

ABA International Labor and Employment Law Committee Newsletter

Winter 2022-2023

Editor: [Tequila Brooks](#)

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Message from the Chairs

Dear Friends and Colleagues:

2022 was a year of considerable changes in the job market. Terms such as remote working, great resignation, work/life balance, and short week have become commonly used. The reallocation of international employees at all levels has changed during and following the pandemic. In the second half of the year, we also witnessed the phenomenon of the reorganization of large US IT companies, which indeed anticipates a future trend in other sectors.

Based on this perspective, all legal operators – lawyers, academics and institutional representatives – are called to be active subjects of change. And today, as never before, the American Bar Association plays a decisive role in providing information and creating dialogue between all the stakeholders.

As co-chairs of the International Labor and Employment Law Committee, we are committed to nurturing dialogue within the Committee, and we believe that the participation of all is more important today than ever given the significant changes that are taking place in the labor market.

We look back fondly at the incredibly informative panels on the International Track at the 16th Annual Labor and Employment Law Conference in Washington, D.C., and look ahead to the 2023 Midyear Meeting of our Committee in Amsterdam (April 30 – May 4).

We also welcome to the 2023 leadership of our Committee the following new co-chairs: [Claire Dawson](#), Employee, [Cristiano Cominotto](#), International Union & Employee, [Paul Callaghan](#), International Employer, and [Monika Mehta](#), Union & Employee. We welcome back for their last year of Committee leadership [Kelly Bunting](#), Employer, and [Ify Okoli-Watson](#), In-House Corporate, and we give a big shout out to the co-chairs whose terms ended in 2022: [Melanie Crowley](#), [JJ Rosenbaum](#) and [Nancy Shilepsky](#).

The 2023 Committee co-chairs look forward to building upon the great traditions of this Committee, including sourcing and presenting cutting-edge topics of importance to international practitioners, as well as continuing the fostering of global friendships and the camaraderie that have always been the hallmark of our Committee.

If you missed the Annual Section Conference in Washington, D.C., the papers and presentations of the three International Track programs are available for download on the Section webpage: https://www.americanbar.org/groups/labor_law/events_cle/llel-conference16/conference-materials/. A huge thank you to our panelists for “Securing Client Communications and Data: Requirements for Attorneys Practicing Labor and Employment Law Internationally,” “Was Brexit that Bad? Separating the Hype from Reality,” and “Workplace Culture Shifts and New Atypical Work Arrangements.” And an especially huge thank you to those speakers who stepped in at the last moment for the original speakers who could not attend the Conference: [Marcia Longdon](#), [Denise Backhouse](#) and [Johannes Traut](#).

And if you missed the Committee’s Business Meeting at the Annual Conference, we are very excited to announce the 2023 Midyear Meeting will take place at the Sofitel Legend The Grand Hotel in Amsterdam, The Netherlands, from April 30 to May 4. Another huge thank you to the Host Committee of our 2022 Midyear Meeting in Berlin, Germany, without whom we could not have had such a fantastic meeting: [Dr. André Zimmermann](#), [Dr. Thomas Granetzny](#), [Dr. Kara](#)

[Preedy](#), [Dr. Daniel Hund](#), [Peter Krebühl](#), [Dr. Christopher Jordan](#) and [Benjamin Biere](#). And a welcome and thank you to the members of the 2023 Host Committee: [Wietje de Muinck Keizer](#), [Martijn van Hall](#), [Bart Hunnekens](#), [Els de Wind](#) and [Thomas Timmermans](#).

In case you haven't noticed, there are a LOT of people who work together all year long to make our Midyear Meetings and our International Track presentations at the Annual Section Conferences successful.

We hope you will consider attending the 2023 Midyear Meeting in Amsterdam, and please reach out to any of the co-chairs or Brad Hoffman or Rose Ashford of the ABA if you are interested in a sponsorship. The Midyear Meeting not only takes teamwork, it takes money!

Until we meet again, we say "tot ziens" – for now!

Warm regards,

The Co-Chairs

[Kelly Bunting](#), Employer
[Paul Callaghan](#), International Employer
[Cristiano Cominotto](#), International Union & Employee
[Claire Dawson](#), Employee
[Monika Mehta](#), Union & Employee
[Ify Okoli-Watson](#), In-House Corporate

THANK YOU, RICK BALES!!

If you have enjoyed reading the International Labor and Employment Law Committee's Newsletter all these years, then please thank the man who is largely responsible: [Professor Rick Bales](#). Professor Bales has been the curator of the content of our newsletters since February 2015. He is the one who encouraged our members to submit their articles, came up with topic ideas, encouraged and supported those who did not think they could write a good article, and always made sure the newsletter was timely, informative and full of interesting ideas that kept everyone talking. The Committee newsletter was a beacon of light during the dark times of COVID, when none of us could meet in person.

Professor Bales may have stepped down from his position as editor, but he will remain a valuable and valued member of our Committee. Now he will now have more time for his arbitration work and will continue teaching at Ohio Northern University (where he was dean for 3 years) and as a visiting professor at other universities, which have recently included the University of Akron and the Peking School of Transnational Law in Shenzhen, China – not to mention the immeasurable support he provides for the labor and employment law community through the Colloquium for Scholarship in Employment and Labor Law (COSELL), [Workplace Prof Blog](#), and SSRN.

Please join my co-chairs and me in thanking Rick for an oftentimes thankless job. He has been the driving force in keeping the Committee's newsletter going and in making it the fantastic publication it is today.

