

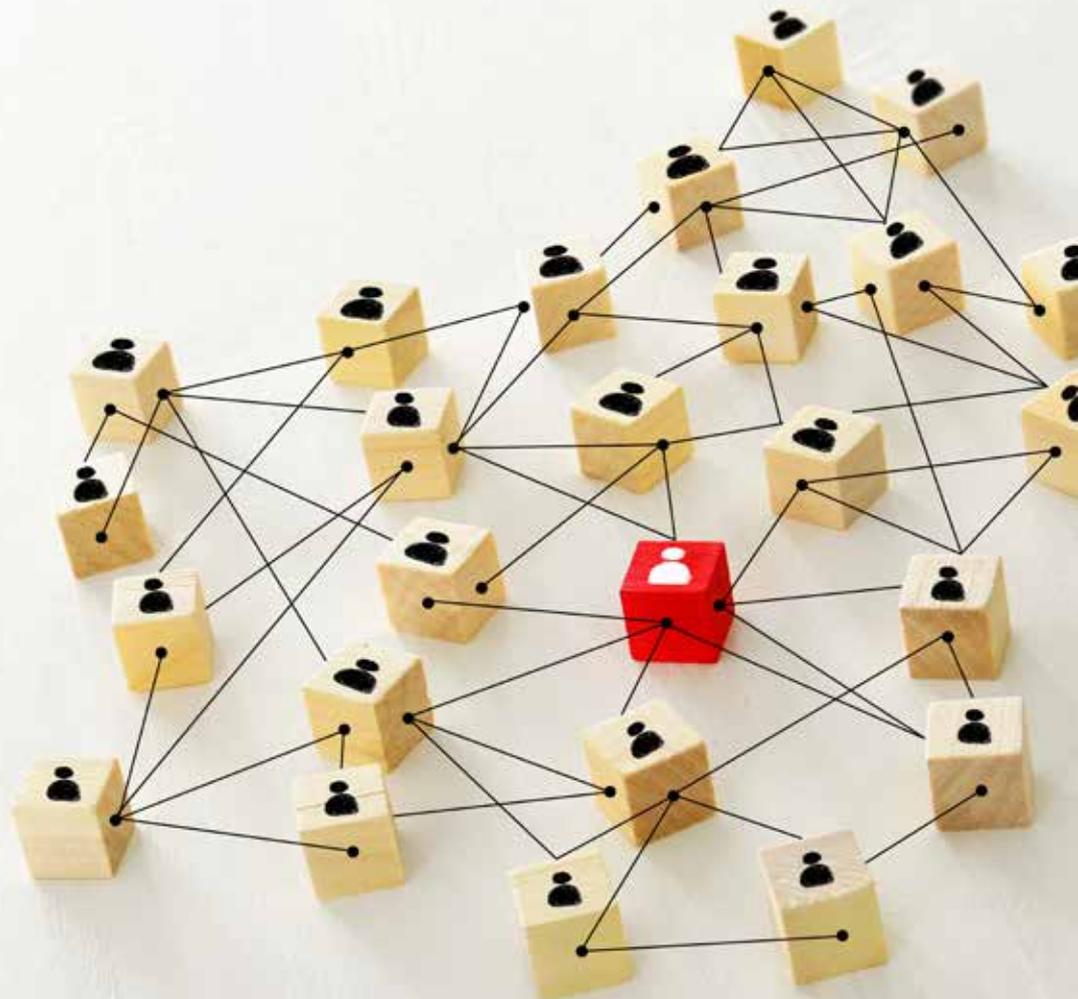


the global voice of
the legal profession®

The IBA Global Employment Institute

Ninth Annual Global Report

National regulatory trends in human resources law



Prepared by

The International Bar Association Global Employment Institute

The International Bar Association (IBA), the global voice of the legal profession, is the foremost organisation for international legal practitioners, bar associations and law societies. Established in 1947, shortly after the creation of the United Nations, it was born out of the conviction that an organisation made up of the world's bar associations could contribute to global stability and peace through the administration of justice. In the ensuing 70 years since its creation, the organisation has evolved, from an association comprised exclusively of bar associations and law societies, to one that incorporates individual international lawyers and entire law firms. The present membership is comprised of more than 80,000 individual international lawyers from most of the world's leading law firms and some 190 bar associations and law societies spanning more than 170 countries. Through its global membership the IBA influences the development of international law reform and shapes the future of the legal profession throughout the world.

The IBA Report on the Future of Work was published in August 2021.

