# On your radar

## Key employment issues to be aware of internationally

# Index of countries in this edition

Please click on the country below to take you to that section.

# Belgium

## Development and date

**COVID-19 related development: end of mandatory telework**
Since 27 June 2021, telework is no longer compulsory.

As a reminder, in Belgium, telework was made compulsory from 2 November 2020.

**Extension of bereavement leave for workers**
The law of 27 June 2021 introduced important changes regarding bereavement leave for workers. Among other things, this law extends the number of days of bereavement leave.

The new rules were supposed to apply to deaths occurring from 25 July 2021.

However, following the floods in the country and according to media reports, the federal minister has extended this entitlement to all workers who have suffered the death of a child or a spouse in the last 12 months. More information should follow...

## Description

The ministerial decree of 23 June 2021 provides that from 27 June 2021, telework is only "highly recommended“ – and no longer compulsory – in all companies, associations and services, whatever their size, for all personnel members whose function is suitable for it.

This measure is part of a broad "summer plan" established by the Belgian Government and aimed at facilitating a "return to normal life" through various relaxations.

The law of 27 June 2021, published on 15 July 2021 in the Belgian Official Gazette, provides that the worker is now entitled to 10 days’ paid bereavement leave in the event of:

- the death of the worker's spouse or cohabiting partner; and
- the death of a child of the worker or a child of his or her spouse or cohabiting partner.

## Impact and risk

Since 27 June 2021, the obligation on employers to publish monthly figures for the number of employees who cannot telework (see previous issue of On Your Radar for more details) is no longer in force.

In addition, employers are no longer required to provide employees with a certificate or other evidence confirming the need for their presence in the workplace.

Employers are now required to pay the worker for 10 days of leave following the bereavement of a child or spouse.

Previously they only had to pay for 3 days in such cases.

## Future actions

As part of their return to the office plans, employers must adopt appropriate preventive measures in order to ensure compliance with the rules on social distancing and to provide the maximum level of protection.

These appropriate preventive measures must comply with the rules in the "Generic Guide" drawn up by the Federal Public Service of Employment, in addition to complying with the rules on social consultation within the company and take place in consultation with the prevention and protection services at work.

The employer will have to take these extra 7 days into account when organising the business and bear in mind that the 10 days must be taken during specific periods.

The first 3 days must be taken by the worker in the period beginning on the day of the death and ending on the day of the funeral. The remaining 7 days may be taken freely by the worker within one year of the death.

However, at the request of the worker and with the agreement of the employer, it is now possible to derogate from the periods during which the days must be taken.



Back to Index of countries →

# Bulgaria

## Development and date

**New regime of receiving EU Blue Card and Single Application Procedure**
On 12 March 2021, important amendments to the Foreigners in the Republic of Bulgaria Act were adopted.

A comprehensive revision of the legal regime for access to the labour market of non-EU nationals has been carried out.

These changes relate to the procedure for obtaining an EU Blue Card as well as the procedure for obtaining a Single Residence and Work Permit. The former applies to highly qualified professionals while the latter is relevant to all other foreigners who want to work in Bulgaria but do not qualify for highly qualified employment.

These changes will apply from 1 June 2021.

## Description

**Changes to the EU Blue Card procedure**
- The whole process of applying for a Blue Card will be kept before the Migration Directorate, which will accept documents and distribute them amongst the relevant institutions without the employer having to visit other legal entities.
- All documents need to be submitted at the beginning of the procedure.
- An application can be lodged by the employer, an authorised person, or by the foreigners themselves, if they have a permit for long-term residence in Bulgaria.
- Visa applications can now be made online.

**Changes to the Single Application procedure**
- Abolition of the market test, i.e., the requirement for the employer to carry out a preliminary labour market survey, proving categorically that the national labour market does not offer prepared and qualified residents for the position.
- Abolition of the requirement that the foreigner must be outside of the territory of Bulgaria when initially applying for access to the labour market.
- The maximum duration of the residence and work permit has been extended by up to three years.

## Impact and risk

**Impact**
The changes in the procedures providing access to the labour market for non-EU nationals, represent a step forward in the process of facilitating labour migration in the country and are the result of the long-standing efforts of several entrepreneurs' organisations to initiate reforms in this area.

In accordance with the new framework, the Migration Directorate shall carry out an inspection of the documents annexed to the application form. In the absence of a document, the Directorate will inform the applicant and set a 7-day deadline for the submission of the required documents. If the instructions are not fulfilled within that period, the proceedings will be terminated, and the application should be reopened.

**Risks**
A major risk is whether the Migration Directorate will have the capacity to take over the large number of applications and process them within reasonable time. It is not certain what technical and information means will be available for the implementation of the electronic exchange. Finally, there is no clarity on what the consequences may be, in cases of non-compliance with the new deadlines.

## Future actions

The changes will affect a number of national and international enterprises which hire or intend to hire employees from non-EU Member States.

Employers who want to hire professionals from outside the EU will need to familiarise themselves with the new procedure and prepare their legal and HR departments for the new EU Blue Card application and the Single Residence and Work Permit procedure.

In addition to this, from 1 June 2021, employers have an obligation to notify the Migration Directorate of the termination of the employment relationship with the foreign national who has received an EU Blue Card within three days from the date of termination of the employment.



Back to Index of countries →

# Colombia

| Development and date | Description | Impact and risk | Future actions |
|---|---|---|---|
| **Reduction of work schedule:**<br>New laws have established that the maximum weekly working hours (which at the moment is equivalent to 48 hours) will be gradually reduced to 42 hours per week. | The reduction will be done in gradual stages:<br>– In 2023 it will be of 47 hours,<br>– In 2024 it will be 46 hours,<br>– From 2025, the reduction will amount to 2 hours for each passing year, until it reaches 42 hours per week. | This reduction does not allow employers to reduce the employees' salaries. It is expected that company labour costs will increase, as a result of this. Also, it will require adjustments on shift patterns. | While the reduction will start in 2023, it is important that employers start to carry out their own analysis and internal studies to prepare and adapt their schedule and shifts to address these new regulations. |
| **Updates to parental leave:**<br>In July 2021, a new Law was introduced extending the paternity leave period and creating new parental leave schemes: “Shared Parental Leave” and “Flexible Time Parental Leave”. | The main changes are the following:<br>1. The paternity leave time was increased initially to 2 weeks, and gradually will increase up to 5 weeks.<br>2. *Shared parental leave: The* parents can agree that the last 6 weeks of maternity leave care distributed between the parents.<br>3. *Flexible Time Parental Leave:* Parents can agree with their employer to change a certain part of the maternity or paternity leave for a period of part time work. | The Bill´s main goal is to reduce discrimination against women when accessing job opportunities, and to promote a more responsible paternity leave system. However, the distribution of the maternity leave between the mother and the father (who in most cases will work for different companies), will involve new procedures for employers that could be complex and cumbersome and may require co-operation efforts between employers and social security entities. | Employers should pay attention to the next maternity and paternity leave periods that their employees may be entitled to. They can then anticipate if some employees are going to make a request for Shared Parental Leave or Flexible Time Parental Leave, and plan ahead for any internal adjustments to avoid possible damages claims and minimise difficulties on implementing the leave. |
| **Social Security Contributions for Employees who earn less than a minimum wage:**<br>Changes on 21 December 2020 regulate the access to and operation of a special protection mechanism that offers basic social guarantees to those who receive a monthly income of less than one legal monthly minimum wage, as a result of part time working in a job, trade or economic activity. | The protection includes:<br>1. Coverage under the Subsidised Health Regime.<br>2. Access to the Periodic Economic Benefits Program – BEPS, as a protection mechanism for old age.<br>3. Inclusive Insurance, which will cover the employee against the risks derived from the work activity and the illnesses covered by the BEPS.<br>4. Access to the Family Subsidy System, once it is regulated by the Government. | Despite the existence of an obligation to affiliate all employees to the Integral Social Security System, the fact is that those who work only on certain days or hours are hardly affiliated and, in this sense, these people remain in the informal sector, lacking savings for the protection of their old age and are exposed to occupational risks without any protection at all. This special protection scheme seeks to reduce inequality in the short term and formalise those excluded from the contributory component of the Social Security System. | From 1 February 2021, all contracting parties or employers who have employees or independent contractors in their service who receive a monthly income of less than one minimum wage, must register them at the Colombian Pension Administrator – (Colpensiones) and pay a contribution of 15% of the monthly income obtained by the worker. This contribution will be in addition to the wages paid for their services and does not exonerate them from their obligation to pay social benefits and other contractual obligations. |



