France

Labour Law Reform

In early spring 2016, the French government put a bill before Parliament proposing reforms to French labour law. The intention was to introduce more flexibility to French labour law and become more "employer-friendly". The proposals in the bill were controversial and sparked protests and strikes across both public and private sectors. Finally, after months of debate, the new laws were enacted in August 2016. The law (2016-1088) introduced numerous changes to the French Labour Code, mainly to give more freedom in collective bargaining and to provide more flexibility to companies.

Notably, company-wide collective bargaining agreements will now prevail over sector-wide collective bargaining agreements in several areas relating to working time, such as overtime, overnight work and daily rests.

As a safeguard against attempts to use the law to reduce collective guarantees negotiated at the company/establishment level, a "right of review" is introduced at the branch/ industry level. This will be through a committee that will prepare annual appraisals of the company-wide collective bargaining agreements entered into within the branch/industry on the issue of working time.

The law also contains various other changes to statutory provisions pertaining to employee representatives, dismissal for economic reasons, professional training and health care, in keeping with the overall intention to bring more flexibility to French labour law.

The Netherlands

New Whistleblowing Law

Summer 2016 saw the new Dutch Whistleblowing Act (*Wet Huis voor klokkenluiders*) ("Act") enter into effect. Under this Act, an employer who employs 50 or more employees is obliged to adopt a whistleblowing policy. The policy must (at least) set out: (i) how internal reporting of wrongdoing is addressed; (ii) the definition of what is regarded as wrongdoing; and (iii) the officers to whom wrongdoing can be reported.

Furthermore, the policy should enable employees to report wrongdoing confidentially and to obtain legal advice. The employer must also inform employees in writing when wrongdoing may be disclosed externally and about the anti-retaliation provisions in the Act. The implementation of the whistleblowing policy requires the works council's prior consent.

In addition to the introduction of a mandatory whistleblowing policy, the Act creates an independent government institution known as the "House for Whistleblowers". The House can advise employees who wish to report wrongdoing. Furthermore, the House has the power to investigate wrongdoing as well as any retaliatory action taken against the employee. The House has wide-ranging investigative powers.

Finally, the Act introduces anti-retaliation measures for employees who have disclosed wrongdoing in good faith. Any form of retaliation against those employees is prohibited.

United Kingdom

Reasonable Adjustments and Disability Discrimination

In a recent decision at the Employment Appeal Tribunal level, it has been held that the statutory duty under the Equality Act to make reasonable adjustments for a disabled employee can extend to protecting an employee's pay (*G4S Cash Solutions (UK) Ltd v Powell*). Due to a disability, and as a "reasonable adjustment" under the Act, the employee was moved to a less-skilled role. The role carried a lower salary—it represented a reduction of approximately 10 percent. Under the Equality Act, an employer is required to make reasonable adjustments in cases where disabled employees are at a "substantial disadvantage" in comparison to employees who are not disabled. The decision stated that many adjustments "involve additional cost to the employer", and it was therefore reasonable for the employer to maintain the employee's former, higher rate of pay.

Whilst in every situation the reasonableness of potential adjustments must be assessed on a case-by-case basis, this decision is a significant departure from previous authorities on the point. As such, employers should take note that there is no reason in principle why pay protection could not be a reasonable adjustment as part of a packet of measures to get an employee back to work and help keep him or her there.

Other News

In **Italy,** the government has implemented Directive 2014/67/EC on the secondment of employees in the EU. This Directive concerns the employment of employees seconded to Italy by companies established in other EU Member States.

Necessary conditions for any such secondment are the continuation of the original employment agreement and that the secondment is for a fixed term.

The law clarifies that the seconded employee must be granted the same terms and conditions of employment that apply in the Member State of the host company with regard to maximum working hours, minimum rest periods, holidays, minimum pay rates, limits on the employment of temporary workers, protection of maternity rights and children, health and safety at work and equality of treatment between men and women.

The seconding employer must give notice of any secondment to the labour authorities within specified timeframes.

In **Spain**, recent case law has confirmed that, contrary to common practice, employers must, for all full-time employees, keep a daily record of hours worked in order to monitor compliance with maximum annual working time laws. The matter is going to the Spanish

Supreme Court. Many questions remain, such as: (i) how should working hours be recorded—manually or through an automatic check-in/check-out system; (ii) who should take control and record of working hours—employer or employee; and (iii) in the case of a dispute or litigation, who bears the burden to prove the hours worked?

The labour authorities will have powers to enable them to verify compliance.

In the **United Kingdom**, the introduction of mandatory gender pay gap reporting by employers with 250 or more employees is in the pipeline. Initially due to come into force on 1 October 2016, the final Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 have been delayed until April 2017. Despite this delay, it is likely that the first "relevant date" under the regulations will remain at 30 April 2017 and that the first gender pay gap reports will still be due by the end of April 2018.

In short, employers will be expected to: (i) publish information on their website relating to the differences in mean bonus, mean pay and median pay during the pay period between male and female employees and details of how many women and men are employed in each quartile of the employer's pay distribution; (ii) leave such information on their website for a period of three years; and (iii) submit evidence of compliance annually to the government.

Although the draft regulations do not contain enforcement provisions or sanctions for noncompliance, the government has made it clear that they will publicise the identity of employers who have not complied with these gender pay gap reporting requirements.

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