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The IBA Global Employment Institute

# Eighth Annual Global Report

National regulatory trends in human resources law



**Prepared by**

The International Bar Association Global Employment Institute



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Note for the members of the advisory board: please send your comments and suggestions regarding this report to Todd Solomon ([tsolomon@mwe.com](mailto:tsolomon@mwe.com)).



# 1. Introduction

The Annual Global Report (AGR) is an annual report prepared by the IBA Global Employment Institute (GEI) highlighting certain general international trends in human resources law. This is the eighth AGR and is based on responses from lawyers in 50 countries. The methodology that was used is described in section 2. The eighth AGR covers trends in human resources law during the calendar year 2018 and, in some cases, the beginning of 2019. Each AGR will build on the historical perspective of previous editions. This may prompt changes to the topics covered in future editions of the AGR.

Please note that it is not the intention or purpose of the AGR to set out the law on any particular topic, but rather its aim is to highlight changes and trends. Any reference to a particular law is not intended to be a description or summary of that law and should not be relied on as a statement of the law or treated as legal advice. Readers should seek appropriate legal advice before taking any action.

## 2. Methodology

Lawyers from 50 countries (Schedule 1) were asked to respond to the questionnaire (Schedule 2). The questions were designed to cover the most relevant issues relating to employment, industrial relations, discrimination and immigration law. Lawyers were asked to consider changes during 2018 (and the start of 2019) and to explain them and their significance very briefly. The answers to the questionnaire have been consolidated and summarised in section 3 of this report (Trends and developments). As previously noted, the AGR's goal is to highlight general international trends in human resources law. Readers seeking more in-depth analysis are welcome to contact the GEI or the lawyers who participated in the survey.

The Council of the GEI appointed a Working Group for the development of the AGR. The members of this Working Group were: Duncan Inverarity (A&L Goodbody, Ireland); Caroline André-Hesse (Ayache Salama, France); Marco Mazzeschi (Mazzeschi, Italy); Filip Saelens (Loyens & Loeff, Belgium); Rebecca Ford (Clyde & Co, United Arab Emirates); and Björn Otto (CMS Hasche Sigle, Germany).

This Working Group, with the coordination of Todd Solomon (McDermott Will & Emery, US, GEI Council Member), were primarily responsible for the AGR. Todd Solomon and his McDermott Will & Emery colleagues updated the questionnaire and contacted lawyers from different countries (Schedule 1), reviewed the completed questionnaires and wrote the draft AGR. Filip Saelens and Björn Otto provided guidance on the development of the questionnaire and identification of attorney contacts, and provided feedback on the draft AGR. The GEI Council wishes to convey its gratitude to all of them for their participation and interest in the development of the survey.

A first draft of the AGR was submitted to qualified senior HR managers and employment counsel in an open meeting on 4–5 July 2019 in Copenhagen.

## 3. Trends and developments

### 3.1 Dismissal and retirement issues

#### *Dismissals*

Employers continue to be cautious of avoiding any negative consequences associated with wrongful termination procedures in their countries. Responders noted that penalties for failing to comply are severe, which has led employers to comply strictly with the rules. This also reflects the willingness of employees to challenge situations that may involve wrongful termination.

Although many responders did not identify any new developments in this area, some countries have experienced changes. For example:

- In Germany, the Brexit Transition Act passed in early 2019. The Act relaxes the strict rules under the German Dismissal Protection for certain highly paid bankers. Banks no longer need to provide specific reasons, those that would typically be identified as creating 'cause', when terminating these highly paid personnel.
- Supreme Court judges in Peru decided that employees who held a position of trust or management are not entitled to severance pay.
- Canadian courts issued multiple decisions in 2018 upholding the enforceability of contractual severance provisions used to avoid common law notice, which is a change from the precedent in recent years.
- In Spain, a royal decree was recently issued to ensure the equal treatment of men and women with respect to employment. The provisions protect female employees from pregnancy-related dismissals or the return from a leave of absence due to child birth or adoption.

Certain respondents also noted changes related to the enforceability of restrictive covenants in their countries. For example:

- Multiple European countries identified new legislation related to the protection of confidential information and unfair trade practices that came into force over the last year, including Hungary, the Netherlands and Poland.
- In the United States, there has not been any movement on a federal basis. However, many states are changing their laws to limit the ability of employers to use and enforce restrictive covenants.

As with many types of litigation, the use of alternative forms of resolution, such as mediation and arbitration, remains strong in countries where such forms are

allowed. In Hungary, the number of court cases involving employment matters appears to be decreasing. This may be due to the implementation of new procedures in the Labour Code that require employees to seek professional help and therefore incur additional costs in resolving these cases. Some countries are also creating special judicial bodies to hear employment cases. For example, beginning this year, wrongful termination cases in Singapore will be heard by the Employment Claims Tribunal.

## **Retirement**

As nations continue to struggle to find solutions to an ageing workforce and limited retirement funds, many have raised the retirement age. This is especially true in Europe, including in Germany and Sweden. Conversely, in Portugal employees who have made contributions for many years or started working at a young age are now able to retire without penalty. In Poland, new legislation requires employers to create their own additional retirement arrangements for their employees. South African employers are increasingly reaching agreements with employees to work beyond the normal retirement age.

Courts and legislating bodies remain generally concerned over the treatment of older workers. In Canada, the Human Rights Tribunal of Ontario determined that allowing employee benefit coverage to end at 65 constituted impermissible age discrimination. However, a recent decision in the Netherlands seems to work against this general principle. There, the Supreme Court ruled that termination compensation is not due to employees required to leave work on reaching a certain age and that this does not constitute age discrimination.

## **3.2 Corruption and whistleblowing**

Several countries adopted new whistleblowing and anti-corruption legislation, or prior laws took effect, in 2018 and 2019. Much of this legislation was aimed at expanding and enhancing rules and systems that had been previously implemented.

Some countries, including Australia, Chile, India, Ireland and Lithuania, have reported proposed laws or legislation that would expand whistleblowing and bribery protection and/or sanctions under existing law.

For example, Australia's federal parliament passed legislation that introduces very significant changes to whistleblower protection in the private sector. The following are examples of some of the reforms that commenced on 1 July 2019:

- changing who can be a whistleblower to also include former officers, employees and contractors and their dependents and relatives;
- including a mechanism for a whistleblower to make a disclosure to a parliamentarian or a journalist in certain circumstances; and

- introducing significant penalties for any contravention of the whistleblower protections with both offence provisions and civil penalty provisions. These include ensuring that the identity of the whistleblower is not disclosed unless one of the exemptions apply.

Lithuania has also passed new legislation that offers additional protection for people who report corruption or other infringement incidents in public and private institutions. Under the new law, it is now forbidden to take any of the following disciplinary actions against whistleblowers: dismissal, demotion, intimidation, harassment, salary reduction or change of working hours. Additionally, a whistleblower who has participated in the violations and has notified the competent authority in accordance with the procedure established by the law may be exempted from liability for the participation in such violations.

There is also important new legislation in Chile targeting certain criminal conduct, including corruption and conflicts of interest. Some aspects of this new law are:

- new criminal offences that may result in criminal liability of legal entities, such as unlawful negotiation, commercial bribery, disloyal management and embezzlement;
- increased time in prison for certain bribery and fraud crimes;
- the statute of limitations for bribery and fraud crimes increasing from five to ten years and convicted people must serve actual prison sentences and not solely alternative penalties; and
- expanded concept of bribery to include any kind of advantage or benefit, not only financial or economic.

