2016

The Global Employer Magazine: 2015 Review and 2016 Preview

Baker & McKenzie

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Abstract

2015 was another busy year in terms of legal changes and developments around the world.

In this "2015 Review and 2016 Preview" edition of the Global Employer Magazine we summarize some of these important changes.

In the "2015 Review of developments and trends" tables below we have set out some of the main developments that took place in 2015 and provided recommended actions or tips on how employers should operate in light of these developments in 2016. For some countries, instead of covering developments, we have referred to trends that we saw in 2015 and again, set out some actions to help employers deal with these trends in the relevant country in 2016.

In the "2016 Preview of important forthcoming changes" tables, we preview pending legislation and case developments for which employers should "stay tuned".

Please note that, as there were so many developments, we haven't been able to cover them all. Instead, we have chosen some of the most important or interesting developments.

Where possible, we have also added a general impact rating to help show the significance of some of the developments, with 5 being a very significant or important development. Of course, the significance and importance of the development is subject to each employer's circumstances. In addition, some of the entries don't have a rating due to the fact that they include only general commentary on developments, trends or potential political changes.

The information below is provided by region in the following order: Asia Pacific, Europe Middle East & Africa, Latin America and North America.

Keywords

Baker & McKenzie, legislation, labor law, Asia Pacific, Europe, Middle East, Africa, Latin America, North America

Comments

Baker & McKenzie

The Global Employer™ Magazine

2015 Review and 2016 Preview

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The Global Employer Magazine

2015 Review and 2016 Preview

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Asia Pacific Regional Overview

There has been significant activity in some of the markets in Asia Pacific. Japan and China, in particular, have been very active with a number of new laws either being implemented or consulted upon. Hong Kong has played catch up with more established jurisdictions – we finally saw Hong Kong fathers being granted statutory paternity leave in February and also saw the full implementation of the Competition Ordinance in December. The Contracts (Rights of Third Parties) Ordinance is coming into force at the beginning of 2016.

There appears to be a focus on the protection of the health of employees across the region with Australian employers facing harsh penalties for falling foul of the Work Health and Safety Act, the Chinese government implementing tougher sanctions for failures in work safety supervision and Japanese employers of a certain size being required to conduct annual stress checks for employees. In Singapore, this protection has taken a different direction with a significant tightening of the rules on hiring foreign nationals, which has the effect of encouraging employers to hire locally and, on a more family friendly note, fathers being granted an additional week of paternity leave (taking it up to two weeks) with retrospective effect from the beginning of 2015.

2016 promises to be full of challenges, particularly if the Draft Mass Layoff Regulations come into effect in China, if the Equal Opportunities Commission's legislative recommendations on new grounds for discrimination are published in Hong Kong and if Japanese legislation promoting women's careers comes into force. It is clear that the employment laws in Asia Pacific are heading in a laudable direction, but it remains to be seen how this will impact employers on a practical level. We will continue to update you on developments as they arise through our local offices – in the interim, it's worth keeping the developments below on your radar.

Asia Pacific: 2015 Review of developments and trends

2015

Issue	What has changed?	Recommended action
Australia Rise of employee claims for work related behavior	During 2015 a trend of employees advancing aggressive claims critical of management conduct and behavior continued. Commonly, employees have been raising accusations of bullying or sexual harassment against management, and often in response to attempts by their employer to manage their own performance. These claims are usually coupled with an assertion that bad management behavior has caused a stress related injury and created a health risk. This brings into play protective provisions under workers' compensation legislation, which restrict an employer's ability to terminate employment. Employers who	Employers should: • maintain policies (e.g., Code of Conduct, Anti-Discrimination, Bullying & Harassment and Whistle-blowing); • train their staff; • treat all complaints seriously, including informal complaints; and • train managers to manage competently.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	fail to rein in bad management behavior which causes workplace stress could also be prosecuted under Work Health and Safety laws for failing to ensure a safe working environment. Penalties under Work Health and Safety laws are considerable, and directors may also be held liable for failing to exercise due diligence. Unfortunately, these types of claims have also gained interest from the media, and carry with them the additional risk of adverse publicity. In this jurisdiction, it is very important that employers have policies in place to ensure that employees (including managers) behave in an appropriate manner, conduct proper training, and ensure that these policies are properly enforced. Penalties under the Work Health and Safety Act are high ranging, as follows: • Corporations: AUD 500,000-AUD 3 million; • Officers: AUD 100,000-AUD 600,000 and/or five years' imprisonment; and • Workers: AUD 50,000-AUD 300,000 and/or five years' imprisonment.	
China Opinion on Building Harmonious Labor Relations, March 21, 2015 2	The Communist Party Central Committee and the State Council issued an Opinion on the Building of Harmonious Labor Relations (the "Opinion") in 2015. The publication of the Opinion reinforces the fact that China's senior leadership is focusing more on China's increasingly agitated workforce. The Opinion refers to issues such as unpaid wages to migrant workers and unpaid/underpaid social insurance contributions (which are the main areas of employee claims), as well as the growing number of labor strikes and protests. Key measures include: • safeguarding fundamental rights (salary, social insurance, leave, work safety, etc.); • written employment contracts and collective bargaining agreements; and • more employee representatives on boards of directors/supervisory boards.	Employers should wait for further substantive developments. The high-level measures are similar to those advocated in the past by government and union officials. It remains to be seen how the government will actually enforce these measures in practice. The measures are not legally binding thus diminishing their effectiveness.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
China Government issued measures to strengthen the supervision of work safety, April 2, 2015 2	The PRC government took a series of measures to strengthen the supervision of work safety. The PRC State Council Released a Notice on Strengthening Supervision and Law Enforcement of Work Safety, which became effective on April 2, 2015. In addition, the State Administration of Work Safety issued an amendment to four existing work safety regulations which became effective on May 1, 2015. The changes have significantly increased the severity of sanctions for non-compliant companies and also increased corporate responsibility to prevent work safety accidents.	The sanctions which non-complying companies will face are more severe following these amendments and demonstrate the government's on-going concern and scrutiny in relation to work safety.
China Sanctions increase for personal data breaches, August 31, 2015 3	On August 31, amendments to the Criminal Law were issued, which increase the sanctions for illegally selling or providing personal information to others. For serious offenses, the sanction has been increased from three years to seven years in prison. If the offender collects the personal information as part of their job role or as a result of providing a service, the court may impose a heavier sanction upon them within a prescribed range. Further, such criminal sanctions apply to anyone who illegally sells or provides personal information, not just people in certain specified industries. In addition, the Standing Committee of the National Congress released the draft Internet Security Law ("Draft") for public comments in July 2015. The Draft prohibits individuals and organizations from engaging in activities that would violate internet security, such as disrupting the functioning of another user's network and stealing internet data. The Draft also stipulates that no individual or organization shall steal or obtain a user's personal information and sell or illegally provide such information to others. The sanctions for internet service providers infringing upon individuals' personal information range from administrative warnings to fines of up to RMB 500,000. For serious breaches, the business license might be revoked by a competent government bureau and the manager responsible may be subject to a fine ranging from RMB 10,000 to RMB 100,000.	Organizations collecting personal data, such as telecom operators, online banks and other service providers, should take steps to review their security and data protection systems in light of the higher sanctions that will be faced for non-compliance.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
China Shanghai Collective Contract Regulations, October 1, 2015 3	The Standing Committee of the Shanghai Municipal People's Congress adopted the Decision to Amend the Shanghai Collective Contract Regulations, which took effect on October 1, 2015 (the "Amendment"). This Amendment may put additional pressure on companies in Shanghai to start collective bargaining and/or enter into collective contracts with employees. The Amendment provides that the upper-level union may also be engaged as the employees' negotiation representative in the collective bargaining process. The Amendment also provides that if a company refuses to engage in or delays the collective bargaining process, the municipal and county level union may issue a rectification notice to request the company to co-operate. If the company still fails to co-operate, the union may include this information in the Shanghai Municipal Public Credit Information Index. This may then potentially limit the company's ability to participate in government procurement activities and bidding for government projects, and from receiving government subsidies. The company may also fall under the authorities' special attention and enhanced penalties may be imposed for its violations of administrative rules (if any). Most collective contracts are simply restatements of the law and few collective contracts have substantive terms that impose real obligations and restrictions on the employer. The Amendment, however, specifies that collective contracts on salary generally should include substantive content such as the annual adjustment range of the employees' average salary.	Companies should be prepared for collective bargaining requests from employees (potentially under the guidance of upper-level unions), and plan for the response and negotiation strategy in advance.
Hong Kong Increase in statutory minimum wage, May 1, 2015 3	The statutory minimum wage rate increased to HKD 32.5 per hour on May 1, 2015. The increased rate led to an adjustment on the monthly monetary cap on keeping records of hours worked which means that since May 1, employers have to retain records of hours worked for employees whose wages payable are less than HKD 13,300.	Check and ensure compliance.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
Hong Kong Statutory paternity leave introduced (for babies born after February 27, 2015) 4	A male employee is now entitled to three days' paid paternity leave, provided he meets the following eligibility criteria: • he is the child's father; • he has been employed under a "continuous contract" i.e., he works 18 hours or more per week during a four-week period, immediately before taking the leave; • he notifies his employer of his intention to take paternity leave at least three months before the expected date of the child's delivery or at least five days before the intended date of his leave. He is entitled to paid leave if, in addition to the above, he has been employed under a "continuous contract" for not less than 40 weeks immediately before taking the paternity leave and provides the employer with a birth certificate with the employee's name entered as the father. The three days' paternity leave may be taken consecutively or separately during the period beginning four weeks before the expected date of the child's delivery and ending 10 weeks after the child's birth.	Note that eligible fathers are now entitled to three days' paid paternity leave. The rate of pay is 80 percent of the average wages of the employee during the 12 months (or actual period of employment, if shorter) immediately prior to the first day of paternity leave. Failure to grant paternity leave and/or paternity leave pay without reasonable excuse is an offense liable on conviction to a fine of HKD 50,000.
Hong Kong Changes to immigration laws – implemented in second quarter 2015 2	Changes have been implemented to make it easier for highly-compensated professionals to live and work in Hong Kong. The changes include: • a relaxed entry period and extension of arrangement for employment visas; and • the introduction of a "top-tier" employment stream, which allows for a six-year visa extension.	Note these changes to immigration law.
Hong Kong Contracts (Rights of Third Parties) Ordinance, January 1, 2016 4	Employers will be aware that from January 1, 2016, third parties to a contract may, in certain circumstances, benefit from a contract or enforce its terms under the new Contracts (Rights of Third Parties) Ordinance (*Cap 623*) (the "Ordinance"), which amends the common law position of "privity of contract". The new law will only apply to contracts entered into after January 1, 2016 and will not have a retrospective effect.	• Identify potentially relevant third parties whose rights should be preserved or for whom enforcement rights should be given (e.g., group companies). • Update standard contracts to ensure that the Ordinance is taken into account. Either exclude the application of the Ordinance, or use it where intended.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	Third parties are not permitted to enforce the terms of an employment contract against employees but this does not prevent third parties from enforcing terms in the employment contract against the employer. The types of scenarios where third parties may seek to enforce their rights against an employer in an employment contract may include where family members of the employee are entitled to benefits such as, for example, medical insurance, medical assistance (evacuation etc.), relocation or repatriation expenses, education allowance for dependents, immigration sponsorship, travel benefits, club membership and housing. In the event of the employee's death, family members may seek to enforce their rights for death in service benefits, medical evacuation benefits or even repatriation of mortal remains. Employers can exclude the application of the Ordinance from their employment contracts thus preventing third parties from enforcing their rights. The Ordinance does not exclude third parties from enforcing their rights in employment related agreements. This means that if an employer has entered into standalone agreements for matters such as confidentiality or non-competition, for example, then third parties will have the right to enforce relevant terms subject to the requirements under the Ordinance being satisfied. This will be useful for associated companies in scenarios where they wish to enforce terms in a settlement agreement, post-termination restriction agreement or confidentiality agreement.	• Where third parties are to be given enforceable rights, ensure that these rights are clearly expressed in the contract. Consider whether there should be any conditions or restrictions on the third party's ability to enforce rights (e.g., should the third party have the right to assign the benefit of its rights?). • Draft any third party beneficiary clauses meticulously to ensure coverage by the Ordinance. Check you fulfill all the requirements of the legislation.
Hong Kong Competition Ordinance, in full force from December 14, 2015 3	Employers should consider the impact this may have on some of their HR practices, for example, participation in benchmarking and salary surveys could be construed as anti-competitive information sharing in certain circumstances. The Competition Commission has issued guidelines which confirm that collective bargaining between a group of employees and their employer in relation to employment matters such as salaries and conditions of work will not be considered a contravention to the Competition Ordinance, as employees are an integral part of the employer. In particular, the Guidelines state that the Competition Ordinance will not apply to collective negotiations between	Ensure HR practices are compliant with the Ordinance to avoid being subject to an investigation and/or enforcement action.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	an employer and a trade union where it acts as an agent representing a number of employees.	
Japan Personal data and privacy 4	The government plans to assign a 12-digit social security and tax number (also known as "my number") to each individual residing in Japan (including a foreign national who is registered as a resident in Japan) for the purpose of managing information concerning social security and tax, both at a national and municipal level. My number will be implemented based on the following time schedule: • October-December 2015: Obtain my number information from each of the employees. • January 2016: Start to use my number for documents relating to employment insurance and tax. • January 2017: Start of the requirement to state my number on notification for eligibility relating to welfare pension insurance and health insurance. The company must properly and safely maintain the my number data in light of regulations on obtaining, using, retaining and destroying the relevant data.	Employers should: • identify new and additional administrative operations that are required in relation to tax and social security after the implementation of my number and allocate sufficient resources to handle such administration; • review relevant rules, policies, manuals and protocols concerning handling of personal data; • ensure the HR system and other systems can deal with the change; and • ensure there are proper safety control measures (physical/technical/resources) over the data. These actions need to be taken in line with the timeline set out in the left column.
Japan Irregular employees 4	An amendment to the Worker Dispatch Act was published on September 18, 2015 and came into force on September 30, 2015. The amendment included, among other things, changes to the framework relating to the limit on the maximum duration of dispatch arrangements which relate to: (i) the abolishment of the 26 specialized job types exception; and (ii) measuring the length of time spent by each particular dispatch worker working in the same team, but not the length of time that a particular position is being operated by any dispatch workers, in relation to the maximum duration. This amendment relates to the earlier amendment to the Worker Dispatch Act published on April 6, 2012 which introduced the concept of a deemed offer of an employment contract effective from October 1, 2015. A collateral resolution was also attached to this 2012 amendment relating to the large discrepancy in the treatment of	Employers should: • identify the positions being managed by dispatch employees or fixed-term employees; • review the term of each dispatching arrangement; • ensure that the terms and conditions of dispatching arrangements comply with the Worker Dispatch Act; • review potentially fake contracting arrangements; and • review hiring practices and renewal provisions/practices in relation to fixed-term employees. These actions should be taken as soon as possible if they have not already been taken at this point.