Back to Index of countries →

# Croatia

## Development and date

**New Employment Act announced**
Since the COVID-19 pandemic began in 2020, the arguments in favour of changing the existing Employment Act have increased.

The pandemic showed that the legislation, especially when it comes to remote work and flexible forms of work in general is insufficient. Although it seemed that the changes would take place in mid-2020, the first serious meeting between the Ministry's expert group and social partners took place at the end of June 2021.

According to the first announcements, a new Employment Act can now be expected mid-2022. However, taking into account the previous experiences and the strength of opposition on certain points, it is more realistic to expect the new legislation towards the end of 2022 or even the beginning of 2023.

## Description

Although it seemed that the only major point which will be changed is remote working, it is now obvious that more serious amendments will be included.

The following additional changes have been announced so far:

- the limitation of the grounds for entering into fixed term employment contracts and shortening their duration;
- the liberalisation of dismissal procedures (including a shortening of notice periods and a reduction in severance payment amounts);
- the regulation of gig work;
- the liberalisation of rules about working for other employers;
- the possibility of prolonging the date of retirement, if the employee wants to do so;
- better definition of salary;
- regulation of the fact that employees who are not union members are able to use the benefits prescribed by collective bargaining agreements
- new measures which further discourage undeclared work
- the liberalisation of Health & Safety related responsibilities and liabilities when it comes to certain types of work (particularly remote work), etc.

## Impact and risk

Of course, all the proposed changes are still subject to an agreement between the social partners, and it is yet to be seen what will be included in the final proposal of the new Employment Act.

However, it is already evident that the changes will significantly impact employers and employees. Some changes are beneficial to employers (particularly the ones regarding reduced employee rights where there has been a termination of employment), however, some changes will impose additional burdens.

## Future actions

Employers should closely monitor the course of negotiations and pay attention to the changes.

According to the current information available, the proposal for the new Employment Act should be published, and formal public discussion initiated by the end of the year. Employers should actively participate in the consultation – either individually, or via their professional associations, or their lawyers – to facilitate the best possible legislation.



Back to Index of countries →

# France

## Development and date

**Paternity leave**
Introduced in 2002, paternity leave has been extended from 11 days to 25 calendar days by the Social Security Financing Act 2021.

A decree of 10 May 2021 sets out exactly how the leave can be taken. The provisions of the decree apply to fathers of children born on or after 1 July, as well as to children born prior to that date but whose due date was scheduled for later.

## Description

If he/she is an employee, the father, the mother's spouse, partner or person linked by a civil solidarity pact is entitled to:

- 3 working days of birth leave starting, at the employee's choice, on the day of birth or the day after;
- 25 calendar days of paternity leave or 32 calendar days in case of multiple births.

Paternity leave must be taken within the 6 months following the child's birth. It is composed of:

- a first period of 4 calendar days which must be taken immediately after the birth leave;
- a second period of 21 calendar days (or 28 calendar days in case of multiple births) which can be split into 2 periods of at least 5 days each.

Paternity leave can be taken more than 6 months after the birth in 2 cases:

- child's hospitalisation;
- mother's death.

The employee must inform their employer at least 1 month in advance of the dates and the duration of the leave.

## Impact and risk

Except in a few limited cases, it is forbidden to instruct the employee to work during the first 3 days of birth leave and during the first 4 days of paternity leave.

Companies that refuse to give fathers the statutory 7 days off (3+4) will face fines of up to EUR 7,500.

## Future actions

While birth leave is paid for by the father's employer, paternity leave is paid by Social Security (daily allowances). The French Labour Code does not require the father's employer to pay additional compensation, but some collective agreements or branch agreements provide for the employer to top-up compensation during paternity leave.

As a reminder, fathers benefit from protection against dismissal. In the period of 10 weeks after the birth, dismissal is prohibited except where the employer demonstrates serious misconduct or that it is impossible to maintain the employment contract on grounds that are not related to the arrival of the child.



Back to Index of countries →

# Germany

## Development and date

**Works Council Modernisation Act (Betriebsrätemodernisierungsgesetz)**
On 18 June 2021 the Works Council Modernisation Act (Betriebsrätemodernisierungsgesetz) came into force. The aim of the act is to promote the establishment and election of works councils and to strengthen participation rights in the areas of artificial intelligence and remote working.

## Description

In particular, the following two new regulations should be on your radar:

- A new right of co-determination has been added to section 87 no. 14 of the Works Council Constitution Act (BetrVG), according to which the works council now has an explicit right of co-determination in the design of mobile work carried out by using information and communication technology. (Co-determination means that the employer may not make decisions without the involvement of the works council.)

- Works council meetings via video and telephone conference are now regulated in section 30 of the Works Council Constitution Act (BetrVG). However, face-to-face meetings are to remain the standard. Participation in meetings via video and telephone conferences is only possible if three conditions are fulfilled:

  i. The requirements for such participation are set out in the works council´s rules of procedure.
  ii. There is no objection from one quarter of the members of the works council.
  iii. Data privacy and security are ensured.

## Impact and risk

- The works council's right of co-determination must now be observed when designing mobile work. However, the decision to introduce remote working as such remains with the employer. The right of co-determination only concerns the content of remote working, such as the duration of remote working, the use of work equipment and safety aspects.

- Virtual works council meetings can bring more efficiency in terms of works council work, especially when several sites are involved.