India has passed significant legislation that brings private entities or commercial organisations under the government's radar. As the result of new legislation, giving a bribe is now an offence, the anti-bribery law is now applicable to commercial organisations and there are stricter punishments for perpetrators of bribery.

### **3.3 Temporary and contract work arrangements**

A number of countries, including Canada, Denmark, Ireland, Norway, Poland and South Africa, reported that legislation has been proposed or adopted that provides additional protection for independent contractors and other temporary workers. These laws most frequently regulate employers' use of worker classifications or protect such workers' compensation.

Norway has recently implemented a legal definition of permanent employment through new legislation, imposing minimum requirements for protection against dismissal and predictability of working hours and salary. The new legislation is aimed at zero-hour contracts in particular. If employment contracts, including

zero-hour contracts, do not fulfil the minimum requirements of a permanent employment, the employment is considered temporary and a legal basis for temporary employment is required. Although the legislation was recently implemented, the practice of using zero-hour contracts in staffing agencies appears to be changing. Several agencies have shifted their practice and now employ their workers on permanent employment contracts in part-time positions, usually about ten to 20 per cent of full time.

In Canada, recent developments have centred on implementing additional protection against abuse of agency work and other atypical working practices. For example, modifications were made to the law ensuring that employees performing the same tasks at the same establishments do not receive a lower pay rate solely because of the number of hours they work per week or their employment status.

Ireland's new legislation, which came into effect in March 2019, contains specific measures to improve the security and predictability of working hours for employees with non-traditional arrangements. The key measures include a written statement of terms at the start of employment, the prohibition of zero-hour contracts where employees are required to be available for work without specific set hours in a contract and the introduction of a minimum payment.

South Africa has passed legislation that makes it more difficult for employers to make use of atypical employment arrangements without ensuring equal treatment for the atypical workers or without the workers being deemed to be employed directly or indefinitely. As a result, many employers have reduced their use of atypical work practices and moved back into full-time employment arrangements, often ceasing to use atypical work arrangements altogether.

In contrast, India has focused on better defining the fixed tenure/contract work relationship. The country has modified its labour laws to clarify temporary worker notice of termination, notice pay, pay parity and statutory benefit requirements and to ban employers from converting permanent employee positions into fixed-term employment arrangements.

## **3.4 Flexible working**

### ***Overall trends***

Most countries saw sustained support for flexible working policies. As in previous years, remote working and flexitime are the most common flexible working arrangements. With respect to remote working, many countries, including Canada, Chile and Romania noted that it often takes the form of occasional or part-time remote work, for example, remote working for one day a week. Several countries, including Latvia, Lithuania, and Russia, mentioned that remote working continues to be more common for certain types of employees, such as analysts and those in the customer support and information technology (IT). Regarding flexible hours,

similar to last year, many countries reported the use of a core period of required work with flexibility outside that core period. In addition, some countries, including Canada, New Zealand and Singapore, mentioned the use of compressed work weeks where a certain number of hours are distributed over four, rather than five days.

A number of countries also mentioned part-time work as a common flexible working practice. Other arrangements that were reported include job sharing, which was mentioned by the Czech Republic, Hungary, Ireland and United Kingdom, and the ability to bank excess hours for future paid time off, which was mentioned by Finland, Germany and Sweden.

Support for flexible working arrangements continues to be limited in certain countries, however, including Albania, Hungary, Russia, Taiwan, Turkey and Ukraine.

### ***Legal rules***

Rules governing flexible working arrangements are typically driven by overall company policy and culture, in particular those of large multinational companies or individual employment agreements, rather than legal rules. However, some countries, including Canada, Ireland, Taiwan and the UK, described laws related to an employee's right to request flexible working and/or an employer's obligation to consider such a request. Australia recently adopted a new law requiring employers to discuss flexible work requests with employees and make genuine attempts to reach an agreement, and Belgium adopted legislation requiring employer and employee representatives to discuss company rules on disconnectivity.

Other recent legal developments include:

- Finland recently proposed an update to its working hours' law providing for limited flexibility in when and where work may be performed. For example, 20 of 40 total work hours may be scheduled at the employee's discretion.
- Italy recently adopted similar rules allowing work to be carried out partially on business premises and partially off site.
- Germany adopted a new law providing a means for employees who work part-time for a limited one-to-five-year duration to return to full-time work so that they are not indefinitely and involuntarily working on a part-time basis.
- Japan adopted new rules limiting overtime working hours per month and per year.
- Spain recently adopted laws relating to the right to maintain a work-life balance, including by working remotely.

## ***Right to disconnect***

While the well-publicised right to disconnect laws in France have generated discussion in many countries about the burdens employees face when expected to be available/responsive to their employers at all times, legal developments in this area have been generally limited. However, legislation regarding the right to disconnect was proposed in India and is under consideration in Chile, the Netherlands and South Korea. In addition, recent legislation in Belgium and Spain expressly recognises the general right to disconnect from work, but leaves the specifics regarding what this means to company policies and employer/employee agreements. Interestingly, France reported that there have been practical challenges in implementing the right to disconnect, particularly with respect to executives with autonomy in the performance of their duties.

### **3.5 Family-friendly policies**

As in recent years, many countries noted gains in rights for working parents. Although maternity leave continues to be well-supported, recent expansions were generally more focused on paternity leave or gender-neutral benefits. In addition, versus previous years, a greater number of countries reported that employers were willing to provide enhanced benefits over and above those that are legally required.

A substantial number of countries reported increases in the length of paternity leave or expansion of maternity leave to gender-neutral parental leave. Canada, Czech Republic, Ireland, Israel, Norway, Singapore, Spain and South Africa recently adopted enhanced paternity leave, while enhanced paternity leave (or a transition to gender-neutral leave) is under consideration in Argentina, Chile, Finland, Peru, Portugal, Spain and Switzerland. Sweden reported that a new law takes effect in 2019 aiming to simplify the leave rules and make them more gender-neutral. Italy reported that several years after adopting new paternity leave rules, the country has witnessed an increase in the actual use of such leave.

The increase in paternity leave and gender-neutral leave is driven in some cases by a desire to achieve greater gender equality at work and at home and concerns that more favourable maternity leave rules (in terms of length and/or continued salary) discriminate against fathers. Both Ireland and South Africa reported cases in which such discrimination was alleged.

Compared to previous years, a greater number of countries, including Australia, Columbia, Denmark, Ireland, Italy, Kenya, New Zealand, Norway, Switzerland, Taiwan, Turkey, the UK and the US, reported that certain companies have been willing to provide maternity and paternity benefits over and above those that are legally required. Most countries stated that this is more common among larger companies and multinational companies, while some countries noted that enhanced benefits typically arise from bargaining.

### 3.6 Absenteeism due to stress and mental health issues

Many countries have noted that absenteeism due to stress and mental health problems continues to be an issue. Formal studies in Belgium, Chile and the UK have shown empirical evidence supporting an increase in absenteeism due to stress and mental health problems in those countries.

Several countries have also reported that stress, mental health problems and/or burnout are increasingly cited by employees as the reason for absenteeism. In Bulgaria, a large number of investigations into disciplinary cases and termination procedures involve employee absenteeism instigated by stress or mental health problems. In Belgium, absenteeism due to mental health problems has risen to record levels, especially among younger workers who suffer from burnout.

There is growing recognition by courts and other regulatory bodies that stress and mental health problems are occupational diseases that deserve special protection. Courts in Finland and Spain have increasingly acknowledged stress and depression as occupational diseases. In Portugal, a resolution was recently adopted to recommend the enactment of legislation that would classify burnout syndrome as an occupational disease and grant it the protection already afforded to other occupational accidents. France reports that burnout has been recognised as a professional disease, which has enabled employees who suffer from it to gain special protections in absenteeism situations.

