ANDERSEN®

European Employment Insights

10
23

Andersen Global

Andersen Global® was established in 2013 as the international entity surrounding the development of a seamless professional services model providing best-in-class tax and legal services around the world.

Andersen Global Chairman and Andersen CEO
Mark L. Vorsatz, Andersen (U.S.)

Andersen Global is an association of legally separate, independent member firms, comprised of more than 14,000 professionals worldwide, over 2,000 global partners and a worldwide presence. Our growth is a by-product of the outstanding client service delivered by our people, the best professionals in the industry. Our objective is not to be the biggest firm, it is to provide best-in-class client service in seamless fashion across the globe. Each and every one of the professionals and member firms that are a part of Andersen Global share our core values. Our professionals share a common background and vision and are selected based on quality, like-mindedness, and commitment to client service. Outstanding client service has and will continue to be our top priority.

Core values

Best-in-class
We aim to be the benchmark for quality in our industry and the standard by wich other firms are measured.

Transparency
We value open communication, information sharing and inclusive decision making.

Independence
Our platform allows us to objectively serve as our client's advocate; the only advice and solutions we offer are those that are in the best interest of our client.

Stewardship
We hire the best and the brightest and we invest in our people to ensure that legacy.

Seamless
Our firm is constructed as a global firm. We share an interest in providing the highest level of client service regardless of location.

INDEX

Introduction

You may also be interested in:

European Employment Insights: September issue

The guide provides an overview from over 20 European countries of recent legal developments, tips for navigating complex legal issues, and staying up to date on notable cases.

Read More

Employment of Managing Directors

The guide provides an overview of the regulations concerning the employment and/or appointment of managing directors who also hold positions within the company's governing bodies. This guide focuses on the rules applicable mainly to limited liability companies (LLCs) in over 30 European countries.

Read More

Context

Andersen Employment and Labor Service Line is your go-to partner for navigating the complexities of local and international labor laws and customs. We help you steer clear of employee-related issues while staying competitive in the global economy.

Our team comprises specialist lawyers and tax advisors who proactively guide both domestic and international companies of all sizes, spanning various industries. With a presence in more than 400 locations worldwide, Andersen offers top-notch advice through local experts. We stand by your side throughout the entire employment relationship, from its establishment to termination, making us your trusted partner in all employment-related matters.

We invite you to read in-depth employment information in our monthly Andersen Employment Insights newsletter. This newsletter provides an overview of the latest developments in employment law, guidelines, case law and collective agreements from various countries.

Stay well informed and maintain your competitive edge with Andersen.

Cord Vernunft
European Employment and Labor Law Coordinator
cord.vernunft@de.andersen.com

Magdalena Patryas
European Employment and Labor Law Sub-coordinator
magdalena.patryas@pl.andersen.com

Malta

Malta has implemented EU directives promoting work-life balance, granting parents and caregivers individual rights, such as paid parental leave and flexible working arrangements.

LAW - Transposition of EU Directive on work-life balance for parents and carers

Malta has recently transposed the EU directive on work-life balance. These regulations aim to promote gender equality in the workplace by helping parents and carers to better reconcile work and family life. They establish individual rights such as paternity leave, parental leave and carer's leave, as well as flexible working arrangements for parents and carers.

These regulations guarantee paid parental leave for up to four months for parents who have had a child through birth, adoption, fostering, or legal custody until the child reaches eight years of age. Similarly, workers with children under eight and caregivers can request flexible work arrangements to fulfil their caregiving responsibilities. These regulations ensure that these workers can return to their jobs with the same conditions and benefits they would have had if they had not taken leave.

Ultimately, these laws protect against unfair treatment, consequences, and any form of discrimination, supporting the goal of equal opportunities and treatment for men and women in the labor market.

Read More

COURT - Maltese Court and Industrial Tribunal's competence

The Maltese Magistrates' Court found that it did not have jurisdiction to hear a case concerning the recovery of funds resulting from the early termination of a fixed-term employment contract. It declared that such matters fall within the exclusive competence of the Maltese Industrial Tribunal. It disregarded the plaintiff company's submission that these proceedings were identical to another case, as it explained that no plea of competence was raised in the referenced proceedings. However, the Court asserted that this does not automatically imply the nullity of these proceedings as it may order the transfer of such proceedings to the Court, Board or other Tribunal which it considers as being competent to hear such proceedings.

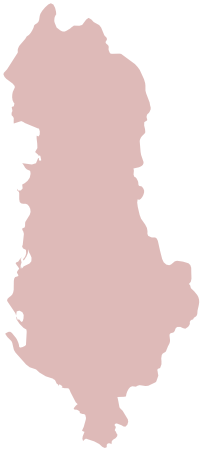
COLLECTIVE AGREEMENTS - New collective agreement for Occupational Health and Safety Authority signed

A new collective agreement aimed at offering better conditions to employees at the Occupational Health and Safety Authority (OHSA) has been signed. This agreement covers technical and administrative staff and is the fifth collective agreement to cover this section since the

establishment of the Authority. It includes improvements in salary structures, new benefits, an increase in overtime rates, as well as better working conditions. Although the agreement was signed in September 2023, it includes a retroactive payment to January 1, 2022.

Dr Luana Cuschieri, Senior Associate
Chetcuti Cauchi Advocates
Collaborating firm of Andersen Global
luana.cuschieri@ccmalta.com

Albania



Employers are now explicitly responsible for remitting contributions to the Employment Social Fund if they fail to hire individuals with disabilities, as clarified in the amended Employment Promotion Law of July 2023.

LAW - Hiring of persons with disabilities

Under the provisions of the Employment Promotion Law, any employer obligated to hire individuals with disabilities, who fails to do so, is required to make a predetermined financial contribution to the Employment Social Fund. However, enforcing this obligation posed a major challenge for employers, as the law did not explicitly identify the entity responsible for collecting this contribution.

In July 2023, the aforementioned law was amended and it was specified that it is the employer's responsibility to remit the contribution and submit the corresponding declaration through the General Tax Directorate's online platform, acting as the designated fiscal agent for the collection of these contributions.

Employers need to stay abreast of this issue, as the Minister of Finance and the Economy is mandated to approve, by 31 December 2023, guidelines setting out the procedures and methodology for the payment of this contribution.

Albania's recent legislation on private pension funds introduces open-ended and closed-ended fund options, increases the maximum threshold for tax deductions on member contributions, and expands deductible costs for employer contributions.

GUIDELINES - New Instruction on Income Tax

In response to the recent enactment of Law No. 29/2023 of 30 March 2023 on Income Tax Regulations, the Ministry of Finance has issued a new General Instruction No. 26. This Instruction was officially published in the Official Gazette on 20 September 2023 and will enter into force on 1 January 2024, commonly referred to as the "Income Tax Instruction".

