Employment

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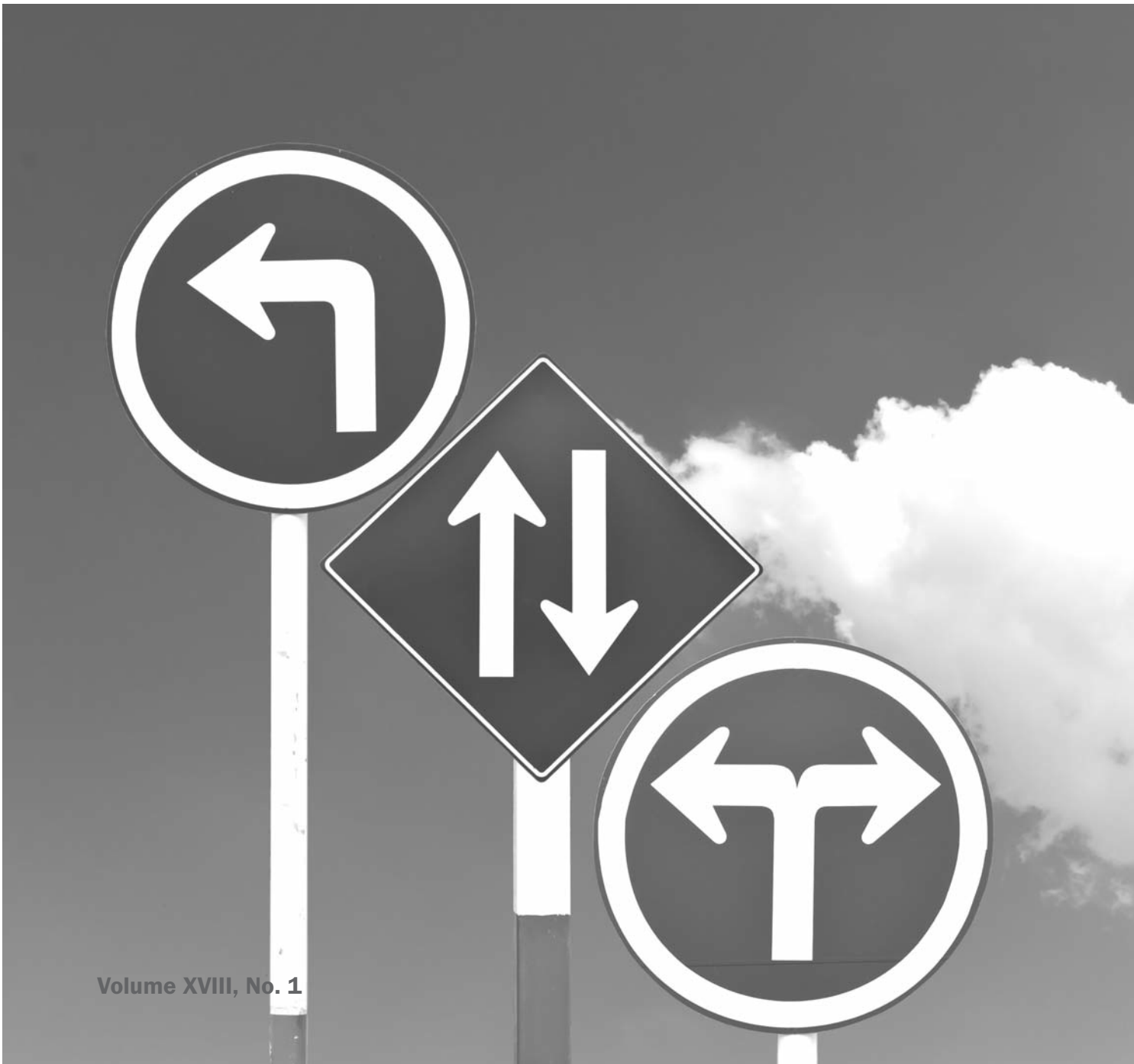
The Employment Law Reform Issue



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The Employment Law Reform Issue

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In times of continued global economic uncertainty, it is no surprise that governments the world over have been revisiting their employment laws to see what, if anything, can be done to help stimulate ailing economies. The net result: 2012 was a very busy year for employment law reform.

The biggest and most significant reforms were across the EMEA region including the Eurozone, with major game changing employment and labour liberalizations in Italy, Spain, Hungary, and the Czech Republic: all designed to reduce the burden on business, improve employer flexibility, increase productivity, and encourage recruitment. It is still too early to say whether the reforms will have the desired effect, but at least there is cause for cautious optimism.

In other regions, Latin America has seen its fair share of employment and labour shake-ups, with Mexico's Senate passing a Labor Reform Act that has radically reformed the country's long-standing labour laws, making it easier for employers to hire and fire, in the hope that the changes will provide a major boost to the country's future potential growth.

However, in Asia Pacific the trend has been in the opposite direction: towards strengthening individual rights. Vietnam introduced an Amended Labour Code and new Union Law to offer greater benefits to employees. There have also been important new data privacy laws introduced in Malaysia, Taiwan, and Singapore, and labour dispatch rules regulating the use of contingent workers in Japan.

In the US, whilst there were no major changes; employers have continued to face increased federal and state agency regulations and enforcement initiatives. All in all, a busy time for global employers.

In this issue of *The Global Employer* Employment Law Reform issue, we explore recent reforms and their likely impact on employers in 10 jurisdictions, and also provide a roundup of trends and hot topics in other regions.

Our Global Employment Practice includes more than 500 locally qualified practitioners in 45 countries. We have more lawyers with mastery of the subtle intricacies of labour, employment, immigration and benefits issues in more jurisdictions around the world than any other leading law firm. *Chambers Global 2012* ranks both our Global Employment and Global Immigration practices as Tier 1. Baker & McKenzie is recognized by *PLC Which lawyer?* Labour and Employee Benefits Super League 2011, as the top global law firm with our Global Employment practice ranked in 24 countries, and we are among the 10 firms US general counsel list most often as "go-to" advisors on employment matters.

Asia Pacific: regional overview

There has been a trend in Asia Pacific to further strengthen individual rights in the workplace. We saw significant amendments to legislation in Japan to further protect employees working on fixed-term contracts in addition to measures being introduced to bolster protection of temporary workers. We note a discernible pattern in Malaysia to increase the regulation of the employment relationship. This was demonstrated by significant amendments to the Employment Act, including the introduction of personal liability of directors and other officers for offenses committed by a company or other corporate body in a bid to encourage employers to comply with legal obligations. Taiwan has introduced data privacy legislation which brings it into line with other key markets in this region. We set out more details on these legal developments below.

Japan

The Labor Contract Act was recently amended with potentially serious implications in relation to hiring and retaining contract employees (employees hired for a fixed period). Key amendments include the following:

- Placing limitations on employers refusing to renew a fixed period of employment without a justifiable cause in certain circumstances;
- The right of contract employees to convert to permanent employees if they have five years of continuous employment with an employer; and
- Provision of fair employment terms and conditions between contract employees and permanent employees.

The amendments came into effect on August 10, 2012 although the implementation of some amendments has been delayed including amendments (ii) and (iii) above which are likely to come into force in April 2013.

Amendments were recently introduced to tighten the regulation of both labour hire agencies and host employers that use temporary workers. The amendments to the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers" ("Act") will mainly affect labour hire agencies and are aimed at protecting temporary workers.

However, there are changes that will impact host employers who use labour hire workers such as the new obligation on host employers to take "measures necessary for stabilizing the employment" of the labour hire worker when it terminates a worker dispatch agreement for its own reasons (i.e. not for cause). These measures could include, for example, introducing a new job or a new host employer to the temporary worker, or paying compensation to the labour hire agency for putting the temporary worker on a paid leave of absence. There are also amendments which restrict the engagement of ex-employees as temporary workers, and an introduction of a "deemed offer of employment" as a sanction against host employers who breach the Act. All of the amendments came into effect on October 1, 2012, except for the deemed employment offer which will come into effect on October 1, 2015.

Malaysia

The Employment (Amendment) Act 2012 ("Amendment Act") came into force on April 1, 2012. The Amendment Act amends and supplements existing employer obligations prescribed by the Malaysian Employment Act 1955 ("EA") and also introduces new ones.

The more significant changes brought about by the Amendment Act include:

- Increasing the wage threshold with regard to the scope of employees covered by the EA;
- Bolstering maternity-related entitlements;
- Introducing sexual harassment-specific criminal offenses in the workplace;
- Introducing the personal liability of directors and other officers for offenses committed by a body corporate; and
- Broadening the circumstances under which EA employees may receive advances on wages.

Other amendments of note include the regulation of supply of labour and additional notification requirements in connection with the employment of non-Malaysians.

Taiwan

Taiwan's new Personal Data Protection Act ("PDPA") became effective on October 1, 2012, although two controversial articles are not yet in force. The PDPA applies to all government, non-government sectors and individuals. The definition of "Personal Data" is broadly defined and covers an individual's name, birthday, ID, special features, fingerprints, marriage, family, education, occupation, medical records, medical history, generic information, sex life, health examinations, criminal records, contact information, financial status, social activities, and other data which is sufficient to directly or indirectly identify a person. Key impacts of the PDPA are as follows:

- All enterprises and individuals that collect, process, or use Personal Data are subject to the PDPA;
- Statutory requirements and procedures must be followed when collecting, processing or using Personal Data;
- Proper safety measures must be taken when retaining Personal Data files;
- Failure to comply with the PDPA will be subject to civil liabilities (up to TWD 200M), administrative penalties (up to TWD 500,000), and criminal liabilities (up to five years and/or TWD 1M).

The representatives of an enterprise may be punished for the same amount of administrative penalties where the enterprise violates the PDPA.

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Brazil

Among other recent developments in Brazil, two employment and labour developments in the past year have had a significant impact on Brazilian employers: the increase of statutory termination notice from 30 to up to 90 days; and the creation of new rules on electronic time control.

Until recently, all Brazilian employees, regardless of their seniority, were entitled to 30 days' notice of termination. The law now requires the notice period to be proportional to the employee's length of service, capped at 90 days.

The law does not change the position for workers employed with the same company for one year or less – they will continue to be entitled to the previous and standard 30-day notice period. However, employees with more than one year's service in the same company will be entitled to an additional notice period of three days for each year worked, up to a maximum of 60 days. So, in total, the notice period for employees with long service within the same company can now be up to 90 days.