Kelly Bunting

2023 Midwinter Meeting Scheduled for Amsterdam, The Netherlands

Dear Friends and Colleagues:

We hope that 2023 is off to a great start for all of you and we look forward to seeing you all in May at our Midyear Meeting in Amsterdam, The Netherlands.

We are all very excited to be hosting the next Committee Midyear Meeting, which will take place in The Netherlands for the first time since 1999. We are pleased to announce that registration is open for our meeting in Amsterdam, April 30-May 4, 2023 at the historic [Sofitel Legend The Grand](#) hotel in the city center. Please visit the [Committee website](#), which includes the meeting registration link, a draft agenda and hotel reservation information.

We are putting together a lively and informative meeting that will focus on many global employment and labor law issues with a focus on developments in Europe. A few of the topics on the agenda include:

- On opening day, we will present an in-depth review of labor and employment law in The Netherlands, including employability challenges and the “Dutch polder model,” which is traditionally characterized by an active and constructive dialogue between trade unions and employers’ organizations.
- Over the course of the meeting, we will hear from labor and employment lawyers and in-house legal counsel from around the world who will speak about important issues such as workforce investigations, diversity and inclusion, immigration, advances in AI regulation in the workplace, the GDPR after five years, and flexible working (including the 4-day work week).

There will be many opportunities to explore Amsterdam with your colleagues with a tour guide. We also will host several dinners and cocktail receptions in historic locations throughout the city.

Please join us for what we expect will be a great opportunity to learn and share your thoughts and ideas with fellow labor and employment lawyers from around the world.

We look forward to hosting you all soon in Amsterdam!

Warm regards,
The Host Committee

- [Bart Hunnekens](#)
- [Els de Wind](#)
- [Martijn van Hall](#)
- [Thomas Timmermans](#)
- [Wietje de Muinck Keizer](#)

Editor's Note: Winter 2022/2023 issue of the *Newsletter*

Welcome to the Winter 2022/2023 edition of the *Newsletter*!

Thanks to our many contributors, this edition demonstrates that workplace law around the world continues to develop, innovate and grow – even now, 104 years after the establishment of the International Labor Organization. It is one of the reasons all of us have dedicated ourselves to International Labor and Employment Law.

The themes of social protection and workplace benefits stand out in this edition's articles. Articles on these themes include the adoption of innovative social protection laws in a number of countries, including the adoption of an unemployment scheme in the UAE, passage of a new Sick Leave law in Ireland, creation of a Portable Retirement Fund in Mauritius, and the establishment of a new and ILO implementation of a new pilot project in Bangladesh to extend compensation to workers who are injured on the job.

The ILO features prominently in this edition. Not only does the ILO's work stand out in Bangladesh, but the ILO Office for the US and Canada is providing guidance to local governments in the US to promote sustainable decent jobs in the green economy. Finally, the International Labor Conference took a crucial step forward to ensure decent workplaces in the world by incorporating Occupational Safety and Health into the 1998 Declaration on Fundamental Principles and Rights at Work.

In addition, this edition contains articles about the new 4-day work week law recently adopted in Belgium, legal and policy measures in Poland to adapt to its recent change to a migration destination country, the adoption of a new Women on Boards Directive in the EU, passage of an adoption benefits law in Switzerland, and reform of the employment provisions of Italy's Civil Law.

Don't forget two exciting events coming up: In addition to the International Labor and Employment Committee's Midyear Meeting in Amsterdam in May, the African Labour Law Society will be holding its 5th Conference in Mauritius in March of this year.

Thank you to all of our authors! We look forward to contributions from more authors on workplace-related legal topics from around the world. Please take note of our upcoming deadlines.

Spring 2023 newsletter Article deadline = **Monday, March 13, 2023**

Summer 2023 newsletter Article deadline = **Monday, June 12, 2023**

Fall newsletter Article deadline = **Monday, September 11, 2023**

Tequila Brooks

AFRICA: *African Labour Law Society to hold 5th conference in Mauritius in March 2023*

By [Pamhidzai Bamu](#)

President, African Labour Law Society
Washington, DC

The Management Committee of the African Labour Law Society is pleased to invite you to [register](#) for its 5th Conference as a Hybrid event at the [Intercontinental](#) Hotel, Balaclava, [Mauritius](#) on March 29 and 30, 2023.

The theme of the two-day Conference is “African Labour Law in a Rapidly Tech Era.” The programme will be topical, diverse and relevant for Labour Law Practitioners and HR specialists who are in Africa or have an interest in African developments. Combine the conference with a stay in Mauritius before or after the event! Some of the program will be translated into French to accommodate all our members and stakeholders.

The [African Labour Law Society \(ALLS\)](#) promotes engagement and networking amongst lawyers and other practitioners who have an interest in labour law and social protection law on the African continent. The intention of the Society is to improve knowledge of Labour law within the continent, to promote the sharing of knowledge amongst members, and to encourage participants to learn from other jurisdictions. The aims of ALLS are to host quality and affordable congresses and workshops and to create networking platforms for the members to engage with each other.

BANGLADESH: *Government and social partners launch EIS pilot project*

By [Anne Marie La Rosa](#)

International Labor Organization

Geneva, Switzerland*

** The opinion and views expressed in this short article are the author's own and do not reflect those of the International Labor Organization.*

Launched on 21 June 2022 by the Government and social partners in Bangladesh, the Employment Injury Scheme (EIS) Pilot in the RMG sector is an innovative public-private initiative to begin a movement for change in Bangladesh. The EIS Pilot is a transformative process that aims at equipping Bangladesh with a fully nationally owned employment protection scheme providing all workers medical care, rehabilitation and income replacement benefits in case of work-related injury in line with international standards. The EIS Pilot initially targets the RMG sector and enjoys the financial support of global brands to cover the difference between what international law sets as minimum level of benefits and what the national law provides. Each brand willing to participate commits to a financial contribution estimated at 0,019% of the value of its total order in Bangladesh.