Inter alia, the Income Tax Instruction offers practical insights by providing concrete examples to clarify the different categories of

taxable income derived from employment, as well as other forms of taxable income that are relevant for companies.

Read More

Shirli Gorenca, Partner
KALO & ASSOCIATES
Collaborating firm of Andersen Global
sh.gorenca@kalo-attorneys.com

Belgium

The 2022 regulation focuses on boosting employee training to enhance job security and labor market prospects. It provides employees in the private sector with a certain number of annual training days.

LAW - Training of employees - new obligations for employers

A new regulation on training of employees came into force in 2022. The aim is to help workers to keep their jobs and/or to improve their chances on the labour market by increasing the training and to improve their quality.

This regulation is implemented in two ways, through:

(1) the employee's individual right to training and **(2)** a training plan. All employees in the private sector (commercial and non-commercial) are entitled to a certain number of training days per year.

Companies with 20 or more employees are required to guarantee each full-time employee the right to at least 4 days of training in 2023 (5 days in 2024). Companies with between 10 and 20 employees are obliged to provide each full-time employee with one day of training unless a collective agreement provides otherwise. Companies with fewer than 10 employees are excluded from the scope of the regulation. While the employer has the obligation to offer training, the employee, is not obliged to attend training courses. The employer must inform the employee in writing of the right to training and the number of training days available, at least once a year. The training may be internal or external and may take place during or outside working hours without additional compensation.

Employers with 20 or more employees are required to draw up training plans. The training plan is valid for one year. The plan must cover formal and informal training courses and explain how these courses contribute to the overall investment in training identified at sectoral level. It must also make provision for training to fill the shortage of workers in the employer's sector of shortage. Employers are required to draw up a training plan for the year 2024 by 31 March 2024 at the latest.

Read More

LAW - New rules on sickness during annual holiday leave

From January 2024, if an employee turns sick during her/his annual leave and he/she wishes to retain these leave days, the period of sickness will be considered as a period of incapacity for work if certain conditions are met. In order not to lose the leave days, the employee must inform the employer immediately of her/his place of residence even if that is abroad. Moreover, the employee must provide the employer with a medical certificate covering the sickness period within 2 days. Employees who wish

to transfer their leave immediately after becoming unfit for work must inform the employer of this at the latest when they submit their medical certificate to the employer. The employee will therefore in principle be entitled to guaranteed pay to be paid by his employer if the employee complies with the strict reporting procedure. The employer is obliged to include the formalities regarding reporting sickness during annual leave in the work regulations as of 1 January 2024.

Leila Mstoian, Partner
Seeds of Law
Collaborating firm of Andersen Global
leila.mstoian@seeds.law

Youssra Andaloussi, Associate
Seeds of Law
Collaborating firm of Andersen Global
youssra.andaloussi@seeds.law

Bosnia and Herzegovina

The Supreme Court of the Federation of Bosnia and Herzegovina clarified that conducting occasional or unreported work, in the absence of a formal employment contract or written statements verifying an oral contract, does not establish an employment relationship, thus denying claims for associated benefits.

COURT - Unreported work and employment relationship status

In May 2023, the Supreme Court of the Federation of Bosnia and Herzegovina, ruling on a review of the judgment of the Cantonal Court in Sarajevo, took the position that if the employee conducted occasional or unreported work, in absence of an employment contract, or written statements from the employer as proof of the existence of an oral employment contract for a fixed period of time, it is not possible to acquire the conditions for the establishment of employment relationship. In other words, unreported work is not an employment relationship and cannot become employment relationship due to the duration of such work.

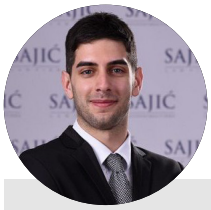
According to the judgement, there was no basis for determining that the employee was in the employment relationship with the employer, so he had no right to claim salaries, contribution payments, allowances for a meal-allowance and vacation allowance.

Read More

COURT – Prolonged violation of work obligations

The Supreme Court of Republic of Srpska, ruling on a review of the judgment of the District Court in Banja Luka, that in the case of a prolonged violation of work obligations, where several violations are linked into a single disciplinary violation: the same nature of the violation and the temporal continuity of the violation of the work obligation, and where the time of the violation is determined by the time of committing all violations that are affected by the prolonged violation, the start of the term is calculated from that time statute of limitations for initiating and conducting disciplinary proceedings.

In the specific case, multiple violations of work obligations, form a unique entity of violation of work obligations (prolonged violation of work obligations), due to their mutual connection and manner of execution.



Igor Letica, Senior Associate
Law Firm Sajić
Member firm of Andersen Global
igor@afsajic.com

Bulgaria

The National Assembly passed amendments to the Labour Code, enhancing employment security, work-life balance, and introducing new administrative obligations for employers, with these changes taking effect on 1 August 2022.

LAW - Harmonization to EU Laws: work-life balance and parental directive

The National Assembly adopted amendments and supplements to the Labour Code, implementing in the national legislation the requirements of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union and of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

The amendments have been published in the Official Gazette, issue no. 62 of 5 August 2022 and enter into force on 1 August 2022. They aim to promote the security and predictability of employment relationships and to improve the possibilities for reconciling work and family responsibilities.

In addition, the Working Time, Breaks and Holidays Ordinance has also been amended with effect from 30 September 2022. The amendments introduce a large number of additional administrative obligations for employers with regard to the organisation of work.

Read More

LAW - The Bulgarian Whistleblower Protection Act

The Bulgarian Whistleblower Protection Act entered into force on 4 May 2023, with an exception for private sector employers with 50-249 employees, where the new regulation will enter into force on 17 December 2023. The protection extends not only to reports of breaches of EU law, but also of Bulgarian national law, and covers the same issues as the EU Directive.

The procedures for reporting a breach include internal and external reporting channels, as well as public disclosure, and adopt the steps set out in the EU Directive. With regard to the internal reporting procedure, the employer designates one or more employees in the company to receive reports and carry out the investigation procedure. For the external reporting procedure, the competent authority for receiving, providing feedback and

following up on reports is the Bulgarian Commission for Personal Data Protection. The submission of anonymous complaints is not allowed, nor are complaints about violations where the limitation period of 2 years from the date of the commitment has expired.

Stefan Stefanov, Senior Associate
Kambourov & Partners
Collaborating firm of Andersen Global
stefanov@kambourov.biz

Croatia

The Act on Suppression of Undeclared Work defines, regulates, and enforces measures against undeclared work, aiming to protect workers, the state, and employers from its adverse effects.

COURT - Constitutional Court Ruling in Croatia: equalizing benefits for union members and non-members

According to the Croatian Labour Code, certain material rights (e.g. anniversary bonuses, Christmas bonuses, etc.) can be agreed in a collective agreement at a higher level for trade union members who have negotiated a collective agreement. It is stipulated that the total value of the above increased benefits for union members who have negotiated a collective agreement may not be set at an annual level higher than twice the average annual membership fee of the union that has negotiated the collective agreement. Only those union members who have been notified by the union to the employer are entitled to the agreed higher benefits. The Constitutional Court found that the above provision discriminated against non-members and members of non-representative unions and declared it unconstitutional.