Please note that the information contained in this Report is accurate as of the time of the collection of information from the country reporters (June/July 2020) and does not reflect subsequent legal or factual developments.

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

1. Introduction

The Annual Global Report (AGR) is an annual report prepared by the IBA Global Employment Institute (GEI) highlighting specific general international trends in human resources law. This is the ninth AGR and is based on responses from lawyers in 50 countries. The methodology that was used is described in section 2. The ninth AGR covers trends in human resources law during the calendar year 2019 and, in some cases, the beginning of 2020. Each AGR builds on the historical perspective of previous editions. This may prompt changes to the topics covered in future editions of the AGR.

As this year the entire world encountered unprecedented challenges due to the Covid-19 pandemic, we have dedicated an independent section of this report to the impact the pandemic had on workplaces around the globe. This section discusses both government-led initiatives as well as reactions by employers themselves to mitigate effects on health and safety at the workplace and in societies as a whole.

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

2. Methodology

Lawyers from 50 countries (Schedule 1) were asked to respond to the questionnaire (Schedule 2). The questions were designed to cover the most relevant issues relating to employment, industrial relations, discrimination, and immigration law. Lawyers were asked to consider changes during 2019 (and the start of 2020) and to explain them and their significance very briefly. Since the questionnaire was prepared and sent to the participating lawyers before the global magnitude of the current Covid-19 crisis was foreseeable, additional questions relating to the impact of Covid-19 on the workplace were later submitted in addition to the questionnaire. The answers to the questionnaire have been consolidated and summarised in section 3 of this report (Trends and developments). Even though survey responses reflect the status as of March/April 2020, in some instances, especially where legislative proceedings were pending, the status of such proceedings was verified and where possible updated during the drafting process. As previously noted, the AGR's goal is to highlight general international trends in human resources law. Readers seeking more in-depth analysis are welcome to contact the GEI or the lawyers who participated in the survey.

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

This Working Group, with the coordination of Todd Solomon (McDermott Will & Emery, US, GEI Council Member) and Björn Otto, was primarily responsible for the AGR. Björn Otto and his CMS Hasche Sigle colleagues updated the questionnaire with guidance provided by Todd Solomon, who also contacted lawyers from different countries (Schedule 1) and reviewed the completed questionnaires together with a team of McDermott Will & Emery lawyers. Björn Otto and his team then analysed the survey results and wrote the draft AGR. The GEI Council wishes to convey its gratitude to all of them for their participation and interest in the development of the survey.

3. Trends and developments

3.1 Dismissal and retirement issues and employment disputes

Dismissals

The vast majority of respondents indicate that employers in their countries generally comply with the regulations and procedures for termination of employees in order to avoid the significant costs related to non-compliance with legal obligations in connection with court proceedings. Only in Mexico and Kenya, the procedure, most importantly, the obligation to pay a severance compensation, is not properly observed by many employers. However, due to the far-reaching implications of employers losing actions based on unfair dismissal, more employers in Kenya are now keen not to terminate employees unfairly.

Although many respondents did not identify any new developments in this area, some countries have reported legislative changes. Most notably:

- In Germany, the recent Tax Act relating to Brexit (Brexit-Steuerbegleitgesetz), which was already a subject of last year's AGR, will now – with the exit of the UK from the EU being imminent – become relevant in practice. Thus, banks no longer need to give specific reasons, those reasons that would typically be identified as creating 'cause', when terminating certain highly paid bankers.
- In Finland, an amendment of the Employment Contracts Act from July 2019 provides that the number of employees employed in an enterprise, among other things, must be taken into consideration when assessing the proper and weighty nature of the reason for termination. This amendment codifies Finland's legal practice before the amendment.
- In November 2018, the Italian Constitutional Court declared the invalidity of the previously applicable rule that the amount of indemnity in the event of wrongful termination is two months' salary per year of service for employees who have been hired from March 2015 onwards. The amount of indemnity is now determined by the court and ranges between six- and 36-months' salary.
- In the Netherlands, the Balanced Labour Market Act (Wet arbeidsmarkt in balans), which – unlike the previous legal position – allows the employer to combine different grounds for dismissal, except for the dismissal on business economics ground and dismissal because of long-term incapacity for work, came into force in January 2020.
- In New Zealand, recent changes to the Employment Relations Act have removed the ability for employers with more than 20 employees to use a 90-day trial period to dismiss employees without process within the trial period.
- In Poland, the scope of protection against dismissal related to maternity and/or paternity has been extended to employees who are close relatives of the child and use a parenthood related leave instead of the mother and father.