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2015

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	dispatch workers depending on whether or not they fall under one of the 26 designated specialized job types. Fixed-Term Employees (Labor Contract Act) Employers should remember that an amendment to the Labor Contract Act passed on August 3, 2012 introduced, among other things, a provision under which a fixed-term contract employee whose total period of continuous employment with the same employer exceeds five years must be offered an indefinite term employment contract, if the employee applies for one. This five-year period runs for fixed-term contracts that have been concluded after April 1, 2013. For a fixed-term contract employee who started to work at the company before April 1, 2013, this five-year period runs from the date the fixed-term contract is first renewed after April 1, 2013.	
Japan Mental illness and stress checks, from December 1, 2015 3	An employer with 50 or more employees is now required to conduct stress checks. The stress check examination on employees should be done once a year by a doctor to identify whether employees are under excessive stress. Upon a request from an employee who is suffering from a high level of stress, an employer will be required to arrange for individual counselling by a doctor. Based on the results of stress checks and individual counselling, the employer may be required to take measures to help manage excessive stress.	From December 1, 2015 employers should: • ensure requirements surrounding stress checks are properly followed; and • take measures as necessary depending on the results of stress checks and individual counselling.
Japan Encouraging the participation of women in the workplace – April 1, 2016 3	An Act to promote women's career activities will come into force on April 1, 2016. This Act obliges large-scale companies to establish quantitative targets to promote women's career activities. By April 1, 2016, a company with 301 or more employees must take the following steps: Step 1: confirm and analyze its current situation; Step 2: establish, file, announce and disclose its action plan; and Step 3: disclose information concerning the career activities of women employees.	By April 1, 2016, a large-scale employer is required to take the three steps set out in the left column as follows: (i) Step 1 (Confirmation and Analysis of Current Situation) The employer must confirm certain information concerning women within the company, as follows: • the gender ratio among its employees; • difference in years of service between men and women; • working hours; and

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		• gender ratio among its managerial employees. (ii) Step 2 (Establishing, Filing, Announcing and Disclosing of Action Plan) Based on the results from Step 1, the company must then establish an action plan ("Action Plan") to rectify deficiencies. The Action Plan must contain: (a) the terms of the plan; (b) a quantitative target; (c) a description of actions to be taken by the company; and (d) a timeline of the planned actions. The Action Plan must be: (a) filed with the corresponding local Labor Bureau; (b) announced to employees; and (c) publicly disclosed. (iii) Step 3 (Disclosing Information concerning Women's Career Activities) This involves the company disclosing information about women's career activities. The information confirmed at Step 1 could be the same information disclosed for this Step 3. These actions must be taken by April 1, 2016.
Singapore Continued tightening of the rules on hiring foreign nationals and increasing the preference for hiring Singaporean nationals – October 1, 2015 5	The Ministry of Manpower ("MOM") announced the following new measures with the objective of strengthening the core Singaporean workforce: <u>Publishing of salary range</u> • To comply with the Fair Consideration Framework's advertising requirement, employers will now be required to publish the salary range of the job vacancy on Jobs Bank. • Employment Pass ("EP") applications with the accompanying job vacancy that did not state a salary range will be rejected. <u>Increased scrutiny of EP applications</u> The MOM will start requesting more information from employers when an EP application is submitted to ensure Singaporeans have been considered in the hiring process. Such information may include, but is not limited to: (i) the number of job applications submitted by Singaporeans in relation to the job advertisement; (ii) whether any	Employers should ensure they comply with the following requirements for Jobs Bank advertisements: • be open to Singaporeans; • comply with the Tripartite Guidelines on Fair Employment Practices; and • ensure they are published at least 14 calendar days before an EP application is made. Employers should be prepared to provide the following additional information to the MOM if their hiring practices are scrutinized: • organization charts with nationality information; • recruitment processes; • staff grievance handling procedures; • framework for staff progression; • plans to develop internal staff;

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	Singaporeans were interviewed; and (iii) a breakdown of the number of Singaporeans in the Professionals, Managers and Executives ("PMEs") positions within the company. The MOM is stepping up its efforts to create a workforce with a strong Singaporean core. These measures are the latest in many which were first announced in September 2013 and we anticipate that more of such changes are in the pipeline.	• the number of applications submitted by Singaporeans; • whether Singaporeans were interviewed for the vacancy; and/or • the firm's current share of Singaporeans in PME positions.
Singapore Increase in paternity leave, retrospective to January 1, 2015 5	Singapore is trying to address certain demographic imbalances and has been promoting "pro-family" policies to increase the country's low birth rate. Among other recent changes that will affect employers is the increase in the government paid paternity leave from one week to two weeks, which is retrospective to January 1, 2015. This will be implemented on a voluntary basis.	Employers should consider providing one additional week of paternity leave in their paternity leave policy.

Asia Pacific: 2016 Preview of important forthcoming changes

2016

Issue	What is changing?	Planning action
China Draft Mass Layoff Regulations issued in 2015 5 (when the Regulations come into effect)	The PRC Ministry of Human Resources and Social Security released draft regulations on mass layoff for public comment (the "Draft Mass Layoff Regulations") on December 31, 2014. The Draft Mass Layoff Regulations formalize actions which employers are required to take in some detail and seek to incentivize employers to retain staff by providing subsidies in certain circumstances, and also to deter staff reductions by making the entire process far more onerous to complete. It is unclear at this stage when the Draft Mass Layoff Regulations will be passed, and whether any significant changes will be made by the time they are issued. The current procedure that must be followed is not prescriptive or detailed and the ambiguity provides employers with a degree of flexibility in executing mass layoffs, while still being legally compliant. The Draft Mass Layoff Regulations provide greater detail on what is	Watching brief for employers: Mass layoffs would become more onerous under the Draft Mass Layoff Regulations if they are passed in their current form. Employers should ensure that they keep abreast of any implementation developments to ensure that they are compliant with the final version of the Regulations to be passed as the sanctions for non-compliance are significant.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	required as part of the process and if the consultation process is not carried out correctly, for example, the union or employees can demand the company to redo the layoff process.	
	The provision that is likely to be the most troubling for companies is that in the event that the statutory circumstances for conducting a mass layoff arise and 20 or more employees are to be terminated, even if the company terminates the employees through mutual agreement, the company still needs to provide 30 days' advance notice to the company union or all the company's employees and report to the local labor bureau on the number of employees to be terminated. If the company fails to fulfill these requirements, the local labor bureau can order rectification, and impose a fine of up to RMB 20,000 if the company refuses to comply with the order to rectify or fails to comply with the administrative decisions.	
China Draft Patent Law and Draft Service Invention Regulations released in 2015 4 (when in force)	In April 2015, the national government released the draft amended version of the Patent Law ("Draft Patent Law") and draft regulations on employee service inventions ("Draft Service Invention Regulations") for public comments. From an employment perspective, one of the most noteworthy revisions in the Draft Patent Law is that it has narrowed the definition of employee inventions. Under the Draft Patent Law, while inventions made by an employee in the course of performing his or her job duties shall be deemed as employee inventions, and shall belong to the company, inventions created by an employee using the company's resources shall belong to the employee, unless the company can prove it was created in the course of performing job duties or unless otherwise agreed by the company and the employee. In contrast, the current PRC Patent Law states that inventions created in the course of performing job duties or by *mainly* using the company's materials or technical resources should both belong to the company. The Draft Service Invention Regulations have kept the majority of the controversial provisions (such as the minimum reward and annual remuneration standards for employee inventor(s)) from an earlier draft issued in April 2014. The current Draft arguably still allows companies to	Watching brief and preparatory steps for employers: It is now even more crucial for companies to enter into well-drafted agreements with employees and to adopt comprehensive company policies to address employee invention issues in order to safeguard companies' legal IP rights and control the costs relating to compensation for inventions.

Level of impact: 1 = low ⟷ 5 = high

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	avoid the default requirements on the reward and remuneration by reaching agreement with employees or implementing company policies, provided that such agreements or policies do not deprive employees of their legitimate rights nor set unreasonable conditions on the employees' claims and use of such rights. The exact meaning and scope of this restriction on the ability of the company to set different terms through agreement or company policies, however, is not clear.	
Hong Kong Further anti-discrimination legislation 3	The Equal Opportunities Commission ("EOC") is a statutory body established to administer anti-discrimination legislation in Hong Kong. The EOC commenced a public consultation as part of a wide ranging Discrimination Law Review ("DLR") on July 8, 2014. This was the first review of anti-discrimination legislation since the original passing of Hong Kong's four anti-discrimination laws. The DLR's main objective is to address gaps in the existing legislation and simplify it where possible. The key topics covered by the DLR include: • whether to legislate against discrimination based on immigration and residency status; • whether to widen the definition of marital status to include de facto relationships; • whether to introduce a statutory duty or requirement to provide reasonable accommodation for people with disabilities; • whether to extend protection for sexual harassment to workers employed by different employers working in a common workplace; and • whether to merge all four anti-discrimination ordinances into one, so that they may be simplified and made consistent where possible, as well as being easier to understand and apply. The EOC extended the public consultation due to an overwhelming response (130,000 submissions were received) and was due to submit a report with recommendations to the government and proposed	Watching brief: The Equal Opportunities Commission's report is likely to cause some controversy given the strength of the reaction caused by the consultation process. It is unlikely that any tangible steps will be taken towards creating new protections in the short to medium term.