Read More

LAW - The Act on Suppression of Undeclared Work - legal frame for transitioning to declared employment

The Act on Suppression of Undeclared Work prescribes what is considered undeclared work, establishes measures to suppress undeclared work, activities aimed at encouraging the reporting of work, keeping records of inactivity of persons and responsibility for violations of the provisions of this Act. In addition to the definitions of certain terms related to undeclared work (which is prohibited), the provisions of the Act determine: the competence of the inspection and other bodies, the actions of these entities, addressees (domestic workers and citizens of third countries, employers and others), records and publications, responsibilities, illegal acts and adoption of implementing regulations. This concerns a law that, for the first time comprehensively, seeks to protect those entities who suffer negative consequences due to undeclared work. Primarily, this refers to workers (who lack employment contracts), the state (as public contributions are not being paid), and employers (due to the emergence of unfair competition).

Ivan Matić, Partner
Kallay & Partners, Ltd.
Member firm of Andersen Global
ivan.matic@kallay-partneri.hr

Czech Republic

A discriminated employee who disagrees with an unfavourable change of work schedule, which is a de facto sanction by the employer, may apply to the court for remedies.

LAW - Amendment to the Labor Code approved, including additional overtime work in health care sector

The Chamber of Deputies approved the amendment to the Labor Code (particularly new regulation of homeworking and regulation of agreements on work performed outside an employment relationship, but also changes in delivery of documents and other areas). The changes proposed by the Senate are thus not reflected in the new regulation which came into effect on 1 October 2023. One of the most controversial points in the parliamentary debate was the issue of overtime in the health sector. The amendment allows doctors, dentists, pharmacists, and non-medical health care workers to agree in writing with their employer on additional overtime of up to 8 hours per week in average (over the regular extent of 8 hours in average). Although the employees cannot be forced to work the additional agreed overtime and must not suffer any disadvantage if they refuse to do so, opponents of the additional overtime see it as legalization of existing illegal practice in the medical sector.

COURT - Change in scheduling of working time as illegal punishment

Recently, the Supreme Court issued a decision regarding an employer's practice of changing an employee's work schedule as a sanction for the employee's assertion of employees' rights. In the case in question the sanctioned person was public transport driver, active union official. The court confirmed that such sanction is illegal. Further, the court ruled that in absence of prescribed legal process for remedy, antidiscrimination remedies may apply. Employees thus do not have right to disregard the new scheduling but may ask the court to remedy the consequences of such interference by requiring the employer to schedule the employee's work in the same manner as before. Although the Supreme Court did not deliberate much over the full spectrum of remedies, it is worth noting that antidiscrimination law provides also for financial satisfaction.

Michal Dobiáš, Senior Associate
rutland & partners
Collaborating firm of Andersen Global
michal.dobias@rutlands.cz

Estonia

Employers are required to register posted employees in the Estonian Labour Inspectorate via the TEIS self-service information system before the commencement of their work in Estonia.

LAW - Estonia moves forward with delayed whistle-blowing regulation

All European Union countries were supposed to have implemented EU Whistleblower Directive into local law by December 2021, but Estonia has been slow to transpose the directive for political and historical reasons. Because of the excessive delay, the European Commission has initiated infringement procedure and has ordered Estonia to pay a fine.

Now, however, the drafting of the law has started to move quickly again and it is expected that the Whistleblower Protection Act will enter into force soon. It is therefore the right time for entities to start preparing to meet this obligation.

GUIDELINES - In Estonia the posted workers must be registered in the Labour Inspectorate's self-service environment

According to the Working Conditions of Employees Posted to Estonia Act the employer is obliged to register posted employees in the Estonian Labour Inspectorate before the actual commencement of employment. The information shall be submitted via TEIS self-service information system (iseteenindus.ti.ee). Notifications by e-mail can no longer be submitted. Changes to the data must be submitted before the change takes effect. According to the Act, a posted employee is a natural person who usually works in a Member State of the European Union, a Member State of the European Economic Area or the Swiss Confederation on the basis of an employment contract, and whom the employer posts to work in Estonia for a specified period of time for the provision of a service.

Kristi Sild, Partner
LEXTAL
Collaborating firm of Andersen Global
kristi.sild@lextal.ee

France

The practical implications for employers are that many employees in this situation will be entitled to compensation for paid leave earned during their absence from work for non-occupational reasons.

LAW - Maximum duration of trial periods

Until 2008, the length of trial periods for new employees in France was determined by the French Labor Code. However, some older collective agreements made before 2008 allowed for longer trial periods. It changed when the European Directive 2019/1152 was introduced on June 20, 2019. The directive set new rules, and France had to pass a new law to follow it.

In the process, France removed the special permission that allowed older collective agreements to have longer trial periods. This change affects nine specific sectors, including air transport, ground staff, ski lifts, staffing agencies, construction promotion, training organizations, insurance companies, inspection insurance companies, banks, and mutual insurance companies.

Starting from September 9, 2023, in these sectors, the maximum length of trial periods, including renewals, can no longer be more than what is stated in the French Labor Code, which is:

- 4 months for regular workers,
- 6 months for technicians, and
- 8 months for executives.

COURT - Paid holidays and sick leave

In a series of rulings issued on September 13, 2023, the French Supreme Court brought French law into conformity with Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 7 of EU Directive 2003/88 on paid leave. Prior to these rulings, an employee suffering from a non-work-related illness or accident was not entitled to paid leave for his or her absence from work. Now, employees who are ill or have suffered an accident are entitled to paid leave for the time they are absent from work, even if that absence is not due to an accident at work or occupational disease. The practical implications for employers are that many employees in this situation will be entitled to compensation for paid leave earned during their absence from work for non-occupational reasons.

COURT - Paid leave and accident at work/occupational disease

Another important change introduced by the rulings of the French Supreme Court on September 13, 2023 is that employees on sick leave as a result of an accident at work or an occupational disease will no longer see the calculation of their paid leave entitlement limited to the first year of sick leave. Prior to this change in case law, compensation for

paid leave in the event of an occupational accident or disease was limited to a one-year suspension of the employment contract. Now, an employee who is the victim of an accident at work or occupational disease is entitled to the benefit of paid leave earned during the entire period of suspension from work, or to compensation for such leave.

COURT - Parental leave and earned paid leave

The last major change introduced by the rulings of the French Supreme Court on September 13, 2023, is that when an employee is unable to take his/her annual paid leave during the reference year due to the exercise of his/her right to parental leave, the paid leave earned at the beginning of parental leave must be carried forward after the date of resumption of work. From now on, employers must ensure that employees on parental leave retain any paid leave that they have earned but not taken, so that they can benefit from it when they return to work.