Some respondents also noted changes concerning the enforcement of restrictive covenants and obligations of confidentiality. For example:

- Certain European countries, such as Bulgaria, Finland and Germany, adopted new legislation in 2018 and 2019 related to the protection of trade secrets against their unlawful acquisition, use, and disclosure. These acts implement the EU Trade Secrets Directive (2016/943).
- A decision by the UK Supreme Court has confirmed that UK courts can sever language from otherwise unenforceable restrictive covenants if the unenforceable part can be removed without needing to add to or change the wording that remains and the removal of the unenforceable part does not significantly change the overall effect of all post-termination restrictions in the contract. This decision is also considered significant by the respondents for Irish employers since it could likely be considered persuasive by the Irish courts.
- In Ireland, the High Court recently refused an application by Ryanair for an injunction to prevent its former Chief Operations Officer from joining EasyJet. It held the restrictive covenant in question was void and unenforceable as an unjustified restraint of trade.
- In Taiwan, recent court rulings have upheld restrictive covenants in cases where trade secrets could be lost to rivals, in particular those based in China. The law was amended in 2016, requiring appropriate compensation to be paid to employees for restrictive covenants to be enforced. The maximum period of such covenants is two years. In 2019, changes made to the Trade Secrets Act now permit prosecutors to issue an investigation confidentiality protective order.
- While in the US there have been no nationwide developments in this regard, several states (New Hampshire, North Dakota, Maine and Washington) have enacted regulations on the use of restrictive covenants, regulating the use and enforcements of such covenants.

Retirement

While in most countries surveyed, retirement age is being continuously increased, employers mostly still do not have the possibility of imposing early retirement unilaterally. Under certain conditions, however, early retirement is an option in some countries. Since June 2019, for example, civil servants in China can among other circumstances apply for early retirement if the length of service is either 30 years or 20 years and the civil servant has less than five years left to the statutory retirement age. Since January 2020, a new regulation that entitles certain people with reduced working capacity to go on early pension is also in force in Denmark. Similar opportunities exist in other countries as well, such as Belgium, Germany, Italy, Norway or Peru.

In an effort to incentivise employees to work longer above the statutory retirement age, a new law in Portugal, for example, sets out conditions for public employees over 70 years of age to continue working and, under certain circumstances, cumulate the remuneration earned for the exercise of public functions with the remaining amount of their pension. Other countries, such as Latvia, implemented special programs and training courses to involve workers close to retirement age in the labour market. Reasons for such efforts given by the respondents are changing tendencies in the employment market, longer life expectancy, demographic changes leading to a migration of younger

workers, high unemployment rates and the capacities of pension funds.

Private (company-sponsored) pension schemes are not yet common in many countries, even though various recently adopted EU directives contain provisions in this regard. However, limited public pension funds remain a concern in many of the countries surveyed. Some respondents particularly noted the problem of low rates of compensation payments for old age pensions. Therefore, pension reforms have recently taken place or are planned in some countries, such as Brazil, Chile, Colombia, Portugal and Romania. In Latvia, it is possible to leave the accumulated pension in inheritance as of this year. At the same time, employees are increasingly encouraged to make additional contributions to private pension funds. The Singapore government recently announced the implementation of a scheme to benefit lower- to middle-income Singaporeans aged 55 to 70 who have not been able to set aside the prevailing Basic Retirement Sum. Under this scheme, the Singapore government will match every dollar of cash top-up made to the retirement account, up to an annual cap.

Employment disputes

Only a few respondents noted changes in the way employment cases are heard before courts. Generally, court proceedings are held publicly – often with the possibility to restrict public access in case of delicate matters, such as sexual harassment claims and except for Irish procedural rules, according to which first-instance proceedings are held in private. A reform to the Mexican Federal Labour Law from 2019 introduced a new system of mandatory pre-trial conciliation in front of newly created Conciliation Centers before access to Federal Labour Courts is granted. Hungary meanwhile sees decreasing numbers in employment-related court-cases since recent amendments of the general Civil Procedure Code led to more formalised procedures, meaning that parties more often require the costly assistance of attorneys. Belgian courts increasingly demand parties to be present in hearings to enhance amicable settlements.

The vast majority of respondents report that employment disputes are mostly resolved before courts instead of arbitration or mediation. The exception to this usually applies to jurisdictions where statutory arbitration or other conciliation procedures are required before a claim is heard in front of a formal court or where such proceedings are embedded in statutory court-procedures (ie, Australia, China, Germany, New Zealand and Turkey). In a few countries, employment disputes are explicitly excluded from the scope of arbitration or other alternative dispute settlement fora (ie, Chile, Hungary, Latvia, Romania and Russia). Even though the US Equal Employment Opportunities Commission issued guidance on the admissibility of forced arbitration clauses in employment-related disputes, efforts on corporate and legislative levels aim to curtail or even eliminate the use of arbitration in employment disputes.