The current understanding is that the extended notice period applies only to the notice that employers must give to employees; but the law is not clear so this remains a matter of debate.

The second significant recent Brazilian law reform refers to time control. Brazilian employers are now being required to adapt their electronic time control systems to the new rules developed by the Brazilian Labour Department.

The new rules aim to ensure employees' safety by properly controlling work schedules (and potential overtime). The challenge for employers is that the new rule creates a major burden both in terms of the steps that need to be taken to comply with the new rules and the technical requirements.

The new rules require all employers with an electronic time control system to use specific equipment (called "REP"), to control the employees' work schedule. This equipment is also able to generate print outs of the time control statements for the employees, setting out their entrance and exit times.

The requirement to control employees' working hours is not a new rule in Brazil. It is provided for in the Labour

Code enacted in 1943. But the Labour Code only provided that companies with more than 10 employees were legally required to control their work schedule through a manual, mechanical or electronic form.

The new rules on time control apply only to electronic time control and the employer may also choose to adopt other forms of time control – manual or mechanic. However, employers that decide to use or maintain an electronic time control system must comply with the new rules issued by the Brazilian Labour Department.

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BRAZIL

Issue	What has changed?	What should employers do? What have employers done?
New rules on electronic time control **5**	• All employers with an electronic time control system must use specific equipment (called "REP"), to control the employees' work schedule.	These new rules impose a significant burden on employers. Investment in equipment and training may be required to properly install and operate the new electronic systems.
Increase of termination notice from 30 to up to 90 days **4**	• Before the new law, all Brazilian employees, regardless of their seniority with the company, were entitled to 30 days' notice of termination. Now, the law requires prior notice to be proportional to the length of service of the worker, up to a maximum 90 days. So for some employees, prior notice will increase from 30 to 90 days.	This has increased the termination costs for long serving employees (which were already high).

Level of impact: 1 = low ⟷ 5 = high

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Colombia

The occupational risks regime in Colombia has traditionally been aimed at employees with formal, regular and fully enforceable employment agreements. However, in reality, informal (non-legal) employment agreements, and the rendering of services in civil, commercial or administrative contract frameworks are common and cover a higher proportion of the working population than those covered by regular and legal employment agreements.

In light of this, the National Congress enacted Law 1562 of 2012 by means of which the occupational risks regime of the Comprehensive Social Security System was modified. The intention behind the reform was to extend the coverage of the occupational risks regime to almost all Colombian employees to guarantee their inclusion in the Social Security system. Before the enactment of this Law, legal and comprehensive regulation of occupational risks did not exist in Colombia; the most important effect of Law 1562, therefore, is the introduction of a positive legal text regulating this subject.

The main reforms introduced by Law 1562 of 2012 are as follows:

- As from July 11, 2012, the following employees shall be mandatorily covered by the occupational risks regime of the social protection system (before the enactment of this law, these employees were not required to be covered by the said regime; their coverage was voluntary): (i) independent contractors whose civil, commercial or administrative contract exceeds one month; (ii) retired individuals with employment agreements in full force and effect; (iii) independent contractors whose services include the execution of high-risk activities, amongst others.

- Informal employees are able to be covered by the occupational risks regime if they so wish to, as they are catalogued as voluntary affiliates.

- Colombian employers must give employees the opportunity to pursue training programs regarding the prevention of work accidents and the promotion of occupational health and industrial security.

- Additional circumstances that will be considered as work accidents, such as: (i) where the accident occurred during the execution of union-related activities by unionized employees when acting as such; and (ii) where the accident occurred during the execution of recreational, cultural or sports activities when the employee was representing the employer, or the activity was promoted by the employer.

- Sanctions for employers who breach the provisions of the new law, of up to COP 1,000 minimum monthly wages, imposed by the Ministry of Labour.

The provisions contained in the new law envisage the establishment of a more inclusive occupational risks regime which covers formal as well as non-formal employees and the different categories of worker who render their services in a non-employment framework, which reflects Colombian reality.

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COLOMBIA

Issue	What has changed?	What should employers do? What have employers done?
Mandatory affiliates 3	• Independent contractors with civil, commercial or administrative contracts must be affiliated to the occupational risks regime. • Retired individuals with employment agreements in full force and effect. • Independent contractors whose services include the execution of high-risk activities. • Members of Associations whose work constitutes an economical income to a company.	Employers have to verify the affiliation to the occupational risks regime of the independent contractors and make the correspondent quotations to the system.
Circumstances considered as work accidents 2	• The accident occurred during the execution of union-related activities by unionized employees when acting as such. • The accident occurred during the execution of recreational, cultural or sporting activities when the employee was representing the employer, or the activity was promoted by the employer.	Employers must guarantee safe conditions when organizing recreational, cultural or sporting activities.
Sanctions 4	• The breach of the provisions contained in Law 1562 of 2012 may lead to the imposition of economic sanctions of up to COP 1,000 minimum monthly wages. • These sanctions will be imposed by the Ministry of Labour.	Employers must comply with the provisions of Law 1562 of 2012 to avoid the imposition of economic sanctions.

Level of impact: 1 = low ⟷ 5 = high

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Hungary

A new Labour Code came into force in Hungary on July 1, 2012, with the objective of increasing the employment rate in Hungary and providing employers with greater flexibility given the current challenging economic conditions.

The new Code preserves the fundamental principles of labour law, but provides some new opportunities and solutions for employers. As such, the Code is more business friendly than the previous regime and provides greater flexibility to employers regarding the regulation of employment relationships.

The previous Labour Code adopted the concept referred to as "unilateral cogency," under which parties to an employment contract could only diverge from the statutory provisions of the Labour Code in respect of certain matters, and only then if such terms were more favorable to the employee. The new Labour Code provides more room for an employer and employee to come to their own mutually agreed arrangements. As of July 1, 2012, various dispositive rules have been introduced into the new Labour Code, under which contracting parties to an employment contract are entitled to deviate from the statutory provisions of the new Labour Code to a much greater extent than before; in addition, provisions relating to collective bargaining agreements provide a wide discretion to deviate from the statutory minimum rules of the new Labour Code.

The new Labour Code provides for *inter alia*: more flexible work time scheduling; obligations on employees relating to their behavior outside the workplace; the right for employers to restrict employees' personal rights and to check employees; the opportunity to adopt disciplinary measures in individual employment contracts; increased liability of employees for their negligent and grossly negligent conduct; a limit on employers' liability for unlawful termination of employment; and new rules applicable to executive employees. The Code also reduces the rights of trade unions to the benefit of works councils and introduces the possibility to conclude agreements with the works councils.

Along with the new Code, transitional provisions have been brought into force which help to determine whether the provisions of the old or the new Labour Code must be applied in relation to ongoing employment matters. In addition, several associated employment-related laws and regulations have been amended, including laws on labour law inspection, labour protection, etc. Given the extent of the changes that have been introduced, the table of reforms set out below is not comprehensive, but it sets out the major changes.

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HUNGARY

Issue	What has changed?	What should employers do? What have employers done?
Behaviour of employees out of the workplace (2)	• Until now behaviour of employees outside working hours has not been regulated. Under the new Labour Code, employees may not behave during or outside working time in such manner which would jeopardize the employer's reputation, legal business interests, or the purpose of the employment. In this respect, the employer may be entitled to restrict employees' personal rights, such as media relations, social media, political activities, etc. as long as the restrictions do not violate the employees' personal rights, and must be proportionate.	Be aware of the change.
Right to monitor employees (3)	• The right of employers to monitor employees in the performance of their work has been expressly adopted. This is the first time that employers have express authorization to check the work of employees. Thus, employers may check – in line with the applicable data protection laws whether, for example, employees are working during their working time, whether their work complies with safety requirements, etc. Monitoring of employees' private life and private time is expressly prohibited.	Consider implementing framework rules.
Employment under conditions other than those in the contract (3)	• Rules on ordering employees to perform work at another employer, in another position or at another place of work have been replaced by rules on employment under conditions other than those stipulated in the working contract; a yearly limitation of 44 days or 352 hours applies.	Note the change.
Rules on disciplinary measures in the CBA or in individual employment contracts (3)	• It is now possible to include disciplinary measures in the collective bargaining agreement or in the absence of a collective bargaining agreement, in the individual employment contract in relation to employees who infringe their labour law obligations.	Consider updating the CBA or employment contracts.
Liability of employees (4)	• Prior to July 1, 2012, if an employee caused damage to the employer by negligent conduct, he/she was liable for any damage up to 0.5 months' salary, unless the employment contract stipulated a higher limit of up to 1.5 months of his/her salary. The new Code has increased the limit to four months' salary.	Consider amending employment contracts to reflect this change.
Termination of definite term employments (3)	• An employment relationship for a definite term can be terminated by the employer by notice if (i) the employer is in a bankruptcy or liquidation procedure; (ii) the reason for termination relates to the employee's abilities; or (iii) the employer cannot maintain the employment relationship for external reasons not attributable to the employer. Employees may terminate a definite term employment relationship by notice if there are circumstances which make it impossible for the employee to maintain the relationship or which would result in disproportionate burden on the employee.	Consider amending employment contracts.
Limitation of employer's liability for unlawful termination (4)	• Employers' liability for unlawful termination has been limited to maximum 12 months' employee's absentee fee, plus damages.	Be aware.
Personal data transfer and processing (3)	• The employer must inform the employee regarding processing of the employee's personal data.	Inform employees as required.

