing employment law in August 2019. These included new provisions for secondment to a DIFC-based employer, restrictions on the employer’s ability to make a payment in lieu of notice and recognition of settlement agreements to terminate employment or settle disputes subject to certain conditions. These changes provide more clarity to employers managing changes in the workforce within the DIFC.

In Dubai, data privacy law is moving quickly and in the absence of one federal authority coordinating legislative efforts, various sectoral regulators are introducing their own data protection and data security requirements. Employers will need to keep watch for developments in their sector in 2020. Meanwhile, the Emiratization campaign, aimed at increasing the number of Emirats in the job market, remains high on the government’s agenda. 2020 could see more companies being encouraged by authorities to enhance their Emiratization efforts. Companies will need to ensure that they are compliant with quota requirements and required practices for recruitment, and continue to factor this into talent planning.
UK With the UK having made its exit from the EU with effect from 31 January 2020, and the transition period in effect at least for the remainder of 2020, it is unlikely that employers will see any significant change to employment laws in 2020. However, once the transition period has ended, a broad group of British judges may be able to depart from previous rulings of the European Court of Justice, meaning there may potentially be significant changes to numerous aspects of employment law and practice, such as holiday pay and agency workers’ rights, as early as in 2021. The UK government has repeatedly said it is not intending to decrease workers’ rights — it remains to be seen whether these statements will continue.

In the meantime, during 2020 businesses will need to work out the impact of Brexit on their current European Works Council arrangements, particularly in terms of UK representatives and the number of employees they will have in Member States following Brexit. In addition, there may be some potential impact on the social security framework for employees working temporarily in another EU jurisdiction.

When employers are forced to consider difficult workforce changes, they must consider a framework of numerous and constantly evolving employment laws.
Employment & Compensation

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