Some countries have developed initiatives to address the challenges posed by absenteeism due to stress and other mental health issues. In 2018, Safe Work Australia, the national health and work safety regulatory body, published guidance for employers on implementing their duty to take reasonable measures to ensure that employees are not exposed to risk of psychological issues arising from work. The Chinese government issued an instructive opinion proposing that employers should provide mental assistance to employees who are under increasing pressure. The UK has announced the implementation of a 24-hour mental health hotline and funding for a new mental health service. In France, the prominence and authority of the Health and Safety Council is increasing on a regular basis.

Whether it be due to legal obligations, government initiatives, increased public awareness or some combination of the three, the most consistent and comprehensive changes related to employees' mental health are driven by employers. Several countries noted increased efforts by employers to support the mental health of employees. The UK reported that employers are under pressure to do more and many employers are now implementing employee assistance programmes and manager training. Several employers in China are also implementing employee assistance programmes that provide a free mental health hotline and counselling services. In the US, employers are increasingly providing employee education around mindfulness and stress management. In Switzerland, time recording obligations are being more strictly enforced and work-life balance training is being increasingly offered. Finland and Kenya also report an increase in employer support measures.

### 3.7 Data protection, privacy and human rights

While most countries continue to focus on data privacy, including implementation of the General Data Protection Regulation (GDPR) and country-specific data privacy rules, privacy as it relates to the use of social media was also a hot topic for many countries.

EU members gave updates on corporate implementation of the GDPR since it came into effect in May 2018. However, several non-European Union members also reported successful implementation of the GDPR or similar rules over the course of the past year. Russia now permits its Data Protection Authority to investigate employer compliance with data protection laws and requires data breach notification when violation of certain data protection laws is discovered. Chile passed a constitutional amendment establishing the right to the protection of personal data and is in the process of creating legislation to implement the amendment. Chile also introduced legislation on cybercrime. Serbia is also in the process of implementing a personal data protection law. Singapore experienced its largest data breach in 2018 and the entity responsible for the breach was subject to a significant fine. Finally, a few countries noted a general trend towards transparency in employer personal data handling practices and a resurgence in employees asserting data subject rights as a means of obtaining information in connection with employment disputes.

Several countries reported a significant increase in attention on the use and regulation of social media. New Zealand has adopted a privacy bill to modernise legislation addressing privacy issues in social media. Both Israel and Italy reported an increasing number of cases based on comments made by employees on social media. In the absence of any legislation regarding social media use, employers in many countries have implemented policies to address social media use and impose disciplinary action for misuse of social media. South Africa noted several cases in which employers were entitled to use information to protect corporate reputation, illustrating that the right to privacy is not absolute. The UAE also reported several cases in which individuals were charged with crimes for what was deemed improper use of social media.

A few countries noted changes in workplace practices relating to human rights and the protection of family and home life. Australia implemented a new family and domestic violence leave law that broadly defines domestic violence and provides for some additional unpaid leave for employees. Australia's Modern Slavery Act became effective in 2019. This law imposes reporting requirements on certain entities related to human trafficking and slavery-like practices. South Korea amended its existing laws to create rules addressing harassment and bullying in the workplace. The amendments define the acts of harassment and bullying and include investigation requirements for employers and a means by which employees can report workplace incidents.

### 3.8 Discrimination in the workplace

Many countries reported developments in laws relating to discrimination based on gender, disability, union status and religion.

Gender-related developments in discrimination laws and practices were most prevalent. For example, the Mexican Congress is currently discussing different initiatives to amend federal law to prevent gender discrimination, and Denmark updated its Act on Equal Treatment to include a separate prohibition on sexual harassment, both of which will affect discrimination in the workplace. Efforts to narrow the gender pay gap and reduce gender discrimination in the private sector have also been initiated in China, the Netherlands and South Korea.

There have been several new laws developed regarding the employment of individuals with disabilities. A new Act on Integration of People with Disabilities was adopted in Bulgaria, which is intended to safeguard the employment of individuals with disabilities and set certain quotas for employers regarding the employment of permanently disabled people as well as fines for non-compliance. In Hungary, the definition of 'persons with reduced working capacity', who are entitled to additional holiday leave days, was expanded and now applies to a greater number of employees. As noted in section 3.9, quotas for employment of individuals with disabilities have also been implemented in a number of countries.

Finally, new legislation in New Zealand specifies that employers cannot discriminate based on union status, and the Australian government proposed a Religious Discrimination Bill to provide protection against discrimination based on religious belief or activity.

Many countries reported that employers regularly educate their workers regarding anti-discrimination laws, but this seemed to be more common among employers with a multinational workforce. The #MeToo movement has continued to fuel an awareness and response by employers in several countries, resulting in increased employee training at work. However, the majority still reported that formal workforce anti-discrimination training is not commonplace.

### 3.9 Diversity

Although most countries report already having diversity laws in place, the extent to which companies comply with these laws varies. Compliance tended to be greater among northern European countries than elsewhere. A number of reports indicated a growing trend of support for proactive diversity initiatives by private employers in response to an increased social awareness of diversity issues, in addition to compliance with existing law.

While many countries report that direct or indirect religious discrimination is prohibited by law, more than half of the countries reported little or no

workplace accommodations for religious practices or beliefs beyond public holidays for the predominant religion in the country, which inhibits religious diversity. Many such countries cited either relatively homogenous workforces or a social norm of not discussing religion in the workplace to explain the lack of accommodation. Religious accommodation, either as a legal requirement or a business norm, appeared to be most common in western Europe and North America. Notably, Norway and Romania require employers to grant at least two days off for observance of religious holidays other than those recognised as public holidays.

Women remain significantly underrepresented on corporate boards. Over the past decade, Germany, Italy, the Netherlands and Portugal have enacted laws establishing minimum target percentages for representation of women on the boards of public companies, although most countries reported that this has had a limited impact on the gender ratio of corporate boards. Similar legislation is being considered in Finland, India, Ireland, Kenya, Sweden and Switzerland. Following a lack of results from a 2007 law aimed at achieving greater gender diversity in the workplace, Spain recently enacted a new law requiring employers to, among other things, ensure equal pay for men and women for work of equal value and provide the same amount of parental leave for both parents. In addition, Argentina, Ireland and Kenya have implemented requirements and incentives for increased representation of women in elected and appointed public positions.

There have been some notable developments in LGBT rights, paving the way for employers to promote LGBT diversity. In Germany, an amendment to the Civil Status Act entered into force, which now recognises a third gender as 'divers', which roughly translates as 'miscellaneous' or 'other'. India's Supreme Court recently decriminalised homosexual intercourse and Taiwan recently legalised same-sex marriage. However, legal prohibitions of homosexuality, particularly in countries with official state religions such as the UAE, continue to interfere with multinational employers' efforts to promote LGBT diversity.

Of note, a growing number of countries have imposed quotas or minimum target percentages on the recruitment of individuals with disabilities, particularly in South America. In Brazil, Peru and Venezuela, five per cent of the workforce must have a disability. Argentina has implemented a four per cent quota for public employees. Similarly, India reserves four per cent of government and semi-government positions for employees with disabilities. Spain has a two per cent quota for employers with 50 or more employees, while Chile has implemented a one per cent quota for employers with 100 or more employees. Bulgaria and Ukraine also have quotas for hiring individuals with disabilities.