With the support of the ILO and GIZ (German international cooperation agency), the Pilot works on the strengthening and capacity building of the Central Fund, which is the national institution tasked to deliver benefits in case of a work-related injury. The ILO and GIZ also work with national stakeholders to establish the administrative processes and necessary financial governance safeguards. Furthermore, to fine-tune its assessment of the costs of such a scheme, the EIS Pilot will gather data on occupational injury and medical care, based on a sample of representative factories. More detailed and accurate data might pave the way to complementary initiatives aiming to improve the workers' return to work and living conditions.

Contributing brands are addressing a critical social need: ensuring effective protection when work-related injuries occur in their supply chains. In doing so, they fulfill the fundamental workers' right to a safe and healthy workplace, now included in most due diligence legislative trends. With a minimal contribution, brands gain a competitive edge by attaching a social dimension to the production of their garments. A new generation of consumers highly values this engagement. Furthermore, the *Pilot* protects brands' supply chains, workers and suppliers against workplace accident disruption and work stoppages. Thus, there is a clear measurable social and financial return in supporting the *Pilot* for brands. With this initiative, RMG brands show their leadership within the global supply chains, by bringing in the social factor of ESG into their investment decisions.

For further information or any query, please do not hesitate to send an email to EIS_pilot@ilo.org.

BELGIUM: *Belgium approves the four-day work week*

[Thomas de Jongh](#)

Employment Lawyer and Founder, HR Legal
Antwerp, Belgium

As of the end of November 2022, full-time workers in Belgium, both white-collar as blue-collar, have the right to request a four-day work week.

Under this scheme, full-time workers can request their employer to work their usual full-time hours over 4 (longer) working days instead of 5. In practice, this means maintaining their usual 38-hour work week but working 9.5 hours for 4 days and having an extra day off to compensate, whilst maintaining their salary and benefits.

The scheme is voluntary for both parties, meaning that the employer can refuse a worker's request, provided the employer has solid reasons for every refusal.

This new legislation aims to improve the work-life balance of workers in Belgium and to decrease burn-out rates, the latter being the highest it has ever been and one of the drivers behind this new legislation. Employment constituencies welcome this new flexibility, allowing customers to be served more hours per day than before, but also fear it will increase job-hopping. On the other hand, in the field, one in four employers believes that it is simply impossible to implement the four-day work week due to organizational issues. Finally, it remains to be seen if workers are going to be willing to sacrifice part of their work-life balance during their four-day work week, to have an extra day off. At least at the time of writing, there appears to be very little appetite.

EU: EU shatters the glass ceiling with its new “Women on Boards” Directive

By: Lina Zhang*, Global Benefits Account Executive
Alliant Insurance Services, Inc., New York, New York

** Reprinted with permission from the Alliant Insurance Services, Global Practice.*

Following the initial proposal in 2012, an increasing number of European Union (EU) Member States have introduced statutory gender quotas on company boards to enhance gender balance. Nevertheless, progress has been slow, variable across EU Member States, and women remain underrepresented on companies’ boards of directors, and this in every Member State.

Gender Quotas on Company Boards

Legislation in Member States that have introduced gender quotas on company boards varies, particularly in terms of enforcement in cases of non-compliance. According to European Commission (EC) [2021 Report on Gender Equality in the EU](#): “In October 2020, women accounted for 37.6% of the board members of the largest listed companies in the six Member States with binding quotas, following an increase of 3 percentage points per year. In comparison, 24.3% of board members were women in countries that had taken either soft measures or no action at all,”

Aside from the United Kingdom – a former EU Member State, according to the [2022 Report on Gender Equality in the EU](#), the 7 EU member states having introduced binding legislation with women on boards quotas are France, Italy, Belgium, Portugal, Germany, Austria, Greece, and most recently the Netherlands since January 2022. Ten member states introduced soft measures, and the remaining Member States have taken no action at all.

The New “Women on Boards” Directive

Given the high variance across Member States, the EU Parliament adopted [Directive \(EU\) 2022/2381 on improving the gender balance among directors of listed companies and related measures](#). The Directive will enter into effect on 27 December 2022, i.e., 20 days after its publication into the Official Journal of the EU. All EU Member States will then have until 28 December 2024 to transpose its provisions into their national legislation; and ensure that larger listed companies (with more than 250 employees that are registered in EU Member States) meet or are striving to meet gender boardroom goals of 40% of the underrepresented gender among non-executive directors or 33% among all directors, by 30 June 2026; and report against these targets annually on their company website and to local authorities.

All EU Member States will be required to enforce the provisions of the Directive, via annual publication of companies that do meet the gender equity targets and the applicable penalties. The EC monitors gender equity in decision-making roles and synthesizes its findings through its annual report on equality between women and men. The EC intends to lead by example, with its goal of reach a gender balance of 50% at all levels of its management before 2025.

Actions to Consider by Larger Listed Companies

In planning ahead of forthcoming legislative changes, larger listed companies with more than 250 employees that are registered in EU Member States would be well advised to review their executive recruitment strategies and processes to ensure they are equitable and transparent, and

that they prioritize candidates of the under-represented gender when choosing between equally qualified candidates, as required by the provisions of the new Directive.