Level of impact: 1 = low ⟷ 5 = high

HUNGARY

Issue	What has changed?	What should employers do? What have employers done?
Allocation of annual leave (4)	• Employees are now able to schedule seven days from the total number of holiday days themselves, contrary to the previous rule where employees could do this for one quarter of their annual holiday entitlement. • Holidays may no longer be carried over where exceptional economic reasons apply, as was allowed under the former Labour Code. However, as of January 2013, parties may agree in writing to allocate one third of an employee's holiday entitled until December 31 of the following holiday year. • Notwithstanding the above, if the employment relationship commenced on October 1 or later, vacation can be allocated until 31 of March of the year following the year in which the holiday was due. • Annual leave must be granted for at least 14 uninterrupted days, although the parties may deviate from this rule in the employment contract.	Consider amending employment contracts.
Scope of employees enjoying labour law protection reduced (3)	• An employee no longer enjoys termination protection in case of incapacity for work due to illness, sick leave, to care for a sick child or during absence without pay for caring for a close relative. The employment can be terminated, but the notice period will start only after the employee returns to work. • Pregnant employees, or female employees during human reproduction treatment (supported by health insurance) enjoy termination protection only if they gave the employer prior notice. Female employees during human reproduction treatment are entitled to termination protection for six months from the beginning of the treatment. • The employment relationship of (i) employees who are up to five years away from claiming their old-age pension, and (ii) working mothers of children under three could not previously be terminated with an ordinary termination. The new Code allows such employees to be terminated if they commit a grave violation of obligations arising from the employment relationship wilfully or by gross negligence, or otherwise engage in conduct that would render the employment relationship impossible; and also if the reason of the termination is connected to their ability, or an operational reason of the employer and there is no other position which could be offered to the employee.	Be aware.
Maximum limit of extraordinary working hours increased	• The maximum limit of extraordinary hours that the employer can demand has been increased from 200 to 250 hours a year. Where the parties agree, rest time compensation for overtime work can be allocated until December 31 of the following year.	Consider amending the employment contracts, if applicable.
New forms of employment (3)	• The new Labour Code introduced several new forms of employment such as job sharing, and employment by multiple employers, telework, employment upon call, and performance work from home.	Consider applying these new mechanisms.
Full time to part time (4)	• If an employee with a child younger than three requests that his/her employment is changed to part-time employment, the employer must grant the request .	Comply with any requests made.
Work scheduling (3)	• New work scheduling mechanisms have been introduced in the form of so-called reference period scheduling. Rules of flexible time scheduling have changed, less than 50 percent of the working time of the employee can now be scheduled by the employer. The occasions when working time can be scheduled for Sunday and national holiday have increased.	Consider implementing these mechanisms.

Level of impact: 1 = low ⟷ 5 = high

HUNGARY

Issue	What has changed?	What should employers do? What have employers done?
Compensation of shift work 4	• If certain conditions are fulfilled, shift work does not need to be compensated.	Review compensation scheme.
Definition of executive employees 4	• Under the old Code, the founder of a company could decide that certain positions qualify as positions of key importance and employees filling such positions qualify as executive employees. Under the new Code, this can be agreed in the employment contract and there is no need for a founder's resolution; salary of said employee must be at least seven times the minimum salary.	Review employment agreements.
Non-competition agreements 3	• Post termination non-compete agreements can now apply for a maximum of two years, and rules on compensation have changed.	Draft contract provisions accordingly.
Works councils 3	• Rights of the work councils have increased. In the absence of a collective bargaining agreement, it is now possible to conclude work councils agreements.	Be aware.
Trade Union rights 3	• Certain rights of the trade unions have been curtailed.	Be aware.

Level of impact: 1 = low ⟷ 5 = high

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Italy

After a long period of waiting, on June 27, 2012, after months of discussions and shilly-shallying, the Italian Parliament approved the Monti-Fornero Reform of employment law which came into force on July 18, 2012.

This Law ambitiously aims to shake up the job market and it is driven by three essential objectives:

- Damping down on certain widespread abuses of what is generally referred to as "flexible" work contracts;
- Liberalizing individual lay-offs for economic reasons; and,
- Introducing a more generalized system of unemployment benefits.

The Law is a complex document, containing several sweeping provisions affecting many key areas of employment law.

The table on page 12 sets out the key elements of the Monti-Fornero Reform, which include new flexible contract types and promotion of "apprenticeship" agreements; the reform of individual dismissals in mid- or big-sized companies (and some minor changes to collective dismissals as well); new regulations for resignations and mutual terminations and the introduction of a brand new unemployment social benefit system that will be rolled out over the next four years.

What difference are the reforms likely

to make in practice? The reforms were met with a barrage of criticism by both Trade Unions and Employers' Associations, which demonstrates the limitation and flaws of the reforms due to the excess of compromises in certain key areas.

Four months after the reforms came into force, it is probably too early to say what the effects are likely to be when their practical implementation is felt in the labour market, but a few trends are already emerging and do not bode well. Generally speaking, employers seem to be very cautious and still unconvinced by apprenticeships (also because of the lack of specific guidelines at the collective level in several business sectors), while the new regulation on dismissals does not seem to have generated a surge of individual lay-offs. Statistics recently published show a steady increase in the unemployment rate over the third quarter of 2012 (now at its record of 11.1 percent) and a surge in use of part-time work and fixed-term contracts (in spite of the several restrictions brought by the reform). Also, and as expected, use of project work has sharply fallen. All in all, and only four months after the reform came into force, its objectives seem to have been somewhat frustrated if not entirely missed.

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ITALY

Issue	What has changed?	What should employers do? What have employers done?
Project work 3	• Stricter definition of "project", which also needs to identify a given (measurable) target. Termination before completion of a project is no longer possible (except for lack of professional skills or gross misconduct). There are reduced cost benefits (progressive increase of social securities) and project workers cannot be hired to perform same duties as regular employees, except for highly-skilled jobs.	Note that the new rules apply only to contracts signed after July 18, 2012. Employers should expect that labour inspectors and courts will enforce the new regulation with renewed attention and rigour.
Apprenticeship 3	• This is now the preferred "default" option for hiring young workers (up to 29 years old) directly or through temporary work agencies. The minimum duration is six months. Limitations: not more than three apprentices for every two fully qualified employees. New hires of apprentices are blocked if the employer has not confirmed at least 50 percent of existing ones as permanent employees.	Employers should evaluate the huge cost benefit for the company: apprentices can be hired at lower job-grade (and pay) and the employer receives a substantial discount on social securities.
Fixed-term contracts 4	• No reasons required for first fixed-term contract of employment – maximum duration of one year and non-renewable. For other fixed-term contracts, the maximum duration is 36 months including all time spent as a temporary worker. An employee cannot be hired on two consecutive contracts unless a minimum term of 60-90 days has elapsed. 1.4 percent increase of social costs apply (with exceptions), partly recoverable if employee is confirmed as permanent.	Employers should check existing fixed-term/temporary contracts and monitor total duration going forward.
Contractors (freelance VAT holders) 5	• Freelance contractors are presumed to be subordinate employees if at least two of the following conditions are met: a) duration of contract > 8 months in two consecutive years; b) > 80 percent of total earnings over two years are derived from the same company; c) contractor has a working station at the company's offices. This presumption does not apply if the contractor is a member of a compulsory professional society for high-skilled jobs.	The new provisions apply to all contractors hired after July 18, 2012; for contractors already in place on July 18, 2012, new rules apply as of July 18, 2013.

Level of impact: 1 = low ⟷ 5 = high

ITALY

Issue	What has changed?	What should employers do? What have employers done?
Protection against dismissal **5**	For companies with more than 15 employees: • Dismissal for disciplinary reasons (I): reinstatement and financial loss up to 12 months' salary can be awarded only if the charge is not made out or the offence is contemplated by the applicable collective agreement or disciplinary code as punishable with a lesser sanction. • Dismissal for disciplinary reasons (II): in any other case reinstatement can no longer be ordered, instead the remedy is an indemnity ranging from 12 - 24 months. • Dismissal for economic reasons: the employer must notify its intention to dismiss for economic reasons to the employee and local Labour Office; Labour Office summons the parties within seven days and mediates on a possible separation by mutual consent; if no agreement is reached, the company is free to notify dismissal; the employee can challenge dismissal within 60 days and file a claim in court in the following 180 days; if the company cannot prove a serious economic case that justifies dismissal, the judge can only award an indemnity between 12 - 24 months' salary and reinstatement no longer applies, taking into account also the diligence of the employee in looking for another job; however the judge can still award reinstatement and up to 12 months' salary if the economic reasons stated by the company are found "manifestly non-existent." • Violation of procedural requirements for collective lay-offs: same protection as above (without reinstatement) applies; however, if employer violates or misapplies the selection criteria agreed to with the unions (absent any such agreement) or required by law, affected employees shall be entitled to reinstatement • Employers must provide the reasons for the basis of the decision to terminate the employment agreement in the termination letter. • In case of ineffective termination of employment, due to the absence of written reasons in the termination letter or breach of procedural aspects (such as in case of disciplinary procedures), reinstatement shall no longer apply, but the judge will award an indemnity ranging from six to 12 months' salary, without prejudice to any stronger protection available if the alleged reasons of dismissal are deemed unfair or unlawful. • In case of discriminatory dismissal or dismissal violating rules on maternity protection or otherwise flawed by fraudulent intent, courts shall still award forced reinstatement and unlimited damages (like in previous regulation). • For companies with less than 15 employees in one single business unit (or less than 60 at national level in more than one business unit), nothing has changed and protection afforded in case of unfair dismissal consists of voluntary rehiring by the employer or payment of an indemnity between 2.5 and six months of salary. • Effective January 1, 2013 employers with more than 15 employees shall have to pay a special contribution to the Social Security Agency, not exceeding EUR 1,500 for each permanent employee individually dismissed, as a special contribution to the new unemployment benefit system.	The complexity of this new regulation, which has revolutionized the system of protection against unfair dismissal, requires a completely new approach and we highly recommend employers plan and implement dismissals carefully. Case law is still very limited and employers should expect that it will take at least one to two years to collect a reliable set of precedents for guidelines in the interpretation of the new law.
Proceedings in labour courts **4**	• Quicker proceedings apply to any judicial dispute relating to dismissal in companies whose workforce exceeds 15 employees: The judge schedules a hearing in maximum 40 days following filing of the claim; serving by certified e-mail; at the hearing, the judge hears parties and witnesses without formalities and issues a provisional ruling, which is immediately enforceable.	Given the short time available before summons to court, employers should take advice prior to implementation of dismissal and provide all documentation available for the reasons for dismissal.