### **3.10 Code of conduct/behaviour in the workplace**

Most surveyed countries report that there have not been any changes to the law following the #MeToo movement, with many noting that sexual harassment is prohibited under existing law. Many country reports, however, indicate that recent events have resulted in more public discussion of sexual harassment issues. In Malaysia and the UK, there is proposed legislation regarding sexual harassment in the workplace. Denmark amended its Act on Equal Treatment to include a separate prohibition on sexual harassment and increase the average level of compensation for victims while strengthening the government's investigative powers regarding workplace environments. Peru recently enacted legislation that criminalises sexual harassment in the workplace. In the US, federal legislation has stalled, but state and local legislation focused on transparency, employee protections, training and education has been enacted. In the Canadian Province of Quebec, employment standards legislation was amended to explicitly prohibit sexual harassment and extend the period for filing a claim from 90 days to two years.

Similarly, most countries report that there has been little change in workplace codes of conduct regarding romantic relationships between employees. Argentina, Canada, Italy, Switzerland, the UK and the US report at least some increase in private employers introducing policies to regulate workplace relationships. Israel reported that the police and military have recently introduced a ban on relationships where there is a subordinate or reporting relationship. In contrast, such restrictions would be considered invalid under French law as an intrusion into the employees' personal lives.

### **3.11 Technology and artificial intelligence**

Respondents from across the globe reported a rise in the use of artificial intelligence (AI). While increases in the use of AI were more common in wealthier countries, countries as varied as Colombia, Germany, Nigeria and Singapore reported increases. Less common were laws and regulations addressing the impact of AI on jobs and the economy. While the European parliament adopted a resolution in 2017 calling for the establishment of new rules governing AI and robotics, the respondents did not report extensive new laws in those areas. To the extent new laws were adopted, they were mainly geared towards increasing the use of AI, such as South Korea's Intelligent Robots Development and Distribution Promotion Act and policies introduced in Guangdong Province in China.

### **3.12 Unions, collective bargaining and industrial action**

There has been a fair deal of activity in collective bargaining over the past year, both in terms of legislative reforms and employee strikes. Countries reporting some developments in laws and regulations surrounding collective bargaining include: Australia, Finland, India, Italy, Lithuania, Mexico, New Zealand, Russia, South Africa, Sweden and the UK.

Sweden recently adopted legislation that, among other things, restricts the right to strike to situations in which the purpose is to achieve a collective bargaining agreement and the parties have already attempted to negotiate regarding the demands. Recent reform of the Italian insolvency statute, which will come into effect in August 2020, will make significant changes concerning collective bargaining matters associated with the transfer of a company under bankruptcy procedure. In South Africa, amendments to Labour Relations Amendment 8 of 2018 aim to strengthen collective bargaining and introduce an advisory arbitration measure for resolving strikes that are intractable or violent or may cause a local or national crisis. New Zealand introduced new large-scale legislation intended to boost union rights specifically and employee rights generally. The sweeping legislation, passed in December 2018, covers subjects such as union access, deductions for partial strikes, multi-employer collective agreements, extended protections against discrimination on basis of union membership, reinstatement as a primary remedy and rest and meal breaks. In March 2018, in Italy the industrial employers' association Confindustria signed a new General Nationwide Protocol with the main trade unions, setting up a new model for collective bargaining.

### ***Emergence of new forms of union activity***

In some jurisdictions, such as Kenya, the erosion of union power has encouraged the use of new forms of union activity, such as union campaigns against multinationals, the targeting of particular departments within organisations and liaising between unions nationally and internationally and with non-governmental organisations. Argentina reports that the erosion of union power has resulted in the appearance of minority groups claiming to represent radicalised union members. These groups often stage strikes affecting public transport and utilities and challenge the authority of the existing labour leadership. In Portugal some union employees have enjoyed financial support through crowdfunding to support themselves during longer strikes.

In contrast, some countries, such as Chile, cited the fact that unions already have and/or continue to have a very strong position within their respective jurisdictions, hence alternative forms of union activity were not necessary.

### ***Strike action***

A number of countries reported strike action by unions, often in public sectors and including the medical, law enforcement, education and transport fields.

Portugal reported a significant increase in strikes, specifically involving teachers, nurses and court clerks. Similarly, in Lithuania and the Netherlands there were recent strikes in the public sector including those by police officers, medics, doctors and teachers. Latvia had a strike by medical personnel and teachers were on the verge of striking. There were major strikes by nurses and teachers in Kenya. Ireland reported striking by nurses and midwives over pay and staffing in January 2019.

In Colombia, the more significant strikes involved public employees in the judicial, natural resources, transport and education sectors. The UK also had a significant strike involving an estimated 42,000 staff members across 65 universities that lasted 14 days over disputes around pensions and other issues. Mexico reported several union conflicts during 2019 in both the public and private sectors, triggered by recent political changes and the plan to amend the Federal Labour Law, including a work stoppage at four public universities and 48 strike calls in the private sector.

In Finland trade union strikes had a significant influence in opposing a proposal by the government to reduce protections for employees of employers with fewer than ten employees from termination of employment.

Recent strikes that received significant media attention in Taiwan involve the civil aviation sector. Kenya also reported a major strike involving the Kenya Aviation Workers Union. Germany, in addition to reporting very high strike activity generally, specifically reported unusual strike waves caused by airline inflight and ground personnel unions. In 2018 Chile endured the second largest strike in its port industry in the past two decades. Israel reported a wave of strikes in 2019 by employees of government offices, airports, seaports and trains.

In January 2019 nearly 2,000 migrant workers went on strike in Malaysia, claiming that they were not paid three months' worth of wages.

### **3.13 Executive remuneration and banking reform**

Survey respondents generally reported few developments in the areas of executive remuneration and banking reform and executive accountability. However, there were several important updates:

- Australia has required certain high-ranking directors and executives in the banking sector to defer a portion of their compensation.
- Chile updated its Banking Act to bring banking protocols more in line with the Basel III capital and reserves requirements, which are risk management and corporate governance mechanisms intended to reduce the risk of bank insolvency.
- Japan and South Africa updated their compensation disclosure requirements for public companies, requiring additional disclosure of how they evaluate executive performance and determine executive salaries (Japan) and the level of compensation and benefits paid (South Africa).
- Denmark passed legislation providing employers with greater flexibility in terms of requiring employees who terminate employment to forfeit unexercised equity awards. This appeared to be the only employer-friendly legislative development among the respondents.

### 3.14 Gender pay gap/equal pay for equal work

There has not been extensive new legislation globally to address gender pay disparities. While many countries have legislation that broadly prohibits discrimination on the basis of gender, legislation in 2018 and 2019 was generally confined to western Europe and even then was generally limited to reporting requirements and certifications employers can obtain for meeting certain gender equality standards. In Switzerland, for example, parliament approved a requirement that companies with at least 100 employees carry out a wage equality analysis every four years and inform their employees and shareholders of the results, but there are no sanctions for failing to meet a particular standard or demonstrating improvement. In the Netherlands and Portugal legislation has been proposed that would allow employers to earn certifications for certain gender equality achievements. Notably, none of the responses described legislation addressing issues relating to transgender employees.

### 3.15 Immigration and talent issues

#### *Responding to talent shortages*

The vast majority of countries surveyed, excluding Chile, Cyprus, Nigeria and Spain are experiencing a shortage of highly skilled workers. This labour shortage is the result of a number of factors, including the impact of talent migration, a lack of educational programmes and training and insufficient economic incentives and initiatives. A number of countries surveyed (including Albania, Bulgaria, Hungary, Latvia, Lithuania, Malaysia, Poland, Portugal, South Africa, Taiwan and Ukraine) emphasised that the labour shortages in their countries were due in part to the migration of highly skilled workers to other countries. Several surveyed countries noted that the so-called brain drain in their countries has been, at least in part, an economic migration caused by high unemployment rates (Albania, Italy, Mexico and Poland), comparatively low(er) or stagnant wages (Bulgaria, Latvia, Lithuania, Mexico and Taiwan) and/or a rising cost of living (Taiwan). Several other countries emphasised the lack of sufficient educational and training programmes as a cause of the skilled labour shortage. For example, a handful of countries (including Kenya, Nigeria, Poland and Russia) noted the need for changes to their educational systems to incorporate market-relevant courses, increased training and mentorship programmes to ensure that individuals have the skills needed to succeed in certain occupations.