The Directive provides that member states where 30% of non-executive directors or 25% of all director positions are women, or those that already have gender boardroom goals and enforcement measures in local legislation, are dispensed from the Directive's requirements related to board member recruitment, appointment, or selection process. Affected employers in other Member States are advised to start preparing for annual public reporting against boardroom gender equity goals of 40% of the underrepresented gender among non-executive directors or 33% among all directors, by 30 June 2026.

What's Next?

In early 2020, the EU Commission adopted its [Gender Equality Strategy 2020-2025](#) spelling out the actions required to close EU's gender pay gap, which is currently at 13%. In late 2020, the EC adopted [2021-2025 the Action Plan on Gender Equality and Women's Empowerment in the EU's External Action](#). In March 2021, the EC's [proposal on pay transparency](#) was adopted, introducing measures to ensure equal pay for equal work, irrespective of gender in particular. Albeit the slow progress, gender equality and women's empowerment have never been so high up on the EU's political agenda. To demonstrate its commitment to closing the gender gap, the Commission has also created [monitoring framework](#) to keep track of progress, continue policy debate, policy development, and policy implementation. Other areas where the Commission has committed to address that may impact employers include gender pay gap, gender pension gap, leave policies, childcare and education, etc. It is likely that further call to action for gender equality will be presented in the form of future legislation.

ILO: ILO adds OSH to 1998 Declaration on Fundamental Principles and Rights at Work

By: [Tequila Brooks](#), Attorney and Comparative Labor Law Scholar, Washington, D.C.

On June 10, 2022, the International Labor Conference adopted the [Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work](#). This Resolution adds a fifth principle to the [1998 Declaration on Fundamental Principles and Rights at Work, as amended in 2022](#) – the right to a safe and healthy working environment. The constitutional basis for including OSH in the 1998 Declaration is the same as that for the other four principles. Both the ILO Constitution and the Declaration of Philadelphia contain express references to protection against sickness, disease, and injury arising out of employment and adequate protection for the life and health of workers in all occupations. The Resolution recalls the 2019 ILO Centenary Declaration for the Future of Work, which promotes a human-centered approach to the future of work.

Per the Declaration, the [Occupational Safety and Health Convention, 1981 \(No. 155\)](#) and the [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#) shall be considered as fundamental as defined in the 1998 Declaration. The June 2022 Resolution specifically references the COVID-19 pandemic and its “profound and transformative impact on the world of work” as one of the important reasons for incorporating OSH into the 1998 Declaration. In addition, the [2013 Rana Plaza](#) disaster could not be far from the minds of the governmental officials labor leaders, and employer representatives who voted to adopt the amendment to the 1998 Declaration. In June 2022, the ILO called for a [workplace safety review after chemical-filled containers at a plant in southeastern Bangladesh combusted](#), leaving [49 dead and several hundred injured](#).

One of the concerns discussed by the Governing Body at its [343rd session in November 2021](#) was what the possible legal effect a revised Declaration might have on existing bilateral and multilateral trade agreements. The NAFTA labor side agreement included OSH among its 11 labor principles. However, beginning with the 2000 US-Jordan FTA, many bilateral and multilateral free trade agreements contain references to the 1998 Declaration, which did not include OSH as a fundamental right at the time. According to the ILO, “The 1998 Declaration is now included in the United Nations Guiding Principles on Business and Human Rights and is expressly referred to in 70 bilateral or plurilateral free trade and economic partnership agreements.” Would the fundamental right to a safe and healthy working environment be “read into” all of these trade agreements? The [ILO Governing Body decided](#) to include a saving clause to “allay concerns that the additional fundamental principle could somehow be automatically introduced into existing trade agreements without the consent of the States parties to those agreements” (p. 6) Therefore, the [June 2022 Resolution](#), “[d]eclares that nothing in this resolution shall be construed as affecting in any unintended manner the rights and obligations of a Member arising from existing trade and investment agreements between States” (pp. 12-13).

Protection of workers’ minds and bodies at work is critical not only to the ability to earn a living but also to the exercise of basic human rights. As argued by [Dabscheck \(1997\)](#), there is a strong correlation between certain core labor rights and fundamental human rights – including the right to be free from slavery and forced labor; the right of women and other groups to be free from discrimination; the freedoms of speech and association; and the right to a safe and healthy workplace. There is also a strong argument that these fundamental rights constitute International Customary Law (see [Brudney, 2021](#)). Thus, while it may have been politically expedient for the ILO to declare that OSH may not be read into previously negotiated trade agreements, such a declaration may not be legally sound.

IRELAND: Ireland introduces employer-paid Sick Leave

By: Maya Alfaisal*, International Account Manager
Alliant Insurance Services, Inc., Washington, D.C.

* Reprinted with permission from the Alliant Insurance Services, Global Practice.

On 20 July 2022, the [Sick Leave Act 2022](#) was signed into law by the President providing for employer-paid statutory Sick leave. However, the start of paid Sick Leave entitlement was pending a Ministerial Order. On 12 October 2022, during a *Dáil Éireann* debate on Employment Rights, *Tánaiste* and Minister for Enterprise, Trade and Employment announced that the Sick Leave Act will commence on 1 January 2023.

The Sick Leave act introduces 3 days of statutory employer-paid Sick Leave per year, which gradually increases to 10 days per year starting 1 January 2026.