3.2 Corruption and whistleblowing

The protection of whistleblowers has been further strengthened in many states. Norway, South Korea and a number of US states (eg, Virginia), for example, have enacted and specified provisions for the protection of whistleblowers. In Japan, the Consumer Affairs Agency created a certification regime for corporate whistleblowing systems, which is still in an early stage of development.

Particularly noteworthy is the EU Directive (2019/1937) on the protection of persons who report

breaches of Union Law, which came into force in December 2019. It lays down common minimum standards for the protection of persons who report infringements on various areas of Union Law specified in the Directive, such as public procurement, financial services, product safety, protection of the environment, public health, consumer protection and the protection of privacy and personal data. The aim is to establish secure channels for the transfer of information both within companies and to public authorities. Besides, whistleblowers are to be effectively protected against retaliatory measures by the employer. The Member States are required to transpose the directive by December 2021.

In regard to the fight against corruption, only a few recent developments were reported. In Germany, a draft law is currently being discussed under which companies can be held criminally liable for offences committed by their executives that were intended to enrich the company, such as bribery. The sanction can be up to ten per cent of the company's annual turnover. A similar draft is also being discussed in Poland. In Ukraine, the High Anti-Corruption Court has started work.

3.3 Temporary and contract work arrangements

Uncertainties in the handling of the 'gig economy' and rights of temporary or agency workers are common topics among the survey respondents. Temporary and contract arrangements both remain popular choices among non-traditional work-relations.

Courts and legislators alike are concerned by the legal qualification of so-called 'gig' workers under existing laws. Courts in different jurisdictions are divided on the question whether Uber drivers or certain food delivery riders are to be considered 'employees' or not. The French Court of Cassation ruled on 4 March 2020 that drivers operating under the app-based platform of Uber are in fact considered to be employees of Uber and the Irish High court decided in December 2019 that delivery drivers working in a gig economy scheme should be treated as employees. Belgian courts have ruled contrary concerning Uber drivers as well as food delivery cyclists under the label of Deliveroo. This assessment is shared by the Brazilian Superior Court concerning workers of the gig economy. In some countries, gig workers receive union support in rallying for enhanced protection and rights under general labour law, for example in Belgium and Germany. Also, Australia reported that the classification of workers in the gig economy under existing labour law is a concern across the economy and for courts, likely to continue in the year ahead.

Legislators in Colombia and Italy are reported to be working towards new regulations ensuring social security and, in the case of Italy, minimum wages for independent contractors of the gig economy. In the Netherlands, similar projects were abandoned in June 2020. In the lead up to elections in Ireland, parties across the spectrum are promising to take measures against work-relations that do not reflect the reality of employment. India has meanwhile introduced legal definitions for the terms 'gig worker' and 'platform worker'.

The regulation of agency work and other temporary work arrangements has been another topic discussed by several survey respondents. Australia and New Zealand report on recent legislative measures aimed at protecting agency workers or other 'hired' employees and ensuring equal rights:

- In New Zealand, an Employment Relations (Triangular Employment) Amendment Act, under

which the employees are enabled to aim personal grievance claims not only against the agency but also against the controlling third party to which the employee is assigned, entered into force on 28 June 2020.

- In Australia, discussions are ongoing towards the implementation of a national labour hire licensing scheme – a concept which began in 2019 on a regional level in the state of Victoria.

Similar initiatives were reported by the US, where California recently revised its regulations to make it more difficult for employers to treat workers as individual contractors – also the Federal Department of Labour proposed rules that determine the status as employee or individual contractor on the basis of an ‘economic reality test’.

According to a new law that entered into force in October 2019 in Portugal, irregular or illegal contracts for agency workers and other irregular temporary contracts will be requalified as permanent employment in order to ensure protection against the unlawful exploitation of such contractual vehicles. The requalification into traditional or permanent contracts is a common penalty where existing regulations on alternative working schemes are not met.

An amendment to Japanese law that came into effect in April 2020 (Act on Improvement of Employment Management for Part-Time and Fixed-Term Workers) is aimed to enhance employment conditions and protection of non-regular employees (ie, part-time, fixed-term and temporary workers) through a general ‘equal pay for equal work’ rule, which prohibits discrimination between regular and non-regular workers. In Canada, similar steps have been taken by the states of Quebec and Ontario, while Ontario eventually reversed such legislative changes.