Nearly all the countries surveyed are taking some action to attract skilled workers. Those actions vary by country, but many of the countries surveyed are focusing their efforts on remigration plans, reducing talent migration and/or facilitating the issuance of work visas and permits for skilled workers. In countries such as Albania, Hungary, Latvia, Lithuania and Taiwan, plans to encourage the remigration of employees include various employment and economic incentives. Many plans offer

extra financial support, housing assistance, mobility grants and other tax benefits for highly qualified workers who return to work in their home country. A number of countries surveyed, including China, Hungary, Ireland, Israel, Latvia, Lithuania, Malaysia, Mexico, South Africa and Taiwan, are also focusing on reducing talent outflow and migration. To do so, many of these countries are offering scholarships and new programmes of study at public universities, working to improve business conditions and economic incentives and providing new training and employment programmes. Many countries, including Albania, Australia, Bulgaria, Estonia, Ireland, Israel, Poland and Sweden, are also taking various steps to facilitate the issuance of work visas and permits for skilled workers.

Although some countries continue to relax rules to encourage the migration of skilled labour into their countries, a number of the countries surveyed (including China, Cyprus, Hungary, Italy, Russia, Serbia, South Africa, the UK and the US) noted an increase in more protectionist immigration rules and policies.

## **Refugees**

Fewer than half of the countries surveyed are common destinations for foreign populations seeking refugee status. Of the countries that are considered common destinations for refugees, only some are actively encouraging the integration of refugees into society and/or the country's workforce. This is being done primarily through educational and economic assistance programmes and training initiatives. For example, in early 2018 the Swedish government adopted a number of regulations and strategies to provide support for employers who recruit newly arrived immigrants and it has generally been encouraging the integration of refugees into the workforce. Also in 2018, Canada announced a three-year immigration plan which promises increased immigration to a total of nearly one million immigrants. Germany and Norway provide educational support aimed at integrating refugees into society and the workforce, including providing language skill classes and social study courses and identifying suitable jobs. Norway's programme is compulsory for refugees. Switzerland has eased the barrier to entry for refugee workers by removing a long work permit approval procedure and allowing refugee employees to work after notification to a competent authority at the place of work. Lithuania and Kenya both report government-established procedures for the integration of refugees into society, and Bulgaria reports numerous integration initiatives by non-governmental organisations. Finland is also encouraging the integration of refugees in several ways. Municipalities, employment and economic development offices and other authorities provide immigrants with guidance and advice concerning measures and services promoting integration and working life. Argentina, Colombia and Peru have recently developed more robust integration procedures due to an influx of Venezuelan refugees.

In contrast, despite the influx of individuals seeking refugee status, some countries, such as India, Italy, Malaysia and Russia do not have a national legal or institutional framework for encouraging the integration of refugees into society or the workforce. In addition, other destination countries have indicated

a desire to curb the migration of refugees to their countries. Australia has a system designed to deter people from seeking asylum, although they do provide a humanitarian programme for those assessed to be refugees by the United Nations High Commission for Refugees. Similarly, in the US the administration has supported efforts aimed at limiting the number of refugees and other foreign nationals entering the country.

### ***Recruitment, residence and workers' rights***

Many of the countries surveyed reported changes to their immigration laws related to the recruitment of foreign nationals at all skill levels. Some countries, such as Israel, Ireland, Japan, Latvia and Poland, reported changes to assist in the recruitment of skilled workers. These countries relaxed work permit and/or visa programmes for workers with certain vocational or specialised skills and high levels of education. Other countries, such as Hungary, Lithuania, Finland and Spain, have extended the duration of stay requirements or created residence permits for foreign graduates and researchers who have completed their studies and are seeking jobs in-country.

Other countries, such as the UAE, have implemented laws focused on increasing labour mobility and workers' rights for less skilled employees, including domestic workers. In Canada, Quebec modified its labour standards legislation to further protect the rights of vulnerable foreign workers, including by prohibiting employers from seizing travel documents. Similarly, countries such as Peru and Switzerland have relaxed work permit requirements for certain recognised refugees.

In addition, several countries, including Bulgaria, Estonia and Taiwan, have implemented changes that benefit both skilled and unskilled workers, such as quota increases, increases to the maximum period of short-term employment and relaxed rules for obtaining dual citizenship. Some countries, such as Hungary, now permit seasonal work permits for foreign nationals working in-country for under 90 days and others, such as Ukraine, now issue short-term business visas online as opposed to on arrival.

Some countries also reported changes concerning the right of foreign nationals employed in their countries to obtain permanent residence. Most of these changes, including in Poland, Spain, Turkey and the UAE, involved relaxing requirements or adding permanent residency status for investors and certain highly skilled workers and students.

In addition, some countries reported changes to the working rights and/or rights to benefits of families of foreign nationals. Several countries have amended their family reunification laws or extended their laws governing the ability of family members of foreign workers to move and reside within the country, including Hungary and India. Some of these amendments only apply to family members of highly skilled specialist workers. For example, in Lithuania family members of highly skilled workers can now apply for temporary residence permits, and in Ireland

spouses/partners of critical skills employment permit holders can work in Ireland without attaining an additional employment permit. Taiwan also now extends benefits to spouses and children of foreign nationals, including the right to work in the country and to use the national health service.

In contrast, some countries, such as Denmark, Russia and Singapore reported changes that have imposed stricter requirements on or made it more difficult to obtain permanent resident status and/or work visas. Argentina and South Korea reported clarified or stricter criteria for obtaining permanent residence status, but relaxed requirements for highly skilled workers, investors and certain refugees. Other countries, such as South Africa and the US, reported proposed changes or general policies attempting to limit the amount of foreign workers or making recruitment and retention of foreign nationals more onerous for employers. Switzerland reported stricter language skill requirements for obtaining permanent residency.

### ***Establishment of foreign subsidiaries***

Most of the countries surveyed have not experienced any changes in the laws relating to the establishment of a branch or subsidiary of a foreign company in their countries. It was noted that when a foreign company permanently establishes a branch or subsidiary in another country, the company is typically subject to that country's income taxes. Most countries surveyed reported that 'permanent establishment' and the taxes owed are determined under the country's general tax laws, a double taxation agreement with the company's home country or a treaty. Ireland, Mexico and Norway reported signing part or all of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and now expect that the threshold for permanent establishment will be lower. Chile also reported changes that broaden its previous interpretation of the definition of permanent establishment for domestic law purposes, that is, in absence of a tax treaty. The UAE, which has no system of federal income taxation, reported considering implementing a federal corporate income tax, which is in drafting stage, but did not report which forms of legal entities will be subject to the tax or the rates that will be applied.

### ***Mobility and outsourcing***

Many of the countries surveyed have seen companies move to other locations to gain access to new labour markets. Outsourcing is also common in many countries. Several countries noted the prevalence of outsourcing in human resources, administration and payroll (Norway and the UK), banking (Nigeria, Portugal and Switzerland), technology and IT (Argentina, Israel, Japan and Russia) and manufacturing and industrial facilities (Canada, Finland, Portugal, Sweden and Taiwan). Some countries reported being an outsourcing destination, particularly in the financial, technology (Bulgaria, Hungary, Lithuania and Singapore) and HR/business process (Romania and South Africa) sectors.