Benoit Dehaene, Partner
Squair
Collaborating firm of Andersen Global
bdehaene@squairlaw.com

Germany

Germany is becoming a modern immigration country. Skilled workers are to be able to work in Germany more quickly and less bureaucratically thanks to the Act on the Further Development of Skilled Worker Immigration.

LAW - Facilitated immigration via the EU Blue Card

Germany has redesigned and expanded the possibilities for immigration with an EU Blue Card, effective November 2023. The salary thresholds will be lowered, the group of eligible persons will be expanded, the list of bottleneck professions will be massively extended, and family reunification will be facilitated.

For bottleneck professions and those just starting their careers, a minimum salary of 45.3% of the annual income threshold for pension insurance contributions (€39,683 in 2023) will apply, and 50% (€43,800) for all other professions.

The possibility of obtaining an EU Blue Card will be opened to a larger group of people. Eligibility broadens, allowing recent graduates to qualify with lower salaries. IT specialists without degrees but with three years of relevant experience can also apply.

The list of bottleneck occupations for the EU Blue Card will be significantly expanded to include managers in production, logistics, information and communication technology, special services such as childcare or health care, veterinarians, dentists, pharmacists, academic and comparable nursing and midwifery professionals, and teachers and educators.

LAW - Facilitated employment and immigration for persons with professional experience

As of March 2024, the immigration and employment of persons from third countries with significant professional experience will be significantly expanded. The new regulation now applies to all non-regulated professions in all sectors. The requirement for persons with professional practical experience is that they have a vocational or university degree recognized by the respective state of education. In the case of a professional degree, a training period of at least two years is required. As an alternative to a state-recognized degree, a degree from a German chamber of commerce abroad is sufficient under certain conditions. In addition, at least two years of experience in the desired profession are required. Formal recognition of the degree in Germany is not required.

For IT specialists, labor market access is additionally facilitated: the required relevant professional experience is reduced to two years (previously three years). A professional or university degree is still not required. Language skills no longer need to be proven for the visa.

LAW - Introduction of a Chance Card for job search

Beginning June 2024, a Chance Card (Chancenkarte) is introduced for job-seeking stays. It can be obtained in two ways. Skilled workers, meeting equivalence criteria, can acquire it without additional requirements. Others must show a foreign university degree, a recognized professional qualification (minimum two years), or a German chamber of commerce-issued qualification from abroad. Proficiency in German (A1 GER) or English (B2 GER) is also needed.

Meeting these requirements earns points based on qualification recognition, language skills, experience, age, ties to Germany, and spouse's potential. A minimum of six points is necessary for the Chance Card.

It's valid for one year, provided livelihood is secure. It allows trial work or part-time employment (20 hours/week). If a regular work permit isn't feasible but qualified employment is available, the Chance Card can extend for two more years.

LAW - Expanded employment opportunities for students and vocational trainees

For third-country nationals studying in Germany on a student visa, the opportunities for secondary employment will be expanded. The current annual working time account of 120 full or 240 half days will be increased to 140 full or 280 half days. The new regulation alternatively allows working student jobs of up to 20 hours per week. The amount of the salary and the subject of the employment are irrelevant. In the future, secondary employment will also be possible when attending preparatory study measures from the beginning. In the case of entry and stay for the purpose of applying to study at German universities, third-country nationals may take on secondary employment for up to 20 hours a week while they are looking for a place to study.

Third-country nationals may also enter Germany for the purpose of seeking an apprenticeship. The age limit for potential applicants will be raised from 25 to 35 years, and the requirements for German language skills will be lowered to level B1 (GER). This will open up the stay for the purpose of seeking a apprenticeship to a larger group of third-country nationals. The previous maximum residence period of six months will be increased to nine months. In addition, persons with this residence title will be able to take up secondary employment of up to 20 hours per week and to take up trial employment of up to two weeks. In the future, secondary employment of up to 20 hours per week will be possible for all vocational training.

Cord Vernunft, Partner
Andersen in Germany
Member firm of Andersen Global
cord.vernunft@de.andersen.com

Greece

The implementation of the digital work card, facilitating real-time electronic reporting of employees' attendance and departure times while physically present at the workplace through the Ergani information system, represents a major advancement in Greece's labor market digitalization efforts.

LAW - The transposition into national law of transparent and predictable working conditions Directive

Law 5053/2023, published in the Government Gazatte on 26 September 2023 incorporates the provisions of EU Directive 2019/1152. This Directive aims to ensure transparent and predictable working conditions within the European Union.

Key changes introduced by Law 5053/2023 with respect to the Directive include:

a) employers' obligation to provide information in writing to their employees on essential aspects of the employment relationship upon the commencement of employment (within one week from any such commencement for the majority of the terms and conditions of employment) is regulated in a more detailed way,

b) the maximum duration of any probationary period is reduced to 6 months, down from the previous the one-year limit. However, this change will not affect employers' obligation to grant severance pay only when employees have completed 12 months of work,

c) parallel employment of employees will henceforth be regulated enabling employees to freely take up employment with other employers outside the working schedule.

Read More

GUIDELINES - Digital work card

The introduction of the digital work card, involving the electronic submission of employees' daily start and end working times when physically present at the company's premises in real-time to the Ergani information system, marks a significant milestone in the ongoing digital transformation of the Greek labor market. This reform is a crucial step in combatting undeclared work and will gradually roll out across all types of businesses.

So far, the digital work card system has been successfully implemented in banks, supermarkets, insurance and security companies, public enterprises, and

organizations. According to the latest statements from the Minister of Labor, this requirement will extend to all private sector enterprises within the next year.

Anastasios Triantafyllos, Partner
Andersen in Greece
Member firm of Andersen Global
anastasios.triantafyllos@gr.andersenlegal.com

Ioannis Ragkos, Associate
Andersen in Greece
Member firm of Andersen Global
yiannis.ragkos@gr.andersenlegal.com

Hungary

LAW - Tighter rules on social contribution tax allowance for foreigners entering the labor market

As a result of Law LIX of 2023 and as from 14 August 2023, the social security tax credit will no longer be available to new entrants to the labour market who are third-country nationals. Prior to this change, any person was considered to have entered the labour market if he/she had been compulsorily insured for up to 92 days during the 275 days preceding the start of employment.

The related tax allowance is limited to the amount of the gross wage (but not more than the minimum wage) in the first two years and to 50 per cent of the minimum wage in the third year. A third country is a country that is not covered by the bilateral convention on social security between the European Economic Area and Hungary. Therefore, employers can no longer claim the social security tax deduction in respect of nationals of such countries entering the Hungarian labour market.