Employer-paid Sick Leave entitlement

Previously, there was no mandate that an employer continues paying an employee while they were on Sick Leave. Under the provisions of the Act, employees are entitled to employer-paid statutory Sick Leave of up to 3 days in 2023. Employee entitlements will then gradually increase to 5 days starting 1 January 2024, to 7 days starting 1 January 2025; and to 10 days starting 1 January 2026.

Employees who need sick days in addition to their statutory employer-paid Sick Leave entitlement may, subject to social contributions, qualify for social security Illness Benefits.

Employer payments during Sick Leave

Employer payment during Sick Leave will be 70% of the employee's base salary, capped at EUR 110 per day, which corresponds to an annual cap of EUR 40,889.16. The capped amount can be revised by Ministerial Decree in line with changes in the cost of living.

The Act provides that exemptions can be granted in cases where an employer is experiencing severe financial difficulty.

Eligibility for employer-paid benefits

To be entitled to employer-paid statutory Sick Leave, employees must be working for their current employer for at least 13 weeks; and have a medical certificate by a General Practitioner stating that they are unfit to work. The medical certificate should be provided only if the employee takes Sick Leave for more than 2 consecutive days. An employee on statutory Sick Leave will, for all other purposes, be treated as if they have not been absent from work.

Employer's Sick Leave record keeping obligations

Employers must record statutory Sick Leave taken by their employees and retain the information for a period of 4 years. The records should include all the period of employment of each employee; the dates and times of each employee's Sick Leave; and the amount of Sick Leave payment made to each employee. Employers who fail to record and retain employees' statutory Sick Leave information will be subject to a class C fine, which can be up to EUR 2,500.

Public health outcomes and impact on employers and employees

Paid Sick Leave policies improve public health outcomes and supports employees' overall mental wellbeing and health. Access to paid Sick Leave reduces the spread of illnesses at the workplace and increases employee loyalty and productivity, which from employers translated into employee retention.

The forthcoming changes will entail employer obligation. Employers will need to plan for statutory paid Sick Leaves in terms of budgeting, taking into account the number of days of employer-paid Sick Leave will gradually increase from 3 days per year starting 1 January 2023 to 10 days per year starting 1 January 2026; update their leave policies; and prepare related communication materials to inform their employees of their new entitlements. Additionally, employers must develop record keeping processes for employees' statutory Sick Leave.

ITALY: Civil law court proceedings reform – employment provisions

By: [Vittorio De Luca](#), Managing Partner, De Luca & Partners
Milan, Italy

All labor cases in Italy are under the jurisdiction of a dedicated specialized labor court.

This court is characterized by high outstanding *celerity* (speed and effectiveness).

The celerity of the labor trial is ensured by:

- a special judicial procedure dedicated to disputes concerning labor relations (including dismissals), anti-union conduct, and social security;
- orality of the procedure;
- broad investigative powers granted to the judges.

Notwithstanding the above, the Italian Government recently approved reforms (Legislative Decree 149/2022) with the aim of improving the efficiency of the civil proceedings and amending the regulation of alternative dispute resolution, includes specific provisions with the aim to make the present system more efficient by (i) tidying up and coordinating some procedural provisions that in recent times were amended repeatedly and (ii) making it easier to sign settlement agreements that are binding on the worker.

The main aspects of the above-mentioned reform, with specific reference to labor procedure, are outlined below.

Repeal of the so-called “Fornero” proceeding

The so-called “Fornero” reform, in 2015, introduced a specific track for proceedings concerning dismissals. The purpose of the reform was to speed up judicial determination of the legitimacy of dismissals. A few years after its implementation, however, the reform resulted in a proliferation of lawsuits. This was because when there were claims based on issues other than the legitimacy of the dismissal, the plaintiff was required to file multiple appeals.

The reform just passed aims to resolve this anomaly by abolishing the dual channel and, at the same time, provide for a fast track for all cases having a request for judicial determination of the legitimacy of dismissal.

Labor proceedings will thus be governed only by Articles 409 et seq. of the Code of Civil Procedure, to which a new specific section has been added for court cases concerning dismissals. More specifically, it is provided that for the handling and decision of cases challenging dismissals with a request for reinstatement, the judge may reduce the time of the proceedings by up to one half, without prejudice to the minimum time limit of compulsory twenty days that must be granted between the notification of the claim to the defendant and the day of the hearing.

The same requirements of celerity and concentration are also extended with reference to appeal and cassation judgments.

Resort to assisted negotiation

As is the case in many other countries, in Italy, in principle, employee waivers and settlements may not be binding unless they are signed before a conciliation commission (i.e., Courts; Territorial Labour Authority; Trade Unions; Certification Committees).

Legislative Decree 149/2022 amends this provision by allowing for the possibility of a binding waiver in the case of a settlement signed between the employer and the employee when both parties are assisted by at least one lawyer.

The latter provision constitutes a so-called zero-cost reform that will have the effect of making it much easier, less onerous and faster to sign binding settlement agreements.

MAURITIUS: *Portable Retirement Gratuity Fund – How does it work in practice?*

By: [Khemila Narraido](#)

Senior Associate – Barrister, Juristconsult Chambers

DLA Piper – Africa, Ebène, Mauritius

With the advent of the Workers' Rights Act ("WRA") in October 2019, we have seen our labour laws being challenged in many ways in Mauritius. Our attention was quickly grasped by the introduction of the Portable Retirement Gratuity Fund ("PRGF") which is deemed to have come into operation on the 1st of January 2020. The obligations of employers to contribute to the PRGF was suspended for the period between January 2020 to December 2021. In the light of the communiqué issued by the Mauritius Revenue Authority ("MRA") dated the 30th of December 2021, employers were reminded that their obligation to contribute to the PRGF kicks in as from the month of January 2022. The 28th of February 2022 is the key date by which submission of the PRGF return for the month of January 2022 has to be made as well as payment of the PRGF contributions due.