Denmark reported growth as a source for green energy and reliable power grids for establishment of data centres.

The UK reported that a large number of companies have warned they will need to cut jobs in the UK or even move operations entirely as a result of Brexit. The US reported developments in US trade policy that have sought to discourage labour offshoring, which has been a practice for US companies over the past decade.

### ***Post-merger integration challenges***

None of the countries surveyed reported any significant developments or changes in human resources law and practice in their countries relating to post-merger integration, including cross-border cultural changes. However, a handful of countries (including India, Israel, New Zealand and Sweden) noted that some companies are continuing to spend money on job and cultural training and enrichment programmes for employees, with a particular focus on cultural diversity, unconscious bias and sexual harassment training.

## **3.16 Impact of recent political and world events**

Most countries reported that they had not seen any HR issues within their borders due to increasing nationalism and isolationism as a result of Donald Trump's US presidency, Brexit and other recent political developments.

However, some countries, including India, Portugal, Taiwan and Ukraine expressed general concern over potentially increased unemployment as a result of various Trump administration policies, such as restrictive immigration policies and high US tariffs on steel and other products. China, Ireland and Sweden expressed specific concern in connection with restrictive immigration policies hampering the global mobility of talent.

Mexico specifically pointed to the direct impact of the signing of the United States-Mexico-Canada Agreement (USMCA). Annex 23 provides specific employment commitments for Mexico, which will serve as guidelines for amendments to the federal Labour Law. Mexico highlighted that the annex contemplates the rights of employees to be involved in union negotiations and the restrictions for employers to interfere in union activities. In contrast, Canada reported no direct impact on workplaces as the result of signing the USMCA and noted that the mutual tariffs imposed by the US and Canada in the context of the renegotiation of NAFTA may have an impact on both sides of the border, but have yet to result in massive redundancies in Canada.

In terms of Brexit, the main concern is that there will be severe consequences with regard to labour and immigration laws when the UK leaves the EU, including visa regulations, work permit requirements, tax and social security issues.

Countries within and surrounding the EU in particular are bracing themselves for the impact of Brexit. For example, Ireland in January 2019 published the general scheme of its Brexit Omnibus bill, which seeks to amend 17 pieces of Irish legislation in preparation for the post-Brexit landscape. Finland, like Ireland, expressed concern about restriction on the free movement of people and the effect it will have on the workplace. Finland has prepared for a hard (no-deal) Brexit by passing the Special Act, which, among other things, allows UK citizens living in Finland who have registered their EU right of residence to reside in Finland without any additional measures until the end of 2020. Sweden's government has introduced a proposal relating to residence and work permits for UK citizens and Swedish social security benefits for Swedish citizens living and working in the UK at the time of Brexit. Hungary anticipates that a no-deal Brexit will lead to Hungarian legislation encouraging Hungarian citizens who live in the UK to return to Hungary and reintegrate into the Hungarian social security system. The UK itself noted significant changes to immigration laws around status and the right to enter and work in the UK, but no other expected changes in labour and employment issues.

### **3.17 Global leadership issues**

#### ***Human resources challenges***

The reporting countries listed a variety of unique, and in many cases unrelated, human resources challenges. However, as in previous years, a number of countries reported unfair dismissals and issues surrounding the termination of employees as the most common human resources challenges. Many countries also reported increased demand for flexible work arrangements, with employers struggling to balance predictability with providing greater work–life balance under conditions that will attract young talent. The explosion of mobile technology platforms and movement towards a gig economy has increased non-traditional work arrangements. In some countries, the change is providing significant pressure for legal intervention and regulation unmet by rigid labour legislation.

Some countries mentioned that changes in their workforces presented challenges. Cyprus, Hungary, Latvia, Lithuania and Sweden reported a shortage of a qualified workforce with issues either retaining talent or local talent not meeting employment opportunities available, especially in IT. Certain countries also reported a new challenge surrounding the establishment of immigrants and asylum seekers following the war in Syria. Finland, Malaysia, Sweden and the UK also reported compliance issues related to immigration matters and employee mobility.

Finally, multiple countries mentioned equal compensation for jobs of equal value between men and women, equal treatment of women in the workplace, enforcement of affirmative action plans and sexual harassment allegations as ongoing challenges.

## ***Litigation***

Many of the human resources areas that were identified as the most challenging were also identified as the most likely to generate litigation. Specifically, many countries reported unfair dismissals and issues surrounding the termination of employees as having a high risk of litigation. A number of countries also reported the transfer and management of employees as a consequence of business changes, such as restructuring, mergers, downsizing or outsourcing, as problematic. The #MeToo movement, which began last year, has continued to result in an increased litigation, with 12 countries reporting harassment and discrimination in the workplace as their most litigious problem. Disputes in connection with remuneration and payment of benefits was another area in which litigation has occurred in the past year. China, Czech Republic, Finland and Japan all reported unpaid salary or benefits as their most common human resources issue. Lawsuits related to the interpretation of collective bargaining agreements were reported with less frequency, as were lawsuits related to occupational safety accidents in the workplace, as in previous years.

## ***Future human resources challenges***

Over the next five to ten years, responding to technological advancements remains a priority, with specific focus on data privacy and cybersecurity issues. Ireland recently enacted the Data Privacy Act to address the GDPR and Portugal, Kenya, Norway and Spain also reported the GDPR as a primary issue for the next few years. Many countries also reported concern for how artificial intelligence and the use of predictive analytics will replace decision-making and accomplishment of repeatable tasks, and potentially make jobs obsolete. The challenge of atypical employment relationships, including a remote workforce and self-employed contractors, is expected to increase with advanced technology as well. Finally, equal treatment of female employees and reduction of sexual harassment and discrimination based on ethnicity or religion remain a focal point for the future.

## 4. Conclusions

As in previous years, labour market challenges and gender and diversity issues are key concerns in many countries. In addition, a number of countries continue to grapple with how to manage increasingly common alternative work arrangements and demands for greater flexibility.

### ***Labour market***

As in previous GEI annual reports, the vast majority of countries surveyed are experiencing a shortage of highly skilled workers. This labour shortage is the result of a number of factors, including the impact of talent migration, a lack of educational programmes and training and insufficient economic incentives and initiatives. Almost all of countries surveyed are taking action to attract skilled workers, including reducing talent migration, recruiting talent that has left and facilitating the issuance of work visas and permits for skilled workers.

### ***Discrimination and diversity***

While several countries reported new anti-discrimination laws, many already had laws in place that prohibit discrimination. However, it appears that in many countries these anti-discrimination laws have not led to a corresponding increase in diversity in the workplace. A number of countries identified efforts to address this gap.

Compared to previous reports, there was greater mention of rules aiming to increase employment opportunities for individuals with disabilities, with certain countries imposing percentage quotas for the employment of such individuals. Gender disparities continue to be a concern for many countries, some of which have focused on increasing the representation of women on corporate boards, with limited success. There have also been developments focused on equal pay for equal work, though current legislation consists primarily of reporting requirements and certifications employers can obtain for meeting certain gender equality standards. With respect to religious diversity, most countries reported that workplace accommodations for religious practices beyond a country's predominant religion are limited, though a few countries reported that employers are required to provide a limited number of days off for non-nationally recognised religious holidays.