COLLECTIVE AGREEMENTS - Possible increase to minimum wage

The Hungarian social partners intend to continue negotiations regarding increase of the minimum wage at the end of September 2023. The possibility of a mid-year increase in the minimum wage has already been the subject of substantial discussions between trade unions, employers, and the government at the meeting of the Permanent Consultative Forum of the Competitiveness Sector and the Government (PCF). However, no concrete proposals for wage increases have yet been made by either the representatives of workers or employers. The joint communication of the PCF only stated that considering the expected annual inflation rate in 2023, the minimum wage could rise not only in 2024 but even in 2023. The social partners' specific proposals for wage increases are not expected to be communicated until the second half of October 2023.

Third-country nationals newly entering the Hungarian labor market no longer qualify for the social security tax credit due to changes introduced by Law LIX of 2023.

Szilvia Fehérvári, Partner
Andersen in Hungary
Member firm of Andersen Global
szilvia.fehervari@hu.AndersenLegal.com

Italy

GUIDELINES - Labor Ministry's ruling on the union rights of staffing agencies' workers

On 15 September 2023, the Minister of Labor responded to a union request of ruling concerning the union rights of staffing agencies' workers, indicating that staffing agencies' workers are entitled to all the unions rights granted by the law and by the collective agreement implemented by the staffing agency, as well as to the union rights outlined by the collective agreement implemented by the user company, while they are assigned to work for said user company. While the ruling specifically concerns union rights, the Ministry expressly explained the same reasoning applies to all the employment rights of temporary workers.

GUIDELINES - Internal Revenue Service (Agenzia delle Entrate) has ruled on the taxation of a director seconded to a sister company outside Italy.

On 9 September 202,3 the Italian Revenue Agency (Agenzia delle Entrate AdE) issued ruling No. 428, on the taxation of remuneration paid to an executive, seconded by his Italian employer to a sister company outside Italy, in order to become the group CEO. AdE argued that, since the executive spent more than 183 days outside Italy, his remuneration could be taxed according to a special mechanism (with conventional wages being the taxable basis) for employees working abroad, and notwithstanding the fact that the executive had kept his residence, as well as his family in Italy and that, due to frequent business travels to various group companies, the executive performed his duties in several jurisdictions, frequently returning to Italy on week-ends and vacation leaves.

GUIDELINES - The Italian social security agency (INPS) issued guidelines on the "incentive to continue work for employees entitled to early retirement

On 22 September 2023, the Italian social security agency (INPS) issued guidelines (circolare 82) on the implementation of an incentive for employees to stay employed. Employees who are entitled to early retirement will be able to continue and work (rather than retire) and elect to have the portion of social security contribution levied on their wage (usually 9.19%) paid to them as remuneration instead.

COURT - The retaliatory nature of a dismissal may be proven by circumstantial evidence

On 19 September 2023 the Italian Supreme Court for Criminal Matters (Corte di Cassazione penale 38306) upheld a petition lodged by an employee, dismissed for cause by her employer, against a court of appeal decision that had acquitted her employer from harassment and mistreatment charges. The acquittal had been influenced by a separate employment court decision, upholding the dismissal of the employee for breach of her duty

of loyalty. However, the supreme court opined that an employer may be convicted for harassment and mistreatment charges (and the related damages) related to an employment relationship, even if the employer conduct (for example consisting of dismissal or disciplinary actions) is grounded from an employment law point of view. Employers should pay attention and implement even tough decisions in a way respectful of their employees.

COURT - An ill employee may request to use accrued vacation and contractual unpaid leave, to avoid dismissal for excessive illness.

On 21 September 2023, the Italian Supreme Court (Corte di Cassazione 26997) confirmed a lower court annulment of the dismissal of an ill employee and the reinstatement of same. When the employee's illness was approaching the maximum period of job protection (after which her employer would be entitled to dismiss her) the employee had requested to use her accrued vacation and then an elective unpaid leave granted by the relevant collective agreement. Her employer had refused to grant vacation, arguing it had the right to reject her request. The court, consistent with a line of precedents, argued that this was true in principle, but that vacation could not be refused if it was the only way for the employee to prevent dismissal and the employer did not have a compelling reason to refuse such request.

Uberto Percivalle, Partner
Andersen in Italy
Member firm of Andersen Global
uberto.percivalle@it.Andersen.com

Liechtenstein

The Liechtenstein Superior Court clarified that in labor law disputes, the 'small claims case' designation only applies to monetary claims under CHF 5,000, but disputes related to non-competition agreements are not categorized as such.

COURT - When is an employment dispute in Liechtenstein a small claims case?

An employer took legal action against three former employees, seeking to prevent them from competing with the company as agreed in their employment contracts.

The Liechtenstein Superior Court made a ruling on November 4, 2022 (LES 2022, 225). It stated that in Liechtenstein labor law, a dispute is considered a "small claims case" (a case with simplified procedures) only if the amount of money in question is less than CHF 5,000. For all other labor law disputes, the small claims designation does not apply. This means that in a small claims case, the decision of the Liechtenstein Court of Appeals cannot be further appealed to the Liechtenstein Superior Court of Justice on legal grounds.

In this specific case, even though the disputed amount was only CHF 3,000 (which is below the CHF 5,000 small claims limit according to the Liechtenstein Court Fees Act), it was not considered a small claims case because the dispute did not involve a specific monetary amount; it was about non-competition agreements instead.

LAW - History and basics of Liechtenstein labor law

In 1974, Liechtenstein adopted the liberal Swiss labor contract law almost word for word, which is why Swiss case law and literature can be used for interpretation. Liechtenstein labor law regulates individual, collective and standard employment contracts. Provisions in individual and collective or standard employment contracts that contradict the mandatory provisions are null and void.

Particularly in the case of employment relationships in industry and commerce, but rarely in the service sector, collective labor agreements are sometimes of relevance, in which employers' associations on the one hand and employees' associations on the other draw up joint provisions on the conclusion, content and termination of the employment relationships of the participating employers and employees.

Since in Liechtenstein there is no compulsory membership for employers in the Liechtenstein Chamber of Commerce

or in the Liechtenstein Chamber of Commerce and Industry and thus the collective agreements concluded by the aforementioned chambers do not cover all employers, the government has the possibility to declare existing collective agreements for a certain industry generally binding by ordinance (e.g. for the plastering and painting industry), whereby all employers in the industry concerned must comply with them.

Rainer Lampert, Manager
NSF
Collaborating firm of Andersen Global
rainer.lampert@nsf.li

Lithuania

LAW - Lithuania increases minimum monthly wage

Studies show that raising the minimum monthly wage helps reduce unemployment. In May 2023, the Tripartite Council, representing the interests of the Government, employers, and employees, decided to increase the minimum monthly wage for the first time in five years.

Employers and employees should be informed that the Government of the Republic of Lithuania has decided that from January 2024 the minimum monthly wage in the Republic of Lithuania will increase by 10 percent, i.e., to EUR 924,00 before tax. It has also been decided that the minimum hourly wage will be increased to EUR 5,65.