Introduction

The PRGF has been set up with an objective to provide for the payment of gratuity to a worker on his retirement or to the legal heirs of a worker on the death of the worker, irrespective of the number of employers with whom the worker may have worked. In respect of every worker or self-employed, there is, in the PRGF, an individual non-withdrawal account. An employer now has the obligation of making PRGF contributions in respect of their employees and file a PRGF return with the MRA, setting out the remuneration paid to the worker as well as the amount of contributions made. The MRA is considered to be the administrator of the fund. The MRA will then remit the contributions collected to the Ministry of Social Security and National Solidarity and the contributions will be credited into the individual account of each worker under the PRGF. The rate of contribution to the PRGF consists of a cumulative figure of 4.5 % of the monthly remuneration of the employee.¹ For the purposes of PRGF contributions, "monthly remuneration" consists of the basic monthly salary as well as productivity bonus, attendance bonus and payment for extra work performed.

Past Services

'Past services' is defined as meaning the time of service with an employer from the date a worker started employment with that employer up to the start date of contributions to the PRGF. In addition to the monthly PRGF contributions which the employer has to make on behalf of its employees, the employer also has to pay the contributions in respect of the past services of an employee who was in its employment as at the 1st of January 2020 and is still employed.

The first question that arises is when does the payment for past services has to be made by the employer to the MRA? Does it have to be made now or when the employee is retiring?

The law provides that the contributions for the past services can be paid to the MRA at any time or upon the occurrence of one of the following events:

- where the employment of the employee has been terminated;
- where the employee retires upon attaining the appropriate retirement age; or
- where the employee has passed away and the contributions have to be paid to the legal heirs of the deceased.

An employer, therefore, has an option to pay the contributions for past services at any time before the termination of employment, retirement or demise of the employee. In deciding when to make the payment for the past services of an employee, the employer has to bear in mind that

the contributions for past services are computed on the last monthly remuneration drawn by the worker. The employer may need to take into the consideration its cash flow in deciding when to pay the contributions for the past services.

- Private Pension Scheme

The law, regulations and communiqués which have been issued are pretty clear; in the event that an employee whose retirement benefits are payable in accordance with a private pension scheme, the said employee is not eligible to join the PRGF. The question, however, arises in the event that an employer decides to subscribe to a private pension scheme, for example, as from January 2022. Would the employer still have a duty to pay PRGF contributions for the past services of the employee, that is, from the date that the employee took employment with the employer up until the adherence of the employer to a private pension scheme? It would seem that it would only be fair that the employer would have to pay for the past services under PRGF contributions up until the date that a private pension scheme is put in place, that is, as from when the employee starts deriving retirement benefits under a private pension scheme. This issue also gives rise to the next question as to what happens in the event that the contributions which an employer makes under a private pension scheme is much less than what it would have had to pay if it had to make contributions to the PRGF. Would the employer who has adhered to a private pension scheme need to top up so that at the end of the day it is contributing as much as an employer who is contributing to the PRGF? It would seem that the law does not make provisions for these circumstances and hopefully these issues will be tackled by our authorities shortly.

Sanctions

For an employer not complying with the PRGF obligations, the employer will be liable to the following sanctions:

- For non-payment of the whole or part of the contributions, a surcharge at the rate of 5% or such other rate as may be prescribed for every month or part of the month during which any contributions remain unpaid;
 - For failure to submit monthly return, a surcharge of 1 % of the total contributions payable, for every day until the return in respect of an eligible person for that month is submitted; and
 - For failure to submit a yearly return, a surcharge of MUR 500 for every day until the return for that year is submitted.
1. For the period between the 1st of January 2022 to December 2024 in respect of workers employed by SMEs, whose amount of annual turnover does not exceed MUR 50 Million, a partial payment of the contributions will be made from seed capital under the Workfare Programme Fund pursuant to the First Schedule to the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020 (as amended).

Please see [here](#) for a longer, more comprehensive version of this article.

POLAND: *Employment of Foreigners in Poland: New Challenges*

By [Izabela Florczak, PhD](#)

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For almost a decade, the structure of labor migration in Poland has been changing dramatically. From a country of emigration, Poland has become a country of immigration. It is estimated that before February 2022, there were between 1.5 and 2 million foreigners actively working in Poland.

Immigration law in Poland is complicated, due to being subject to frequent changes. New regulations are introduced into existing laws, unfortunately – often introducing legislative chaos.

Recent years have seen numerous challenges to the employment of foreigners in Poland. First, it was necessary to implement procedures aimed at facilitating foreigners' access to the labor market during the COVID-19 pandemic. The solutions introduced led to the extension of the legality of foreigners' residence and work until the states announced in connection with COVID-19 were revoked or the regulations were repealed. These regulations are still in effect – although at the end of October 2022 a draft amendment to the regulations was announced to repeal them. This means that multitudes of foreigners who currently enjoy extended legality will have to legalize both their residency and work. Paralysis of the offices processing the application seems guaranteed.

February 24, 2022 was a day that changed the fate of the world forever, affecting the situation of migrants in Poland. Poland has become a major center of flight for Ukrainian citizens. Due to the increasingly frequent phenomenon of so-called circular migration (Poland-Ukraine-Poland...), it is difficult to estimate exactly how many war-migrants from Ukraine have found refuge in Poland. Approximate numbers speak of more than 7.5 million arrivals from Ukraine to Poland (as of early November 2022). Even taking into account that the same people may have crossed the border several times, this number is striking.