Level of impact: 1 = low ⟷ 5 = high

ITALY

Issue	What has changed?	What should employers do? What have employers done?
Resignation and termination agreement 5	• Resignation and termination by mutual consent of the employment relationship are enforceable only after validation by the competent Labour Office. As an alternative they are effective also following submission of a statement by the employee at the bottom of the transmission receipt of the communication of the termination of the employment relationship provided by the employer; reinforced protection for parents until their child is three years of age, whereby termination of the employment contract by mutual consent or unilateral resignations must be validated by the competent Labour Office in order to be enforceable.	Employers should always check if dismissed employee (male or female) had a child under three years of age at the time of dismissal.
Unemployment Social Benefit System 4	• New (and universal) unemployment social benefit system for those involuntarily losing their jobs is being rolled out over a period of four years starting January 1, 2013, called "ASPI" (Assicurazione Sociale per l'Impiego) managed by the National Social Security Agency (INPS).	

Level of impact: 1 = low ⟷ 5 = high

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Mexico

Mexico's Federal Labour Law was last overhauled over 40 years ago; it took many years before a debate was started about incorporating certain flexibilities into the law, and that debate has intensified since the enactment of the North American Free Trade Agreement.

After numerous bills were rejected and in the face of diverse political, social and economic circumstances, on November 29, 2012, under the prevailing political atmosphere and using Fast Track mechanisms, the president of Mexico signed into law the Decree to overhaul Mexico's Federal Labour Law. The reforms are likely to have a very significant impact on employers operating in Mexico.

The Law is very new and complex and employers are still coming to grips with its full implications. However its main objectives may be summarized as follows:

- The reduction of an informal workforce and economy by increasing employers' flexibility and options for hiring workers.
- To modernize the labour framework by bringing Mexico into the 21st Century particularly in relation to human rights, especially women's rights in the workplace.
- The inclusion of productivity as a key factor in the performance of and compensation for work.

It is too early to tell if the law will produce the desired effects.

However, what is clear is that the Federal Labour Law has been amended with the clear intention to modernize employment relationships between employers, workers, and unions and more positive changes are expected to follow.

The chart that follows includes the main (but not all) changes that came into effect on November 30, 2012.

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MEXICO

Issue	What has changed?	What should employers do? What have employers done?
Decent or respectable job (1)	• The concept of a decent or respectable job is included, and defined as a job that respects the worker's human dignity, which is wide enough to include non-discrimination due to race, gender, age, disability, health condition, sexual preference, marital status, opinions, etc.	Review internal policies.
Non-discrimination and social interest (2)	• The principle of diversity and non-discrimination is included. The promotion of environmental sustainability is of social interest. • Likewise, the concept of giving a qualification to the work performed by the employee is added, which seeks to increase productivity and competitiveness.	Review selection and recruitment policies.
Harassment and sexual harassment (3)	• Harassment and sexual harassment is defined. Harassment is the use of power in a relationship of subordination of a victim against an aggressor in the workplace, verbally, physically, or both. Sexual harassment is a form of violence when, although there may not be a relationship of subordination, there is an abusive use of power which leads to the victim's risk and inability to defend herself/himself, irrespective of the fact that this conduct may be carried out one or several times.	Review internal policies, regarding selection and hiring of employees.
Outsourcing regime (5)	• A legal framework is established for outsourcing, defined as the means whereby a contractor carries out works or provides services via its employees working under the contractor's supervision and responsibility, for the benefit of a client who supervises the contractor's tasks during the development of the services or the performance of the assignments entrusted. This type of job must meet the following conditions: a) It may not cover all the activities carried out in the workplace. b) It must be justified as a specialized job. c) It may not include tasks equal or similar to those being carried out by the client's employees. • In the event that all of these conditions are not met, the client will be deemed the legal employer. • The contractor must also comply with applicable safety, security, and environmental rules and verify compliance with obligations of the Mexican Social Security Institute and the Mexican Federal Institute for Workers' Housing (INFONAVIT). For that purpose, the concept of a verification unit duly credited and approved is included. • The outsourcing regime will not be permitted if employees are transferred from a client to the contractor deliberately to reduce labour rights.	Internal analysis should be made regarding the current structure of the legal entities of the companies in Mexico from the labour, social security, corporate, tax and transfer pricing matters, since the new regulations may have an important impact on compensation, finance and Union issues. In addition review current commercial contracts with third party service providers.
Profit sharing (3)	• A company's branch employees are part of such company for profit sharing purposes.	Review the current structure of work sites.
Initial training (5)	• An initial training contract is established of up to three months, which may be extended to six months in specific circumstances. • Under an initial training contract an employee may be able to acquire the necessary knowledge and skills for the activity for which he/she will be hired.	In accordance with hiring policies, review the possibility of incorporating this new type new of labour contract.
Trial period (5)	• A trial period can be negotiated in the employment contract of up to 30 days, although this may be extended to 180 days in specific cases.	Review the possibility of incorporating trial periods in new contracts.
Seasonal work (5)	• This is a new hiring option for indefinite contracts. Outside of the seasonal period, the employment relationship will be suspended, so there is no obligation to provide pay/wage.	Review the possibility of incorporating this new type of contract.

Level of impact: 1 = low ⟷ 5 = high

MEXICO

Issue	What has changed?	What should employers do? What have employers done?
Termination of employment relationship for cause attributable to the employee (2)	• The following are included as new causes for termination: a) If the worker commits acts of lack of integrity or honesty, acts of violence, threats, slanderous allegations (among other) against the employer's clients and suppliers, unless such acts are provoked or he/she acts on self-defense; b) If the worker commits harassment and/or sexual harassment against any person in the workplace; c) Not having the documents that are required by the laws and regulations, which are necessary to provide the service. • Notice must be delivered to the worker or Conciliation and Arbitration Board within five business days. The 60-day term that the worker has to file a layoff lawsuit starts counting as of the date when the notice of rescission is personally served to him/her.	Review current termination policies and processes.
Termination of employment relationships for cause attributable to the employer (2)	• The following are causes for termination attributable to the employer: a) Committing harassment and/or sexual harassment, b) Acting in ways that harm an employee's dignity.	Review current termination policies and processes.
Working mothers (2)	• Pregnant or breastfeeding women are barred from working during a health emergency, without detriment to their salary. • Rights are established for a mother who adopts an infant. • Working mothers may transfer up to four out of the six weeks of leave from before the birth date to after the birth. • The reduction of the workday is regulated for breastfeeding working mothers. Also, both extraordinary terms of rest will be for a period of up to six months.	Review current policies related to leave of absence and permits.
Paternity leave (2)	• Paid leave of five working days is granted to working men for the birth of a child or in case of adoption.	Review of the current policies related to leave of absence and permits.
Registration of unions (1)	• In the matter of union registration, the principles of legality, transparency, certainty, gratuity, immediacy, impartiality, and respect for freedom, autonomy, equality, and union democracy shall be observed. • Furthermore, access to information is regulated regarding the registration of unions, specifying that the union's bylaws will be available to any person at the Internet sites of the Ministry of Labour and of the Local Boards of Conciliation and Arbitration, as the case may be. • Similarly, a term of 60 calendar days is specified in order for the responsible authority to issue an answer to the registration request submitted by a union, applying the concept of constructive approval (*afirmativa ficta*) in case the authority fails to answer within such term.	No action required.
Contents of the unions' by-laws *(continued on page 17)* (1)	• In all internal procedures for choosing the leaders and members of unions, free voting shall be safeguarded in the modalities of vote by a show of hands; indirect vote (through delegates); or secret ballot. • Likewise, the union's bylaws should establish the internal systems and procedures that guarantee the resolution of disputes among the members arising from management of the union's funds. • The union's leaders, in accordance with the bylaws, shall submit to the meeting, at least every six months, complete, detailed accounts of the management of the union's assets, the status of the income from dues, and the intended use thereof. • Any worker at any time will be entitled to request information from the leaders, concerning the management of the union's assets.	No action required.

Level of impact: 1 = low ⟷ 5 = high

MEXICO

Issue	What has changed?	What should employers do? What have employers done?
Contents of the unions' by-laws *(continued)*	• In the event that workers have not received information on management of the union's assets, or if they estimate there are irregularities in the management of the union's assets, they may make use of the internal systems and procedures contemplated in the respective union bylaws.	
Transparency 3	• The Conciliation and Arbitration Boards will make publicly available for reference by any person the information of the collective bargaining agreements and internal shop rules that may have been submitted to the same. Likewise, they shall issue copies of such documents, according to the provisions of the Federal Law of Transparency and Access to the Government's Public Information and the laws that regulate access to the information of the governments of the states, as the case may be.	Review internal policies related to publicly held information as well as Data privacy rules.
INFONACOT 5	• Employer still must enroll with the INFONACOT (formerly the FONACOT)	Register with INFONACOT.
Collective Bargaining Agreements 5	• The information contained in the collective bargaining agreement and the internal shop rules submitted to the Conciliation and Arbitration Boards will be made public.	Review procedure to comply with this obliagtion.
Labour Procedural and para-procedural Law 3	• Rules are incorporated and modified regarding the legal status, evidence and submission thereof, ancillary proceedings, statute of limitations, no-contest, enforcement measures, burden of proof, awards, and in general, the individual process and its various stages, as well as the para-procedural process. • The possibility to offer new evidence is acknowledged, including those elements contributed by the scientific advances and information technologies. • As to the introduction of evidence, now it is possible to introduce confessional evidence through an agent with powers of attorney, and in the submission of testimonies, it will be possible to offer up to five witnesses per disputed fact, with the testimonies being limited to three. • Regarding expert testimonies, the interrogatory should be included in the evidence offered. • The initial hearing of Conciliation, Demand and Defenses, Introduction and Admission of Evidence will now be divided into two hearings: the Conciliation, Demand and Defenses hearing; and the Introduction and Admission of Evidence hearing.	No immediate effect. Review process for maintaining internal records.
Penalties 5	• It is established that the general minimum daily wage in force in the Federal District will be the basis for the calculation of monetary penalties. • For the workers, the penalties may not exceed the amount indicated in article 21 of the Constitution. • The penalties were increased by 50 to 5000 times the general minimum daily wage in force in the Federal District. • In imposing such penalties, the intention, the seriousness of the offense, any damages caused or that may be caused, the offender's economic capacity, and recidivism will be taken into account. Precisely, in case of recidivism, the fine imposed will be doubled. • If, through one single action, several offenses are committed, the penalties corresponding to each conduct will be applied. If one single act or omission affects several workers, a penalty per each of the affected individuals will be imposed. If through one single act or omission several offenses are incurred, the penalties corresponding to each of them will be applied separately.	Immediate action should be implemented to review compliance of obligations as provided in the Reform.