## Future actions

- Co-determination concerning remote working was previously considered to be covered under the right of co-determination under section 87 no. 1 Works Council Constitution Act (BetrVG). In this respect, many employers are already sensitive to the co-determination of the works council in remote working. However, with the explicit codification of the right, the importance of the works council´s right of co-determination has been established and should therefore be one of the core tasks when designing remote working.

- The practical implementation in the future will show whether and to what extent works councils make use of the possibility of virtual works council meetings and replace face-to-face meetings.



Back to Index of countries →

# Italy

## Development and date

**Ban on dismissals**
The ban on collective and individual economic dismissals has been extended to the end of October for most companies. In some sectors the ban was lifted from the end of June.

**Remote working**
Employers will be able to have employees working from home without their agreement until the end of 2021.

**Social safety nets**
The special social safety net created for employers who suffered economic losses due to the pandemic has been extended for an additional 13 weeks for most companies. Companies working in the fashion sector will be entitled to apply for 17 weeks of assistance.

## Description

The ban on dismissal does not apply:

- where employment is terminated because the company has stopped trading including as a result of the company's liquidation, (without partial or total continuation of the activity),
- in cases where, in the course of the liquidation, there is no transfer of a group of assets or activities that may constitute a transfer of the business or a branch, or
- in the event of a company collective agreement, (entered into by the most representative trade unions at national level), providing an incentive to terminate the employment relationship, the ban is limited to employees who adhere to the collective agreement.

## Impact and risk

Employees dismissed during the ban shall be reinstated to their job and the employer shall be ordered to pay wages and contributions from the date of dismissal until reinstatement. Employees may opt for an indemnity of 15 months' pay instead of reinstatement.

## Future actions

**Safety in the workplace**
Vaccination is not mandatory, and employers cannot dismiss an employee who refuses to be vaccinated. However, they can assign them tasks that do not involve interpersonal contact or risk spreading the infection, or suspend them.

The Government has recently announced that the European Green Pass, the certificate that is only issued to vaccinated individuals, will be necessary to go to any place where there may be social contact (i.e. restaurants). If confirmed employers may ask their employees to have the Green Pass before accessing the premises.



Back to Index of countries →

# Kenya

## Development and date

**Disability Discrimination**
A recent Employment and Labour Relations Court [ELRC] case from 8 July 2021 made it clear to employers that they need to demonstrate the steps they have taken to comply with the concept of reasonable accommodation when employing disabled individuals.

In *Wilson Macharia v Safaricom PLC* , the ELRC ruled that the employer had failed to demonstrate that it was impossible to employ the Petitioner based on his visual disability. There is no requirement to have sight to use, operate and work a computer.

This amounted to a breach of the Persons with Disability Act and the Constitutional rights of the Petitioner on his right to equality and freedom from discrimination.

In Kenya, an employer is liable for the discriminatory actions of an employee unless it can be demonstrated that it took all reasonable steps to prevent the discriminatory act in question.

## Description

Following a decision by the employer to retract an invitation to the Petitioner for an 8-week induction training based on the fact that he had not undertaken a technical interview, the Petitioner sued the employer for having been informed all through the recruitment process that he would do this training once the employer bought the software to enable the blind Petitioner to take the test.
In response, the employer stated that despite best and diligent endeavours, it was not able to integrate its customer service platform with the software to enable the Petitioner to work as a customer experience executive.

While the tribunal acknowledged the employer's point that the integration was not possible due to conflicting software configurations; the employer's failure to make a reasonable accommodation here amounted to a violation of the Petitioner's right to be treated with dignity. An award equivalent to the sum of USD 60,0000 was awarded as damages.

## Impact and risk

It was critical in this case that the employer had advertised in a local daily newspaper that it was committed to creating a "diverse environment and is proud to be an equal opportunity employer. All qualified Kenyans will receive consideration for employment without regard to race, colour, religion, gender, tribal origin, disability or age".

This meant that it could not say that it was unable to come up with software that could enable the Petitioner to carry out his duties as a blind employee.

It was not enough for the employer to state that the integration was not possible because of conflicting software configurations, if there was a willingness to engage visually impaired people to work as a customer experience executive.

This case makes it more difficult for employers to rely on the concept of reasonable accommodation and encourages employers to go further in demonstrating the steps they have taken towards practically achieving this concept from the outset.

## Future actions

As a starting point, employers must ensure that they accurately describe the diverse work environment they are committed to creating and further understand the implications of these diversities and how they would be practically implemented.

In the digital era, employers should carefully consider the use of technology that would create equal opportunities especially for persons with disabilities.

Employers must also develop and strictly adhere to recruitment policies noting that time is of the essence and a delay in communicating the accurate results of the selection process may lead to a claim in violation of fair administrative action, particularly if the employer is a Government institution.



Back to Index of countries →

# Mexico

## Development and date

**Amendments on Labour Outsourcing Practices**
On 23 April 2021, a Bill was published in the Federal Official Gazette to amend several provisions on outsourcing and profit-sharing.

The Bill, though limited to outsourcing/ subcontracting, represents the most significant labour reform in Mexico since 2013.

The Government states that the purpose of these amendments is to put an end to abusive practices from employers as well as reducing tax evasion.

The Bill includes amendments to the Federal Labour Law, the Federal Tax Code, the Income Tax and the Value-Added Tax (VAT) laws, as well as the Social Security Law and National Employees' Housing Fund Law (Payroll Tax Laws).

The amendments to the Federal Labour Law, Social Security Law and National Employees' Housing Fund Law entered into force the day after its publication in the Federal Official Gazette. The amendments to the Federal Tax Code, Income Tax and Value-Added Tax laws shall enter into force on 1 September 2021.

## Description

Among the main amendments to the Federal Labour Law regarding outsourcing employment structures, are the following:

- Subcontracting personnel, i.e. the provision of services in which an entity or individual provides or makes available to another entity its own employees for the other entity's benefit, is now prohibited.
- Contracting specialised services is only permitted if such services or tasks are not part of the corporate purpose or main economic activity of the contracting party and provided that the contracting entity is registered at a special public registry.
- Complementary or shared services or tasks provided between companies of the same corporate group shall also be considered as specialised.
- It is a legal requirement that in order for an employer substitution to occur, the assets of the company or establishment shall be transferred to the substitute employer.
- The amount of profit sharing to be paid to employees, will be capped to 3 months of salary or the average amount received by the employee in the last 3 years; whatever option is the most beneficial amount for the employee.

## Impact and risk

Outsourcing agreements shall be formalised through the execution of a written contract stating the scope of the services to be provided or the works to be performed, and the approximate number of employees needed for the provision of tasks stated in the agreement.

Joint and several liability is recognised between the individual or entity who engages the specialised services or specialised works and the contractor who fails to comply with the obligations arising from the relationships with its employees.

Economic sanctions may be imposed on employers who do not allow inspections or reviews to be performed in its facilities by labour authorities, who perform illegal outsourcing, or individuals or entities who provide outsourcing services without having registered at the relevant registry.

