



The GEI Annual Global Report

National Regulatory Trends on Human Resources Law

Prepared by the

Global Employment Institute
International Bar Association

August 2012



Contents

	Page
1. Introduction	4
2. Methodology	5
3. General trends	7
4. Conclusions	19
5. About the International Bar Association Global Employment Institute	20
Schedule 1. Countries and lawyers	21
Schedule 2. Questionnaire	23

© Copyright 2012 International Bar Association. All rights reserved.

The recommendations and opinions expressed herein are those solely of the International Bar Association Global Employment Institute and do not necessarily represent the views of the International Bar Association. No publication is permitted without prior permission.

1. Introduction

- 1.1 After completing the 10/20 Survey in 2010/2011 and the Balancing Report in 2011/2012, the Global Employment Institute (GEI) of the International Bar Association (IBA) has undertaken a new project: the Annual Global Report (AGR). The AGR will be an annual report highlighting certain general international trends in human resources law (principally discrimination, employment, industrial relations and immigration law). Each AGR will be based on responses from lawyers from approximately 35 countries. In some specific years, GEI is planning to increase this number of countries responding to around 60 to have a wider perspective. The methodology that will be used is described in Section 2 below.
- 1.2 This publication is the inaugural AGR and covers trends in human resources law during calendar year 2011 (although for some countries a number of new developments taking place at the beginning of 2012 have been recorded). Each AGR will build on the historical perspective of the previous editions. This may prompt changes to the coverage of future editions of the AGR.
- 1.3 Please note that it is not the intention or purpose of the AGR to set out the law on any particular topic. Its aim is to highlight changes and trends. Any reference to a particular law is not intended to be a description or summary of that law and should not be relied upon as a statement of the law or treated as legal advice. Before taking any action a reader should take appropriate legal advice.

2. Methodology

- 2.1 Lawyers from 36 countries (Schedule 1) were asked to respond to the 20 questions set out in the annexed Questionnaire (Schedule 2). The questions were designed to cover the most relevant issues relating to employment, industrial relations, discrimination and immigration law. Lawyers were asked to consider only relevant changes during 2011 (and the start of 2012 in some cases) and to explain them and their significance very briefly. As previously noted the goal of the AGR is to highlight general international trends in human resources law. Readers seeking more in depth analysis are welcome to contact the GEI or the lawyers who participated in the survey.
- 2.2 The Council of the GEI appointed a **Working Group** for the development of this Report. The members of this working group were: Alfredo Kupfer Dominguez, *Sánchez Devanny, Mexico*; Barry Walsh, *A&L Goodbody, Ireland*; Caroline André-Hesse, *Altana, France*; Dayo Adu, *Bloomfield Advocates and Solicitors, Nigeria*; Iván Suárez, *Bufete Suárez de Vivero, Spain*; Marco Mazzeschi, *Mazzeschi, Italy*; Minna Saarelainen, *Borenius, Finland*; and Rebecca Ford, *Clyde & Co, UAE*.
- 2.3 This Working Group, with the coordination of the GEI Vice-Chair for Institutions, Keith Corkan, and the contribution of Vice-Chairs for Knowledge Management, Mariann Norrbom and Dirk Rutgers, Vice-Chair for Internal Affairs, Graeme Kirk and member of the Council, Raymond Jeffers, who also was in charge of the final English editing, designed the Surveys and contacted lawyers from different countries (Schedule 1). The GEI Council wishes to convey its gratitude to all of them for their participation and interest in the development of the survey. The GEI Council would also like to express its thanks to Elisabet Calzada, *associate at Cuatrecasas, Gonçalves Pereira*, who greatly contributed to the drafting of the Report, and to Sandra Peris (pa to the GEI Chair and executive assistant from the organisation of *Cuatrecasas, Gonçalves Pereira*), who helped with the format and the editing of the Report and the logistics and organisation of meetings and conference calls.
- 2.4 A first draft of the Annual Global Report was submitted to qualified senior HR managers and experts in an Open Meeting on 9 July 2012 in London at the offices of Laytons Solicitors and sponsored by the IBA. Some of the conclusions of this important meeting, that highly enriched and qualified our Initial Report, have been included. The participants at this Open Meeting were:
- From the GEI Council, Salvador del Rey, Dirk Jan Rutgers, Graeme Kirk, Keith Corkan, Mariann Norrbom, Pascale Lagesse (Vice-Chair of the GEI), Raymond Jeffers, Scott Borene and Els De Wind (Co-Chair of the IBA Employment Committee) and in attendance to the Council, Shalini Agarwal (Vice-Chair of the IBA Immigration and Nationality Law Committee), Anders Etgen (Senior Vice-Chair of the IBA Discrimination Law Committee) and Jelle Kroes (Secretary of the IBA Immigration and Nationality Law Committee);