Level of impact: 1 = low ⟷ 5 = high

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Spain

With ongoing economic uncertainty, 2012 has been a very challenging year for Spain, as for some other EU countries. The situation has become particularly serious for the labour market, with an unsustainable unemployment rate of 25 percent in the third quarter of 2012 and a projected unemployment rate for 2013 exceeding 26 percent.

Against this backdrop, in February 2012, the Spanish Government passed emergency legislation that included the most significant amendments to employment law in Spain in decades. Despite the unions' and opposition party's aggressive opposition (which has led to two general strikes and frequent demonstrations), the final law was passed by Parliament in July 2012. It has confirmed most of the amendments passed in February, 2012, but has further defined company rights and limited employee representative rights and collective bargaining.

The amendments, which are numerous and substantially modify different areas of employment law, can be summarized as follows:

- Severance costs for unfair dismissals are significantly reduced, both for current and future contracts (33 days salary per year worked, as opposed to the traditional 45 days salary, and the notion of interim salary is eliminated in almost all cases of termination).
- The definition of what constitutes sufficient financial cause for redundancies is substantially broadened and reduces employee representatives' power in collective redundancy procedures. As a result, redundancies are permitted even in profit making companies, limiting their costs to 20 days salary per year worked, capped at 12 months' salary, for fair redundancies. Similarly, the definition of financial cause to suspend employees' contracts or to opt out of substantial provisions of industry collective bargaining agreements ("CBAs") is expanded making it easier for companies to implement such measures.
- Collective dismissal and suspension of employment contracts procedures are no longer subject to administrative approval.
- Increased company right to change working conditions (including salary), location and duties.
- Increased right for companies to distribute work time irregularly.
- Companies with fewer than 50 employees can now hire employees subject to a one year probationary period and enjoy tax and social security discounts.
- Reduced influence of industry CBAs (local company CBAs will prevail over industry CBAs in a significant list of matters) and reduced expiry dates for CBAs that are being renegotiated.
- Forced retirement provisions under current CBAs are invalidated.
- Several changes to certain basic employment rights (e.g. family care reduction of work hours).

It is hoped that these new laws, which have significantly changed Spanish employment law, will facilitate recruitment, reduce the restrictions imposed by CBAs, decrease company costs, and overall improve employer flexibility.

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SPAIN

Issue	What has changed?	What should employers do? What have employers done?
New favourable rules on employment contracts **2**	• New indefinite term employment contract only for companies < 50 employees to hire employees subject to a one year trial period; tax and social security discounts for these new hires. • Fixed-term training contracts are regulated more flexibly. • Additional social security discounts are established as incentives to hiring. • Overtime is now permitted in part-time contracts. • Limits on repeated use of fixed term contracts rules suspended until December 31, 2012.	The new indefinite term employment contract is recommended for companies < 50 employees.
Amendments to basic employment rights **3**	• 10 percent of employee's work hours can be distributed irregularly throughout the year → five days prior notice. • 20 hours paid time off for training per year. • (i) One hour paid leave until child nine months old for nursing extended to fathers, adoption and guardianship; (ii) the reduction of work hours from 1/8 to 1/2 to care for child under eight or disabled family member must be reduction to daily work schedule; notice of beginning and end of leave required. • Vacation carry over in cases of sick leave → within 18 months as from end of the year that vacation accrued.	These changes aim to introduce more flexibility in work time distribution and part time contracts and limit employee's right to take a reduction in work hours for family care. Company should negotiate training plans.
Changes to contract termination rules **5**	• Individual Dismissals: (i) Severance costs for unfair dismissals are significantly reduced → 33 days' salary/year as opposed to the traditional 45 days' salary/year (ii) interim salary is eliminated in almost all cases of termination. • Redefined causes for redundancies: The new law provides there will be sufficient economic cause for redundancy so long as there have been three consecutive quarters of decrease in ordinary income or sales with respect to previous year's quarters. • Redundancies based on chronic absenteeism are facilitated. • Collective redundancies: (i) No longer subject to prior administrative approval (ii) If over 50 employees affected, outplacement required of at least six months (iii) Companies > 100 employees and benefits in prior two years required additional payment to Spanish Treasury for each employee 50 years of age or over made redundant.	In practice, these changes have had a considerable impact on dismissal decisions, in particular on collective redundancies. Under the new regulations, companies should take special care with the formal requirements in collective dismissal processes, as there is now stricter judicial control of the procedures and relevant documentation required.
Changes to employment conditions **5**	• The law facilitates the company's unilateral ability to substantially modify employment conditions, including salary. • Similarly, change of an employee's work place is more feasible. • Companies can likewise unilaterally change job duties more easily.	Internal flexibility is enhanced.
Less binding industry level collective bargaining agreements **5**	• Local company level CBAs will prevail over industry level CBAs in a long list of matters. • Employers now can enter into company level agreements with employee representatives to opt out of and/or to substitute many key aspects of working conditions established by the industry level collective bargaining agreement. • Collective bargaining agreements are also subject to complete cancellation if not renegotiated within a one year period as from their expiration date.	Social dialogue at the workplace level is the key to flexibility and productivity.
Other **2**	• Forced retirement provisions under current CBAs will be legally invalidated, and companies will no longer be entitled to rely on them to terminate employees who reach the ordinary retirement age unilaterally (such employees would either need to resign or be dismissed by the company).	Check CBA's provisions.

Level of impact: **1** = low ⟷ **5** = high

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Turkey

The Grand National Assembly of Turkey enacted some important new codes significantly impacting the area of labour law in 2012: A new Code of Obligations (No. 6098) replaced the previous Code of Obligations as of July 1, 2012 and brought important changes to non-competition agreements amongst other things; a new Code on Occupational Health and Safety (No. 6331) was implemented to establish rules on labour health and safety in workplaces; and enactment of the Code on Trade Unions and Collective Employment Relations (No. 6356) aims to regulate the general principles, conditions and requirements for the formation, management and operations of trade unions, and collective bargaining agreements as well as strikes and lockouts.

Before the new Code of Obligations came into force, non-compete clauses in employment agreements which were found to be excessive were deemed void. The Code of Obligations has enabled Courts to re-write valid non-compete provisions. As such, valid non-compete provisions which are found to be excessive will no longer be deemed void, but will be re-written by the Courts if necessary to comply with legal standards in terms of their territorial extent, term, and nature of restrictions.

The Code on Occupational Health and Safety (No. 6331) was implemented to establish rules on labour health and safety in workplaces. Additionally, enactment of the "Code on Trade Unions and Collective Employment Relations" (No. 6356) aims to regulate the general principles, conditions and requirements for the formation, management and operations of trade unions, and collective bargaining agreements as well as strikes and lockouts.

The Code on Occupational Health and Safety which came into force on December 30, 2012, with different implementation dates for different types of businesses, sets out the measures to be taken by employers for the prevention of occupational accidents and disease, and specifies employers' obligations with respect to health and safety in all workplaces in Turkey. Employers must carry out risk management, addressing all potentially harmful risks in the workplace, provide his/her employees with the relevant information, instruction, training and supervision on health and safety risks, take preventative measures and make arrangements to ensure the safe use of equipment or substances. Additionally, employers must hire an occupational safety expert, workplace doctor, and other healthcare personnel within the workplace or outsource to healthcare institutions in order to provide health and safety assistance. Workplaces are categorized as hazardous, less hazardous, and very hazardous under the Code on Occupational Health and Safety and applicable provisions (which will be further detailed later by communiqué) and their date of enactment apply according to category.

The Code on Trade Unions and Collective Employment Relations combines the two former codes which regulated trade unions and collective bargaining agreements separately. It has introduced important changes regarding trade union establishment and membership, the execution of collective bargaining agreements, strikes and lock-outs. The noteworthy changes include amending the procedure for establishing trade unions and removing the requirements of Turkish citizenship, Turkish language proficiency and the requirement to work actively in the same line of business as qualifications for trade union founders. Pursuant to the new Code, employees aged 15 years and older can make online membership applications to a relevant trade union, and unlike the former code, they are not required to submit notarized documents. New mandatory thresholds are set out for trade unions seeking to enter into collective bargaining agreements with employers. Accordingly, trade unions seeking to bargain collectively must have union members not less than:

- A minimum of three percent of the total registered employees in a particular employment sector, and
- A minimum of 50 percent of the employees in the relevant workplace, except where an enterprise has several workplaces active in the same sector, then a minimum of 40 percent.

As for strikes, the general principles of the previous codes remain, under which the Council of Ministers may postpone for 60 days a strike or lockout that may be harmful to public health or national security. Unlike the former codes, the Code on Trade

Unions and Collective Employment Relations does not grant a right to initiate a cancellation lawsuit before the Council of State.

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TURKEY

Issue	What has changed?	What should employers do? What have employers done?
The Code of Obligation (No. 6098) which came into effect on July 1, 2012 **5**	• An employee's release of his employer for his receivables from his employer is regulated and subjected to objective criteria. • The non-compete provisions of the employment agreements are subject to certain criteria.	Employers must be sure that • (i) release agreement is in written form, (ii) as of the date of the release, one month period must have passed from the termination date of the employment agreement, (iii) nature and exact amount of the receivable subject to release must be indicated therein, and (iv) the payment must be made in full and through banks. • The non-compete prohibitions in employment agreements are appropriately limited in terms of time, place and scope; do not unfairly restrict the employee's prospective job opportunities and do not exceed two years starting from the termination of the employment.
The Code on Occupational Health and Safety (No. 6331) which came into force on December 30, 2012, have different effective dates for different types of businesses *(continued on page 22)* **5**	• The provisions of the Turkish Labour Code (No. 4857) on health and safety at work have been repealed by the Code on Occupational Health and Safety which has become the principal legislation concerning health and safety matters at work in Turkey. • All public and private workplaces fall within the scope of the Code on Occupational Health and Safety. • Under the former legal regime, recruitment of a workplace doctor and occupational safety expert was only required for workplaces with more than 50 employees. The Code on Occupational Health and Safety on the other hand requires all employers to employ health care personnel in the workplace. The Code on Occupational Health and Safety includes additional mandates for certain industries categorized as "hazardous" and "very hazardous". • Under the former legal regime, employers were required to notify the Regional Labour Directorate on any occupational diseases and accidents within two days of occurrence; however, pursuant to the Code on Occupational Health and Safety however, employers must notify the Social Security Institution within three days of occurrence. • Administrative monetary penalties have increased for non-compliance with the health and safety provisions, in a range between TRY 1000 to TRY 100,000.	Employers must: • Carry out risk management for the purposes of addressing all risks that have the potential to cause harm in the workplace. • Provide employees with relevant information, instruction, training and supervision on risks to their health and safety. • Take preventative measures and make arrangements to ensure the safe use of equipment or substances. • Employ an occupational security expert, workplace doctor and other health care personnel in the workplace or outsource to health institutions to provide health and safety assistance.