The use of sham schemes that provide specialised services or the execution of specialised works, as well as the subcontracting of personnel, will be considered to be a tax criminal offense.

## Future actions

The amendments to the labour and tax laws will require many businesses to reorganise their operations in Mexico to eliminate subcontracting arrangements. Specialised service providers will need to be registered before a special registrar in charge of the Labour Department.

Individuals or entities providing outsourcing services shall be required to complete the registration process before the Ministry of Labour and to renew such registration every 3 years with a 3-month anticipation period to the expiration date. To be registered, individuals or entities must prove that they have complied with all their tax and social security obligations.



Back to Index of countries →

# Monaco

## Development and date

**Health Pass and the workplace**
On 1 July 2021, the Monegasque Government announced in a ministerial decision that they plan to regulate the use of the Health Pass in Monaco. They stated that "*except in the cases provided for in Article 3* [which concerns inter-border travel and access to establishments listed exhaustively], *no one may require a person to present his/her Health pass,"*

However, unlike the French bill which was being discussed by the French Parliament, no specific criminal sanction is provided if one requests such a document.

However, employers could face legal sanctions on the grounds of Law No. 1.165 of 23 December 1993 on personal data if they request and use information related to the Health Pass.

## Description

It is prohibited to collect (record and store) data relating to health, except in the following limited cases (below are the only two exceptions that might be relevant in the context of an employer/employee relationship):

- Where the processing is in response to a legal obligation – which is not the case at present;
- Where the data subject has given his/her free, express and written consent.

In any case, the processing of this information must be declared to the administration controlling the use of personal data (CCIN).

## Impact and risk

However:

- The notion of free consent implies that there is no specific incentive to provide this health information – a different workspace/work organisation could be considered an incentive;
- It could be argued that adopting different treatment amongst employees, without legal provisions allowing them to do so, would lead to communicating who has or who has not got a Health Pass within the company, thus constituting an infringement of the private and family life of the employees.

As a result, if the use of this information by the employer is considered unlawful, this may leave companies exposed to a criminal fine of between EUR 18,000 and EUR 90,000 per breach of duty (in addition to any damages that the employee concerned may seek, as well as any administrative sanctions imposed by the CCIN).

## Future actions

At the moment, relying on health and safety at work as the reason for collecting Health Pass information may not guarantee that it is lawful since

i. it is accepted that the employer sufficiently fulfils his safety obligation when he ensures that the mask and barrier gestures are worn;

ii. no legal provisions expressly authorise the employer to collect such health information.

In this respect, Health Pass information, if collected in the workplace, should be subject to many precautions.



Back to Index of countries →

# The Netherlands

## Development and date

**Redeployment obligation**
On 8 July 2021, the court of appeal issued its ruling in a case involving an appointed director who claimed damages because his employer had failed to investigate and look for (international) reassignment possibilities.

The amount that was awarded in first instance, EUR 275,000 gross, was reduced to EUR 25,000 gross by the court of appeal. Employers sometimes tend to 'overlook' the reassignment obligation for senior management roles which may lead to claims which can be prevented if this issue is addressed at the correct time.

## Description

The director, who had an international management role, was all of a sudden after 27 years, confronted with the decision by the shareholder to terminate his corporate position. This decision led to the automatic termination of his employment due to the dual position of a director under Dutch law, involving both a corporate and an employment position.

The director went to court after the employment had ended and claimed damages in the amount of EUR 300,000 and a severance of EUR 200,000. In first instance, the court awarded EUR 475,000 in total: EUR 200,000 for severance and EUR 275,000 for damages for multiple reasons. One of which was the failure by the employer to look for an alternative position within the international group despite the fact that the director had explicitly asked the employer for reassignment and had even referred to specific potential positions.

The court of appeal lowered the amount for damages to EUR 25,000 gross. Nevertheless, employers should remain aware of the statutory reassignment obligations and that these apply to directors and others in senior leadership positions where reassignment is not always seen as a preferred option.

## Impact and risk

The case underlines that failure to comply with the reassignment obligation, can lead to damages. Although the amount awarded by the court of appeal was not very high, we have seen other cases where the loss of continued employment led to significantly higher amounts. One should also take into account that a regular employee (meaning an employee who is not an appointed director) could have also claimed reinstatement.

The director had an international role that was made redundant. The seven alternative positions of which the director claimed potentially to be suitable, were all rejected by the employer. Some were rejected because the director was not a native speaker and one position was no longer available because an interim person was already appointed.

The court of appeal ruled that the employer had been too quick in allowing someone else in what could have been a suitable alternative role and that the director had not been taken seriously. The employer should have taken more time to investigate alternatives and should have discussed this topic with the director at an earlier stage in the termination process.

## Future actions

The reassignment obligation is mandatory for all employers and in all cases of termination, unless reassignment cannot be expected from an employer. The latter is only the case when for example, the termination is the result of serious acts of the employee and the employer cannot be expected to allow the employee to continue within another role.

Employers should remain aware that an employee can claim reassignment in any international role within the group of companies, even if the employer is not able to actually influence whether the employee should be hired by another legal entity within the group. The employer however has the obligation to look for such alternatives and present these to the employee. The employee is not obliged to accept such alternatives.

With working boundaries fading in international organisations due to COVID-19 as global working policies allow employees more than before to work remotely, conducting a proper reassignment effort in a redundancy or termination situation (based on another ground for dismissal) becomes more important than before. This also remains the case with directors. By handling reassignment timely and ensuring a proper paper trail, chances of a successful claim by the employee can be lowered significantly.



Back to Index of countries →

# Norway

| Development and date | Description | Impact and risk | Future actions |
|---|---|---|---|
| **Retaliation – whistleblowing**<br>From 1 July 2021, the Norwegian Anti-Discrimination Tribunal was given the authority to hear claims regarding retaliation after whistleblowing. Previously, such cases have been brought before the courts.The new authority has been introduced by amending existing statutory legislation. | The Anti-Discrimination Tribunal's authority is limited to cases which do not concern dismissal with notice or summary dismissal. The amendment will only apply to cases where the alleged retaliation has taken place after 1 July 2021. The Tribunal can award non-economic damages in retaliation cases, as well as economic damages if the employer argues they are insolvent or provides other objections that are without merit. | The amendment is intended to lower the threshold for whistleblowers to have their case heard. As cases to the Tribunal can be brought free of charge, with no legal representation and without the risk of having to bear the employer's legal costs, the amendment will most likely lead to an increase in such cases being tried. This will raise employers' legal costs. A decision against the employer may include an award for damages, as well as negative publicity. | The amendment underlines the need for employers to ensure compliance with statutory legislation on retaliation. The whistle blower should not under any circumstances be subject to negative measures because of whistleblowing. If measures that may be deemed as negative for the whistle blower are implemented for other reasons than the whistleblowing, such measures should be supported by documentation stating the reasons for the measures. |
| **Extended preferential right for new employment**<br>A change in legislation gives employees who have their employment terminated in the period between 1 July 2021 and 31 December 2021, due to COVID-19 pandemic, an extended preferential right to be offered new employment with the employer. In such situations, the preferential right is extended from 1 year to 2 years after the expiry of the notice period. | The extended preferential right applies to three groups of employees (all having been employed for at least 12 months during the last two years):<br>– Permanent employees who are laid off due to the company's circumstances (work force reductions etc.)<br>– Temporary employees whose employment is not continued due to the company's circumstances<br>– An employee who has accepted an offer of a reduced position instead of dismissal | Information on preferential rights (when employees are laid off due to workforce reductions etc.) shall be given in the notice of termination according to Norwegian legislation. If such information is not given, and the employee submits a claim to the courts within four months, the dismissal shall in principle be declared invalid solely due to the procedural error. Compensation for both economic and non-economic damages may be awarded. | Employers must ensure that a thorough assessment on whether COVID-19 is directly or indirectly, partly or wholly, the background for the dismissal/non-continuance/or offer of reduced position. If so, information on the extended preferential right should be communicated in writing to the employee, including in the letter providing notice of termination. |