- From the Working Group for the Annual Global Report: Alfredo Kupfer Dominguez, Barry Walsh, Caroline André-Hesse, Iván Suárez and Marco Mazzeschi;
- Senior human resources managers: Elisa Bleier (BBVA), Hanne Blume (DONG Energy), Patricia Burke (Servicemaster), Richard Devereaux (Intel Corporation), Dolores Sarrión (Acciona), Diane Van Breda (Dekra) and Baba Zipkin (IBM); and
- Experts: Matthew Lynch (PriceWaterhouseCoopers – PwC), John McMullen (Durham University), Manuel Ortigao (Eurofound) and Steven Tobin (International Labour Organization – ILO).

The GEI Council wishes to thank all those attendants for their great contribution to this Report, although only the GEI is responsible for the views included in it.

3. General trends

3.1 Changes in flexible working practices (such as remote working)

In 24 of the surveyed countries no significant development were reported in relation to flexible working practices. For the remaining countries, legislation has either been drafted, or debated in the relevant parliaments, or has already been adopted. A broad array of topics has been covered including fixed-term agreements, temporary assignments, trial periods, and modulation of working time.

The main trend identified is the regulation of existing practices. Two developments are worthy of note. First, there is an increase in the regulation of two types of employment contracts: part-time contracts and fixed-term contracts. The new laws are focused on limiting the extensive use of these two forms of contracts. Secondly in four countries (Mexico, Poland, Spain and Russia) laws have been introduced in relation to teleworking and remote working. It will be interesting to see if more countries will follow suit and seek to regulate the growing phenomenon of remote working.

3.2 Changes in laws relating to maternity, paternity and dependants

Only seven of the surveyed countries reported no recent developments in laws on maternity, paternity and dependants. Thus, the overwhelming number of countries reported change. The main trend is an increasing regulation relating to maternity (more so than paternity or dependants).

In particular, recent enhancements to maternity rights have occurred in two distinct ways:

- by improving the period of maternity leave (for example, extending it from two weeks to four weeks in Poland; adding prenatal leave to postnatal leave in the case of premature birth in Turkey; creating 14-weeks maternity leave in Colombia; and aligning the period of maternity leave in China with the International Labour Organisation (ILO) Maternity Standards Convention 2000 by extending the maternity leave period from 90 days to 14 weeks); and
- by expanding protection against termination of employment based on pregnancy or motherhood (for example, an employer may not terminate the employment of a woman employee during her pregnancy and after 18 months of giving birth in Greece; in Cyprus a similar protection has been introduced that covers the period ending three months after the cessation of maternity leave, and in the UK, providing protection from unfavourable treatment).

On top of changes to legislation, courts are also following these trends in their rulings. In Denmark, for example, while legislation has not changed, the Supreme Court ruled that anti-discrimination protection based on pregnancy covers female employees who are pregnant regardless of whether the employer is aware of their pregnancy or not.

3.3 Changes in the regulation of executive compensation, especially with regard to banking reform and accountability

Dealing with perceived problems associated with executive remuneration seems to mark another interesting general trend. In a significant number of countries (especially Brazil, certain European countries, Japan, Russia and South Africa), recent reforms on executive compensation (most of the time affecting only certain categories of executives) have been developed. Although a variety of solutions have been implemented, the general trend is regulatory provisions limiting salaries and remuneration (for example, a salary cap in Ireland; an intended salary cap in Spain; and a procedure for approval of remuneration by shareholders in South Africa).

3.4 Changes with regards to: a) termination and b) suspension of employment contracts

3.4.1 Termination of employment contracts

From the responses to the Questionnaire, it seems that not many countries have introduced changes to their termination of employment rules. However, where changes have been made three trends are noteworthy.

First of all, some countries have enacted rules related to dismissal that give greater protection to those employees with longer service. Canada and the Czech Republic are examples.

Secondly, there remain several countries whose legislation places significant barriers to termination of employment. This can be a considerable challenge for employers seeking flexibility. In Israel and the United Arab Emirates for example, in order to terminate employment the employer must obtain prior authorisation from the respective Ministry of Labour. Mexico continues to place a high standard of proof on employers to establish a 'cause' that will permit termination of employment.

Thirdly, and this is perhaps the most interesting trend, there seems to be a global trend to balance the interests of business with employees' rights. While some countries, such as Spain or the Netherlands, have recently amended national legislation to protect employers in financial crisis (making the termination process easier and less expensive for the employer), other countries, such as Switzerland

and Italy, have increased the employer's cost of terminating employment. Arguably the overall direction of these laws is towards increasing severance payments rather than stopping employers effecting dismissals.