Level of impact: 1 = low ⟷ 5 = high

TURKEY

Issue	What has changed?	What should employers do? What have employers done?
The Code on Occupational Health and Safety (No. 6331) *(continued)*	• Workplaces will be re-categorized based on the level of hazardous nature of the work performed in accordance with the communiqué to be enacted in the near future.	• Ensure that employees are provided with health inspections as appropriate having regard to the risks they may encounter at the workplace.
The Code on Trade Unions and Collective Employment Relations (No. 6356) has entered into force **5**	• The Code on Trade Unions and Collective Employment Relations introduced changes with respect to the establishment of trade unions, membership to trade unions, execution of collective bargaining agreements, strikes and lock-outs. • The Code on Trade Unions and Collective Employment Relations mitigates the required qualifications for founders of trade unions and the procedure to be followed for the establishment of trade unions, e.g. the founders need not be Turkish citizens, speak Turkish or work actively in the same line of business to form a trade union. • Employees aged 15 years and older can apply for memberships to the relevant trade union online, and are not required to submit notarized documents unlike the regime under the former Trade Unions Code. • The Code on Trade Unions and Collective Employment Relations foresees new thresholds for a trade union to legitimately enter into a collective bargaining agreement with an employer. • As for strikes, the Code on Trade Unions and Collective Employment Relations maintains the general principles under which the Council of Ministers may postpone a strike or lockout, which may be harmful to public health or national security, similar to the previous statutory provisions. The Code on Trade Unions and Collective Employment Relations does not however grant the right to initiate a cancellation lawsuit before the Council of State, unlike the former code.	• Employers must pay employees' membership fees to the relevant trade union by deducting the corresponding amount from their salaries. • Employers cannot terminate employment agreements on the grounds of an employee's membership of a trade union or participation in trade union activities.

Level of impact: **1** = low ⟷ **5** = high

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United Kingdom

With the UK Government's focus firmly on its de-regulatory and pro-business agenda throughout the past 12 months, we have seen a number of changes in the UK employment law world. This trend looks set to continue throughout 2013 and beyond as the UK authorities seek to encourage economic growth by making it easier for companies to recruit and dismiss employees.

One of the key recent reforms which took effect in April 2012 was to increase the qualifying period of service needed for an employee to bring an unfair dismissal claim from one year to two years. The aim of this change is to encourage employers to take on new employees without the risk of claims for unfair dismissal in the event that the new employee does not work out. This followed concerns from employers, amongst other things, about the time-consuming process required to fairly dismiss a poor performing employee.

Although this change will only apply to new recruits employed on or after April 6, 2012, the Government anticipates that it will save businesses GBP six million per year as a result of a reduction in claims. In practice, however, employers may find that employees without the requisite service seek to bring – more complicated and typically more expensive to defend – discrimination or whistleblowing claims.

Allied to this, the Government is also currently consulting on a number of changes to the UK collective redundancy regime which would make the process less time consuming and less confusing for employers. Foremost amongst the proposed changes is a reduction in the current 90 day consultation period (which applies where an employer is proposing to dismiss 100 or more employees) to 45 day period. It is anticipated that these changes will come in from April 2013.

In response to concerns that the employment tribunal system was too prejudiced in favour of employees, the Government has also announced a package of measures in order to try and redress the balance. These changes will come into force during the course of next year and include enhanced powers for judges to strike out weak claims.

The Government has also used the wider changes as a platform to try and shift the financial burden of running the employment tribunal system to the "users" (i.e. employers and employees). Mandatory pre-claim conciliation will therefore be introduced in an effort to reduce the number of claims reaching tribunal. Financial penalties of up to GBP 5,000 will be levied on employers found to have breached an employee's rights. Most significantly, 2013 will see the introduction of fees for lodging a tribunal claim, with a straightforward claim costing a claimant GBP 390 to take to a full hearing, and a more complicated claim GBP 1,200. We expect this to have a significant impact on the number of claims being brought. However, a scheme which means those receiving state benefits will be exempt from the charges might limit the impact for many claimants.

The above contains just a handful of changes which we anticipate will come into force during the course of 2013. This much is certain – 2013 will be another busy year for UK employment law practitioners.

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UNITED KINGDOM

Issue	What has changed?	What should employers do? What have employers done?
Pensions auto-enrolment 5	• Various provisions of the Pensions Act 2008 came into force on October 1, 2012 providing for the automatic enrolment of workers into a pension scheme. This regime will be phased in over a period of five years, starting with the largest employers. An organisation's "staging date" (i.e. the date on which it is required to comply) depends upon the number of employees in the employer's PAYE scheme.	Check your staging date and start taking steps to review rules of pension scheme and developing employee communication plan.
Unfair dismissal – increase in qualifying period 3	• The period of service required to bring a claim for unfair dismissal increased from one to two years for employees commencing employment on or after April 6, 2012.	Ensure that HR personnel/ managers are aware.
Employee shareholders 3	• A new employee shareholder regime is due to come into force in April 2013 under which employees will be able to waive certain statutory employment rights (e.g. unfair dismissal, and the right to a statutory redundancy payment) in exchange for shares of at least GBP 2,000 in value in the employing company. This is voluntary – employers do not have to offer this.	If your organisation wishes to use this regime, ensure relevant contracts in place and mechanism for valuation of shares.
Changes to collective redundancy regime 3	• Changes to the collective redundancy consultation regime will come into effect in April 2013, including a reduction in the length of time an employer must consult where 100+ dismissals are contemplated from 90 days to 45 days.	Watch for developments.
Introduction of employment tribunal fees 2	• Fees for lodging employment tribunal claims will come into effect in the Summer of 2013. Claimants will be expected to pay an issue fee (of either GBP 160 or GBP 250 – depending upon the complexity of the claim) and a further hearing fee (of either GBP 230 or GBP 950). It is hoped that this will reduce the number of unmeritorious claims submitted to employment tribunals.	No action required.
Lower compensation for unfair dismissal? 5	• Proposals have been tabled to reduce the compensatory award for unfair dismissal to the lower of: national median average earnings (GBP 25,882) or the individual's net salary, capped at between one to three times median earnings. If the proposal is adopted, this measure could significantly reduce the number of unfair dismissal claims.	No action required.
Reform to the employment tribunal system 2	• A number of other reforms are due to come into force in October 2013 intended to reduce the burden on business including: mandatory pre-claim conciliation, a new rapid resolution scheme for straightforward claims, restricting the circumstances in which a whistleblowing claim can be brought, financial penalties for employers who lose Tribunal claims, protection for pre-termination negotiations, the abolition of the statutory questionnaire procedure and the repeal of the third party harassment provisions in the Equality Act 2010.	Watch for developments.

Level of impact: 1 = low ⟷ 5 = high

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United States

U.S. employers continued to face increased federal and state agency regulations and enforcement initiatives in 2012. This year the Equal Employment Opportunity Commission (EEOC) released guidance restricting the use of criminal background checks for new hires and announced its intention to pursue new strategies against disability, sexual orientation/transgender, and pregnancy discrimination.

The EEOC also renewed its focus on systemic discrimination cases – pattern or practice, policy, and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic area. As things stand now, a single plaintiff charge may trigger a class-wide investigation by the EEOC, increasing the risk for employers.

The U.S. Department of Labor (DOL) reaffirmed that the misclassification of independent contractors is a top priority. It continues to work with other federal and state agencies, including the IRS, to investigate claims of worker misclassification. It also has ramped up wage and hour enforcement, launching companywide investigations, seeking liquidated damages, and targeting certain "fissured" industries, including construction, hospitality, staffing, janitorial, and home health care.

The National Labor Relations Board (NLRB) continued to pursue a controversial course, issuing decisions generally viewed as highly favorable to unions on a wide variety of topics. The NLRB more forcefully restricted employer handbook policies and work rules, including social media policies, at-will language, and arbitration agreements. Perhaps a signal of things to come, in 2012, a federal appeals court enjoined the NLRB's final rule requiring employers to post a notice informing workers of their rights under the National Labor Relations Act.

The Securities and Exchange Commission (SEC) issued its first annual report on the Dodd-Frank Whistleblower Program, reporting 3,001 whistleblower complaints in 2012 (with the highest number of tips received from California, New York and Florida) and only one award totaling less than USD 50,000. The SEC and the Department of Justice (DOJ) also released new guidance on the U.S. Foreign Corrupt Practices Act, including information on the agency's enforcement priorities and whistleblower provisions and protections. As a result, U.S. companies are assessing the impact of the regulations, reviewing their compliance programs and bolstering their open door policies, non-retaliation policies and training to encourage internal reporting.

On the national stage, the Supreme Court's decision upholding President Obama's Affordable Care Act in June will require businesses to focus on healthcare compliance obligations and consider plan design changes. U.S. companies also continue to confront the executive compensation-related provisions of the Dodd-Frank Act and pay for performance issues.

In the wake of the election, the prospect for immigration reform legislation in 2013 is real. In the meantime, the U.S. Immigration and Customs Enforcement (ICE) is continuing its audits of employers to detect those who knowingly hire workers that are not authorized to work in the U.S. In addition, employers are facing challenges when it comes to hiring foreign workers in the U.S. under the H-1B visa category as well as continued scrutiny of intra-company transfers.

At the state level, new laws and regulations expanded worker protections in 2012. Employers must contend with new state laws restricting credit report background checks, limiting access to employees' Facebook accounts, and imposing new sick leave requirements. Various states also expanded discrimination laws to cover unemployment, religious dress and grooming, and breastfeeding, among other categories. On the wage and hour front, minimum wage increases take effect in numerous states and cities on January 1, 2013. Employers continue to navigate new state legislation imposing wage and hour notice, record keeping requirements, and significant civil penalties for employee misclassification. Organized labour, however, suffered a setback as several states enacted right-to-work laws banning requirements that public- or private-sector employees join a union or pay union dues.