### ***Alternative work arrangements/demands for greater flexibility***

A number of countries reported proposed or adopted legislation that provides independent contractors and other temporary workers with additional protections, most typically by regulating employer use of these worker classifications or

protecting such workers' compensation. The explosion of mobile technology platforms and movement towards a gig economy has increased non-traditional work arrangements and in some countries the change is providing pressure for legal intervention and regulation unmet by rigid labour legislation.

Many countries reported increased demand for flexible working arrangements, which has also been challenging within the confines of traditional labour legislation. Employees, particularly those from younger generations, are increasingly looking for the ability to work remotely or have more control over their hours, and employers are struggling to balance predictability with providing greater work–life balance under conditions that will attract young talent. In many cases, employers have been embracing hybrid arrangements under which employees can work remotely part but not all of the time or have flexibility with respect to when some of their work is completed but are still required to work during certain core hours. As in previous years, flexible working arrangements seem to have been largely driven by company policy and cultural norms rather than formal legislation.

### ***Other notable trends***

- *Recent political and social developments*  
While certain political and social developments, including the presidency of Donald Trump, Brexit, the #MeToo movement and the right to disconnect have generated significant discussion across the globe, few countries have seen notable government or legal action as a result.
- *Family-friendly policies*  
A substantial number of countries reported increases in the length of paternity leave or expansions of maternity leave to gender-neutral leave. In addition, compared to previous years, more countries reported that companies have been willing to provide maternity and/or paternity benefits over and above those that are legally required.
- *Data privacy and cybersecurity*  
While most countries continue to focus on implementing the GDPR and country-specific data privacy rules, privacy as it relates to the use of social media was also a hot topic. Many countries also reported legal developments intended to address cybersecurity incidents and data breaches.
- *Absenteeism due to stress and mental health issues*  
Absenteeism due to stress and mental health problems continues to be a concern in many countries. These issues are more often addressed at the employer versus the government level, although courts and other regulatory bodies in some countries are beginning to treat these issues as occupational diseases that deserve special protection.

- *Corruption and whistleblowing*  
A number of countries adopted new whistleblowing and anti-corruption legislation, much of it aimed at expanding and enhancing protection and/or sanctions under existing law.
- *Unions, collective bargaining and industrial action*  
There has been a fair amount of strike activity over the past year, most commonly in the medical, law enforcement, education and transport fields. In addition, several countries adopted laws to govern the collective bargaining process.
- *Disputes and litigation*  
The most commonly reported human resources disputes – and the most frequently litigated – have continued to be unfair dismissals and issues surrounding the termination of employees.

## 5. About the IBA and GEI

The International Bar Association Global Employment Institute was established in 2010. Its primary purpose is to develop a global and strategic approach to the main issues in the human resources and human capital fields for multinationals and worldwide institutions.

The Executive Council Officers of the IBA GEI are:

- Co-Chair: Dirk Jan Rutgers
- Co-Chair: Anders Etgen Reitz
- Vice-Chair for Institutions: Ignacio Funes de Rioja
- Vice-Chair for Multinationals: Gerlind Wisskirchen
- Vice-Chair for Knowledge Management: Johan Lubbe
- Vice-Chair for Publications: Jelle Kroes
- Vice-Chair for Communications: Antony Hyams-Parish
- Vice-Chair for New Members: Oscar de la Vega
- Treasurer: Gunther Mävers
- Council Members:
  1. Donald Dowling
  2. Regina Glaser
  3. Todd Solomon
  4. Peter Talibart
  5. Philip Berkowitz

## Schedule 1: Countries and lawyers

### **Albania**

Jonida Melani Braja (Wolf Theiss) – Employment law

### **Argentina**

Juan Javier Negri (Negri & Pueyrredon Abogados) – Employment and immigration law

### **Australia**

Adrian Morris and Hannah Martin (Ashurst) – Employment and immigration law

### **Belgium**

Chris Van Olmen & Gautier Busschaert (Van Olmen & Wynant) – Employment law

### **Bulgaria**

Youliana Naoumova (Djingov, Gouginski, Kyutchukov & Velichkov) – Employment and immigration law

### **Canada**

Patrick Benaroch and Charif El-Khoury (Stikeman Elliott) – Employment and immigration law

### **Chile**

Oscar Aitken (Carey) – Employment and immigration law

### **China**

Annie Li and Jane Dong (Chen & Co) – Employment and immigration law

### **Colombia**

Lorena Arámbula (Dentons Cardenas & Cardenas) – Employment and immigration law

### **Cyprus**

Andreas Thoma (Deloitte) – Employment and immigration law

### **Czech Republic**

Andrea Krásná (Baroch Sobota) – Employment and immigration law

## **Denmark**

Anders Etgen Reitz (IUNO) – Employment and immigration law

## **Estonia**

Karina Paatsi and Heili Haabu (COBALT) – Employment and immigration law

## **Finland**

Jani Syrjänen (Borenius) – Employment and immigration law

## **France**

Caroline André-Hesse (Ayache Salama) – Employment law

## **Germany**

Michael Magotsch (BCLP) – Employment law

## **Hungary**

Hedi Bozsonyik (Szecskay) – Employment and immigration law

## **India**

Vikram Shroff & Archita Mohapatra (Nishith Desai) – Employment and immigration law

## **Ireland**

Duncan Inverarity (A&L Goodbody) – Employment and immigration law

## **Israel**

Tsvi Kan-Tor and Rinatya Cohen (Kan-Tor & Acco) – Employment and immigration law

## **Italy**

Marco Mazzeschi (Mazzeschi Srl) – Immigration law

Angelo Zambelli (Grimaldi) – Employment law

## **Japan**

Masako Banno (Okuno) – Employment and immigration law

**Kenya**

Sean Omondi (Bowmans) – Employment and immigration law

**Latvia**

Sintija Radionova (Primus) – Employment and immigration law

**Lithuania**

Robert Juodka (Primus) – Employment and immigration law

**Malaysia**

Vijayan Venugopal (Shearn Delamore & Co) – Employment and immigration law

**Mexico**

Francisco J Peniche Beguerisse and Julio Rodrigo Alvarez Ortega (Creel) – Employment and immigration law

**Netherlands**

Martin Beijneveld (Adriaanse van der Weel) – Employment law

**New Zealand**

Carl Blake (Simpson Grierson) – Employment and immigration law

**Nigeria**

Kunle Obebe (Bloomfield) – Employment and immigration law

**Norway**

Stein Kimsås-Otterbech (Thommessen) – Employment and immigration law

**Peru**

Mario Pasco Lizárraga and Iván Blume (Rodrigo, Elias & Medrano) – Employment and immigration law

**Poland**

Tomasz Rogala (Raczkowski Paruch) – Employment and immigration law

**Portugal**

Sofia Costa Lobo and Susana Afonso (CMS Portugal) – Employment and immigration law

**Romania**

Ileana Glodeanu (Wolf Theiss) – Employment and immigration law

**Russia**

Irina Anyukhina and Maria Gnutova (ALRUD) – Employment law

**Serbia**

Milena Papac (Karanovic & Partners) – Employment and immigration law

**Singapore**

Jenny Tsin (WongPartnership) – Employment and immigration law

**South Africa**

Irvin Lawrence and Dash Pather (ENSafrica) – Employment and immigration law

**South Korea**

Thomas Pinansky (Barun Law) – Employment and immigration law

**Spain**

Diana Rodríguez Redondo (Ashurst) – Employment and immigration law

**Sweden**

Jonas Lindblad (VINGE) – Employment and immigration law

**Switzerland**

Ueli Sommer (Walder Wyss) – Employment and immigration law

**Taiwan**

Christine Chen (Winkler Partners) – Employment and immigration law

**Turkey**

Maria Celebi, Batuhan Sahmay and Özlem Özdemir (Bener Law Office) – Employment and immigration law

**United Arab Emirates**

Rebecca Ford (Clyde & Co) – Employment and immigration law

**United Kingdom**

Paul McGrath and Chris Lynn (McDermott Will & Emery) – Employment and immigration law

**United States**

Dan Doran (McDermott Will & Emery) – Employment and immigration law

**Ukraine**

Oksana Voynarovska (Vasil Kisisil) – Employment and immigration law

**Venezuela**

John Tucker (LEGA Abogados) – Employment and immigration law

## Schedule 2: Questionnaire

### Eighth Annual Global Report Questionnaire for Country Representatives and Multinational Employer Members

Instructions:

Please briefly respond to each question. Where relevant, please describe any differences between legal rules and employee/employer practices ie, when employees/employers are not following legal rules in practice, or when employees/employers are adopting practices beyond current legal requirements.