Poland, applying EU regulations (Council Directive 2001/55/EC of July 20, 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof and Council Implementing Decision (EU) 2022/382 of March 4, 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection) allowed displaced persons into the domestic labor market without restrictions. The Polish legislature has expanded access to the labor market – in fact, the Law of March 12, 2022 (on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country) opened the Polish labor market to all Ukrainian citizens legally residing in Poland. The condition for legal work is the notification of employment. Notification is made by the employing entity through the IT system, and it has to be done within 14 days from the start of work. Given that Ukrainian citizens have been the largest group of foreigners on the Polish labor market for years, the current regulation should be considered a revolutionary step in opening the labor market to foreigners.

The war in Ukraine has also led to depriving citizens of the Russian Federation of the opportunity to apply for legalization of their residency under simplified rules. These rules

currently apply only to citizens of Armenia, Belarus, Georgia, Moldova and Ukraine. The tense geopolitical situation in the region has also resulted in legal changes applicable to Belarusian citizens – they can now apply to stay in Poland on humanitarian grounds and extend their visas without leaving the country. Such stays entitle them to work without further legalization. Another challenge that Polish lawmakers will soon have to face is the planned revision of an EU directive – Proposal for a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast). It assumes (among other things) the possibility of applying for a single residence and work permit in the country of origin. Currently, such a possibility exists only in the host country.

Given the record-low unemployment for several years (5.1% in September 2022), the Polish government is working on changes in access to the domestic labor market for foreigners, which are expected to remove the barriers that currently exist. It is planned (among other things) to remove the requirement for a prior examination of the labor market situation by a relevant authority at the request of an employer who intends to hire a foreigner. Now, when such an entity is to hire a foreigner, it must obtain a negative result of the so-called labor market test. This result confirms that there are no persons in the official records who meet the employer's staffing needs. Its removal opens the labor market to foreigners.

SWITZERLAND: *Switzerland introduces statutory Adoption Leave starting in January*

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In many countries, Adoption Leave is not a statutory employee entitlement *per se* (e.g., Japan, Australia, Iceland) while in some countries, leave for adoption is provided for under Parental Leave entitlements. Adoption Leave entitlements and eligibility criteria vary by jurisdiction. Entitlements in particular, may be a total number of days to be shared by both parents, or consist of individual entitlements for each parent.

As norms and family structures change around the world, an increasing number of countries have introduced statutory Paternity Leave and Adoption Leave.

In Switzerland, the 2020 referendum approved paid Paternity Leave and the related legislation came into effect on 1 January 2021, entitling fathers to 2 weeks of paid Paternity Leave within 6 months of their child's birth. Then, the 2021 referendum approved same-sex marriage and adoption of children by same-sex couples.

In line with recent changes, starting 1 January 2023, working parents who adopt a child under the age of 4 will be entitled to 2 weeks of paid Adoption Leave, with payments of social allowances by the social Loss of Earnings Allowance System, similar to the allowances paid for the existing Maternity Leave. However, the adoption allowance is available to only 1 of the parents, provided that parent effectively stops working during the leave.

Adoption Leave entitlement is governed by Article 329j of the Code of Obligations ([Droit des obligations](#)). Whereas, entitlements to payments of an allowance during Adoption Leave is governed by Articles 16t through 16x of the Loss of Earnings Compensation Act ([Loi fédérale sur les allocations pour perte de gain, LAPG](#)).

While there is no federal entitlement to Adoption Leave prior to 1 January 2023, according to the LAPG cantons may provide adoption allowances to eligible individuals. Additionally, some collective bargaining agreements (CBA) do provide for Adoption Leave.

Eligibility for adoption allowance

According to Article 16t paragraph 1 of the LAPG, the criteria that an employee needs to meet for Adoption Leave allowance eligibility is:

- a child less than 4 years of age is placed in the employee's home for adoption;
- the employee has been insured under the Old Age and Survivors Insurance Act during the 9 months preceding the placement of the child and was employed for at least 6 months; and
- is an employee (or self-employed) as defined by social security law or gainfully works for a at the time the child is placed for adoption.

If the child is adopted jointly by both parents, then both must meet the above criteria. Also, per Article 16t paragraph 5 of the LAPG, the adoption of a spouse's or partner's child does not entitle an employee to the allowance.

Social adoption allowance

The adoption allowance is paid during the leave granted by the employer of the parent. The current amount of the allowance is 80% of the average earnings with a daily maximum of CHF 196.

As for the duration of the leave, according to Article 329j paragraph 1 of the Code of Obligations the maximum time for the leave is 2 weeks without pay, unless mutually agreed otherwise with the employer. The Adoption Leave must be taken within 1 year of the adoption. If both parents are employed, the 2 weeks of Adoption Leave may be shared between the parents, but not simultaneously taken according to Article 329j paragraph 3 of the Code of Obligations. According to paragraph 4, Adoption Leave may be drawn on a weekly or daily basis.

Entitlement to paid Adoption Leave is per child adopted. However, when 2 or more children are simultaneously adopted, the right to paid Adoption Leave remains the same, i.e., 2 weeks of paid Adoption Leave.