3.4.2 Suspension of employment contracts

The responses to the Questionnaire did not reveal any significant changes in practice or law related to suspension from work.

3.5 Changes that affect: a) employees' rights following a business reorganisation, merger or acquisition and b) employee involvement in works councils etc.

3.5.1 Employee rights before, during or after a business reorganisation, merger or acquisition

Not many countries reported important changes to their laws establishing rights for employees in the context of reorganisations, mergers or acquisitions. Nonetheless, some comment on current laws may be of interest.

The European Union requires each Member State to bring into force a national law establishing information and consultation rights for employees and their representatives in the context of business reorganisations and transfers of undertakings. The national law must incorporate the provisions of an EU Directive. When introducing legislation in order to comply with this EU Directive some Member States have included additional features. Germany for example has special rules for codetermination rights of work councils; Ireland requires employers to include information regarding workers supplied by a personnel agency; and Spain establishes severance rights for unfair treatment connected to such transactions.

Some countries have strict rules that preserve rights of employees existing prior to the relevant reorganisation, merger or acquisition. For example, in the Czech Republic, Israel, Italy and Mexico the law requires that terms and conditions of employment are not altered to the detriment of employees.

The concept of a business reorganisation, merger or acquisition leading to a transfer of employment from one employer to another is still not a universal right in all the countries covered by the Questionnaire. Three examples can be given to illustrate this divergence. In South Africa a transfer of business generally automatically entails the transfer of employees. In the Netherlands this requires a written employment contract or otherwise employees will not transfer. In the United Arab Emirates there is no transfer of employment but the termination of employment with one employer and the commencement of a new and different employment with the acquirer or merging entity.

3.5.2 Employee involvement in works councils, collective agreements or other consultative bodies

Similar to the above, no major changes appear to have taken place with respect to legislation dealing with employee participation or involvement in work councils and other employee representative bodies. Even so, three developments are worthy of note.

First, most of the revised laws in Europe have been prompted by two EU Directives. These are the EU Directive mentioned at 3.5.1 above and another Directive requiring Member States to introduce into their national law rules requiring the establishment of a European Works Council for information and consultation purposes in respect of limited transnational matters. Unsurprisingly therefore in the main the new laws provide broader protection for employees in the case of transfers of undertakings (with some providing for extension of rights to agency workers), and/or regulate European Works Councils.

Secondly, Germany is notable in having laws establishing co-determination rights which have been in place for many years. German law recently introduced changes providing for employees' participation in work councils at a business-operation level and in supervisory boards.

Thirdly, there are still important differences in the level of employee participation and employee involvement in various countries. An example is in relation to the scope of the application of collective bargaining agreements. For example, in Canada this is limited to the workplace, but in Greece this can have further reach within the different grades of Greek unions. In China, new regulations relating to employees' representative congress came into effect in May 2011. Since then, employers with 100 employees or more are required to have an employees' representative congress. Finally, a few countries, such as, the United Arab Emirates, do not recognise the right of organising unions and collective bargaining.

3.6 Changes in International Labour Standards (ILS)

Except for limited activity in Australia and New Zealand, most countries surveyed did not identify either union campaigns or use of international labour standards as a material trend in 2011. However, countries such as Brazil, Canada, Colombia, Mexico, Nigeria and Switzerland reported that multinational companies have voluntarily adopted or adhered to several international labour standards, or conventions of the International Labour Organisation.

Interestingly in some European countries there are reports of international labour standards being used by courts in giving their rulings. Examples include France, Germany, the Netherlands and Spain. Even so some limits have been placed on the reach of such international labour standards. For example in Japan, these standards have an important influence, but union campaigns are banned from 'invading employer's private life'.

3.7 Changes in collective negotiation, freedom of association, strikes and industrial action

In these matters, there have been only slight modifications in the countries surveyed.

Many lawyers answering the Questionnaire pointed out that strikes and protests are a common issue in their country, probably related to the global economic crisis. Such is the case in India, where trade unions have taken a more aggressive stance on redundancies. However, in general and in most countries, the influence of unions has been gradually decreasing. But this is not universal. In Sweden, for example, unions retain a powerful position. In the US, the NLRB has been trying to implement Obama's policy initiatives enhancing the ability of labour organisations to organise workers in the US.

Some interesting union responses were noted in the answers. For example, in Mexico a small groups of independent unions have tried to team up with social and even religious groups, but they have not yet become a national concern. In New Zealand even though unions have been losing presence, some of them are driving active media campaigns to win public and political support. These examples may be evidence of a trend of unions adopting new strategies to reverse any perceived decline in their influence.