#### I. Attracting talent

##### A. Responding to talent shortages

1. Is there a skills shortage in your country and what are its causes? How is your government responding? Is your country's immigration policy becoming more relaxed in response, more protectionist, or not changing at all?
2. What changes have there been to the immigration laws of your country relating to the recruitment of foreign nationals of all skill levels?
3. What changes have there been concerning the right of foreign nationals employed in your country to obtain permanent residence?
4. Have there been any changes to the working rights and/or rights to benefits of the families of foreign nationals employed in your country?
5. Have there been any changes in your country regarding short-term assignments for business visitors, eg, limits on the amount of time someone visiting your country on business can stay?
6. Is your country a common destination for foreign populations seeking refugee status? If so, explain whether your country is encouraging the integration of refugees into society and the workforce.
7. Have there been changes to the laws of your country relating to the establishment of a branch or subsidiary of a foreign company? Please explain the relevance, if any, of permanent establishment for tax purposes.
8. Are companies in your country moving to other locations to gain access to new labour markets? If so, in which sectors of the economy is outsourcing most prevalent?

- B. Post-merger integration challenges
  - 1. Have there been any significant developments or changes in human resources law and practice in your country relating to post-merger integration, including cross-border cultural changes? Are companies spending more money on job and cultural training programmes for employees?

## **II. The work environment**

- A. Work–life balance
  - 1. What changes have there been in your country’s laws that are intended to have an impact on flexible working practices, including remote working? Are employers applying flexible working practices to a greater degree?
  - 2. What types of flexible working arrangements are most common in your country?
  - 3. Have there been any changes in legal rules or corporate practices regarding the ‘right to disconnect’ from work ie, certain hours or days when an employee is not obligated to monitor or respond to work communications?
  - 4. Have there been any changes or developments relating to atypical working practices, including the emergence of zero-hour contracts, the extension of agency working, or the engagement of temporary workers? Please briefly explain any social, economic and workplace consequences.
  - 5. Have there been any significant changes in the rules relating to maternity, paternity, or dependents? Are employers receptive to paying enhanced benefits over and above their legal obligations?
  - 6. Has there been an increase in employee absenteeism due to stress and other mental health problems? If so, how have your government and other employers responded to such challenges?
- B. Collective bargaining
  - 1. What changes have there been in relation to collective bargaining, freedom of association, strikes, or other industrial action? To what extent has the erosion of union power encouraged the emergence of new forms of union activity, such as publicity campaigns against multinationals, the targeting of particular departments within organisations, liaising between unions nationally and internationally and with non-governmental organisations? Have there been any significant strikes in the public or private sectors?
  - 2. What changes have there been in your country’s laws that could materially affect the rights of employees:

- a) Before, during, or after a business reorganisation, merger, or acquisition?
  - b) To employee participation or involvement in works councils, collective agreements, or other consultative bodies?
  - c) With respect to employee strikes?
- C. Remuneration
- 1. What changes have there been to the laws in your country that regulate executive remuneration, and are any new laws anticipated in relation to banking reform and executive accountability?
  - 2. What changes have there been in your country with regard to gender equality in remuneration, including any proposed or adopted legislation regarding the gender pay gap and the reporting of gender pay disparities?
- D. Corruption and whistleblowing
- 1. Have there been any changes in your country in the restrictions on corruption and bribery in the workplace, including the relevance and effectiveness of new whistleblowing procedures?
  - 2. Have there been any significant developments or changes in human resources law and practice in your country relating to cross-border investigations, including confidentiality and legal privilege?
- E. Privacy and human rights
- 1. What changes have there been in the laws or workplace practices relating to privacy, surveillance, data protection, social media, and human rights, such as the protection of family and home life and freedom of expression? Have there been any significant cases involving these issues?
  - 2. To what extent have international labour standards emerged as an issue, for example, campaigns by unions and non-governmental organisations requiring multinationals to adopt human rights and corporate governance standards, such as the UN Global Compact or within international framework agreements?
- F. Discrimination
- 1. What changes have there been in your country's laws on discrimination in the workplace by reason of gender, sexual orientation, age, race, nationality, ethnic origin, ideology, religious belief, or disability?
  - 2. Do employers in your country provide training to their employees about workplace discrimination laws? Do employers generally comply with anti-discrimination laws?

G. Diversity

1. To what extent are employers embracing diversity and equality of opportunity in the workplace either voluntarily or in response to legal requirements?
2. To what extent do employers in your country make accommodations for religious practices or beliefs?
3. Have there been any significant developments or changes in human resources law and practice in your country relating to the imposition of government quotas or targets for gender parity, including board membership?

H. Code of conduct/behaviour in the workplace

1. Have there been any changes in your country's laws following the #MeToo debate?
2. Do you see a change in workplace policies/codes of conduct with regard to romantic relationships between employees?

I. Technology/artificial intelligence

1. Has there been an increase in employer reliance on artificial intelligence in your country? How has any increase in the use of artificial intelligence been perceived by employees and employers? In which areas/industries of your country have artificial intelligence tools resulted in a loss of jobs and/or in the creation of new jobs?
2. Have there been any laws adopted in your country related to the use of artificial intelligence?

**III. Separation from service**

A. Termination

1. What changes have there been that materially affect the ability of employers to dismiss employees, including redundancy practice? Do employers in your country generally observe procedures or are they ignored?
2. Have there been any significant changes in relation to enforcement of restrictive covenants and obligations of confidentiality by employers?

B. Retirement

1. Have there been any changes to the law and practice of retirement, including the ability and practice of employers to impose early retirement? Has there been an increase in age discrimination claims arising out of early retirement, pay protection schemes, or enhanced redundancy payments for older workers?
2. Have there been any significant changes in the way employment cases before the courts and tribunals are reported, including any new powers to restrict reporting at the request of the parties?

3. Are employment disputes resolved more often in court or via arbitration proceedings?

**IV. Impact of recent political and world events**

- A. What global HR issues have arisen, or do you expect to arise, with respect to increasing nationalism and isolationism as a result of the Donald Trump US Presidency and other recent political developments? Has there been, or will there be, any related impact on the labour and employment legal landscape or laws in your country eg, discrimination laws, trade regulations, etc.?
- B. Please describe any additional labour and employment issues and legal changes you have seen or expect to see as a result of Brexit.

**V. Summing up current and future trends**

- A. What do you consider to be the top three challenges in the area of human resources law and practice in your country right now? Is your government considering or implementing any solutions?
- B. Which human resources problem do you currently deal with most often in your job?
- C. Which three human resources issues in your country generate the most litigation?
- D. Which challenges in the area of human resources law and practice do you expect to become more important over the next five to ten years?