Legislative background

On 12 December 2013, a Parliamentary proposal to Introduce of an Adoption Allowance ([*Initiative parlementaire Introduire des allocations en cas d'adoption d'un enfant*](#)) advocated for the introduction of a government-paid 12-week Adoption Leave at federal level. The Committee for Social Security and Health of the Swiss National Council (*la Commission de la sécurité sociale et de la santé publique du Conseil national, SGK-N*) reduced the proposed duration of the leave to 2 weeks; approved the proposal on 5 July 2019; submitted it to the Swiss National Council; and the amendment to the law was adopted on 1 October 2021.

UNITED ARAB EMIRATES: *Unemployment Insurance Scheme Enters Into Force*

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On 9 May 2022, the UAE Cabinet approved the Unemployment Insurance Scheme as part of the government's broader job security initiative and measures to attract and retain talent in UAE. The unemployment insurance system is expected to sustain unemployed individuals' standard of living until they find new employment.

On 2 November 2022, in a [press release](#) the Ministry of Human Resources and Emiratization (MoHRE) announced that the Unemployment Insurance Scheme will come into effect starting 1 January 2023.

The Unemployment Insurance Scheme was introduced by the [Federal Decree-Law No. \(13\) of 2022 regarding unemployment insurance](#), which was signed by the President and promulgated on 15 September 2022.

The provisions of the Decree-Law affect most private sector employees but does not affect employers. Employers are not required to contribute to the Unemployment Insurance Scheme. Employees concerned

Private and public sector employees in the UAE must enroll in the Unemployment Insurance Scheme.

Investors who work in their own company, domestic aids, part-time employees, workers under 18 years of age, and retired individuals are not eligible for the Unemployment Scheme.

The Scheme is optional for individuals who work on a commission basis.

Contributions to the Unemployment Fund

The amount of employee contributions to the unemployment fund depends on an employee's base salary, as follows:

- Employees with a base salary less than AED 16,000 who are eligible for the Unemployment Scheme must contribute AED 5 per month.
- Employees with a base salary greater than AED 16,000 who are eligible for the Unemployment Scheme must contribute AED 10 per month.

The contributions may be paid on a monthly, quarterly, or annual basis.

Unemployment benefits and eligibility

According to Article 6 of the Decree-Law, the maximum monthly unemployment benefit will depend on the employee's monthly contributions which is based on their gross base salary. As such covered employees receive 60% of their base salary up to a maximum monthly benefit of:

- AED 10,000 for employees with a base salary less than AED 16,000; and
- AED 20,000 for employees with a base salary greater than AED 16,000.

Additional benefits may be negotiated between the insured and the service provider, i.e., qualified private insurance companies licensed by the Central Bank.

Unemployment benefits must be claimed within 30 days of the date of unemployment, and benefits will be paid until the unemployed individual finds employment, or for a maximum of 3 consecutive months per claim, whichever occurs first.

According to Article 5 of the Decree-Law, are eligible for unemployment benefits, all Emirati, and residents (irrespective of their nationality) who remain in the UAE during their period of unemployment, and who:

- have contributed to the program for a minimum of 12 months,
- have not been terminated for disciplinary reasons or resigned.

Individuals who leave the UAE lose their eligibility for unemployment benefits. As indicated above, the Unemployment Insurance Scheme is part of the government's broader job security initiative and measures to attract and retain talent in UAE.

USA: *The Future of Work: Toward a Greener, More Just and Equitable Global Economy*

By [John M. Krieger](#), J.D., LL.M.
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In so many ways, the COVID pandemic created a global reset. Most prominently, employers, workers, and government agencies are now responding and adapting to fundamental changes in the way people work. Many of the shifts are generational and were already underway prior to COVID and then rapidly accelerated by the reorganization of the last two years. Now, for most, work and the workplace are nothing like before. With change comes opportunity to reorient globally towards a future of work that is human-centered and focused on sustainability, justice, and equity.

As the main hub for international exchange and global engagement in Colorado and a member of the [World Affairs Councils of America](#) national network, [WorldDenver](#) was proud to host Kevin Cassidy, Director of the International Labour Organization Office for the United States, last month for one in a series of conversations around the country on the [future of work](#). Kevin and his colleagues at the ILO are seizing this transformational moment by interviewing employers and workers from industries, governments, and companies of all sizes and participating in community conversations in those cities that are leading the way in sustainable and equitable workforce development.

Denver definitely qualifies as a leader in that space. In 2020, Denver voters approved an increase in the local sales tax to fund a new Climate Protection Fund. The initiative raises more than \$40M annually to eliminate greenhouse gas emissions and air pollution, support climate adaptation, and create new green economy jobs. It also sparked creation of Denver's [Office of Climate Action, Sustainability, and Resiliency](#) (CASR). While executing its mandate of climate action from the voters, CASR is focused on building the new workforce equitably with a focus on inclusion of those communities that are most directly impacted by climate change and environmental degradation. Through tailored outreach, training, private-public partnerships, and trust-building with community leaders, Denver's CASR office is creating a more inclusive workforce and equitable local economy while taking head-on the existential threat of the climate crisis.

Denver's climate initiative is just one example of how communities can come together amid the "COVID reset" and reorient toward a workplace and economy that centers equity and sustainability. As the one global organization with a tripartite approach, representing workers, employers, and governments equally, the [International Labour Organization](#) is uniquely positioned to lead that reorientation across the globe. The World Affairs Councils of America and our affiliates in more than 85 cities across the US are an important facilitator of these conversations and others on issues that are global in scope and have real impact on our lives every day. As a leader of a World Affairs Council and a supporter of global collaboration, I hope that you will find and join your local [WACA affiliate](#) and support the important work of the ILO and other vital international organizations.