Employment-related litigation filings, including class and collective actions, remain at record levels. In particular, the number of wage and hour lawsuits filed under the federal Fair Labor Standards Act hit a new high in 2012, with claims alleging misclassification, uncompensated "off the clock" work,

and miscalculation of overtime pay for non-exempt workers. At the same time, the Supreme Court's decisions in *Dukes and Concepcion* continue to shape class action litigation, with employers advancing new theories to defeat certification or limit the size and scope of class claims. Courts also have been more inclined to enforce arbitration provisions and require employees to individually arbitrate in lieu of pursuing class action lawsuits. Employers can expect to hear more on class arbitration in 2013, including from the U.S. Supreme Court. The Court will address whether the parties to an arbitration agreement authorize class arbitration when the agreement provides that "any dispute" will be submitted to arbitration and whether the Federal Arbitration Act permits courts to invalidate arbitration agreements on the ground that they do not permit class arbitration of a federal-law claim. Other employment-related issues on the Supreme Court's docket include: whether plaintiffs may obtain class certification without introducing admissible evidence (including expert testimony) that damages can be proven on a class-wide basis; the scope of the "supervisor" liability rule under Title VII; whether an FLSA collective action is rendered moot if the defense makes an offer of judgment in the full amount of the representative plaintiff's claim; whether ERISA Section 502(a)(3) authorizes courts to use equitable "fairness" principles to rewrite language in employee benefit plans; and the constitutionality of both the Federal Defense of Marriage Act and California's Proposition 8, which could impact same-sex employee benefits.

President Obama's re-election promises to continue the trend of heightened agency rulemaking and enforcement, as federal agencies likely will be given more leeway to move forward with their regulatory agendas. U.S. employers should ensure their policies and practices are updated to comply with new laws and regulations at both the federal and state level to minimize litigation and compliance risks.

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Venezuela

The Organic Labour and Workers' Law (the "OLWL") became effective on May 7, 2012, the date of its publication in Venezuela's Official Gazette. Some provisions are subject to certain transition terms, and become effective at later stages (e.g., the provisions relating to the new maximum limits to the work weeks and mandatory weekly rest days will enter into effect as of May 7, 2013).

The main reason for the enactment of the OLWL was certain temporary provisions or mandates contained in the Venezuelan Constitution (the "Constitution") of December, 1999. According to these provisions, the National Assembly was required to amend the then existing Organic Labour Law (the "OLL") in order to: (i) establish a new seniority benefits system whereby benefits would be calculated in proportion of the employee's seniority, or time of service and based on the employee's last salary; (ii) provide for a term or statute of limitations of ten years for employees to claim payment of the seniority benefits; and (iii) establish a set of provisions tending to progressively reduce the work week in a manner consistent with the provisions set forth in the agreements of the International Labour Organization.

After several years, during which a draft Bill for the Reform of the OLL was introduced and discussed at the National Assembly, but was never enacted as Law, the National Executive of Venezuela, claiming powers to legislate on labour matters based on the Enabling Law then in effect (an issue that is subject to debate), announced during the last quarter of 2011 that the reform would soon take place, appointing a Presidential Commission to work on this matter. After some months of work, the Presidential Commission finally submitted its work product to the National Executive for review, and the National Executive approved the OLWL on April 30, 2012, which was finally published in the Official Gazette on May 7, 2012.

The OLWL goes well beyond the specific elements of reform set forth in the Constitution, and amends several provisions of the former OLL, in many areas. The purpose of the following summary is to describe in general

terms, without addressing all aspects or details, some of these changes. Because it is not the purpose of this summary to describe all changes contained in the OLWL, we advise employers and all interested parties to review and become familiar with the OLWL.

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VENEZUELA

Issue	What has changed?	What should employers do? What have employers done?

Seniority Benefits System – Termination Payments
*3-5 (depending on the seniority and salaries of the employees and the number of employees)
	• The new Organic Labour and Workers' Law, effective since May 7, 2012 (the "OLWL"), established a new seniority benefits system (the seniority benefits guarantee) that consists of:
	  • A quarterly component, equivalent to 15 days' salary per quarter of service; and
	  • An annual component, equivalent to two additional and cumulative days' salary per each year of service after the first year, up to a maximum of 30 additional days' per year.
	• On termination of employment (for any reason), a final calculation must be made, equivalent to 30 days' salary per year of service based on the employee's seniority (from June 19, 1997 onwards) and last salary.
	• The final calculation must be compared with the seniority benefits guarantee and the employee will be entitled to the higher of the two.
		Employers must comply with this new seniority benefits system.
		
		Some companies have made special adjustments in order to ensure that the quarterly accruals of seniority benefits are coincidental with the calendar quarters, even though the OLWL entered into effect on May 7, 2012.

Work Hours *0-5 (depending on whether the employer is already compliant)	As of May 7, 2013: • In principle, the daily workweek may not exceed 40 hours, and the mixed workweek may not exceed 37.5 hours; • Employees must be granted a second mandatory weekly rest day, to be enjoyed jointly with the traditional mandatory weekly rest day; • The OLWL adds four public holidays: Carnival Monday and Tuesday, and December 24 and 31.	Employers who need to reduce working hours based on these new rules must amend, with the workers' participation, the applicable new working schedules, which must be filed before the competent Labour Office(s) prior to May 7, 2013. Employers must allow employees to take the additional paid holidays, to the extent they were not already doing so.
Overtime *0-5 (depending on whether the employer is already compliant)	• As of May 7, 2012, if overtime is worked without previous authorization by the competent Labour Office, or, in case of emergencies, without immediate notification of the Labour Office as provided for in the OLWL, the employer must pay double the overtime surcharge set out in the OLWL.	Employers must comply with the OLWL's requirements relating to prior authorization/subsequent notice to work overtime hours .
Outsourcing *(continued on page 28)* *0-5 (depending on the company's involvement in outsourcing activities)	Outsourcing is defined in the OLWL as the simulation or fraud committed by the employer to deviate, disavow or hinder the application of the labour legislation. It specifically forbids outsourcing and, particularly, does not allow: • Contracting with another entity to perform works, services or activities on a permanent basis within the facilities of the contracting entity, directly related to the contracting party's production process and lacking which the latter's operations would be impaired or interrupted; *(continued on page 28)*	Companies which prior to May 7, 2012 had contractual arrangements with others involving any prohibited form of outsourcing, are required to hire the employees involved within 3 years following May 7, 2012. In the *(continued on page 28)*

Level of impact: 1 = low ⟷ 5 = high

VENEZUELA

Issue	What has changed?	What should employers do? What have employers done?
Outsourcing (continued)	• The hiring of workers through intermediary parties, in order to avoid the obligations that arise from an employment relationship with the contracting party; • Working entities created by the employer to avoid obligations towards the workers; • Fraudulent contracts or agreements designed to hide the existence of an employment relationship, through the use of legal structures that pertain to civil or commercial law; and • Any other form of labour simulation or fraud.	meantime, these workers will be protected against dismissals, deterioration of conditions and transfers without just cause previously proven before and authorized by the competent Labour Office, and are entitled to the same benefits and conditions of employment as the employees directly hired by the beneficiary.
Absolute Labour Stability 2	• An absolute labour stability system is set whereby the protected workers cannot be dismissed without cause. This way, unjustified dismissals are void and the employer is bound to reinstate the worker with back pay except if the worker declines to be reinstated and instead accepts the additional indemnity(ies) due to him/her. In most cases, this indemnity is equivalent to the amount of the workers' seniority benefits. • The system protects most employees except for those having less than one month of service and upper management employees ("*trabajadores de dirección*"). • If reinstatement with back pay order issued by the labour court is not complied with by the employer, the court can enforce it and the employer may be exposed to criminal penalties for contempt of judicial authority.	. Employers must adjust to this new system, and be mindful of the fact that dismissals without cause are not possible except in the exceptional cases set forth in the OLWL .
Special Labour Protection (*or Inamovilidad*) 5	Workers protected by special labour or union protection cannot be dismissed, transferred or have their conditions detrimentally changed without just cause previously authorized by the Labour Inspector. In this respect: • Reinstatement with back pay or restitution of rights procedure is simplified. The Labour Inspector makes the decision prior to notifying the defendant company, which becomes aware of the procedure and decision made when the same is enforced; • During the enforcement of the decision, the company may oppose and submit all relevant evidence. The labour official will suspend the enforcement when the existence of the employment relationship is not evidenced, and will open a term to bring and call for evidence; • The Labour Inspector's decision is not subject to appeal; • If the decision orders the reinstatement, it cannot be challenged before the courts until there is evidence of the employer's compliance with the reinstatement and restitution of the worker's legal status; and • To enforce the order of reinstatement or restitution, the labour official may request the support of the public order forces and, if the employer continues to resist the order, its representative or the person responsible for the contempt or hindrance of the order shall be summoned by the Public Attorney's Office to appear before the competent judicial authority.	Employers must adjust to the new and more stringent rules regarding reinstatement or restitution of rights of protected employees.
Employment contracts * *3-5 (depending on the degree to which the employer is already in compliance with this aspect)	• Employer must record the date and hour when the worker was given a copy of the contract, in a book to be maintained for this purpose. • The maximum term of contracts for a stated term is reduced from three years for skilled labourers and employees to one year. • Three months (increased from one month) must now elapse between fixed term/ specific project contracts so that it is clear they are two separate relationships. • When there is no written employment contract, statements made by the worker regarding terms and conditions will be presumed to be true, except if there is evidence to the contrary.	Employers must adjust to the new rules. In particular, they must ensure that each employee executes an individual employment contract in writing, and that a copy of each employee's contract is delivered to the employee and the date and hour of such delivery is recorded.