Turning to strikes and other industrial action, few significant changes were reported. A notable exception is in Germany where the Federal Labour Court has considered legitimate new forms of strikes, such as 'flashmobs' or boycotts. Also in Germany support strikes are considered lawful except in some cases in which they could be disproportionate, such as the support strike of air traffic controllers to airport ground staff.

Few answers to the Questionnaire reported amendments to collective bargaining procedures. Those countries that have introduced modifications demonstrate a trend that consists of adjusting these procedures to current times and needs. Two examples can be given. First of all, in Spain, the negotiating committee is now entitled to review collective bargaining agreements while they are still in force. The application of collective bargaining agreements after their fixed expiration date and while they are being renegotiated has also been modified and is now limited to one year. The aim is to put an end to the former situation where collective bargaining agreements could be applicable for much longer than originally intended. A second example is in Russia where a new law entitles the parties to submit their collective disputes to a permanent labour arbitration tribunal.

3.8 Changes in restrictions on corruption and bribery in the workplace and whistleblowing

Answers to the Questionnaire revealed two different approaches by legislators. On the one hand some countries have addressed concerns over corruption and bribery at the workplace and rights for whistleblowers by introducing very specific regulations. On the other, a number of countries do not have workplace-specific regulation and instead rely on applying sanctions provided for by more general laws set out in criminal codes.

It seems that this topic is currently of concern in Europe since several countries are either working on a draft law or have recently approved regulations. This is the case for the Czech Republic, which does not have special regulation to protect whistleblowers, but a specific law is now being prepared. Sweden also has a new law which entered into force on 1 July 2012 and will change provisions of the Swedish Penal Code. Switzerland has a draft law in preparation. The Finnish Criminal Law was amended on 1 October 2011 to include bribery. Lastly, Ireland had weak legislation on corruption and bribery but in 2011 the government included corruption and bribery in a list of new offences of 'withholding information'. The Irish government has recently promised to consolidate all the existing legislation into a single statute with a view to clarifying the different enactments presently in operation. The UK adopted the Bribery Act 2010, that came into force in July 2011, which applies to the UK, international organisations and UK individuals.

Putting recent European developments to one side, it is worth noting as a very significant issue the extraterritorial application of the US and UK bribery laws. These laws may have a significant effect in some countries even though there are no national regulations. India, for example, does not have a specific law but British and American multinationals operating in India must observe their own national regulations. Something similar occurs in South Africa where US and British multinationals with subsidiaries in the country are very proactive in complying with their national anti-corruption legislation. Another aspect of this extraterritorial influence can be seen in China where the US Dodd-Frank reforms have affected whistleblowing activity in China – in November 2011 the US SEC reported that more whistleblower complaints came from China than any other non-US jurisdiction. Finally, in parts of China regulations have been issued that place limitations on the use of commercial pre-paid card or cash rewards for whistleblowers.

3.9 Changes with regard employment cases before the courts

There have been no significant changes in this field in most countries surveyed. Nonetheless, some three changes are of note.

The Czech Republic has launched a trial version of a database covering the case law of lower courts, including labour law rulings. This is freely accessible but the names of the parties remain anonymous to protect their personal data.

In Greece by Law 3994/2011 the payment of a judicial stamp is required in declaratory actions, and this applies to labour disputes. Consequently the cost of labour justice has become more expensive.

On 1 January 2011 the Swiss Civil Procedure Code entered into force. As from that date, Switzerland has a uniform Procedure Code. Prior to that date, each of the 26 cantons had its own Procedure Code.

3.10 Changes in enforcing restrictive covenants and obligations of confidentiality by employers

In nearly all countries surveyed there were no major legal developments identified. Consequently, no broad trends have been identified. However, the lawyers' responses included some interesting comment on how the courts react in practice to applications to enforce restrictive covenants.

There was a broad consensus that employment agreements in most countries contain restrictive covenants and confidentiality clauses, particularly for senior employees. But in the overwhelming majority of the countries (including Canada, India, Ireland and UAE) it was noted that restrictive covenants are generally interpreted narrowly by courts and in favour of the employee defendant. Generally speaking for an employer to enforce a restrictive covenant successfully the employer must identify a real commercial need that must be protected; the employee must be sufficiently senior to justify the restriction; and the restrictions of the covenant must be reasonable in time and scope. Even so in some countries these factors will not suffice. For example, in Russia such covenants are generally considered unenforceable, although they are still used in practice in employment agreements to exert some moral pressure on employees. Similarly a number of other countries including India noted the 'psychological' value of such covenants for employers even where the covenants are difficult to enforce in practice.