Read More

COURT - When the employee's function becomes redundant for the employer

Under Lithuanian Labor law, an employer can terminate an employment contract if the employee's role is no longer required. However, this can only happen if there are no other vacancies at the workplace to which the employee could transfer (with the employee's consent). This option must be available within five working days of the notice of termination being given.

In February 2023, the Supreme Court of Lithuania dealt with a case where the employer claimed that available positions at the workplace were only accessible through a competitive process, and therefore, they could not offer them to the employee. The court ruled that if the employee is not allowed to express his or her will to be transferred to a position that is available without competition, the termination must be declared unlawful. The point is that the employer must be able to offer other positions, if they are available, even if the position is a competitive one.

Read More

COURT - The content of the Confidential Information Protection Agreement

Employers are advised to conclude agreements with employees on the protection of confidential information to secure business interests. Lithuanian courts ruled on the necessary elements of confidential information. In this case, the parties concluded an agreement on the protection of confidential information, but the court ruled that the definition of confidential information in the agreement was too broad and ambiguous and did not comply with the criteria applicable to confidential information.

The Court ruled that the fact that a document is marked "confidential" does not justify treating it as confidential because its content does not fulfill one of the necessary elements of confidential information. Therefore, to protect confidential information, the employer should carefully

and responsibly prepare confidentiality agreements, including the necessary terms of the agreement. Legal advice may be available to assist an employer in preparing a quality agreement to protect confidential information.

Vilius Maciulaitis, Partner
ILAW LEXTAL
Collaborating Firm of Andersen Global
vilius.maciulaitis@ilaw.legal

Aiste Lescinskaite, Senior Associate
ILAW LEXTAL
Collaborating firm of Andersen Global
aiste.lescinskaite@ilaw.legal

Malta

Malta has implemented EU directives promoting work-life balance, granting parents and caregivers individual rights, such as paid parental leave and flexible working arrangements.

LAW - Transposition of EU Directive on work-life balance for parents and carers

Malta has recently transposed the EU directive on work-life balance. These regulations aim to promote gender equality in the workplace by helping parents and carers to better reconcile work and family life. They establish individual rights such as paternity leave, parental leave and carer's leave, as well as flexible working arrangements for parents and carers.

These regulations guarantee paid parental leave for up to four months for parents who have had a child through birth, adoption, fostering, or legal custody until the child reaches eight years of age. Similarly, workers with children under eight and caregivers can request flexible work arrangements to fulfil their caregiving responsibilities. These regulations ensure that these workers can return to their jobs with the same conditions and benefits they would have had if they had not taken leave.

Ultimately, these laws protect against unfair treatment, consequences, and any form of discrimination, supporting the goal of equal opportunities and treatment for men and women in the labor market.

Read More

COURT - Maltese Court and Industrial Tribunal's competence

The Maltese Magistrates' Court found that it did not have jurisdiction to hear a case concerning the recovery of funds resulting from the early termination of a fixed-term employment contract. It declared that such matters fall within the exclusive competence of the Maltese Industrial Tribunal. It disregarded the plaintiff company's submission that these proceedings were identical to another case, as it explained that no plea of competence was raised in the referenced proceedings. However, the Court asserted that this does not automatically imply the nullity of these proceedings as it may order the transfer of such proceedings to the Court, Board or other Tribunal which it considers as being competent to hear such proceedings.

COLLECTIVE AGREEMENTS - New collective agreement for Occupational Health and Safety Authority signed

A new collective agreement aimed at offering better conditions to employees at the Occupational Health and Safety Authority (OHSA) has been signed. This agreement covers technical and administrative staff and is the fifth collective agreement to cover this section since the

establishment of the Authority. It includes improvements in salary structures, new benefits, an increase in overtime rates, as well as better working conditions. Although the agreement was signed in September 2023, it includes a retroactive payment to January 1, 2022.

Dr Luana Cuschieri, Senior Associate
Chetcuti Cauchi Advocates
Collaborating firm of Andersen Global
luana.cuschieri@ccmalta.com

Moldova

LAW - Paternity Leave

According to the latest amendments to the Moldovan Labor Code, effective from 1 January 2024, paternity leave will be 15 calendar days, which the father of the newborn child can take in full or in 3 parts (one part must be at least 5 calendar days) during the first 12 months after the birth. If the duration of these parts has not been previously agreed between the employee and the employer, the employee shall be entitled to paternity leave on the basis of his written application submitted not later than 5 days before each part of such leave.

The father of an adopted child will be also entitled to a paternity leave of up to 15 calendar days to be used during the first 12 months from the adoption, unless the father used other social leave (i.e. adoption of a child).

LAW - Rest break between the shifts

The Moldovan government has been approached by the American Chamber of Commerce in Moldova (Amcham), on behalf of its members who work in shifts, to review the provision of the Moldovan Labor Code which states that the mandatory minimum duration of the rest break between two consecutive shifts cannot be less than twice the duration of the working time of the previous shift (including the lunch break).

Amcham notes that an 8-hour shift with a 30-minute lunch break requires an interruption of approximately 17 consecutive hours before employees can start working in the next shift, making the organisation of the work process very complicated from a logistical point of view.

Thus, Amcham requests that this special rule, applicable only to shift work, be amended accordingly and brought in line with EU Directive 2003/88/CE of 4 November 2003 transposed in Moldovan Labor Code for the regular working hours and according to which, the daily rest period between the end of work on one day and the start of work on the next day cannot be less than 11 consecutive hours.

Amcham urges the Moldovan government to align the rest break provisions for shift employees with EU Directive 2003/888/CE to simplify logistical challenges and ensure a minimum 11-hour rest period between shifts.

Iulia Furtuna, Partner
Turcan Cazac Law Firm
Collaborating firm of Andersen Global
Iulia.Furtuna@TurcanLaw.md

Norway

Effective from 1 January 2024, amendments to the Norwegian Working Environment Act will emphasise the key criteria for determining employee status and introduce a presumption of an employment relationship in certain cases.

LAW - Stronger rights and protections for employees made redundant from a group company

Due to changes to the law, in force from January 1st 2024, the rights of employees who become redundant due to restructuring or downsizing should not only apply to their own employer, but also to all Norwegian companies in the group of which the employer is a part. There will be a duty to offer the employee other suitable work in other group companies if there is no other work available in the employer company. The preferential right to new employment (which applies for 12 months after termination of the employment relationship) will also be extended to apply in other group companies. In the notice of termination, information must be given about this extended preferential right and all group companies at the time of termination must be listed.

LAW - Upcoming Changes to Norwegian Labor Law: clarifying employee vs. independent contractor status

Due to a change in the Norwegian Working Environment Act coming into force on 1 January 2024, the most central elements in the assessment of whether a person is an employee, or an independent contractor will be included in the legal text. In addition, a rule will be introduced that it must be assumed that there is an employee relationship unless the company makes it overwhelmingly likely that there is an independent assignment relationship.