Back to Index of countries →

# Norway (continued)

| Development and date | Description | Impact and risk | Future actions |
|---|---|---|---|
| **Independent contractor/self employed persons vs. employee**<br>A recent appeals case in July 2021 shed light on the assessment of the boundary between independent contractors and employees. The Court of Appeal concluded that 22 people who had been hired as independent contractors, were employees and awarded them compensation for benefits they should have been granted as employees. | The Court underlined several elements in the assessment of whether a contractor in reality is an employee, including whether the employee is obliged to personally work for the employer and submit to the employer's management and control. The Court largely rejected that the claimants' view as to the classification should be given significant weight. The Court also came to the conclusion that the claims for holiday pay had not been time-barred. | The judgement is not yet final but underlines the risk of contractors claiming permanent employment with corresponding rights to compensation for benefits they should have received as employees (e.g. overtime and holiday pay). The formal contractual classification is not the decisive factor, as it is the reality of the situation and the worker's need for protection that is decisive. | Employers should assess the reality of their contractor relationships. They should assess whether the contractor(s) have a real room for maneuver, or if they in practice are subject to the employer's instructions and the same regulations as employees. It should be kept in mind that the employer's and contractor's view on this will not be given much weight. Employers should make sure that holidays are taken, and that holiday pay is paid. |



Back to Index of countries →

# Peru

## Development and date

**New Court ruling on fixed-term contracts**
In a recently published decision, the Supreme Court of Justice has declared that employees hired specifically to replace other workers may perform other work and not only the same tasks as those they have replaced.

This decision has established that a ‘substitution contract’ does not prevent an employee from performing work other than that of the employee they have replaced.

## Description

This point is significant because, according to the law, employment contracts can, in principle, only be concluded for an indefinite period of time, unless there is some justification for them to be a fixed term contract.

For this reason, when a court case establishes that the justification relied on in a temporary fixed term contract does not exist, judges have been ordering employers to recognise the right of employees hired for a fixed term to remain in the job indefinitely.

Among the fixed term contracts permitted by law is the substitution contract, the purpose of which is to replace a permanent employee whose employment is suspended, whether due to illness, holidays or other reasons.

Within the framework of employment stability in force in the country and established by the courts since 2000, it could be understood that, if an employee was hired temporally to replace another, and the employer decides to entrust him/her with a job other than that of the one being replaced, the replacement could allege that his/her contract has been distorted, and request in court that the employer recognise his/her absolute employment stability.

## Impact and risk

According to the new ruling of the Court, the substitution contracts do not prevent the employer from varying the "non-essential" elements of the employment relationship. The law recognises that all employers have a power of direction and control (within the criteria of reasonableness) to enable the workplace to operate.

Under this new interpretation, employers should be aware that when they hire an employee to replace another employee, they may vary the specific tasks of the replacement, including the possibility of assigning him/her different tasks from those normally performed by the replaced employee.

## Future actions

Based on this decision, it is to be expected that the courts will take a more flexible approach where an employer is assigning different tasks to a replacement, even if they do not correspond exactly to the tasks performed by the replaced employee.

It is advisable, however, to ensure that the new tasks to be assigned correspond to a certain extent to the job of the replaced employee and are not completely unrelated to it.



Back to Index of countries →

# Peru (continued)

## Development and date

**New Labour Inspection Court accepts longer than legal working hours due to the pandemic**
In June 2021, the Labour Inspection Court, a state body that took office a few months ago, issued a decision accepting the validity of an agreement between a mining company and its workers to work longer hours than those permitted by law during the COVID-19 pandemic in order to avoid the risk of infection for its staff.

## Description

In this decision, the Court accepted that during the state of emergency, employers may establish, by agreement with their staff, cumulative or atypical working hours of more than 21 days. These cumulative working days consist of a series of continuous working days, usually 14 days, without any rest days, followed by an extended rest period, usually 7 days. They are considered atypical workdays because the typical workdays are weekly, usually 6 days on and 1 day off, or 5 days on and 2 days off.

This resolution is contrary to the repeated and publicised criterion of the Superintendence of Labour Inspection (SUNAFIL), according to which companies can only establish atypical workdays of no more than 3 weeks, and that, if this limit is exceeded, the company would be in breach and would be sanctioned with a fine.

However, the fact remains that this new position adopted by the Court is based on ILO Convention No. 1, which, although it establishes the 3-week limit, also allows for exceptions to this rule in extraordinary cases that justify them, as is the case in the present health emergency.

## Impact and risk

The Labour Court has established that the COVID-19 pandemic constitutes sufficient grounds for the employer to implement cumulative workdays longer than 3 weeks, as during the pandemic several companies whose workers remain in camps far from the cities, have found it necessary to establish atypical workdays of more than 3 weeks to reduce the risks of workplace infection of personnel by reducing the movement of workers to and from the workplace.

By allowing the Court to allow the employer during states of emergency to establish cumulative workdays longer than three weeks, the Court is permitting workdays of, for example, 20 uninterrupted days of work followed by 10 days off, or 30 days of work followed by 15 days off.

## Future actions

Although the Labour Inspection Court is part of SUNAFIL, several of the pronouncements it has issued show that it has a much more reflective and reasonable attitude towards the rigidity of the lower levels of SUNAFIL which, for several years now, has been imposing fines on employers without accepting the reasons they give, almost always considering the employers as violators of the law.

In addition to this change of attitude by the authority, it is important that the validity of these agreements containing extraordinary measures has been recognised.



Back to Index of countries →

# Poland

## Development and date

**Minimum wage in 2022**
The Polish Government proposed to raise the statutory minimum wage and the minimum hourly rate in 2022.

**New draft bill on remote working rules**
The Polish Government has recently published a new draft bill on post-pandemic remote working regulations. A new draft is a response to numerous objections raised by employers' organisations and trade unions to the previous version of the draft. The process is very dynamic, but the final bill is not ready yet. Previously, the Government said that the new law would come into force in the third quarter of 2021, but this may change.