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	legislative amendments in mid 2015, however, this has since been pushed back to March 2016. Reports on studies considering legislation against discrimination on grounds of sexual orientation, gender identity and intersex status were due in December 2015, while a report on age discrimination is due in early 2016.	
Hong Kong Compulsory re-instatement and re-engagement 2	There is a proposal to amend the Employment Ordinance so that if an employee was dismissed unlawfully and without a valid reason, the Labor Tribunal could make a compulsory order for re-instatement or re-engagement without obtaining the employer's agreement. This has been on the books for a number of years and the delay appears to be due to some complex legal issues in the bill. It was reported that the Labor Department and Department of Justice are currently trying to resolve these technical issues.	Employers will have to wait and see how this plays out. It doesn't seem to be a priority at the moment.
Singapore Proposed amendments to the Employment Act ("EA") 5	From April 1, 2016 the Singapore government will be introducing tougher rules to ensure employers comply with good employment practices and to clamp down on contravention of employment regulations. The key proposed amendments are: • revised obligations for employers to record employee information which include, but are limited to: (i) records of prescribed particulars of every present and former employee; (ii) 'record retention period'; and (iii) records of the key employment terms of employees within 14 days of commencement of employment with the employer, as well as an obligation for employers to issue itemized pay slips to employees; and • civil contraventions and enforcement of penalties. Failure to comply with the aforementioned new record provisions or the provision of inaccurate employee information will render the employer liable for civil contraventions. The MOM may issue a contravention notice and require the employer to pay an 'administrative penalty' (limited to SGD 1,000 for each occasion of a civil contravention and SGD 2,000 for subsequent occasions of the contravention).	Employers should be alert to the key proposed amendments to the EA and adapt their practices in accordance with the amendments when they come into force.

Level of impact: 1 = low ⟷ 5 = high

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Issue	What is changing?	Planning action
	The MOM will also be able to prescribe penalties (limited to SGD 5,000 for first convictions and SGD 10,000 for subsequent convictions for the same contravention within a year) for the contravention of any regulations under the EA.	

Level of impact: 1 = low ⟷ 5 = high

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Europe Regional Overview

Employee data privacy update

One of the most significant developments affecting Europe this year was the Court of Justice of the European Union's now infamous "Schrems judgment". This judgment, given in October, sent ripples of panic across the Atlantic which left some US multinationals with European operations questioning – if only for a split second – whether it would be necessary to pull the plug on all transatlantic personal data transfers.

The Court of Justice of the European Union ("CJEU") took a bold position, standing up to what many Europeans consider the US government's flagrant disregard for the European fundamental right to privacy (brought into the spotlight by the Snowden revelations of NSA surveillance practices). The decision has been widely reported as "invalidating" Safe Harbor, but the Court, in fact, ruled that national Data Protection Authorities ("DPAs") have authority to evaluate the safeguards guaranteed under Safe Harbor to determine adequacy (rather than defer to the European Commission's decision on the adequacy of the Safe Harbor scheme – a decision the Court ruled was no longer valid in light of the US government's pervasive surveillance).

The DPAs rose to the challenge, with pronouncements on the topic seemingly on a weekly basis. The Spanish and French DPAs have told data controllers they have until the end of January to safeguard transfers to the US by other means (for instance, via data transfer agreements containing the EU-approved model clauses). However, the French DPA has said that even the model clauses may need to be revisited after January 2016. The German DPAs were divided but at least one went so far as to say there is no mechanism to adequately safeguard employee data transferred to the US, leaving data controllers with no clear alternative short of ceasing transfers of employee data altogether. The Italian DPA has also pronounced that transfers may not rely on Safe Harbor but may use alternative measures, such as model clauses, until at least the end of January. In contrast, the UK DPA has taken a more relaxed approach, blogging that although there is no longer carte blanche for transfers under Safe Harbor – they are not automatically unlawful.

What happens now?

To avoid a patchwork of potentially contradicting decisions by the Member State DPAs, the European Commission ("EC") is expected to publish, together with the DPAs of the Member States, further analysis and guidance in the coming weeks for companies trying to address the implications of the judgment. Such guidance should facilitate a co-ordinated response from the Member State DPAs, and would be an appropriate vehicle to define a formal transition period, if any will be offered.

Although it has given no particular timetable, the EC has indicated its intent to continue working with US authorities to reach agreement on Safe Harbor 2.0 after nearly two years of negotiations. Such an amended program should be framed in a manner that addresses the concerns in the CJEU judgment, although the EC would need to conduct internal consultations within the European Union before issuance, and may have to allow more discretion and residual sovereignty of national DPAs. Ultimately, like other decisions, it could be challenged judicially.

An additional thread in this discussion of which companies should be aware is the European General Data Protection Regulation, the text of which was agreed on December 15, 2015. Once the European Parliament and Council adopt the text, it will apply directly in each of the 28 EU Member States. The GDPR will apply both to the data processing activities of EU-based businesses and to various data processing activities of businesses not established in the EU to the extent they target EU data subjects.

Click here for an article about the GDPR.

What does the judgment mean for European trading partners of Safe Harbor certified companies?

European companies who have been doing business with participants in the Safe Harbor will now have to revisit their compliance obligations and options, which could disrupt their data protection compliance programs and established business relationships. They may have to ask their US counterparties to consider model clauses, binding corporate rules (among members of multinational groups of companies) or other approaches, which would have an impact also in terms of cost, time for implementation and administrative burdens. European companies may have to update their filings with DPAs as well as all information notices (e.g., the removal of references to Safe Harbor from privacy policies, IT policies). Also, European companies may become subject to approval requirements with local DPAs for data transfers to the US.

The US implications and recommended actions arising from this decision are covered in the North America section below.

Working time and holiday pay

Working time developments remained high on the list of issues employers had to grapple with in 2015. One of the most important cases of 2015 was *Tyco*, which held that travel between home and certain customers is "working time" for workers with no fixed place of work. This case could have significant implications for employers who have mobile workforces and is covered in more detail in the table below.

Calculating holiday pay was another important issue in 2015 with various national courts implementing the CJEU's previous decisions in *Robinson-Steele v. RD Retail Service Ltd*, *Williams & Others v. British Airways plc* and *Lock v. British Gas Trading Ltd*. To recap, in *Williams* the CJEU expanded on the concept of "normal remuneration" set out in *Robinson-Steele*, suggesting that holiday pay for the four weeks of holiday guaranteed under the Working Time Directive ("WTD"), should not only include the employee's basic salary but also correspond to the normal pay, including certain additional allowances, that an employee would receive while at work. Strictly speaking, this decision only related to mobile staff in the civil aviation industry, such as pilots and cabin crew, to whom specific legislation related to working time applied. However, in the case of *Lock v. British Gas Trading Ltd.*, the CJEU concluded that the same principle applied to non-aviation sector employees and required that holiday pay (again for the four weeks guaranteed under the WTD) should include an element to reflect commission payments that a worker would normally receive, and which he has not as a result of going on holiday and not continuing to sell over that period. Overall, the CJEU's decisions in *Williams* and *Lock* have given many workers who receive variable pay the potential to argue that they have been, or are currently being, subjected to underpayments of holiday pay.

In Spain, as a result of these decisions, the courts have basically been requiring that all amounts regularly paid as salary should be paid during vacation. For example, in one decision, a court invalidated a collective bargaining agreement provision that limited payment of certain amounts (including payments for night work and overtime) during vacation. The court ordered payment of these types of payments during vacation as well. In another case, a court required additional payment of commission, even though the employee had received a commission payment during the month of vacation. The court reasoned that the commission payment the employee received during the month of vacation was really just a payment for commissions earned during the previous month(s), and so an additional payment had to be made to compensate for the lack of earnings during the month of vacation (i.e., an additional 11th of the total annual commissions for that 12-month vacation, or similar reasonable average).

In the UK, for some time, there was confusion about how far back a claimant could claim underpayments for holiday pay. This has, in part, been resolved by the Deduction from Wages (Limitation) Regulations 2014 which impose a two-year long stop on claims for back pay in relation to claims brought on or after July 1, 2015. The UK EAT in *Bear Scotland Ltd & Others v. Fulton* found that a gap of three months or more between underpayments would break the series of deductions where

underpayments for holiday pay were raised as a deduction from wages claim. The effect of this is that employees must bring the claim before the end of that three-month break, or else lose the right to bring a claim for underpayments occurring before that break. However, with the prospect of an appeal on this case, and others, this remains an issue to watch. The EAT in *Bear* also concluded that "non-guaranteed overtime" must be included in the calculation of holiday pay for the four weeks of holiday under the WTD. A Northern Irish case, *Patterson v. Castlereagh Borough Council*, extended this to say there was no reason in principle why voluntary overtime should not be included. This decision does not bind tribunals in the UK and so employers are unlikely to change their calculation of holiday pay on the basis of this decision. However, it may be an indication of the direction of travel of the courts.

In the UK, British Gas has also appealed the *Williams* decision effectively arguing that the CJEU's decisions do not apply to overtime, and that even if they do, the domestic legislation cannot be interpreted consistently with those decisions, so employers cannot be held liable for underpayments caused by what is effectively an error in the legislation. The appeal was scheduled to be heard by the EAT in December 2015 but no decision was available at the time this magazine was prepared. Given that many claims against other employers in the UK were stayed pending the outcome of this case, we expect that most of those employers will ask for cases to remain stayed until the EAT delivers its ruling. Employers not currently involved in such claims will also be affected by further delay and uncertainty pending an outcome from the EAT and in the meantime may need advice on how to calculate holiday pay or compromise potential claims.

We will continue to ensure that employers "stay tuned" to the developments in this area.

Europe: 2015 Review of developments and trends

2015

Issue	What has changed?	Recommended action
Europe Working time: travel between home and certain customers is "working time" for workers with no fixed place of work 5 (for employers with mobile workforces)	One of the hottest cases of 2015 was the Spanish case *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v. Tyco Integrated Security SL and another* (now simply referred to as "*Tyco*"). In *Tyco*, the Court of Justice of the European Union confirmed that where workers do not have a fixed or habitual place of work, the time spent travelling each day between their homes and the premises of the first and last customers designated by their employer is "working time" for the purposes of the EU Working Time Directive.	This decision will potentially have significant implications for employers who have mobile workers, or who are considering making workers mobile by closing an office to save costs. If travel to and from home has not previously been classified as working time for mobile employees, employers must now ensure that their time recording processes are altered to ensure that that time is recorded as working time for the purposes of, e.g., maximum working time limits. Note, however, that this decision does not strictly impact the question of pay. The CJEU was clear that employers are free to determine what remuneration they pay for travel to and from home in these circumstances. However, employers of hourly paid employees, or employees who are paid for overtime should review individual contracts and collective agreements to check for any implications this decision might have on pay and also consider