In some countries, such as Japan, Spain and Sweden, it was noted that payment to the employee for such covenants is generally required.

A small number of countries (Ireland and Malaysia) also referred to new statutory whistleblowing provisions which are relevant to obligations of confidentiality by employers. These provisions may serve as a defence to employees accused of breaching confidentiality obligations owed to their employers.

3.11 Changes related to privacy, surveillance, data protection, social media and human rights

A large majority of the countries surveyed identified that new privacy or data protection legislation had been implemented or is expected soon. To varying degrees Australia, Brazil, Canada, China, Colombia, Germany, India, Ireland, Hong Kong, Malaysia, Mexico, the Netherlands, Poland, Russia, South Africa, and Sweden have new or expected legislation. These new or expected laws introduce further complexity to the regulation of the processing of employee information by employers. This will generally result in a higher level of compliance being required by employers. Some of the new legislation in Member States of the European Union is likely to be based on a proposal at EU law level for a new regulation relating to personal data. This is an area that continues to develop and further changes are likely in the coming years.

A number of countries noted the growing trend of employment issues related to the use of social media such as Facebook by employees. It was noted that employment tribunals and courts in a number of the countries surveyed have upheld dismissals where the employee used social media in a manner which damaged the interests of the employer or brought the employer into disrepute. However, these cases are generally fact specific so that it would be dangerous to conclude that the use of social media is or is not always a lawful ground for dismissal.

3.12 Changes regarding discrimination at the workplace by reason of gender, sexual orientation, age, race, nationality, ethnic origin, ideology, religious beliefs and disability

The majority of the countries surveyed identified the existence of anti-discrimination legislation based on one or more of the above prohibited grounds especially gender, age, nationality, sexual orientation and religion. Among these grounds, it seems sex/gender is the discriminatory ground in respect of which most countries have recently legislated. The trend that countries seem to follow is to issue new regulations that focus either on eliminating the wage gap or on ensuring a higher representation of women on boards of directors. The latter trend calls for more comment.

Various countries have experienced a growing political debate around gender balance in employment, including on boards of directors. But in most cases no specific legal developments have occurred. A relatively small number of countries have voluntary codes of practice designed to promote gender balance on boards of directors including many state boards. Most of these appear to be 'aspirational' in nature and not legally binding. However, in France there is legislation which actively requires specific balanced gender representation on boards. Lastly, Canada and South Africa have proposed legislation regarding better gender balance in employment.

Some other grounds (such as, religion or race) are the object of new regulations. This seems to be taking place in particular in countries that have historically had serious problems in relation to the discrimination in question, for example South Africa. Also the US is experiencing some development with regards to this matter, since a possible amendment to Title VII might take place in order to provide protection in case of discrimination based on sexual orientation.

3.13 Changes to the law of retirement

Retirement is an issue of current regulation in many countries. European countries that are Member States of the EU share one trend. Almost all of them have regulated on the retirement age and the trend is to extend the age of retirement so that employees might retire later than before – such is the case of France (where legal retirement age will be 62, but full rate retirement age is 67), Germany (where full statutory pension age is 67) or Ireland (where state pension age will be 66 in 2014, 67 in 2021 and 68 in 2028). Some other countries, such as Malaysia, which did not have a retirement age imposed by the law are now regulating on the issue. Spain has recently eliminated the possibility of collective agreements regulating compulsory retirement for employees at 65.

3.14 Changes relating to the engagement of temporary or agency workers

From the responses to the Questionnaire, it seems that the use of temporary workers and agency workers is on the rise. Furthermore, legislation is being passed in a great number of countries regarding both temporary and agency workers.

Some national regulators are taking steps towards limiting the use of temporary and agency workers. In France, courts have clarified that employers cannot resort to temporary workers to replace workers on strike; Japan has limited the number of possible renewals for fixed-term employment agreements or prohibited discrimination between fixed-term and permanent employees; Germany is regulating on the 'lending' of employees between a group of companies.

In any case, regulations are providing further protection to these workers by affording them equivalent conditions of employment and remuneration as the ones applicable to permanent employees (such has been the case of the UK, Finland, Germany, Ireland, Japan), by automatically transforming agency workers into permanent employees or by compelling the user company to notify these employees of any vacancies (for example in Finland and Germany).

Even though regulations on agency work are more common, there have been some amendments to laws on temporary work in a number of countries. Such new regulations tend to limit the number of times a fixed-term contract may be renewed or provide for other measures giving greater protection to temporary workers.