## Description

According to the published draft bill, in 2022, the minimum wage will be raised to PLN 3,000 gross (for FTE). The minimum hourly rate will be raised to PLN 19,60 gross. The new act has not yet been accepted.

## Impact and risk

Currently the minimum wage in Poland is PLN 2,800 gross (for FTE). The minimum hourly rate is PLN 18,30 gross. The minimum pay has impact on many other benefits and allowances, for example: night work allowance, downtime remuneration, severance pay in case of redundancy, the deduction-free amount.

## Future actions

If the new law comes into force, the employers will have to ensure that the remuneration for each employee is not lower than the statutory minimum pay. They will need to mind the raise when determining other benefits and allowances, which amounts depend on the minimum wage.

The employer should monitor possible legal changes in remote working rules.



Back to Index of countries →

# Russia

## Development and date

**Mandatory vaccination against COVID-19**
On 16 June 2021, against the background of an increase in COVID-19 cases, Moscow and the Moscow Region authorities announced a mandatory preventive vaccination requirement against COVID-19 in the service and trade sectors.

The respective decisions were adopted by means of decrees by chief public health doctors of Moscow (No. 1 dated 15 June 2021) and the Moscow Region (No. 3 dated 16 June 2021).

Since that date, a further 63 regions in Russia have adopted similar measures.

## Description

At least 60% of employees and civil law contractors of organisations and individual entrepreneurs of Moscow and the Moscow Region are subject to preventive vaccination if engaged in the following sectors:

- trade;
- public catering;
- personal services;
- client departments of financial and postal organisations;
- beauty salons, cosmetic and spa salons, massage parlours, solariums, baths, saunas, fitness centres, fitness clubs, swimming pools;
- public transport and taxis;
- housing and power supply;
- education, healthcare, social protection and social services;
- culture, exhibitions, educational events (including museums, exhibition halls, libraries, lectures, trainings);
- leisure events, entertainment events, shows;
- children's playrooms and entertainment centres, children's camps and other children's recreation facilities, including in parks of culture and rest, shopping and entertainment centres;
- theatres, cinemas, concert halls;
- mass physical culture and sports events;
- multifunctional centres for the provision of state and municipal services; and
- state civil and municipal service.

## Impact and risk

Employers must ensure that their employees and civil law contractors receive the first injection or one-component of the vaccine by 15 July 2021, and the second injection by 15 August 2021.

A reporting procedure on compliance with the above requirements is laid down for employers by Moscow Mayor Decree No. 32-UM dated 16 June 2021 and the Moscow Region Governor Decree No. 184-PG dated 16 June 2021. Russian citizens are vaccinated free of charge, while vaccination of foreign employees is to be covered by the employer (RUB 1,300, or EUR 15, per employee).

In terms of liability, Russian federal legislation does not provide for special sanctions for refusal to vaccinate or a failure to ensure vaccinations, but individuals and organisations are generally liable for violating the requirements for ensuring the sanitary and epidemiological well-being of the population in accordance with Article 6.3 of the Russian Code on Administrative Offences.

Thus, a fine from RUB 50,000 to RUB 1m (approximately from EUR 580 to EUR 11,584) may be imposed on individual entrepreneurs and from RUB 200,000 to RUB 1m (approximately from EUR 2,317 to EUR 11,584) on organisations for violation of the vaccination requirements.

## Future actions

According to the clarifications provided by the state authorities, employees who refuse vaccination without a medical excuse are to be suspended from work without pay. However, termination of such employees is not recommended as the relevant ground is not provided for in the Russian Labour Code, and therefore dismissal may lead to court disputes with employees.

Employers are advised to carefully assess whether their activities fall within the prescribed industries and, if necessary, obtain respective clarifications from the regional authorities.

Based on other COVID-related restrictions currently adopted by Russian authorities, it is expected that (re-)vaccination from COVID-19 will become a regular and compulsory exercise, at least in the trade and service sectors.



Back to Index of countries →

# Serbia

## Development and date

**New Law on Gender Equality**
After years of negotiations, the National Assembly adopted the new Law on Gender Equality, which entered into force on 1 June 2021 and replaced the 2009 Law on Gender Equality. Aimed at improving the institutional framework and enabling the implementation of equal opportunities for both women and men, it envisages numerous obligations on public authorities, employers and other natural and legal persons in relation to gender equality.

**Online application for the Serbian temporary residence permit**
From the beginning of July 2021, expats who plan to come to work in Serbia can apply online for the temporary residence permit, while they are still abroad.

## Description

Employers with more than 50 employees must now undertake the following:
(i) adopt an annual plan of gender equality measures; (ii) adopt a report on the realisation of planned gender equality measures; (iii) keep records of anonymised data on the gender structure of the workforce, based on a form which the Ministry has not published yet; (iv) adopt a separate annual report on gender equality, which is to include the records mentioned under (iii), as well as an analysis of the status of gender equality and an explanation of reasons why the prescribed gender equality levels (40–50%) have not been reached.

Expats first need to register on the Living in Serbia portal at https://lnkd.in/eM_bBAJ, either by using a simple username/password model (with a scan of the passport ID page) or by using a qualified electronic signature certificate issued in Serbia. After uploading all required documents and following an approval of the Police Department for Foreigners, the expats shall be notified of the date when they should come to Serbia to collect their temporary residence permit. Once the temporary residence permit is affixed to the passport, the Serbian employer should file the work permit with the National Employment Office and this can also be done electronically.

## Impact and risk

Fines ranging from RSD 50,000 to RSD 2m may be imposed on an employer for failure to obey the obligations stipulated by law or for any infringements related to prohibited discrimination based on gender.

The procedure and steps are well explained on the portal itself, in the English language, but the expats might still need the assistance of local lawyers to prepare the required documents that will need to be uploaded (e.g. the employment contract, the “labour market test” results, documents for temporary transfer of expat to Serbia, etc.).

This new procedure is supposed to end the longstanding practice of expats filing for the temporary residence permit after they come to Serbia and needing to wait for at least a month or two before they can officially start to work for the Serbian employer. This online procedure shall make the planning easier and shorten the whole process.

## Future actions

Currently, the relevant documents concerning the Law (including the bylaws) are being drafted by the Ministry of Human and Minority Rights and Social Dialogue and are expected to be published within the next 3 to 6 months.

We understand that the Serbian authorities are already working on combining the two processes, so that it would be possible to file for both the temporary residence permit and the work permit online in one step. However, as of December 2020, even though we already have regulation that allows for one-step filing “on paper” this is not expected to efficiently work in practice before the end of this year.



Back to Index of countries →

# Singapore

## Development and date

**COVID-19 Vaccination Advisory**

The Advisory on COVID-19 vaccination in employment settings (the "**Advisory**") was issued on 2 July 2021.