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
		administratively how they can deal with different start and finish times for working time and pay purposes. Employers should also consider how to deal with employees who carry out personal business on the way to and from home and give guidance to employees about what is permissible and how it is recorded.
Europe The meaning of "establishment" for collective redundancy purposes 4	The European Court of Justice has confirmed the Advocate General's approach to the meaning of "establishment" for collective redundancy purposes in the context of an appeal of a UK decision involving the high street chain Woolworths (*USDAW v. Woolworths and Ethel Austen*). It was held that "establishment" means "local employment unit" in which the potentially redundant employees are assigned to carry out their duties and not the organization as a whole. Therefore, collective redundancy consultation obligations will only be triggered when the relevant threshold is reached in one branch or division and not across an entire organization.	It will no longer be necessary to aggregate dismissals across a company to determine whether the collective redundancy consultation requirements are triggered. Instead, the focus should be on the establishment, which is the local employment unit to which employees are assigned to carry out their duties.
Europe Private messages at work can be read by employers, subject to limitations 3	*Bărbulescu v. Romania* is a January 2016 case which has sneaked into this 2015 review section due to the widespread media attention it has received. In this case, the European Court of Human Rights ("ECHR") held that an employee's right to privacy, under Article 8 of the European Convention on Human Rights, had not been breached by an employer monitoring the employee's instant messenger account that had been set up to deal with customer queries. Mr Bărbulescu ("B") was dismissed by his employer for a breach of company regulations when he used a work related instant messenger account for personal use during working hours. B had used this account to message his brother and fiancée discussing personal matters. A transcript of B's personal communications were produced by the employer in disciplinary proceedings and subsequent court hearings. B applied to the ECHR arguing his right to privacy, under Article 8 of the Convention, had been breached when the employer accessed the instant messenger communications. Even though the ECHR recognised B's Article 8 rights were engaged, it held that the domestic court had balanced the	This decision has received widespread media attention with some of it giving a misleading impression that employers have free rein to access an employee's personal electronic communications. This decision must be treated with caution and does not override previous ECHR case law with regards to privacy. In some countries, employers' actions are also subject to further restrictions set by country-specific privacy related legislation. For example, in the UK, employers need to comply with the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000 which limit an employer's ability to monitor employees' private communications. Now is a good time for employers to: • review their company policy and approach to monitoring electronic communications systems, checking that monitoring is carried out for legitimate purposes and is proportionate; and

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	interests of the employer against B's Article 8 right to privacy proportionately. The ECHR concluded there was no violation of the employee's Article 8 right to privacy and the employer's access to the communications was justified.	• ensure employees are aware of company policies on monitoring communications and that disciplinary action may be taken against employees who do not comply with the policy.
Germany Minimum Wage Act 5	As of January 1, 2015, a minimum wage of EUR 8.50 per hour applies to all employees in Germany. Principally, each employee working in Germany shall receive this minimum wage, regardless of the working time and its scope. Exceptions apply under specific conditions to interns and long-term unemployed persons. Additionally, the new Minimum Wage Act provides for a step-by-step introduction of the minimum wage in the newspaper delivery sector. During the introduction period until the end of 2017, deviating regulations are also permissible if agreed in a collective bargaining agreement. The amount of the minimum wage will be checked on a regular basis by a minimum wage committee and – if necessary – adjusted. The first review will take place in 2017. An employer/principal will be liable if its sub-contractor fails to pay the minimum wage to its employees, which could result in fines and penalties.	Employers should: • ensure they comply with these new minimum wage requirements; and • consider seeking appropriate protection/indemnification from sub-contractors in the event they do not comply with the new requirements.
Germany Parental leave 4	Since July 1, 2015 the transitional period for the introduction of the new regulations in the Parental Leave Act ("PLA") has lapsed. The new regulations, which were inserted in the PLA in January 2015, can now be fully applied to children who were born after July 1, 2015. For children who were born before July 1, 2015, the old version of the PLA still applies. A parent must take his or her parental leave before the child's eighth year of life, but will be limited to taking a maximum of 24 months' leave after the child's third year. Thus a parent may take 12 months' leave within the first three years of the child's life (up to a maximum of 36 months), and then take the remaining 24 months between the child's third and eighth years (up to a maximum of 24 months). The new legislation also introduces the Elterngeld Plus ("parental benefit plus"), a social security payment which is available to parents who opt to work part-time. The	Employers should note these developments.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	payment will not exceed 50 percent of the existing Basiselterngeld ("basic parental benefit"), the basic social security payment available to parents who are not in gainful employment. However, the Elterngeld Plus can be received for up to 28 months of the child's life, twice the length of time the Basiselterngeld is available for. If both parents decide to work part-time simultaneously for a period of four months, the period of time the Elterngeld Plus may be received may be extended up to a maximum of 32 months from the birth of the child. The law also clarifies that in the case of a multiple birth, parents will only be entitled to parental benefit for one child. Finally, the scope for grandparents to take parental leave while a parent is training has been widened by the abolition of the requirement for the parent to be in his final or penultimate year of training.	
Germany Re-establishment of the principle of tariff agreement unity 4	Case law had changed to allow more than one tariff agreement to apply in one undertaking – this resulted in "rat races" between trade unions and strengthened small unions for "special interest groups" (pilots, cabin crew, train conductors). New legislation has been introduced which confirms that only one tariff agreement can be applied to an individual employment relationship or to all employment relationships within an undertaking. A complaint against this legislation is pending at the constitutional court.	Employers should note this legislative change and watch out for the outcome of the complaint pending at the constitutional court.
Spain Collective dismissals 4	The CJEU issued two major rulings that established that two aspects of Spanish law that govern collective dismissals infringes the Directive. In one case, judgment of May 13, 2015 (the *Rabal Cañas* case), the CJEU held that the unit that should be taken into consideration in computing the existing number of employees and the number of employees to be laid off for purposes of the thresholds is the work center, and not, as Spanish law established, the company. There has already been at least one case in Spain where an appellate court has held redundancies null and void for failing to follow the collective dismissal procedure in contravention of the *Rabal Cañas* decision, despite the fact that under the Spanish	Employers should take care when calculating the number of employees to be laid off in order to determine whether the collective dismissal procedure is triggered.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	Labor Act, the collective dismissal procedure was not required. In the second case, judgment of STJUE of November 11, 2015 (the *Pujante Rivera* case), the court held that for purposes of the thresholds regarding the number of employees to be laid off, the law should consider any other terminations not due to the employee, whereas Spanish law requires that these other types of terminations must amount to at least five in order to compute for the purposes of the collective dismissal thresholds.	
Spain Social security tax inspections 3-4	In an effort to obtain more funds for the Spanish Social Security System, in late 2015, the government employment department began a campaign to review how much companies were paying for social security tax for workplace accidents and illnesses. Since the tax varies significantly (in some cases by up to six percent or more of the taxable social security basis) depending on the job positions employees hold, government officials have been inspecting companies and evaluating employees' job classifications for the purposes of the social security tax. In some cases, officials have re-characterized office employees (who are subject to a relatively low tax for workplace accidents and illnesses) as employees of the company's main activity (such as, pharmaceutical or manufacturing employees, with a much higher applicable tax rate). For some large companies, these massive re-classifications of personnel have resulted in liability for allegedly overdue social security taxes and fines reaching hundreds of thousands of euro. Indeed, for some companies, the liability has exceeded EUR 1,000,000.	Companies should review their classification system and take possible pre-emptive measures against such inspections.
UK Modern Slavery 5 (for companies that need to prepare a statement)	From October 2015 commercial organizations have been required to prepare a human trafficking statement for each financial year. This will affect organizations with a turnover of not less than GBP 36,000,000 and who supply goods or services in any part of the UK. The statement must include information relating to an organization's policies and training provided on slavery and human trafficking; as well as the measures the organization takes to eradicate the same from its supply chains.	The first statements need to be produced for organizations with financial years ending after March 31, 2016. There is no prescribed time limit within which to prepare the statement but this should be done "as soon as reasonably practicable" after the end of the financial year and within six months of the end of the financial year is "encouraged".

Level of impact: 1 = low ⟷ 5 = high

Europe: 2016 Preview of important forthcoming changes

2016

Issue	What is changing?	Planning action
Germany Personnel leasing 5	A draft bill regulating the employment of external staff significantly modifies the "Employee Leasing Act". One of the most significant amendments will be the maximum duration of 18 months for employee leasing. The principle of "Equal Pay" will have to be applied with effect from the first day of leasing. Furthermore, personnel leasing will have to be contractually defined as personnel leasing in the contract between the lessor and the lessee. The use of personnel leasing during industrial action will be prohibited. Finally, the draft bill includes a catalog of criteria in § 611 of the German Civil Code for determining the difference between an employment contract and a contract to produce work. Please note, the first draft bill was put on hold by Angela Merkel because of differing views within the government.	For information only.
Spain Potentially significant employment reforms	General elections were held in Spain in December. The conservative party, which is currently in power, won the elections, but it is far from having a majority of the parliamentary seats; consequently, the only way it will be able to continue in power is if it succeeds in getting sufficient support from other political parties, which will be difficult if not impossible. PSOE, which is the socialist party, could, alternatively, end up in power, but to do so it would need the support of other parties further on the left.	In either case, amendments to the labor and employment laws are expected and, if the left ends up governing, the amendments are expected to be significant, as, in the elections, the left promised to revoke the conservative government's 2012 amendments. Watch for developments.
UK Mandatory gender pay gap reporting, expected by Spring 2016 5	In March 2015 the government introduced amendments to the Small Business, Enterprise and Employment Act 2015 ("SBEEA") that require the government to make regulations under the Equality Act that bring in mandatory pay gap reporting for private and voluntary sector employers with at least 250 employees, within 12 months of SBEEA coming into force. Consultation closed on September 6, 2015 and although the government's response and draft regulations have yet to be published, it has indicated that: • gender pay gap calculations will need to include discretionary bonuses, not just basic pay; and	Watch for developments.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	• the reporting obligation will apply to large employers in the public sector, not just the private and voluntary sectors.	

Level of impact: 1 = low  5 = high

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Latin America Regional Overview

As is frequently the case, 2015 was quite a dynamic year in Latin America in the field of labor relations, with many developments taking place in various jurisdictions. Naturally, many trends very much followed economic/political conditions. Argentina, Brazil and Venezuela, for instance, given high inflation and other challenges, with varying degrees, experienced some personnel reductions and/or difficulties in negotiating new terms and conditions of employment, particularly in collective bargaining settings. Other jurisdictions experienced some economic growth, and pretty much remained stable. However, a common development that took place in various countries in the region was an increase in the efforts of governments and labor authorities to enforce certain labor standards and provisions. In general terms, the region's labor legislations are protective of employees, and employers are generally advised to become familiar with the respective legal framework and plan in advance to ensure compliance with the respective labor provisions while pursuing and obtaining the company's economic objectives. Countries whose labor legislations were a bit less protective are showing signs of strengthening certain areas of protection. In Chile, for example, a bill of law under consideration, if passed, could improve the position of workers in collective labor relations and bargaining in certain ways (e.g., by prohibiting the replacement of workers on strike). In Mexico, the introduction of the Trans-Pacific Partnership could change the operational structure for doing business, particularly by adopting new employment rules derived from ILO Convention 98.

In light of the foregoing, 2016 promises to be an interesting year for labor relations management in Latin America, and it is advisable for companies to "stay tuned" to the changes that might be forthcoming in the various jurisdictions. Despite any challenges, with careful and anticipated planning, many business objectives may be successfully accomplished.