3.15 Changes in immigration laws regarding recruitment of foreign nationals

From the responses to the Questionnaire, seemingly no general trend can be identified. However, having said this, there is a case for arguing that two patterns do emerge. The first pattern is that the amendments to immigration laws are frequently linked to the economic situation of the country in question. Thus, immigration rules are 'tightened' if the national economy is perceived as not growing (for example in South Africa, Turkey and Spain) and immigration rules are 'softened' if the economy is perceived to be growing (for example in Germany and Japan). It is worth highlighting the German perspective on the issue. Here immigration laws are being discussed as a measure to attract talent and, therefore, German legislators are seeking to reduce barriers for talented staff. The UK introduced legal changes and created a new immigration category aimed at talented workers, namely the Tier 1 'exceptional talent' category.

The second pattern is that in those countries that have introduced amendments to their immigration laws there is a distinction between the treatment for highly qualified employees and that for blue collar employees. Generally the rules are less 'tight' for the former group.

3.16 Changes to the right of permanent residence of foreign nationals

The right of permanent residence seems not to be of the greatest concern for legislators and national governments. A small number of countries (seven) reported that recent developments had taken place. Of these seven countries, three were EU Member States. Their introduction of new laws was prompted solely by the need to implement EU regulations on the matter. These regulations provide for a more extended right of permanent residence. Remarkably Italy, while a Member State of the EU, has introduced additional barriers to permanent residence.

3.17 Changes to immigration rights of families of foreign nationals employed in the country

As with the previous topic this one seems not to be of the greatest concern for legislators and national governments. Again only eight countries have amended their laws. Interestingly such changes made have exhibited two opposing approaches. On the one hand, some family reunification regulations have been made stricter in terms of making it more difficult to obtain residence permits for family members (such as in Belgium, the UK and Spain). On the other, some regulations, such as Japan and Mexico, have focused on the protection of the family unit and so have extended their protection. In a similar vein to that noted in relation to the previous topic Italy has introduced additional requirements.

3.18 Changes to working rights or rights to benefits for families of foreign nationals

None of the countries surveyed reported any significant changes to working rights or rights to benefits for families of foreign nationals.

It is worth pointing out that Germany and Japan have recognised a need to give special treatment to the spouses and families of those employees they perceive as desirable immigrants such as scientists and white-collar employees. These two countries have regulated favourably in relation to the spouses of such desirable employees by providing incentives to live in the country. Other countries competing for such employees may have to introduce similar incentives.

3.19 Changes to immigration laws relating to the establishment of a branch or subsidiary of a foreign company

None of the countries surveyed reported any significant changes to immigration laws relating to the establishment of a branch or subsidiary of a foreign company. Some changes in tax law were reported but this is beyond the scope of the AGR.

3.20 Other changes in HR law

The last question in the Questionnaire provides the lawyers with an opportunity to comment on any other developments. As this is an open question, a variety of answers were given. Looked at from a very broad perspective perhaps two trends can be extracted from the responses.

First of all, we are not witnessing an end to the evolution of human resources law. In almost every country changes are taking place in the way the world of work is practiced and regulated. The coverage of change is diverse: from health and safety to working time to minimum wage to penalties for employment infringements.

Secondly, EU Member States are particularly active in introducing new laws: mostly to protect employees. This is no surprise because in recent years the European Commission has been very active in pushing through new regulations and Directives. It is incumbent on Member States to incorporate those laws into domestic law. There is thus an inevitable time lag between the Commission finalising the laws and a subsequent flurry of implementation activity by Member States. The result is a number of similar laws across Europe. Unfortunately this does not produce one homogenous European labour law for many reasons. One such reason is the predilection of some Member States to depart from the Commission's text.

A number of Member States are attempting to limit the scope of EU employment regulation. In general terms they are finding this difficult partly because employee protections are entrenched, and also because the adoption of new regulations to replace the old are subject to dispute resolution and interpretation before the courts and tribunals which are required to enforce EU laws.

4. Conclusions

This first IBA GEI Annual Global Report has revealed several general trends in discrimination, employment, industrial relations and immigration law.¹ Of these, five trends worthy of special notice. All are likely to feature in future editions of this Report. They are:

- a) **Maternity leave** is currently an issue of concern and change. Amendments in national laws take the same direction: providing more protection to mothers and pregnant employees. This issue inter-relates with the increasingly important matter of work-life balance and the need to hire and to retain talented workers.
- b) **Executive compensation** limitations are being regulated in a fair number of countries. It is difficult to determine whether this is only a temporary concern linked to the current global economic crisis, or if this is the beginning of a continuing desire to restrict executive compensation packages, at least in certain sectors and under specific circumstances.
- c) Many of the countries surveyed have recently approved or are in the process of approving new **laws on data protection**. Those countries exhibit a common concern with regard to the use, transfer and collection of personnel data by employers. Regulations try to put limits on such transfer and controls on employers' access to such information. Further developments in this area can be expected in the near future.
- d) **Atypical work** is on the rise worldwide, especially in the form of temporary or agency work. Agency work, far more than temporary work, has been an object of concern for national legislators, who are following a course of providing broader protection to agency workers. It will be interesting to observe in future editions of the AGR if this increase in the importance of atypical work is solely a result of the economic crisis or, on the contrary, it is a more permanent feature of the labour market.
- e) With respect to **immigration law**, it is difficult to deduce a general trend from a regulatory perspective since regulations on the issue are very specific and technical. However, two patterns can be identified. First, there is a couple of differing approaches to the immigration of employees. Some countries are becoming 'tougher' with regard to immigration, notably countries with economies perceived to be in crisis. Other countries, those perceived to have growing economies, treat immigration in a 'softer' way. Secondly, there is a clear dichotomy between 'soft' and 'tough' treatment for categories of employees. For example, making the rules applicable to high-skilled employees more flexible than those applicable to low-skilled employees.

¹ At the open meeting on 9 July 2012, the senior human resources managers present observed that the more challenging HR issues for their organisations are off-shoring, service centralisation, talent for leadership and post-merger integration. Accordingly these will be the subject of forthcoming GEI initiatives and will be the focus of further analysis in future AGR's.

5. About the International Bar Association Global Employment Institute

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

The Executive Council Officers of the IBA GEI:

- Chair: Salvador del Rey
- Vice-Chairs for institutions: Keith Corkan and John K. Weir
- Vice-Chairs for multinationals: Pascale Lagesse, Bob Mignin, Julia Onslow-Cole and Rob Towner
- Vice-Chairs for knowledge management: Mariann Norrbom and Dirk Rutgers
- Vice-Chair for internal affairs: Graeme Kirk

How to join

If you would like to join the IBA Global Employment Institute or one of the other committees in the Human Resources Section, or if you would like further information on section or committee activities, please visit www.ibanet.org.

We also invite you to contact the IBA Membership Department on:

Tel: +44 (0)20 7842 0090, Fax: +44 (0)20 7842 0091

or email member@int-bar.org

Further information is available at the IBA website:

www.ibanet.org/LPD/Human_Resources_Section/Global_Employment_Institute/Global_Employment_Institute_Home.aspx.

Schedule 1: Countries and lawyers

AUSTRALIA

Anne O'Donoghue (Immigration Solutions Lawyers) – immigration law

Adrian Morris (Blake Dawson) – employment law

BELGIUM

Bernard Caris (Liedekerke) – immigration law

Chris Van Olmen (Van Olmen) – employment law

BRAZIL

Maria Isabel Tostes da Costa Bueno (Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados) – employment and immigration law

CANADA

Lukasz Granskik and Team - Iysra Siddiquee (Norton Rose – Montreal) – employment and immigration law

CHINA

Lesli Ligorner (Simmons & Simmons) – employment and immigration law

COLOMBIA

Lorena Arambula (Cardenas & Cardenas Abogados) – employment and immigration law

CYPRUS

Natasa Aplikiotou and George Georgiou (Georgiou & Associates) – employment and immigration law

CZECH REPUBLIC

Oldrich Baroch (Baroch-Sobota) – employment and immigration law

DENMARK

Anders Etgen Reitz (IUNO) – employment and immigration law

FINLAND

Minna Saarelainen (Borenium Ltd) – employment and immigration law

FRANCE

Caroline Andre-Hesse (Atlana) – employment law

Karl Waheed (Karl Waheed) – immigration law

GERMANY

Gunther Mavers (MKRG) – immigration law

Michael Magotsch (DLA Piper) – employment law

GREECE

Elsa Dalampyra (LLM Lawyer) – employment and immigration law

INDIA

Amit Bhasin (Law Offices of Bhasin & Bhasin Associates) – employment and immigration law

IRELAND

Barry Walsh (A & L Goodbody) – employment and immigration law

ISRAEL

Tsvi Kan-Tor (Kan-Tor & Acco) – employment and immigration law

ITALY

Marco Mazzeschi (Mazzeschi Srl) – Immigration Law.