## Description

The Singapore Government is strongly encouraging everyone who is medically eligible o get vaccinated when the vaccine is offered. Comprehensive vaccination coverage in the population will ensure that the population is adequately protected from COVID-19. This in turn will enable Singapore to reopen further both as a society and economy and expedite recovery from the pandemic.

In view of this, the tripartite partners, comprising the Ministry of Manpower, the National Trades Union Congress and the Singapore National Employers Federation, issued the Advisory to provide guidance to both employers and employees regarding COVID-19 vaccination in employment settings.

## Impact and risk

Employers should not make COVID-19 vaccination mandatory.

Employees who decline vaccination should not be penalised.

Nonetheless, employers should strongly encourage and facilitate all medically eligible employees to get vaccinated, e.g. by granting paid time-off for the vaccination.

Employers may also ask employees for their vaccination status for business purposes e.g. business continuity planning.

Where an employee's employment/workplace exposes him to a higher risk of COVID-19 infection, employers may require COVID-19 vaccination as a company policy for these higher risk employment settings. If such employees decline vaccination, employers may:

a) redeploy such an employee to another job with lower risk of COVID-19 infection;
b) recover from employees who decline to be vaccinated the COVID-19 related costs incurred that are over and above the costs incurred for vaccinated employees; or
c) take such other measures mutually agreed between the union and employer.

Under no circumstances should an employer terminate or threaten to terminate an employee's employment on the ground of declining vaccination.

## Future actions

The Advisory provides clear guidelines for both employers and employees on vaccinations in employment settings, including leave arrangements and approach in high risk settings.

Whilst vaccination is strongly encouraged, the Advisory makes it clear that terminating an employee for declining vaccination is not permissible. That said, certain measures are available to employers dealing with non-vaccinated employees working in settings with higher risk of COVID-19 infection.

Employers and employees are encouraged to follow the guidelines and reach mutually acceptable agreements where possible, failing which, they may reach out to the Ministry of Manpower for further advice and/or assistance.



Back to Index of countries →

# Slovakia

## Development and date

**“Kurzarbeit” - short-time working in English**

A highly anticipated change to employment law is set to come into force from 1 January 2022. The legislator has responded to employers’ demands and has developed a permanent system for protecting jobs during an economic recession or crisis inspired by the Austrian model.

The legislator was urged by the manufacturing industries to include alternative support mechanisms to prevent further damage as a result of the COVID-19 pandemic or other crisis situations. For the Slovak market this novel solution is expected to ignite faster economic recovery and protect jobs.

Kurzarbeit support is intended for employers who cannot assign a minimum of 10% of weekly working hours to at least one-third of their employees. It is important that this only applies to temporary circumstances external to the employer´s effective control, where it is not possible to assign work to its employees.

Such external circumstances include, for example, extraordinary situations, a state of emergency, force majeure events, or when the Slovak Government declares extraordinary circumstances as a result of the drop in GDP in quarterly comparison with outputs from previous years, and a predicted decrease in GDP for the year ahead of at least 3%.

## Description

Kurzarbeit, is a temporary reduction in working hours when an employer cannot provide work to its employees due to external circumstances. This scheme represents a form of support where the Government makes up part of the shortfall in employees’ wages. This measure is intended to help firms through short-term economic difficulties: employees do not have to be dismissed and are ready to resume full-time work as soon as the situation improves.

The system will be funded through the social insurance scheme and the support will be paid to the employer’s account on a monthly basis. The support will cover 60% of the hourly average wage earnings for each hour there is no work for the employee. The upper limit of the support is EUR 7,81 per hour per employee in 2022. The employer is obliged to pay to the employee during Kurzarbeit wage compensation of at least 80% of the hourly average wage earnings of the employee.

Employers, subject to Kurzarbeit´s terms and conditions, can apply for the support only if they have paid social insurance premiums in at least the last 24 months and do not have any outstanding payments for social insurance. At the same time, there cannot be a case of illegal employment 2 years prior to applying for Kurzarbeit. Another requirement is agreement with the employees or their representatives.

## Impact and risk

The introduction of Kurzarbeit provides employers with reassurance of receiving state support not only in the event of another wave of the pandemic but also other external circumstances beyond an employer’s control.

The legislator vows to protect only jobs that will withstand the recession and remain unaltered afterwards. In light of this ambition, employers will have to continue to employ their employees two months after the end of the Kurzarbeit period.

It will be possible to rely on Kurzarbeit for a maximum of 6 months throughout the period of 2 years (exceptionally the Slovak Government can decide on longer period of support).

## Future actions

Employers may make use of the Kurzarbeit scheme starting from January 2022.

Provided that the employer fulfils the requirements of Kurzarbeit support, they may send electronic applications to the Central Office of Labour, Social Affairs and Family or local labour offices (depending on the type of external event which prevents the employer to assign work to its employees).

Subsequently, the respective authority shall decide within 10 days.

As the new law only comes into force in January 2022, it is unclear whether in practice it will meet the expectations of employers.

Both employers and employees welcome the fact that – although Kurzarbeit will be funded through the social insurance fund – the amount of their mandatory contributions to the social insurance remains unchanged. To finance the new Kurzarbeit scheme, the current contribution by the employer to the unemployment fund (1%), will be split and a portion (0,5%) will be used to fund Kurzarbeit.



Back to Index of countries →

# Spain

## Development and date

**New 'Riders Law' introduced**
On 12 May 2021, a new Royal Decree, was published regulating delivery workers hired by digital platforms (usually called *Riders).*

The Royal Decree came into force on 12 August 2021.

As these types of platforms have become more common, the question has been asked whether these *riders* should be considered freelancers or self-employed (with a commercial relationship) or they should be recognised as employees. To date there have been several contradictory judicial decisions – depending on particular circumstances. Recently, on 25 September 2020, the Spanish Supreme Court ruled that platform delivery drivers had an employment relationship and not a commercial one.

This new regulation aims to unify the judicial criteria in line with the conclusion reached by the Supreme Court.

A new law is currently being discussed among the parliamentary groups, which may formalise or expand the content of this Royal Decree. Notwithstanding the above, the Royal Decree entered into force on 12 August.

## Description

The new regulation includes:

- A presumption that an employment relationship exists with the riders. It is currently unclear under which circumstances it will be possible to overcome this assumption and prove that the relationship between the riders and the platform is a purely commercial relationship. This is likely to be formalised by the Act that is under discussion.
- The right of the works council to be informed of the parameters, rules and instructions on which the algorithms are based. The scope of the information to be provided is also under discussion in Parliament and perhaps, with the approval of the new law, the Royal Decree may undergo some changes.

## Impact and risk

It seems that the presumption of employment in favour of the *riders* must be considered as a rebuttable presumption. Therefore, if the platform is able to prove that there are no elements of an employment relationship, an employment court could consider that the *riders* are actually self-employed.

It seems that the situation will depend on each specific case and that, ultimately, the judges will decide.

However, this matter is currently subject to further discussion in the Spanish Parliament.