Latin America: 2015 Review of developments and trends

2015

Issue	What has changed?	Recommended action
Argentina High inflation scenario – impact on the employment relationship	Unionized employees' salaries: Annual inflation in Argentina was close to 25 percent. Consequently, there have been hard negotiations with unions and new measures aimed at increasing net salaries (e.g., income tax reimbursement), or minimizing the impact of inflation on salaries (shorter negotiation terms). Non-unionized salaries: The challenge here is for employers to avoid an overlap with unionized employees.	Consider the impact of high inflation on the employment relationship.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
Brazil Increase in employee terminations	The Brazilian political and economic crisis, which became worse during the course of 2015, has triggered many employee terminations. As a result, unemployment rates are reaching new highs and are close to nine percent. As a response, the government issued the Employment Protection Program ("EPP" – addressed below), granting employers an alternative way to manage and reduce payroll costs during the crisis.	The increase in employee terminations is expected to increase the number of claims filed against employers, as employees usually file claims upon termination. Providing enhanced severance packages, with benefits like an extension to health care provision and outplacement services, may help reduce the risk of claims.
Brazil Employment Protection Program ("EPP"), July 2015	The EPP has gained a lot of traction over the last few months and has benefited over 30,000 Brazilian employees so far. Companies that participate in the program may temporarily reduce employees' work schedules by 30 percent with the proportional reduction in pay. However, to be able to join the program and claim the temporary cost reduction, the employer must meet certain requirements, including the following: (i) unions must be involved in negotiating the working hours/pay reduction; (ii) all vacation days must have been used; and (iii) the company must be able to evidence the financial difficulties that prevent it from maintaining employment conditions as originally agreed.	To avoid additional employee terminations (especially collective ones), joining the EPP may be a good alternative.
Colombia Increase in dawn raids performed by administrative authorities (i.e., the Ministry of Work, the Pension and Payroll Tax Management Unit ("UGPP"), and the Superintendence of Industry) 5	The UGPP is legally allowed to monitor, control and ensure that employers are complying with social security requirements. The UGPP reviews the information provided by payroll tax entities, and can require 'suspicious' employers to submit further information that it deems appropriate to establish their compliance with the obligations mentioned above.	Employers should conduct audits to ensure that they are complying with social security requirements.
Colombia A more rigid due process in disciplinary procedures against employees 3	A recent ruling of the Constitutional Court introduces important changes to how disciplinary proceedings are held in relation to the principle of due process and the right of defense. The main changes relate to the evidence an employer needs to produce of the investigation it conducted and the	Employers should review and, if necessary, adjust their disciplinary procedures to take account of these changes.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	employee having the right to appeal the result of the investigation. According to the Constitutional Court the principle of due process and the right of defense applicable to criminal process are applicable to the disciplinary proceedings held by an employer.	
Colombia New regulations regarding health and safety within the workplace 4	By means of Decree 1443 of 2014, employers are obliged to modify the Occupational Health Program for the Management System for Health and Safety in the Workplace. This obliges employers to put in place a more comprehensive occupational program aligned with the international law of health and safety, which is based on what is called the Planning, Doing, Verifying and Acting ("PHVA") cycle (based on its acronym in Spanish).	Employers should implement the new regulations relating to health and safety in the workplace, according to the following timetable: 18 months for companies with less than 10 employees; 24 months for companies that have between 10 and 200 employees; and 30 months for companies that have more than 201 employees. The time period is counted from July 31, 2014.
Mexico Joint or mixed committees 4	Companies are obliged to incorporate joint commissions or committees regarding profit sharing calculations and payments, general employment conditions, productivity, training and instruction, safety and hygiene, among others. The Productivity, Training and Instruction committee is particularly important because it is the ideal tool for hiring and terminating employees under the modalities contained in the Federal Labor Law ("FLL").	Employers should review terms and conditions of commissions or committees to confirm that they include specific conduct and/or compliance rules for the purposes of terminating employment relationships and disciplinary measures.
Mexico Audit procedures 5	Labor authorities have significantly increased audits over recent months, focusing mainly on matters of safety, hygiene and productivity.	Employers should ensure that they are complying with applicable authorizations and matters regarding safety, hygiene and productivity.
Mexico Compliance rules and procedures 4	Compliance rules and procedures are becoming increasingly important for companies. It is important to understand that their enforceability, for the purposes of terminating employment relationships, must be based and referred to in the Internal Shop Rules and Codes of Business, Conducts and Ethics.	Employers should review their Internal Shop Rules and Codes of Business, Conducts and Ethics to confirm that they include compliance rules and/or procedures for the purposes of terminating employment relationships.
Mexico Codes of Conduct 4	Codes of Conduct may create grounds for termination and disciplinary measures, to the extent permitted by the FLL. However Codes of Conduct are not mandatory.	Employers should review their Internal Codes of Conduct to confirm that they include specific conduct and/or compliance rules for the purposes of terminating employment relationships and disciplinary measures. Individual employment agreements must be revised so that they include specific wording in connection with the

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
		obligations provided by the Business and Ethics Codes and Internal Shop Rules.
Mexico Rise in the minimum age for employment, June 12, 2015 5	On June 12, 2015, a new amendment to the FLL was published in the Official Gazette, which increased the minimum age for employment from 14 to 15 years old. This amendment is consistent with the constitutional reform that came into effect on June 17, 2014, whereby it is also established that the work shift of minors who are more than 15 years old and those under 16 years old cannot exceed six hours. Likewise, this amendment protects children who are younger than 15 years old from working in family businesses and prohibits the employment of those under the age of 18 who have not concluded elementary school. The amendment also prohibits individuals younger than 18 from working overtime, and on Sundays and mandatory rest days. It is important to note that minors who are more than 15 years old and younger than 16 years old must obtain a written permit from their parents or the Labor Board before they start to work. In the case of minors who are more than 15 years old and younger than 18 years old, they must provide a medical certificate and be subject to periodic medical examinations, as requested by the Labor Authorities, to evidence their capacity to perform the job activities. The FLL also prevents minors from working in hazardous or damaging environments, including but not limited to loud workplaces, night shifts, in mining activities, in construction, on ships, on submarines, and on establishments likely to affect their morals or good customs.	Specific points employers should note are set out below. Employers should particularly note this change due to the onerous sanctions for breach of the law, which include a fine of between 250 and 5,000 times the daily general minimum wage and up to four years in prison. In case of non-compliance, employers must pay overtime at 200 percent of the applicable salary; and pay for Sundays and days of mandatory rest in compliance with the FLL. Employers should note that if this requirement is not met, the employer cannot use minors' services.
Mexico Minimum Wage Unification 5	By a resolution issued on September 24, 2015 by the National Minimum Wages Commission, the Minimum Wage Unification for geographic areas "A" and "B" was established. The current minimum wage is MXN 73.04 Mx. Cy., effective as of January 1, 2016.	It is important that employers consider this increase in order to update, if applicable, employees' base quotation salary for the payment of social security contributions and to file the proper notice before the Mexican Social Security Institute.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
Peru Modifications to immigration regulations, September and October 2015 4	The law on immigration status has been modified establishing new immigration statuses such as frontier employees, provisional residents and short-term employees, among others. The current requirements for existing immigration status have also been amended, e.g., foreign resident employees are able to render not only subordinated services to a local employee, but will also be allowed to render independent services. The decree implementing these changes is not yet in force; it will take effect 90 days after the publication of its regulation. A considerable number of procedures at the Peruvian Immigration Office have also been simplified. Some examples of these changes are the following: Regarding the foreign resident employee visa procedures, it is no longer mandatory to submit the General Manager's proxy. It will only be mandatory to submit a legal representative proxy if the General Manager of the Company does not sign the foreign employment agreement. Regarding family resident visa procedures, it is no longer mandatory that the birth certificate or the marriage certificate (duly legalized by the Peruvian Consulate or apostilled abroad) has a minimum period of validity (previously, a maximum of six months validity was required).	Employers should be aware of this change in order to choose the best immigration status for foreign citizens according to the activities that they will perform in the country.
Peru Essalud (Social Security in Health) – new policies regarding the granting of reimbursement to employers for their employees' subsidies 5	To balance the budget cuts caused by the permanent reversal of legal bonuses to Essalud contributions, Essalud has adopted a more rigorous policy regarding the granting of reimbursement to employers for subsidies. For example, any partial payment of the contribution referred to a worker corresponding to a certain month implies that the payment of the contribution was not made timely and in full that month, which impedes the access to subsidies during the next 18 months. This occurs even in cases where the employer itself has detected the mistake and has corrected it voluntarily paying the interest and fines. This leads not only to punishment through the payment of fines and interest, but also to a loss of coverage.	The tax authority will be stricter when evaluating the inclusion of any item paid to an employee as remuneration. Therefore, employers should take care when classifying any payment as non-remunerative. In addition, employers should be very careful when approving payroll because it could generate the inability to receive reimbursement for benefits that should be borne by Essalud.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	Therefore, in recent months the number of resolutions issued by Essalud demanding reimbursement for the full cost of economic or welfare benefits provided to employees and their families has increased, due to incomplete or delayed payments. In addition, the time to proceed with the exchange of the Medical Certificate for the Certificate of Temporary Incapacity for Work that is required as a first step to request reimbursement of the subsidy has been reduced to 30 business days (the previous deadline was several months).	
Venezuela Increase in restructurings and cost reductions **3-5**	The Venezuelan economic crisis, which became worse during 2015, motivated some companies to restructure their organizations to reduce labor costs, often resulting in personnel reductions. Because the Venezuelan labor legislation, in general terms, prohibits dismissals without cause and provides for many other restrictions protecting employees, most companies decide to offer attractive severance packages to employees who voluntarily resign from employment and sign a settlement agreement and releases.	In order to increase the chances of success, it is important for companies to plan in advance and develop the right strategies in this respect.
Venezuela New rule affecting restructurings and cost reductions **3-5**	At the end of 2015, the National Executive issued a decree establishing a special labor protection against dismissals, deterioration of conditions and transfers without just cause, previously proven before and authorized by the competent Labor Inspector, for a term of three years. In prior years, similar decrees had established this protection for one year terms. Although the prior decrees had been successively issued, so that, in practice, this protection has been in effect continuously for a significant number of years, the National Executive had never extended this protection, at once, for three years as it has just done. This three year extension, which will expire at the end of 2018 unless the decree is repealed or amended earlier, is likely to have a significant impact on labor negotiations regarding voluntary employment separations, making it more challenging for employers to reduce personnel.	It is important for companies in need of reducing personnel, to explore various solutions and possibilities to this challenge. Careful analysis of options and planning is highly advisable.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
Venezuela The three-year transition term regarding prohibited outsourcing provisions finalized in May 2015 3-5	Inspections and administrative procedures regarding cases of prohibited outsourcing in the new labor legislation have been taking place (with certain tests being applied to detect cases of prohibited outsourcing). Most relevant situations of prohibited outsourcing putting employers at risk are labor intermediation and certain types of independent contractor services.	All situations must be examined on a case by case basis.
Venezuela Challenges to attract and retain talent 3-5	Companies are trying to attract and retain talent, which is a challenging task in the current economic environment.	It is important for companies to review whether they have the right measures in place to attract and retain the right talent, and to keep employees engaged and motivated.