Level of impact: 1 = low ⟷ 5 = high

VENEZUELA

Issue	What has changed?	What should employers do? What have employers done?
Payment receipts * *3-5 (depending on the degree to which the employer is already in compliance with this aspect)	• Employers are now obliged to issue receipts with details of the amount of salaries, premiums, gratifications, profit sharing, year-end bonus, additional or excess salary, vacation bonus, surcharges for holidays, overtime, night work and other salary items, and the relevant deductions made. • Defaulting on this obligation will create a presumption, which will stand unless there is evidence to the contrary, that the salary alleged by the worker is true, without impairment to the penalties set forth in the OLWL.	Employers must ensure that receipts are issued detailing each payment made to their employees.
Mandatory profit sharing * *0-5 (depending on whether the employer has already been paying the maximum 4 months' salary per employee)	• The obligation on employers to distribute 15 percent of net profits and the maximum limit of four months' salary per employee are maintained. However, the minimum guarantee is increased from 15 to 30 days' salary (year-end bonus). • The maximum limit of two months' salary, which under the former law applied to employers with less than 50 workers or a capital stock of up to Bs. 1,000, is eliminated. Thus all employers will now be governed by the four months' salary per employee limit. • Year-end bonus for non-profit employers is increased to 30 days. • The small employer exemption is removed.	Employers must adjust to the new rules relating to mandatory profit sharing.
Family protection 3	• Maternity and paternity protection are established from the start of pregnancy up to two years after childbirth. • Post-birth leave for the mother is increased to 20 weeks (and pre-birth leave is maintained at six weeks), with the possibility of an extension in case of illness. • Rest periods for breastfeeding are set at two rest periods per day of: (i) 1/2 an hour each, if the employer provides a child care centre or breast feeding room; or of (ii) 1 ½ hours each if no such facilities exist. • A worker with one or more children with a disability or illness that prevents the child from caring for him/herself, will be permanently protected by a bar against dismissal.	Employers must adjust to the new rules governing family protection.
New rules on collective relations 4	• There will be a National Registry of Workers' Unions (starting in January 2013). Workers' unions must adjust their by-laws to the new law before December 31, 2013. If there is only one workers' union, the employer must negotiate a collective bargaining agreement (even though it does not represent a majority of the workers).	Employers and unions must adjust to the new rules regarding collective relations.
Sanctions 3	• New criminal penalties or sanctions are created (for example, for employers who refuse to comply with reinstatement orders, or who hinder the right to strike). • Administrative sanctions (e.g.: fines) are increased.	Employers must make efforts to ensure they comply with the labour legislation, to minimize the risks of sanctions.
Other changes 4	Several other changes were introduced under the new OLWL which we have not covered in this summary (for example, vacations, suspension of the employment relationship, substitution of the employer, etc).	Employers should: (i) familiarize themselves with the OLWL; (ii) ensure full compliance with the OLWL and other Venezuelan labour provisions; (iii) monitor the interpretation and application of the new provisions by the administrative and judicial authorities; and (iv) monitor issuance of the new regulations that should be enacted to regulate the new OLWL.

Level of impact: 1 = low ⟷ 5 = high

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Vietnam

2012 marked the beginning of major employment and labour law change in Vietnam. Two significant new employment laws were passed by the National Assembly including Labour Code No. 10/2012/QH13 dated June 18, 2012 taking effect from May 1, 2013 (the "New Labour Code") and Law No. 12/2012/QH13 on Trade Unions dated June 20, 2012 with effect from January 1, 2013 (the "New Union Law").

These laws will replace the current Labour Code passed on June 23, 1994, amended and supplemented in 2002, 2006 and 2007 (the " Current Labour Code") and current Law No. 40-LCT/HDNN8 on Trade Unions dated June 30, 1990 (the "Current Union Law"). Also, the new draft of Employment Law is under discussion and expected to take effect from January 1, 2015 (the "Draft Employment Law").

The New Labour Code introduces several changes to the Current Labour Code, in particular concerning salary increases during probationary periods (i.e., increase from at least 70 percent of official salary to at least 85 percent of official salary); new regulations on labour subleasing; increase of maternity leave period (i.e., increase from four-month maternity leave period in standard conditions under the Current Labour Code to six-month maternity leave period); shortening of work permit term (i.e., two-year work permit term instead of three-year work permit term under the Current Labour Code); revised working and rest times (i.e., more limitation to working overtime, increase of holidays from nine days to 10 days in a calendar year); and a new role for immediate upper level trade union in enterprises without grass-root unions, etc.

The New Union Law incorporates some major changes which, among other things: provide more comprehensive guidance for the prohibition of foreign workers from establishing and joining trade unions and participating in trade unions' activities; enhance rights and obligations of the immediate upper level trade union of grassroots trade union to workers at enterprises where the grassroots union has not yet been established; provide stronger protection for part-time trade union officers; and guarantee the provision of financial matters for trade unions by requiring all employers to pay union levies, even where such enterprises do not have a grassroots trade union.

It is expected that, during 2013, numerous Decrees and Circulars that implement the Current Labour Code and Current Union Law will also be revised or replaced to comply with these new laws.

In addition, the Draft Employment Law provides a new "Employment Insurance Fund" which is a fund to support, maintain and develop employment; prevent unemployment; partially support income and reintroduce unemployed people back into the labour market as soon as possible. Upon taking effect, this fund will replace the current unemployment insurance fund which is provided under the Law on Social Insurance.

Finally, a plan to increase regional minimum wages which has been proposed by the Ministry of Labour, Invalids and Social Affairs (MOLISA) is expected to become effective from January 1, 2013. Originally, the MOLISA proposed two options to increase regional minimum wages: by 36 or 25 percent. After strong resistance from the business community, the MOLISA revised its proposal and has submitted a proposal for a lower increased rate (around 17 to 20 percent) to the Government for a final decision. This proposal is under review and consideration by the Government.

These significant new laws will directly impact employment relationships and employers' businesses. In particular, the changes are likely to increase the labour costs for employers. The increased costs may include both direct costs (i.e., meeting legal requirements that directly impose higher taxes, fees and labour costs on the enterprises, such as increase of probationary salary, increase of regional minimum salary rates; increase of insurance contribution rates; increase of leave regimes, increase of salary for overtime, new regulation of union fund, etc.); and indirect costs (i.e., meeting legal requirements that would cost companies more administrative and management time, such as the imposition of union levies to all enterprises even if such enterprises have no grassroots union, shortening the term of work permit, more restriction to working overtime, etc.).

During these economically challenging times, the considerable increase in labour costs will surely lead to employers considering reductions in workforce and/or increases in product/service prices. Labour costs and country competitiveness are key factors for investors when considering whether to invest in Vietnam. These

significant changes could impact investors' decisions on whether to choose Vietnam or other neighboring countries as their investment destination.

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VIETNAM

Issue	What has changed?	What should employers do? What have employers done?
Labour subleasing* 4	• The concept of labour subleasing is introduced for the first time to (i) satisfy urgent purchase orders; (ii) temporarily replace employees doing military service, taking maternity leave, suffering from sickness or occupational accidents; and (iii) satisfy demand for highly skilled/high-quality employees; • Labour subleasing only applies to certain jobs as prescribed by the Government; • The maximum term of a sublease is 12 months; • The contract for labour subleasing must be in writing with certain content prescribed by law; • The labour subleasor must pay the employees' salaries; • The labour subleasee must not discriminate between the subleased employees and its own employees; • An enterprise wishing to engage in labour sub-leasing activities must (i) have a license issued by the State authority to provide labour subleasing services; and (ii) meet a minimum funding requirement.	Companies have used subleased labour before now in Vietnam even though it has not been provided for by law, but the new regulations are expected to have a major impact on both labour subleasor and subleasee.
Maternity leave* 4	• Maternity leave will increase from four months in standard conditions to six months including any prenatal and postnatal period, regardless of the woman's work situation. • Prenatal leave cannot exceed two months. • An employee may only return to work after maternity leave after having had at least 4 months' rest.	The employer must arrange temporary work replacements for longer maternity leave.
Work permit* 3	• Work permit term shortened from three to two years; • There are fewer exemptions from work permit requirements in the new Labour Code.	The employer must spend more time on the work permit application/ renewal permit.
Union Levy** 4	• A two percent union levy calculated on total local employees' payroll used to contribute to social insurance fund, which applies to all companies regardless of existence of grassroots trade union in such companies.	Increased workforce costs, and grassroots union establishment becoming *de facto* compulsory.
Work hours and rest breaks* 4 *(continued on page 32)*	• Working hours cannot exceed 10 hours a day where hours are determined on a weekly basis; • In addition to rest breaks of 30 minutes (day shift) or 45 minutes (night shift), the employer shall determine the short breaks and record in the internal work rules; • Increase of leave for Lunar New Year from four to five days; • In some special cases, the employer can request the employee to work overtime without the employee's consent; • Monthly overtime hours must not exceed 30 hours;	Restriction to work hours, overtime and rest breaks can effect employer's business and increase labour costs.

* In force from May 1, 2013
** In force from January 1, 2013

Level of impact: 1 = low ⟷ 5 = high

VIETNAM

Issue	What has changed?	What should employers do? What have employers done?
Work hours and rest breaks* *(continued)*	• Overtime salary during holiday/paid-leave for employees paid on a daily basis is at least 300 percent of the normal salary plus normal salary for such holidays/ paid leave; • Employees working overtime on night-shifts are entitled to an additional 20 percent of normal day time salary (night shift = 22:00 to 06:00).	
Roles of immediate upper union** 4	• When a company has no grassroots union, consultation with the immediate upper level trade union will be required where matters need consultation/ agreement with the trade union.	Grassroots union establishment to become *de facto* compulsory.
Greater protection of part-time union officer** 3	• If the employment contract of a part-time trade union officer expires while such officer is still within the term of his or her office, then such employment contract must be extended until expiry of the term of such office.	In some cases, this provision can protect non-dedicated part-time union officers.
Salary in probationary period* 2	• Salary during the probationary period is increased from at least 70 percent of official salary to at least 85 percent of official salary.	Labour costs will be increased.
Dismissal* 2	• The list of dismissal cases are extended to include some further breaches: assault causing injuries, using drugs during working time, infringing the employer's intellectual property rights, or other breaches possibly causing serious material damages to employers' interests or assets.	The employer may have more legal bases on which to dismiss employees.
Strike** 2	• The definition of a strike is limited to where circumstances where there is a collective labour dispute over interest only (instead of a collective labour dispute over both rights and interest as is the case currently).	The scope of a strike has been narrowed.

* In force from May 1, 2013
** In force from January 1, 2013

Level of impact: 1 = low ⟷ 5 = high

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