## Future actions

New technologies are having a significant impact on work and employment. Following the publication of new teleworking regulations, the Spanish legislator is now regulating work through digital platforms. In the months and years ahead, employment regulations are expected to change to accommodate how work interacts with developments in technology.

Regarding digital platforms, this new regulation is expected to have a relevant impact on their costs structure and functioning, although the Act on this matter is still being discussed. Therefore, we will have to wait until the new Act is published to know the full extent of the changes.

# Switzerland

## Development and date

**Paid Leave for Parents of a Child with a Serious Illness**
Since 1 July 2021, employees are now entitled to 14 weeks of paid caring leave for a child who is seriously impaired due to illness or accident.

The employer will receive financial compensation (daily allowances) through the compensation scheme for the loss of earnings.

The daily allowance corresponds to 80% of the average income earned before the start of the care leave and is capped at CHF 196 per day.

Such care allowances are granted to parents of a minor child (up to 18 years old) whose health is seriously impaired, as confirmed by a medical certificate.

## Description

Serious health impairment is defined by law and occurs when (i) a significant change in the child's physical or psychological condition has occurred; (ii) the course or outcome of this change is difficult to predict or is likely to result in permanent or increasing impairment or death; and (iii) there is an increased need for parental care.

Such a serious health impairment must result in at least one parent being required to interrupt their working pattern.

The maximum period of care leave is 14 weeks, which can be taken within a framework period of 18 months.

## Impact and risk

Provided that the employee has successfully completed their probationary period, temporary protection against dismissal applies during the childcare leave.

The protection period lasts for a maximum of 6 months from the first daily allowance entitlement arises. A dismissal during the protection period would be null and void.

Additionally, the holiday entitlement of an employee cannot be reduced because they have been on leave.

## Future actions

Employers have to be aware of the right to paid leave for parents of a child with a serious illness and of the corresponding protection against dismissal.



Back to Index of countries →

# Ukraine

## Development and date

**Childbirth leave for family members other than mothers**
(July 2021)

## Description

On 9 May 2021, changes to the Labour Code came into force which include 14 days of childbirth leave for men and other family members.

On 7 July 2021, the Cabinet of Ministers of Ukraine approved the new rules.

People who are entitled to such leave include:

- a husband whose wife gave birth to a child;
- a child's father, who is not in a registered marriage with a child's mother, provided they live together, are related by common law, and have mutual rights and obligations;
- grandparents or other adult relatives of the child who are taking care of the child, whose mother or father is a single parent.

The paid leave of up to 14 calendar days may be granted in one leave period within three months following the birth of a child.

## Impact and risk

Overall, the impact of the amendments is positive, as the Ukrainian labour legislation has been adjusted to international standards.

## Future actions

It is recommended that a 14-day childbirth leave is added to internal policies and collective agreements of the employers.



Back to Index of countries →

# Ukraine (continued)

| Development and date | Description | Impact and risk | Future actions |
|---|---|---|---|
| **Digital sick leave certificates**<br>(June 2021) | On 4 June 2021, digital sick leave certificates were introduced in Ukraine to replace paper certificates.<br><br>The electronic sick leave certificates are to be created in the Electronic Register of Sick Leave based on the information from the Register of Medical Certificates in the Electronic Health Care System (i.e. medical records in the medical information system).<br><br>The transition period will last until 1 September 2021, during which period both types of certificates may be used. After that, the use of digital sick leave certificates will be mandatory. | The changes are expected to make the sick leave confirmation process more transparent as well as convenient for patients, employers, physicians and social workers.<br><br>However, certain technical issues may transpire during the the roll-out of the Electronic Register of Sick Leave. | It is recommended that employers familiarise themselves with the new register. |
| **Joint dawn raids by the labour and tax authorities**<br>(from 1 July 2021) | The State Labour Service of Ukraine announced a series of dawn raids to find cases of hidden employment (both undocumented and those improperly documented by civil law agreements).<br><br>These inspections will be conducted jointly with the tax authority. The first day of the dawn raid campaign was 1 July 2021. The dawn raids follow the information campaign on the same subject matter that the authority conducted earlier this year. | The dawn raid campaign is aimed at preventing and limiting hidden employment and tax evasion related to this.<br><br>If as a result of a dawn raid the labour authority discovers cases of hidden employment (including cases, where full timers are documented as part-timers or where the actual salary paid to the employees differs from the officially documented remuneration), it may impose a fine UAH 6,000 (approx. EUR 180) per each such case. On top of that, recalculation of tax obligations and penalties for non-payment of payroll taxes may be imposed by the tax body. | It is recommended that employers carry out internal audits of their labour matters to minimise the risks of fines and negative tax consequences. |



Back to Index of countries →

# United Kingdom

## Development and date

**Government announces new duty on employers to prevent sexual harassment in the workplace**
In July the UK Government published their response to the consultation on sexual harassment in the workplace, announcing a new duty on employers to prevent sexual harassment in the workplace.

In addition, the law will be changed to re-introduce liability on employers for third party harassment. Finally, it seems that there will be an extension in the time limits to bring a claim under the Equality Act 2010 from three months to six months.

## Description

Employers will be required to take 'all reasonable steps' to prevent sexual harassment.

It appears that an incident will need to have taken place before an individual can bring a claim against their employer, although there are mixed messages about this in the response and we will need to wait for further clarity on this point. Employers will already be familiar with the 'reasonable steps' defence which can be relied on to avoid liability for the actions of an employee who carries out harassment or discrimination. It is expected that this new duty will ask employers to go further than their existing arrangements to avoid liability.

The Government has now committed to re-introduce protection against third party harassment, although the details on what this will look like have yet to be published.

Whilst it has not been finalised it appears a strong possibility that the Government will extend the time limits for individuals to bring discrimination claims in an Employment Tribunal from three months to six months.

## Impact and risk

This consultation response should prompt employers to put their harassment policies and procedures at the top (or in some cases back at the top) of their HR priorities for this year.

Training and awareness are central to spreading the message across the wider workforce, many of whom may be working remotely. Harassment can still occur in a remote environment although it takes different forms.

## Future actions

Although we do not know the timescales at this stage for the changes to come into effect, it is clear that a great deal more is going to be expected of employers in relation to preventing workplace harassment. Employers who fail to put preventative steps in place will be at risk of a claim under this new duty, in addition to a claim for workplace harassment. What taking all reasonable steps to prevent harassment will entail will vary according to an employer's size and resources.

At the very least, it will involve having an up to date harassment policy and ensuring that the workforce are aware of their obligations towards each other through regular equality and respect training (recent case law has reenforced that "one size fits all" training sessions on their own are unlikely to be sufficient here).

It is also important that where individuals complain of harassment, these complaints are taken seriously and addressed fairly and in accordance with process. However, we expect that fuller details of what the duty will involve will be set out in the EHRC code of practice.



Back to Index of countries →

CMS Law-Now™

**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.
**cms-lawnow.com**

---



---

**cms.law**