Latin America: 2016 Preview of important forthcoming changes

2016

Issue	What is changing?	Planning action
Argentina The new government and union disputes	The new government took office on December 10. According to the new president's statements and anticipated policies, there will be significant measures against inflation and an opening to global financial markets. The new president also intends to shortly announce the end of the foreign exchange restrictions. Union disputes are likely to remain at their current level. Collective negotiations will therefore be difficult in 2016, although it is possible to have less aggressive negotiations.	The government's specific agenda is not yet known. However, everything is pointing to the fact that it will create a more friendly business environment. The inflation rate could be reduced, but, even in an optimistic scenario, this will take time. Therefore, union negotiations will still be hard in 2016 and payroll costs could increase.
Brazil Various predictions	High inflation will continue to increase payroll costs • The impact on payroll costs of the high inflation indexes disclosed recently will be significant in 2016. Union disputes are likely to increase • Collective negotiations will be more difficult in 2016, with unions trying to get as many salary increases as possible to shield employees from inflation, and companies trying to reduce costs.	Employers must be creative and careful in their cost management and, wherever possible, look for contingent forms of engagement with lower costs. In relation to union negotiations being even more difficult in 2016, employers should look for alternative forms of engagement, using a contingent workforce whenever possible. To avoid additional employee terminations (especially collective ones), joining the EPP may be a good alternative.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	EPP Program • With the program's recent extension from December 31, 2015 to December 31, 2016, the number of companies joining the program to reduce costs is likely to increase.	Employers that terminated a high number of employees in the course of 2015 are likely to have more claims filed in 2016, as a result of the reduction in force. Providing enhanced severance packages may help reduce the risk of claims.
Colombia Increase in dawn raids performed by administrative authorities 5	In 2016 the trend of the increasing number of investigations performed by the Ministry of Work and the UGPP is likely to continue regarding: • outsourced activities; • labor and employment conditions; and • health and safety.	Employers should: • review their current outsourcing schemes; and • conduct labor audits and train staff to deal with potential dawn raids.
Colombia Promotion of home-based work or telework by the Ministry of Work	Colombian labor legislation establishes a special form of employment contract that may be entered into with certain employees, for home-based work (*trabajo a domicilio*). Under this form of engagement, an employment contract is deemed to exist with the individual that permanently renders remunerated services from his/her own residence.	In order to ensure the appropriate performance of home-based services, the employer must provide the homeworker/teleworker with the necessary work tools that are the same as or similar to those used by the personnel working at the employer's offices and must cover the expenses incurred for home-based work, such as telephone bills or stationery supplies which should be duly accounted for by the home worker/teleworker through expense reports.
Mexico Overview	Foreign investment is predicted to continue in the automotive industry and in infrastructure with the new Mexico City airport under construction. The Trans-Pacific Partnership might change the operational structure for doing business in Mexico, particularly by adopting new employment rules derived from the ILO Convention No. 98. More and tougher audits are expected by the Federal Employment Bureau regarding companies' compliance with new rules for safety and hygiene at work centers, including reviews for properly documented Mixed Commissions. There could be a possible increase of contingencies derived from litigation if the back pay rule and the limit of 12 months of back wages are determined as unconstitutional by the Supreme Court.	Employers will be less liable for possible contingencies if they negotiate and close potential and new litigation during the initial stages of the procedures. If approved, the ILO Convention No. 98 could pose a threat to companies as the number of "Protection CBAs" might be diminished or even targeted by labor authorities, therefore leaving companies exposed to possible threats and incursions from external/hostile unions. For compliance purposes, file the corresponding Internal Shop Rules before the authorities for the purposes of acquiring sufficient grounds to proceed against employees that breach the Codes of Business.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
Mexico Waiver of rights 4	On April 9, 2015, the Mexican Chamber of Deputies approved a decree that amends Articles 33 and 1006 of the FLL that was sent to the Senate for its review and approval. The aim of the reform is to prohibit the practice of forcing employees to sign blank documents that represent a waiver of their rights, and establishes a confidential procedure to denounce this practice, which can be used as evidence in the event of a subsequent labor claim.	According to the decree, employers who commit the aforementioned conduct may be subject to a prison term of six months to four years and fines from 125 to 1900 times the minimum wage.
Venezuela Predictions for 2016 3-5	Most economists agree that important economic measures must be taken to deal with inflation and other economic issues. Many suggestions have been made for quite some time. Even if the right measures are taken, high inflation is likely to continue, at least for some time while the economy comes back to balance, and therefore, the labor situation is likely to be similar to what it was in 2015. However, if the right measures are taken, and particularly if this happens in early 2016, a much better economic (and with, it, labor) outlook is likely to take shape.	Companies operating in Venezuela must continue to be creative to maintain and/or reduce costs during the current economic crisis, and to deal successfully with any risky outsourcing structures in which they might be involved. In addition, it is important for companies to review whether they have the right measures in place to attract and retain the right talent, and to keep employees engaged and motivated.

Level of impact: 1 = low ⟷ 5 = high

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North America Regional Overview

2015 was a whirlwind year for US employers.

2015 showed a marked trend toward employer obligations over outsourced and contract workers, including down through companies' supply chains. The US National Labor Relations Board and the Department of Labor issued rulings and guidance memos that drastically expanded the agencies' "joint employer" definition and have far reaching implications for any US business that: (i) contracts, subcontracts or outsources work (e.g., janitorial work, trucking/long-haul shipping, office/secretarial support services, and other uses of independent contractors or staffing agencies); (ii) uses staffing agencies to provide temporary assistance; (iii) maintains franchise agreements with other entities; and/or (iv) maintains some control over a subsidiary entity. Most workers in the US will now likely qualify as employees of the contracting company, regardless of contractor or outsourced status. As those workers come under the purview of employment status, they may be entitled to employment benefits and protections from the contracting company, such as minimum wage, overtime, family and medical leave, unemployment/workers' compensation insurance and union bargaining rights, if not provided by the employing company. The California Department of Justice also began enforcement activity on the 2010 California Transparency in Supply Chain Act ("CTSCA"), issuing warning letters to non-compliant companies throughout 2015. The California law requires retail sellers and manufacturers doing business in California, with over USD 100 million in worldwide gross receipts, to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods they offer for sale.

The US Department of Labor also announced proposed amendments to federal overtime laws that, if adopted, would extend overtime pay protections to millions of workers and have a significant impact on US employers' operations. The proposals significantly increase the minimum salary for certain professional, administrative, executive and highly-compensated employees who are currently exempt from overtime in the US. The proposed new overtime rules require a substantially higher minimum salary for employees to be exempt from overtime and include an automatic annual increase in those salary levels.

In March 2015, the National Labor Relations Board's General Counsel also issued a report applicable to all US employers, providing guidance on the General Counsel's view of what rules and policies are impermissible under US labor laws. The report describes overbroad rules and policies that, in the General Counsel's view, interfere with, restrain or coerce employees in the exercise of their protected rights. Generally, these are overly broad policies which might have a "chilling effect" if an employee could reasonably read the policy to prohibit protected activities. Policies scrutinized by the General Counsel included those that touch on confidentiality, use of company logos, employee conduct rules and conflicts of interest.

2015 was an equally interesting year for Canadian employers.

Significant decisions were handed down in 2015 at both the federal and provincial level which impacted the amount of human rights damages employees could expect to receive if their claim was upheld, as well as the ability of employers to suspend non-union employees and to terminate the employment of federally-regulated employees on a without cause basis.

In 2015, the Supreme Court of Canada rendered a decision confirming that legislation limiting the right to strike is unconstitutional and protected by the Canadian Charter of Rights and Freedoms.

The test for family status discrimination was clarified in 2015, giving employers greater clarity as to how far they must go to accommodate employees with certain family obligations.

Employee data privacy update for US multinational companies

As described in our Europe Regional Overview, one of the most significant developments in Europe this year was the CJEU's now infamous "Schrems judgment." Please refer to this overview for more information on this. This judgment had wide ranging impacts on US multinational companies that receive personal information about employees in Europe.

The US implications and recommended actions arising from this decision are as follows.

Remember that for European employees, with the exception of a few countries which accept that employees may consent to transfers without safeguards, all transfers outside the employee's home jurisdiction must be adequately safeguarded. All US multinationals with employees in Europe should take stock:

1. **Should you certify or recertify your US company?** If you were considering Safe Harbor certification as the primary means of safeguarding transfers of employee data to the US parent company, it may not make sense to begin the due diligence process right this minute, at least until after January (that is the earliest we can hope to have further guidance from the European authorities as to "Safe Harbor 2.0" (a revamped and renegotiated version of the same scheme)). If you really need something in place right now, the model contracts are your best bet since currently most DPAs continue to recognize this mechanism and it can be implemented much faster than the other alternative, binding corporate rules. If you were to start now on the approval process for your binding corporate rules, it is likely that Safe Harbor 2.0 will be in place before your new binding corporate rules are approved (the process takes at least 18 months and several DPAs are not currently reviewing applications). However, if you are already certified and due for recertification – these developments do not necessarily mean you should let it lapse – a lot of the appropriate groundwork has been laid and Safe Harbor certification is better than nothing as it, at the very least, shows a good faith effort.

2. **How are you safeguarding the data you share with vendors and other third parties?** Regardless of your company's Safe Harbor status and chosen method of securing internal transfers, you should be thinking about the arrangements your company has in place with third party vendors. This includes benefits providers, learning and communication tool providers, other cloud service providers, ethics hotline administrators and anyone else with whom your company shares European employee data (including by merely granting incidental access to that data). Are you relying on your vendors' Safe Harbor certifications? Given that this has been deemed unlawful in several jurisdictions, it may be time to inventory Safe Harbor certified vendors and initiate discussions on putting in place model contracts. With any luck, you won't be the first customer to raise the concern and the vendor will have a pre-packaged solution (i.e., completed model contract ready for execution).

3. **Is it time for employee communications and revised privacy notices?** It is likely that this publicity has not gone unnoticed by at least one of your European employees. It is important to remember they have the right to ask about the data held on them and about what happens to that data. Any such request must be addressed as a matter of European law. Being clear and upfront with employees as to how their data is safeguarded in the US will also help keep them from seeking recourse with their local DPA. Depending on what current employee privacy notices are rolled out to European employees and what they currently say about Safe Harbor, it may be worthwhile to consider whether to disseminate an update as to Safe Harbor status and the company's current compliance plan. It may also suit your company better to "not rock the boat" until at least there

is more guidance in the New Year.

Don't forget your privacy compliance basics

Even while we await a new Safe Harbor, there are steps you could take to be a better, more compliant data custodian:

- Only transfer personal data that is absolutely required for legitimate business reasons (not the entire HR file) – this may be difficult if your HRIS system is administered/hosted in the US (because that is where either the contract with the vendor is held or the server physically sits). Consider whether any HR functions or IT functions such as helpdesks, etc. may be administered locally or at least in a European hub, to the extent possible so as to minimize data processing in the US.

- Limit distribution and access in the US only to those who have a legitimate business need to know (HR, legal, IT and direct managers of the given European employees).

- Don't transfer social security/national ID numbers or other more "sensitive data" – use a randomized employee ID instead.

- Remember that data not stored or transmitted electronically (data in hardcopy) is sometimes subject to less stringent rules. In some countries, if it is not organized (alphabetically or otherwise) it may not even be considered "personal data" as long as it does not become electronic. The principle behind this is that hardcopy data is more controlled in how it is disseminated, etc. To the extent you have very sensitive data (i.e., investigation notes) consider whether this could be kept in hardcopy only, and whether it should be in a "relevant filing system."

- The current upheaval relates only to US transfers. Therefore it is still possible to allocate some data processing to another third country outside of Europe (for instance in APAC), as long as data transfer agreements are put in place. Some countries are even considered "safe" and so no additional measures are required.

Given that thousands of US companies are all wondering what to do next, we hope that Safe Harbor will be renegotiated at the governmental level in January, but this is looking less likely by the day. If not, some more definitive guidance on alternatives should be issued, as pulling the plug on all data transfers to the US is clearly not an option.