As a result of the change in the law, businesses must be more careful with documentation and the assessments made in connection with the use of independent contractors. These changes to the law are meant to clarify the difference between an employee and an independent contractor and make the businesses more aware of the differences and thereby their obligations towards these persons.

Kristine Slotnæs, Partner
Brækhus Advokatfirma DA
Collaborating firm of Andersen Global
slotnaes@braekhus.no

Poland

Employees will no longer have to pay any fees when initiating lawsuits in labor law cases.

LAW - Employees exempt from court fees

In a significant legal development effective September 28, 2023, employees will no longer be required to pay filing fees for labor law cases. Previously, when the dispute's value exceeded PLN 50,000, employees were charged a fee equivalent to 5% of the lawsuit's value.

Under the new regulations, employees will only be responsible for covering the appeal fee against the initial court judgment, and this obligation applies solely when the dispute's value exceeds PLN 50,000. Importantly, even in such cases, the fee will only be calculated based on the amount exceeding PLN 50,000.

This change is poised to have a significant impact on labor court proceedings. Presently, the average duration of cases before labor courts is several months. With the elimination of upfront fees, it's anticipated that there will be a surge in the number of court cases, potentially extending the duration of proceedings. Furthermore, employees may be more inclined to pursue legal action against their employers for substantial sums, given the absence of initial costs associated with initiating court proceedings.

COURT - Unitentional mobbing

In its judgment of February 22, 2023 (ref. I PSKP 8/22), the Supreme Court ruled that establishing mobbing does not require proving an intentional intent to harm an employee's health.

In this case, it was evident that the supervisor consistently increased the employee's workload, engaged in frequent unpleasant conversations, leading to emotional distress, and demanded constant availability, even infringing on the employee's personal time. Medical examinations confirmed that this behavior resulted in the employee feeling diminished professionally, humiliated, isolated, and worthless. Both the lower and appellate courts ruled in favor of the employee, awarding her PLN 20,000. The employer contested these judgments, arguing that the mobbing actions were not intentional.

The Supreme Court emphasized that intentionality on the part of the employer is not necessary for mobbing claims. Mobbing can be established if the employee experiences interactions that qualify as mobbing under the Labor Code. This clarification significantly simplifies the process for employees seeking to assert their rights against employers in cases of suspected mobbing.

An employer does not have to act intentionally to cause mobbing.

COURT - R&D Tax credit in Poland: Paid leave and sickness benefits qualify as eligible costs

The Supreme Administrative Court of Poland, in its judgments dated August 3, 2023 (II FSK 185/21) and August 30, 2023 (II FSK 263/21), confirmed that paid leave and sickness benefits are considered qualified costs for the Research and Development (R&D) tax credit. This not only applies to the basic salary but also includes contributions to social and health insurance.

Under the R&D tax credit scheme, taxpayers (employers) can deduct R&D-related expenses twice from their taxable base. Firstly, following the general rules governing deductible expenses. Secondly, as qualified costs under the R&D tax credit. Employee-related expenses are among these qualified costs. However, Polish tax authorities have long contested this right concerning expenses incurred by employees during periods of leave or illness. They argue that the tax credit should only apply to compensation for the time an employee genuinely dedicates to R&D activities. The Supreme Administrative Court disagreed with this position in both rulings.

These decisions by the Supreme Administrative Court align with a series of recent judgments in favor of taxpayers benefiting from the R&D tax credit. In March 2023, the Supreme Administrative Court also ruled that the R&D tax credit can extend to compensation for management personnel.

Read More

COURT - Supreme Administrative Court rules benefits of employee secondment not taxable

In a recent ruling (II FSK 270/21) NSA, the Supreme Administrative Court clarified that accommodation and transport during the period of an employee's secondment are not taxable. Secondment involves the temporary relocation of the place where the employee's duties are performed - for example, the employee may be seconded to work in another city or country to carry out a project for a client.

The NSA's latest landmark ruling of 1 August 2023 held that benefits related to accommodation and transport during an employee's secondment are not taxable. This ruling is unique in that it refers to EU rules that state that benefits in kind are not part of an employee's salary and are therefore not taxable. This represents a significant departure from the hitherto uniform position of the administrative courts, which had previously ruled that such benefits were taxable.

The decision of the Court of the Supreme Administrative Court clarifies that the accommodation and transport benefits provided during the secondment of employees are not subject to taxation.

Magdalena Patryas, Partner
Andersen in Poland
Member firm of Andersen Global
magdalena.patryas@pl.andersen.com

Maciej Pietrzycki, Manager
Andersen in Poland
Member firm of Andersen Global
maciej.pietrzycki@pl.andersen.com

Portugal

In May 2023, amendments were made to the labor law, which stipulate that such compensation should be considered, for tax purposes, a cost for the employer and not constitute income for the employee.

LAW - Tax exemption for teleworking expenses

According to the legal regime for teleworking, employers are obliged to compensate employees for the additional expenses arising from teleworking, namely those relating to increased energy costs.
In May 2023, amendments were made to the labor law, which stipulate that such compensation should be considered, for tax purposes, a cost for the employer and not constitute income for the employee until the amount defined in a specific decree is reached.

Nearly five months after the legislative amendments came into force, the government established the limit for exemption from taxation, which should be euro 22 per month according to daily expenses – corresponding to euro 0.10/ day for electricity consumption, € 0.40/ day for internet and euro 0.50/day for the use of a computer or other IT equipment – increased by 50% if stipulated by a collective bargaining agreement.

The government decree has been signed and will come into force the day after it is published, which has not yet occurred.

LAW - Overtime work compensation

The Law no. 12/2023, enacted on 3 April 2023, brought amendments to various aspects of the Portuguese Labor Code, particularly regarding employee compensation for overtime work. When overtime work is performed and meets the criteria defined in the legal framework, employees have the right to receive financial compensation as outlined below:

1. For overtime work up to 100 hours per year: Paid at the hourly rate with a 25% increase for the first hour or fraction thereof on a working day. For subsequent hours or fractions on a working day, a 37.5% increase applies. On a weekly rest day, compulsory or additional, or on a public holiday, a 50% increase is applicable for each hour or fraction thereof.

2. For overtime work exceeding 100 hours per year: Paid at the hourly rate with a 50% increase for the first hour or fraction thereof on a working day. For subsequent hours or fractions on a working day, a 75% increase is applied. On a weekly rest day, compulsory or additional, or on a public holiday, a 100% increase is applicable for each hour or fraction thereof.

It is important to note that the Portuguese Labor Code also sets overtime work

limits for micro, small, medium, and large companies. In summary, while specific requirements exist for overtime work to be recognized, once it qualifies, employees are entitled to receive pecuniary compensation.