Angelo Zambelli (Dewey & LeBoeuf) – employment law

JAPAN

Hideki Thurgood KANO (Anderson Mori & Tomotsune) – employment and immigration law

HONG KONG

Vivien Chan (Vivien Chan & Co) – employment and immigration law

SOUTH KOREA

Tom Pinansky (Barun Law) – employment and immigration law

MALAYSIA

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

MEXICO

Alfredo Kupfer Dominguez and David Puente (Sanchez Devanny) – employment and immigration law

NETHERLANDS

Martin Beijneveld (Van Harmen Beijneveld van Houten) – employment and immigration law

NEW ZEALAND

Don MacKinnon (Swarbrick Beck Mackinnon) – employment and immigration law

NIGERIA

Adekunle Obebe (Bloomfield) – employment and immigration law

PAKISTAN

Salim Hasan (Meer & Hasan) – employment and immigration law

POLAND

Arkadiusz Sobczyk – employment law
Adam Kraszewski (Gessel) – immigration law

RUSSIA

Irina Anyukhina (ALRUD) – employment law
Timur Beslangurov (VFBS) – immigration law

SOUTH AFRICA

Stuart Harrison (Edward Nathan Sonnenbergs) – employment and immigration law

SPAIN

Ivan Suarez (Bufete Suarez De Vivero) – employment and immigration law

SWEDEN

Olle Linden (VINGE) – employment and immigration law

SWITZERLAND

Ueli Sommer (Walder Wyss Ltd) – employment and immigration law

TURKEY

Maria Lianides Celebi – employment and immigration law

UNITED ARAB EMIRATES

Rebecca Ford (Clyde and Co Dubai) – employment and immigration law

UNITED KINGDOM

Ildes Sousa (Kingsley Napley) – employment and immigration law

UNITED STATES

Bill Martucci (Shook Hardy and Bacon) – employment and immigration law

Schedule 2: Questionnaire

GLOBAL EMPLOYMENT INSTITUTE

QUESTIONS TO COUNTRY LAWYERS FOR THE ANNUAL GLOBAL REPORT

1. What changes have there been in your laws that are intended to have an impact on flexible working practices including remote working?
2. Have there been any significant changes in respect of the rules relating to maternity, paternity or dependants?
3. What changes have there been in the laws that regulate executive remuneration and are any new laws anticipated in relation to banking reform and executive accountability?
4. What changes have there been that materially affect the ability of employers to dismiss employees, including any changes relating to the law and practice of suspension from employment?
5. What changes have there been in your laws that could materially affect the rights of employees:
 - a) before, during or after a business reorganisation, merger or acquisition?
 - b) to employee participation or employee involvement in works councils, collective agreements or other consultative bodies?
6. To what extent have international labour standards emerged as an issue for example campaigns by unions and non-governmental organisations requiring multinationals to adopt human rights and corporate governance standards such as the UN Global Compact or within international framework agreements?
7. What changes have there been in relation to collective bargaining, freedom of association, strikes or other industrial action. To what extent has the erosion of union power encouraged the emergence of new forms of union activity such as publicity campaigns against multinationals, the targeting of particular departments within organisations, liaison between unions nationally and internationally and with non-governmental organisations?
8. Have there been any changes in relation to restrictions on corruption and bribery in the workplace including the relevance and effectiveness of new whistle-blowing procedures?
9. Have there been any significant changes in the way employment cases before the courts and tribunals are reported, including any new powers to restrict reporting at the request of the parties?

10. Have there been any significant changes in relation to enforcement of restrictive covenants and obligations of confidentiality by employers?
11. What changes have there been in the laws or practices relating to privacy, surveillance, data protection, social media and human rights such as protection of family and home life and freedom of expression?
12. What changes have there been in your laws concerning discrimination in the workplace by reason of gender, sexual orientation, age, race, nationality, ethnic origin, ideology, religious belief or disability including any changes to the law and practice of encouraging women to become members of boards of listed companies?
13. Have there been any changes to the law and practice of retirement including ability of employers to impose early retirement?
14. Have there been any developments relating to the engagement of temporary or agency workers?
15. What changes have there been to the immigration laws of your country relating to the recruitment of foreign nationals?
16. What changes have there been in relation to the right of permanent residence of foreign nationals employed in your jurisdiction?
17. What changes have there been to immigration rights of families of foreign nationals employed in your country?
18. Have there been any changes to the working rights and/or right to benefits of families of foreign nationals employed in your country?
19. Have there been any changes to the immigration laws in your country relating to the establishment of a branch or subsidiary of a foreign company? Please explain the relevance if any of permanent establishment or residence for tax purposes.
20. Have there been any other significant changes in human resources law in your country other than those referred to above including but not limited to:
 - a) talent shortages and demographic trends;
 - b) post-merger integration;
 - c) cultural changes resulting from cross border work; or
 - d) global leadership issues.