North America: 2015 Review of developments and trends

2015

Issue	What has changed?	Recommended action
Canada Targeting sexual harassment at work 3	On October 27, 2015, the Ontario Legislature introduced legislation as part of its action plan to stop sexual violence and harassment. Bill 132, an act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters, proposes changes to various statutes, aimed at making workplaces, university campuses and communities safer, while recognizing the needs of survivors of sexual violence and harassment.	Bill 132 puts an onus on employers to ensure that: their workers are provided with these workplace harassment policies and receive appropriate instruction on their content; they adhere to these policies; and the policies are reviewed at least annually. Under Bill 132, an inspector will have the right to order an employer to conduct an investigation and obtain a report from an impartial person at the expense of the employer.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	Bill 132 proposes amendments to the Ministry of Training, Colleges and Universities Act and Private Career Colleges Act, 2005. Among other things, these amendments include adding the definition of "sexual violence," and requiring colleges and universities to have sexual violence policies that outline the reporting process for incidents or complaints of sexual violence. Colleges or universities must ensure that student input is considered in the development, amendment or review of sexual violence policies. Regulations may require the implementation of additional measures. Of significance to employers, Bill 132 would amend the Occupational Health and Safety Act to include the definition of "workplace sexual harassment" as a form of "workplace harassment," and will require employers to include in their workplace harassment policies: 1. procedures for workers to report incidents of workplace harassment to someone other than the employer or supervisor; 2. the employer's investigative procedure; 3. that the information reported will be treated as confidential unless disclosure is necessary to conduct the investigation or take corrective action, or is otherwise required by law; and 4. that a worker will be informed of the results of the investigation and any corrective action that has been or will be taken.	If passed, Bill 132 will not be significantly onerous for employers that already have detailed workplace harassment policies with a thorough investigative process and confidentiality provisions. However, employers should review their harassment policies to ensure that they meet the procedural requirements of Bill 132, while university policies should be reviewed for a reporting process for complaints of sexual violence, in anticipation of changes to legislation that further protect employees and students from sexual violence and harassment.
Canada New high watermark for human rights damages 4	In *OPT v. Presteve Foods Ltd.*, the Ontario Human Rights Tribunal issued its highest award yet for injury to dignity, feelings and self-respect, in the amount of CAD 150,000. On the other hand, in *Kelly v. University of British Columbia*, the British Columbia Superior Court overturned an award of CAD 75,000 for injury to dignity – the British Columbia Human Rights Tribunal's highest award to date – finding it was unjustifiably high.	This new high watermark for human rights damages illustrates once more the importance for employers to carefully navigate the shoals of human rights laws. Treading water is no longer enough – and has not been for a long time – an employer must demonstrate proactive approaches to meeting and enforcing human rights obligations in the workplace.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
Canada "Right to strike" is protected under Canadian Charter of Rights and Freedoms 4	In *Saskatchewan Federation of Labour v. Saskatchewan*, the Supreme Court of Canada confirmed that legislation limiting the right to strike is unconstitutional unless its limits are reasonable and justified in a free and democratic society. This case establishes a high threshold for justifying laws that limit the right to strike. However, the Court recognized the competing interests of workers on the one hand, and employers and the public on the other. In particular, the Court recognized that it is acceptable for the government to restrict the ability of workers to strike when they are needed to provide essential services, so long as the restrictions are justified and proportionate. Strike restrictions must only go so far as is necessary to ensure that the public is not detrimentally affected. According to the Court, governments should engage with unions to determine what services are truly essential and how many people are required to carry out just those essential services. At a minimum, legislation must provide a forum where governmental decisions on essential services can be challenged, as well as ensuring that workers who are not allowed to strike are given access to a meaningful alternative mechanism for resolving an impasse, such as access to arbitration.	For employers and industries that use alternative systems for resolving a bargaining impasse, it is important to remember that the Court has, time and time again, affirmed that the constitutional right to bargain collectively does not guarantee any particular process. For example, in many provinces, interest arbitration is provided as an alternative means of resolution for bargaining units that provide "essential services." Although the Court did not consider the sufficiency of this alternative in Saskatchewan Federation of Labour v. Saskatchewan (because it was not provided for under the Public Service Essential Services Act), it is likely that such alternatives will continue to pass constitutional scrutiny, so long as they are only unilaterally imposed to the extent that strike activity will have serious implications.
Canada Ontario Superior Court adopts federal test for family status discrimination 4	In *Partridge v. Botony Dental Corporation*, the Ontario Superior Court adopted the federal test for family status discrimination (a.k.a. the "*Johnstone* test") under the Ontario Human Rights Code (upheld on appeal). This test is generally viewed as more favorable to individuals seeking accommodation than previous tests.	Although the *Johnstone* test has been considered and applied in Ontario by the Human Rights Tribunal, the *Partridge* case appears to be the first instance in which an Ontario court has provided its approval of the test. Moving forward, employers operating in Ontario should expect that courts and administrative decision-makers will apply the *Johnstone* test where an employee claims that he or she has been discriminated against on the basis of "family status." Employers will be required to prove that any rule or practice that impacts an employee's child care obligations in a non-trivial way is connected and necessary to the performance of the employee's job and that it was adopted for that reason. At the same time, employers can legitimately expect that employees will make reasonable efforts to find alternative solutions before asking for accommodations at work. In addition, the *Partridge* case appears to be one of the few instances in which a court has ordered a party to pay

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
		compensation for breaching the Human Rights Code. This case may signal that courts are becoming increasingly more comfortable awarding compensation for breaches of the Human Rights Code where the cases are brought before them, rather than a tribunal.
Canada Administrative suspensions as constructive dismissal 4	The Supreme Court of Canada ("SCC") has clarified and expanded the scope of "constructive dismissal." In *Potter v. New Brunswick Legal Aid Services Commission*, the SCC held that placing an employee on paid administrative (i.e., non-disciplinary) leave can constitute constructive dismissal. The SCC determined that employers are required to act in good faith towards their employees and, unless explicitly authorized by the employment contract, employers cannot place employees on leave, even if paid, without providing legitimate business justification. Where an employer fails to do so, the suspension will be viewed as an unauthorized breach of the employment contract, amounting to "constructive dismissal" of the employee, who can then sue the former employer for compensation.	Employers should consider including language in employment contracts to reserve this power, as a constructive dismissal only occurs where an employer has undertaken a unilateral and unauthorized breach of the employment contract. Where the employee has consented or acquiesced to a change, a constructive dismissal cannot occur. Without this language, an employer should ensure it has legitimate business reasons for placing an employee on administrative suspension.
Canada Without cause dismissals permitted in the federal sector 2	In *Wilson v. Atomic Energy of Canada Limited*, the Federal Court of Appeal determined that employees can be dismissed without cause under the Canada Labour Code. Leave to appeal to the Supreme Court of Canada has been granted in this case.	The Federal Court of Appeal's decision provides much-needed clarity to federal employers. It is now settled that without cause dismissals are permitted under the Canada Labour Code, in the same way that they are permitted under many provincial statutes. At the same time, employees can still file a complaint on the basis that they have not received the appropriate notice or equivalent compensation, based on factors such as their age, type of work, length of service, salary and availability of alternate employment. In order to provide a greater level of certainty, federal employers should consider including language in their written employment agreements that limits the amount of notice and severance the employee is entitled to upon termination of employment, but ensuring that this language provides for at least the minimum amounts required by the Canada Labour Code. While the employee may still try to argue that the language should not be enforced, having such a provision will help support the argument that the employee was not wrongfully dismissed.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
US Department of Labor publishes proposed amendments to overtime rules 4	In July, the Department of Labor published proposals to amend the "white collar" exemptions for executive, administrative, and professional exemptions, as well as the exemption for highly-compensated employees. The proposed new overtime rules are designed to extend the Fair Labor Standards Act's ("FLSA") overtime protections to millions of workers and, if adopted, will have a significant impact on employers' operations. The DOL's proposed amendments contain three key changes to the current FLSA regulations: 1. Set the minimum salary required to qualify for the white collar exemptions (administrative, executive and professional exemptions) at the 40th percentile of weekly earnings for full-time salaried workers. Based on 2013 data, this would amount to a minimum salary of USD 921 per week or USD 47,892 annually, almost double the current level. 2. Increase the total annual compensation requirement needed to exempt highly-compensated employees to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers. In 2013, this was USD 122,148 annually. This too is a large increase over the current salary basis of at least USD 100,000 annually. 3. Establish a mechanism for automatically updating the minimum salary and compensation levels for these exemptions going forward. The proposal does not contain any specific changes to these exempt classifications' duties requirements "at this time." Instead, the DOL only "seek[s] to determine whether, in light of our salary level proposal, changes to the duties tests are also warranted" and "invites comments on whether adjustments to the duties tests are necessary, particularly in light of the proposed change in the salary level test." These changes could impact as many as five million workers. The final rules are expected to be published by late 2016.	Employers should consider the following actions: 1. Identify the employee populations in your workforce currently classified as exempt under the white collar exemptions who will not meet the DOL's proposed increases in the salary basis tests, if and when the proposed rule becomes final. 2. Create an action plan to be ready to raise the salary for certain employees to meet the proposed minimum salary threshold or reclassify employees from exempt to non-exempt. 3. If employees are reclassified from exempt to non-exempt, determine an appropriate hourly rate, work schedule, and timekeeping policy and practice for those employees, including an appropriate communication and training strategy and budgeting for salary increases and increased overtime costs.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
US Department of Labor publishes memorandum on misclassification of independent contractors 3	In July, the Department of Labor ("DOL") issued a guiding memorandum, Administrator's Interpretation No. 2015-1, on how to determine whether a worker is an independent contractor or an employee under the FLSA. The memorandum adopts the "economic realities test," which courts commonly use to determine employee versus independent contractor status. The economic realities test weighs six factors, which analyze whether the worker is truly in business for himself or herself, or economically dependent on the employer. Specifically, the factors include: • the extent to which the work performed is an integral part of the employer's business; • the worker's opportunities for profit or loss depending on his or her managerial skill; • the extent of the relative investments of the employer and the worker; • whether the work performed requires special skills and initiative; • the permanency of the relationship; and • the degree of control exercised or retained by the employer. The memorandum concludes by noting that most workers will likely qualify as employees under the FLSA's broad definitions. The DOL's prediction that most contractors are actually employees under the FLSA will likely increase the number of disputes with workers claiming to be misclassified. As those misclassified workers come under the purview of the FLSA as employees (as well as other employment laws), they will be entitled to additional benefits and protections, such as minimum wage, overtime compensation, family and medical leave, and unemployment insurance, which may result in significant liability for employers.	Since it appears that demonstrating that a worker is a true independent contractor will become more difficult, companies should conduct a privileged audit of their relationships with independent contractors to ensure proper classification.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
US – California San Francisco enacts new ordinance requiring predictable work schedules for certain businesses 3	Effective August 2015, the Predictable Work Schedule law ("PWSL") requires "formula retail" businesses with 40 or more locations worldwide, and 20 or more employees in San Francisco, to provide predictable schedules, and two weeks' advance notice for any change in an employee's schedule, as well as provide greater protections for, and equal treatment of, part-time employees. This new ordinance will require several key substantial revisions to most formula or retail stores' operations and hiring practices in California, including: • requirements for set schedules, with extra pay for changes in schedules on short notice; • requirements for certain protections for part-time employees; • provision of additional protections for on-call shifts; and • provision of protections for workforces in the event of a sale of the business. Covered Businesses A "formula retail" business is one that has two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark. This can include retail stores, franchises and chain restaurants. Under the new law, a covered "formula retail" business in San Francisco must: • provide an employee with a description of their work schedule and an estimate of the minimum hours and days they are expected to work each month, including on-call shifts, prior to the start of their employment (note: the employee may request modifications to the proposed work schedule, and the employer must consider and respond to the request); • post work schedules in a conspicuous location or provide them electronically (so long as employees are given access to the electronic schedules at work) at least two weeks in advance;	Covered San Francisco "formula retail" businesses should ensure their on-call and scheduling policies comply with the new law as well as ensure that employees are receiving predictability pay and on-call compensation where required.

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action

	• provide notice to employees either in person or through appropriate forms of electronic communication (e.g., phone, e-mail or text) of any change or cancellation to the employee's schedule, which can trigger "predictability pay" as described below;
	• pay part-time and full-time employees with the same job at the same hourly rate;
	• provide part-time employees with the same access to time off, and the same eligibility for promotions as their full-time equivalents;
	• offer, in writing to the employee or by posting in a conspicuous location in the workplace where notices to employees are customarily posted, any extra work hours to current qualified part-time employees and provide the qualified part-time employees with 72 hours to accept the additional hours before hiring new employees or subcontractors or staffing agencies to perform any additional work; and
	• compensate employees who are scheduled to be "on-call" for a particular shift but are not called in to work with "On-call Compensation" as described below.
	
	Predictability Pay
	
	If a covered employer makes any changes to the posted schedules (i.e., cancels the shift or moves the shift to another date and/or time), the employer must pay the employee with a certain amount of pay in addition to the hours worked, referred to as "predictability pay." Predictability pay is calculated as follows:
	• One hour of pay in addition to the hours worked if changes are made to the work schedule with less than seven days' notice, but more than 24 hours' notice.
	• For changes made with less than 24 hours' notice, the employer must pay the employee either:
	  ○ two hours of pay in addition to the hours worked if the shift is four hours or less; or
	  ○ four hours of pay in addition to the hours worked if the shift is more than four hours.	