Although the legal framework of the overtime work establishes several requirements for the work provided after the normal working period to be deemed as overtime work, once it is provided and deemed as overtime work the employees are entitled to a pecuniary compensation.

Jose Mota Soares, Partner
Andersen in Portugal
Member firm of Andersen Global
jose.soares@pt.Andersen.com

Slovakia

The Supreme Court addressed key aspects of employer-employee contracts, explaining that it is not mandatory to specify the exact amount of monetary compensation and that individual circumstances will be taken into account when determining compensation in cases where a specific amount is not specified in the contract.

LAW - Amendment to the Whistleblower Protection Act

On July 1, 2023, and September 1, 2023, changes to the Whistleblower Protection Act (Act no. 54/2019 Coll.) were implemented.

Effective September 1, 2023, the requirement for establishing an internal whistleblowing system is expanded beyond employers with over 50 employees and public authorities with more than 5 employees. This obligation now extends to employers in the financial services, transport safety, and environmental sectors, regardless of their workforce size. Additionally, the amended legislation allows for outsourcing the role of the responsible person.

Moreover, the definition of a whistleblower has broadened to include various individuals such as employees under an employment contract, those under work agreements outside traditional employment, job applicants, former employees, contractual partners, managing directors, or other members of a legal entity's governing bodies. The revised law explicitly prohibits employers from intimidating or retaliating against whistleblowers, their immediate family members, and other individuals specified in the Act, with penalties for non-compliance.

COURT - Monetary compensation of the employer & notice period

In a resolution dated September 25, 2018 (No. 3 Cdo 154/2018), the Supreme Court addressed important aspects of employer-employee agreements.

According to the Labor Code, employers and employees can agree in writing that if the employee does not complete the notice period, the employer can demand monetary compensation. The Labor Code sets a maximum amount of monetary compensation which is calculated by multiplying the employee's average monthly earnings by the length of the notice period.

The Supreme Court clarified two key points. First, it stated that specifying the exact amount of monetary compensation is not a mandatory component of such agreements. It's sufficient for the employment contract to include a general provision allowing the employer to seek monetary compensation. Second, in cases where the specific compensation amount isn't determined in the contract (which is often the case due to changing variables like monthly earnings

and notice period length), the court considers individual circumstances when determining the amount. These factors may include the reason for termination and the employee's absence during the notice period. This clarification offers flexibility in crafting agreements and ensures that fair compensation can be determined when necessary.

JUDr. Vladimír Grác, Partner
CLS Čavojský & Partners
Collaborating firm of Andersen Global
grac@clscp.sk

Slovenia

The Higher Labor and Social Court decided that the determination of the criterion of effective presence at work when paying part of the salary for business performance is not discriminatory.

LAW - Measures to help people and businesses cope with flood damage

In order to deal with the consequences of the devastating floods that hit Slovenia in August 2023, two laws were adopted in August and September 2023, setting out various measures to help the economy and individuals, including in the areas of strengthening the labour market and preserving jobs. Among others the law introduced a temporary measure of two solidarity working Saturdays or compulsory solidarity contribution.

If the employer opts for a solidarity Saturday, both the employer and the employee will give up their earnings. If working Saturdays are not introduced, then both the worker and the employer will pay the compulsory solidarity contribution. Employees will pay 0.3 per cent of their income tax bill and companies will contribute 0.8 per cent of their corporate tax base. It is a new form of contribution that has not been introduced before.

COURT - Criteria for the Christmas bonus and business performance payments

In recent years, a very actual topic in Slovenia has been the determination of the criteria for the payment of the Christmas bonus/business performance. The Advocate of the principle of equality in Slovenia has adopted several decisions that employers have violated the prohibition of indirect discrimination by creating and adopting criteria for determining eligibility for payment and for the amount of payment for business performance, which are linked to the presence of an individual worker at work in such a way that the amount of the payment decreases as the number of days of absence due to illness and maternity leave increases.

In connection with this issue the Higher Labor and Social Court decided in the judgment X Pdp 781/2022 that the determination of the criterion of (effective) presence at work when paying part of the salary for business performance is not discriminatory. In relation to the decision of the judgment, a revision was allowed, and the decision of the Supreme Court is still awaited.

Maja Skorupan, Associate
Law Firm Senica & Partners, Ltd.
Member firm of Andersen Global
maja.skorupan@senica.si

Spain

Paid leave is intended to free workers from work obligations without loss of pay, so that they can deal with specific situations defined by law. These situations range from achieving a work-life balance in certain life circumstances to fulfilling specific responsibilities or engaging in representative activities.

GUIDELINES – Dealing with investigations when complaints do not go through the regulatory channels

Spain's recent Law 2/2023, dated 20 February 2023, introduces significant changes in the realm of whistleblower protection and anti-corruption measures. The law clarifies what qualifies as a reporting channel for individuals to disclose regulatory violations and corruption and how to respond when a report of a criminal or administrative breach does not follow the prescribed reporting channel.

Regarding employment relationships, the Spanish Criminal Code identifies specific crimes:

a) Harassment: This includes hostile or humiliating acts carried out repeatedly, taking advantage of one's superiority over another but not constituting degrading treatment.

b) Illegal employment conditions: Enforcing illegal conditions on employees, such as using alternative hiring methods contrary to the employment contract, may result in criminal liability or administrative sanctions. To mitigate liability, an employer must implement a prevention plan, supervised by an autonomous authority. Liability can be avoided if the crime occurs despite the prevention plan, and there is no negligence in supervising, monitoring, and controlling its implementation.

However, the law raises questions about situations where the knowledge of an infringement doesn't come through the prescribed reporting channel, such as complaints to the Labor Inspection or lawsuits. While administrative breaches may not always lead to criminal liability, the prevention-focused system necessitates treating complaints from these sources as valuable information that may trigger investigations.

COURT – Understanding paid leave during holidays in Spain

As the holiday season draws to a close, questions often arise about the status of paid leave under the Spanish Workers' Statute and overlapping collective agreements. The Spanish courts have addressed this issue, distinguishing it from cases involving vacation and sick leave. While holidays are intended to provide workers with rest and leisure, paid leave has a different purpose.

Paid leave is intended to free workers from work obligations without loss of pay, so that they can deal with specific situations defined by law. These situations range from achieving a work-life balance in certain life circumstances to fulfilling specific responsibilities or engaging in representative activities.

The granting of paid leave is subject to two key conditions. First, the event that triggers the leave must comply with the regulations. Secondly, the needs or obligations requiring paid leave must arise during working hours. In essence, paid leave is justified when there is a genuine obligation to work. Understanding this distinction is crucial for employees and employers navigating the intersection of paid leave and holidays in Spain.

Victoria Caldevilla, Partner
Andersen in Spain
Member firm of Andersen Global
victoria.caldevilla@es.andersen.com