Level of impact: 1 = low ⟷ 5 = high

2015

Issue	What has changed?	Recommended action
	There are certain exceptions, which include natural disasters, public utilities failures, voluntary employee shift-trading and the unexpected unavailability of another employee when the employer did not receive at least seven days' notice.	
	On-call Compensation Covered employers are required to compensate employees who are scheduled to be "on-call" for a particular shift but are not called in to work with either: • two hours of pay for shifts of four hours or less; or • four hours of pay if the shift is more than four hours. Employee treatment when selling a "formula retail" business If a "formula retail" business is sold, the new employer must retain, for 90 days, all employees who worked for the former employer for at least six months prior to the sale. If the new employer determines it needs fewer employees, the new employer must retain the employees by seniority based on their date of hire. However, this requirement does not apply to supervisory or managerial employees. A public notice of change of control must be posted at the business within 24 hours of the date of the transfer of ownership. Additionally, the new employer must provide written notice to any and all retained employees about their rights. The law also requires employees to retain employee work schedules and payroll records for three years and post a notice of the law in a conspicuous area at the workplace where it can be easily viewed during the workday.	

Level of impact: 1 = low ⟷ 5 = high

North America: 2016 Preview of important forthcoming changes

2016

Issue	What is changing?	Planning action
Canada The enactment of Bill 18 will begin to have an impact in 2016 4	Many significant changes to Ontario's Employment Standards Act came into force in 2015 as a result of Bill 18, including: (i) the elimination of a CAD 10,000 limit on orders for unpaid wages; (ii) increasing the limitation period for unpaid wages claims from six months to two years; and (iii) adopting a system of automatic increases to the minimum wage, based on the consumer price index.	Employers must ensure that they abide by the new requirements of Bill 18 as necessary.
Canada The new legislation introduced in 2015 with Bill 132, Bill 109 and Bill 12 may be enacted 2	On October 27, 2015, the Ontario Legislature introduced legislation as part of its action plan to stop sexual violence and harassment. Bill 132, an act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters, proposes changes to various statutes, aimed at making workplaces, university campuses, and communities safer, while recognizing the needs of survivors of sexual violence and harassment. On December 10, 2015, the Ontario Legislature passed Bill 109, the Employment and Labour Statute Law Amendment Act, 2015, adding (among other things) a new offense to the Workplace Safety and Insurance Act that prohibits employers from acting with the intention of discouraging or preventing a worker from filing a Workplace Safety and Insurance Board claim, or inducing the worker to withdraw or abandon a claim for benefits. Also on December 10, 2015, the Ontario Legislature's Bill 12, an act to amend the Employment Standards Act, 2000 with respect to tips and other gratuities, received Royal Assent, prohibiting employers from withholding, making deductions from, or collecting tips or other gratuities from employees, unless authorized to do so under the Employment Standards Act and its regulations.	Employers should watch out for the enactment of this legislation and, once becoming law, must ensure that they abide by the new requirements of Bill 132, Bill 109, and Bill 12 as necessary.
US NLRB drastically expands "joint employer" definition 4	In August 2015, the National Labor Relations Board ("NLRB") issued a ruling in *Browning-Ferris* that drastically expanded the NLRB's "joint employer" definition. Under the decision, third party employees may be treated as the contracting company's employees for the purposes of the National Labor Relations Act ("NLRA") when the entities share or codetermine those matters governing the essential terms and conditions of employment. *Browning-Ferris* has far reaching implications for any business that: contracts,	Employers should carefully review subcontracts, service contracts, outsourcing agreements, staffing agency contracts, franchise agreements, corporate subsidiary relationships and/or any other relationship through which control may be exercised over another entities' "employees." Although a "joint employer" finding may be unavoidable in certain circumstances, employers should prepare for such a contingency. In such situations, a broad indemnification agreement should be considered.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	subcontracts or outsources work (e.g., janitorial work, trucking/long-haul shipping, office/secretarial support services, etc.); uses staffing agencies to provide temporary assistance; maintains franchise agreements with other entities; and/or maintains some control over a subsidiary entity. The NLRB's ruling may also provide a template for other government agencies to follow, such as the US Department of Labor's Wage and Hour Division, Equal Employment Opportunity Commission or other government entities.	
US NLRB General Counsel issues report on employer rules and policies that violate NLRA 4	In March 2015, the NLRB's General Counsel issued a report applicable to both union and non-union employers alike, providing guidance on the General Counsel's view of what rules and policies are impermissible under the NLRA. The report describes overbroad rules and policies that, in the General Counsel's view, interfere with, restrain, or coerce employees in their exercise of rights protected by the NLRA's Section 7. Generally, these are overly broad policies which might have a "chilling effect" on protected employee conduct if an employee could reasonably read the rule to prohibit protected activities. The report specifically details several categories of rules, and examples of those rules, that may be impermissible: • rules regarding confidentiality (e.g., "[d]o not discuss 'customer or employee information' outside of work, including 'phone numbers [and] addresses'"); • rules regarding employee conduct towards their employer and supervisors (e.g., "be respectful to the company, other employees, customers, partners and competitors"); • rules regarding conduct towards fellow employees (e.g., "don't pick fights online"); • rules regarding employee interactions with third parties (e.g., "if you are contacted by any government agency you should contact the Law Department immediately for assistance"); • rules regarding the use of company logos, copyrights and trademarks (e.g., "do not use any company logos, trademarks, graphics, or advertising materials" in social media);	Employers should review all rules and policies to ensure that there are no restrictions that may be reasonably interpreted by employees to prohibit protected activities. The General Counsel seems principally concerned with vague rules that may have sweeping effects if read liberally.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	• rules regarding photography and recording (e.g., "taking unauthorized pictures or video on company property is prohibited"); • rules regarding employees leaving work (e.g., "walking off the job is prohibited"); and • employer rules regarding conflicts of interest (e.g., "employees may not engage in any action that is not in the best interest of the employer"). An employer that maintains an overbroad rule or policy may be required to retract the rule or policy and inform all employees that were covered by the rule or policy that it was overbroad, that it will be removed/replaced, and that the employees have rights under the NLRA. Employers may be required to inform employees in a variety of ways, including posting physical and electronic notices and personally notifying employees either electronically or by other means.	
US Accommodations provided for "similarly limiting conditions" must also be extended to pregnant employees 3	The US Supreme Court held in *Young v. UPS* that claims under the Pregnancy Discrimination Act ("PDA") are evaluated by comparing the treatment of pregnant workers to the treatment of "similarly limited" workers, rejecting a policy of granting light duty to employees with certain limitations, such as those injured on the job or disabled, but not to pregnant employees.	Employers should analyze their accommodation and light duty processes and procedures. If a pregnant woman requires an accommodation that is provided to some other similarly situated workers, she should also have the benefit of that accommodation.
US – California California Department of Justice begins enforcement activity under the CTSCA 2	On April 1, 2015 and again on October 1, 2015, the California Department of Justice began enforcement activity of the CTSCA, which came into effect in 2010 and issued warning letters to companies not in compliance with its requirements. The law requires retail sellers and manufacturers doing business in California with over USD 100 million in worldwide gross receipts to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods they offer for sale. CTSCA sets forth specific guidance on the items that must be disclosed. For retail sellers and manufacturers with Internet websites, disclosures must be posted "with a conspicuous and easily understood link to the required information placed on the business' homepage." Cal Civ.	Companies with manufacturing or retail sales listed as their principal business activity on California tax filings should ensure that they are compliant with the CTSCA requirements and take steps to diligence their supply chain.

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	Code §1714.43, subd. (b). For those covered retail sellers or manufacturers without a website, written disclosure must be provided within 30 days of receiving a written request for the disclosure from a consumer. The remedy for the violation is an action brought by the State Attorney General for injunctive relief, but the CTSCA does not limit remedies available for violations of any other state or federal laws. Potentially, consumers can bring claims under the California Business and Professions Code Section 17200 for unfair business practices and Section 17500 for false advertising.	
US – California California expands equal pay act to make it easier for employees to establish successful gender-based pay disparity claims 4	On October 6, 2015, California's Governor Jerry Brown signed the Equal Pay Act into law. The Equal Pay Act amends Labor Code 1197.5 to prohibit employers from paying women less than men for performing the same job. The law, based on the Paycheck Fairness Act that has died in Congress several times, is touted as the most sweeping legislation in the nation to date aimed at closing the wage gap. Previously, employers were prohibited from paying employees at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work, requiring equal skill, effort and responsibility. The Equal Pay Act removed the "same establishment" requirement, which means that employees can now use any of the employer's employees at any establishment as a point of comparison when bringing unequal pay claims. The new law also replaces the "equal work" standard with a more subjective "substantially similar work standard," further lessening the burden on employees. To bring a claim, an employee must now demonstrate that an employee of the opposite sex is being paid a higher wage for "substantially similar work, when viewed as a composite of skill, effort and responsibility." This new standard for the comparative positions is much broader than under the previous law. If there is a wage disparity for substantially similar work between a male and female employee, the employer will have the burden to demonstrate that the wage differential is based on seniority, merit, a system that measures earnings by quantity or quality of production or a bona fide factor	These amendments will inevitably lead to a rise in equal pay litigation as plaintiffs' lawyers test the relaxed burden of proof. Employers with California workforces should: • inventory jobs that are "substantially similar" using the new law's definition; • conduct privileged audits to determine pay disparities on the basis of gender, and prospectively justify different wages for employees of different sexes on one of the permitted bases under the law; • properly train managers who make compensation decisions about the impact of different raises or bonuses; • remove confidential designations on wage policies or agreements; and • update wage data retention periods to retain records for at least three years, if not the recommended four years following termination (the longest statute of limitations under California law).

Level of impact: 1 = low ⟷ 5 = high

2016

Issue	What is changing?	Planning action
	other than sex. Under the new law, one or more of these factors must account for the entire wage differential. Previously, Labor Code 1197.5 was silent on the definition of "bona fide factor other than sex." Under the new law, a bona fide factor must not be derived from a sex-based differential in compensation, must be related to the position and must be consistent with a "business necessity," which is now defined as "an overriding legitimate business purpose" that must be effectively satisfied by the factor relied upon. Further, the business necessity defense is not available if the employee demonstrates that an alternative business practice could serve the same business purpose without producing the wage differential. These new standards now make a successful defense to pay disparity claims much more difficult in California. The new law also explicitly prohibits employers from preventing California employees from disclosing their wages, discussing the wages of others, asking about another employee's wages or encouraging another employee to exercise his or her rights under Labor Code 1197.5. Lastly, employers now must maintain records of wages, wage rates, job classifications and other terms and conditions of its employees for three years, instead of two.	
US – California Minimum wage and salary basis increases 5	2016 will bring several important increases in California's statewide and local minimum wages as set out in the table below.	Employers should continue to monitor developments at the state and local levels to ensure compliance with changing minimum wage laws.

California Minimum Wage and Exempt Salary Increases	
State Minimum Wage	USD 10.00/hr (eff. Jan 1, 2016)
Exempt Salary	USD 41,600 annually (eff. Jan 1, 16)
Computer Professionals	USD 87,185.14 annually OR USD 41.85/hr (eff. Jan. 1, 2016)

Level of impact: 1 = low ⟷ 5 = high

Local Minimum Wages	
Berkeley	USD 12.53/hr (eff. Oct 1, 2016)
El Cerrito	USD 11.60/hr (eff. Jul 1, 2016)
Emeryville	USD 12.25/hr OR USD 14.44/hr (56+ employees)(eff. Jul 1, 15)
Los Angeles	USD 10.50/hr (26+ employees) (eff. Jul 1, 2016)
Mountain View	USD 11.00/hr (eff. Jan 1, 2016)
Oakland	USD 12.55/hr (eff. Jan 1, 2016)
Palo Alto	USD 11.00/hr (eff. Jan 1, 2016)
Richmond	USD 11.52/hr (eff. Jan 1, 2016)
Sacramento	USD 10.50/hr (100+ employees) (eff. Jan 1, 2017)
San Francisco	USD 13.00/hr (eff. Jul 1, 2016)
San Jose	USD 10.30/hr (No increase for 2016)
Santa Clara	USD 11.00/hr (eff. Jan 1, 2016)
Sunnyvale	USD 10.30/hr Pending approval to increase to: USD 11.00/hr (eff. Jul 1, 2016)

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