3.4 Flexible working

Overall trends

The use of flexible working practices is increasing according to the survey results. Lithuania and Nigeria mentioned flexible working is becoming more and more popular in the financial sector, IT and tech start-ups as well as the telecommunication sector. In the US, there was a 159 per cent increase in people having access to remote work between 2005 and 2017.

The most common types of flexible working are flexible working hours, part-time work, and remote work – the latter often in a hybrid model, where remote work is permitted on an occasional or part-time basis only. Furthermore, the Czech Republic, Ireland and Hungary reported that job-sharing is a popular type of flexible working. In Poland, a popular arrangement is the task-based working time scheme, in which the employer does not set specific working hours, but only assigns tasks to the employee, and the employee chooses the time of work. The US added that concepts of ‘hot desking’, where several workers share the same workstation at different times, and flexible or unlimited vacation time were popular instruments to increase flexibility.

The purpose of the increased flexibility of work is to retain talent and to satisfy family needs. Remote working prevents long commuting journeys and high costs of office space as well. Agile work is mainly practiced in the private sector and especially in large and/or international companies. Denmark mentioned that it would generally be perceived as more important for the employer that the

employees show results and meet their deadlines than when or where the specific work is carried out.

Kenya and Nigeria are among the few countries that said companies would still operate under traditional work practices for fear of inefficiency, concerned that employees may misuse time when they are not under direct monitoring as ‘free time’. India stated, that for some sectors it is not possible to introduce flexible working, for example in the manufacturing industry.

Legal rules

Still, in some countries, there is no statutory framework for flexible working arrangements (eg, Argentina, Cyprus, Singapore, Sweden, and Taiwan).

On the other hand, for instance, Finland has recently introduced new regulations enhancing the scope of flexible working. The new Finnish Working Hours Act came into force on 1 January 2020 and introduced a newly defined statutory flexible working time arrangement applicable to expert tasks in which the work objectives and the overall schedule are more important than the actual time and place of work. Under this arrangement, the employee is free to decide the working time and the place of work during at least half of the contractual working time. Moreover, the new Act provides a possibility to agree on the establishment of a working time bank in order to compensate overtime work through paid leave in lieu of overtime-pay.

In the context of the Covid-19 pandemic, in most countries, specific practices and regulations were introduced relative to teleworking and ‘smart working’. Such developments are set out in detail in section 3.18 of this report. Whether these developments are only temporary or if persisting trends for an increased use of remote capabilities in labour relations emerges will remain a question for further editions. Some respondents to this survey already stated their prediction, that we will see a trend towards increased use of remote working emerge from the current situation (eg, Chile, the UK); others do not think so (UAE).

Right to disconnect

Discussions around the risks of the often-existing burden of employees to be continuously available/responsive for their employers continue to prevail. Recently, Chile introduced a right to disconnect under the Telework Act for employees who practice teleworking and who are not subject to fixed working schedules and/or locations. The employer is obliged to take all the necessary measures to guarantee that the employee will not be required to answer communications, orders, or other requests for at least 12 consecutive hours within a 24-hour period. In the US, employers may see themselves exposed to claims under the Fair Labour Standards Act, if they require non-exempt employees to monitor or respond to communications outside their working hours.

Meanwhile, in Ireland, Mexico, the Netherlands and South Korea, the implementation of an explicit right to disconnect is currently either being discussed in politics or already pending in legislative procedures. Many countries, however, have regulations concerning statutory rest periods for the employee without expressly including a specific right to disconnect during these periods. Thus, it usually depends on internal company practices or regulations whether employees can actually use rest periods to disconnect.

3.5 Family-friendly policies

As in recent years, some countries noted improvements in rights for working parents. Although maternity leave continues to be well-supported, recent expansions were generally more focused on paternity leave or gender-neutral benefits.

A substantial number of countries reported increases in the length of parental leave or expansion of maternity leave to gender-neutral parental leave. Belgium, Denmark, Estonia, Ireland, Israel, Italy and the Netherlands recently adopted enhanced paternity leave, while enhanced paternity leave (or a transition to gender-neutral leave) is under consideration in Australia, Chile, Finland and Switzerland. Italy reported an increase in the actual use of such leave. Employees of the public sector now have access to parental leave under new US federal and state laws, for instance, in late 2019, the US government enacted the Federal Employee Paid Leave Act, which grants federal employees up to 12 weeks of paid time for the birth, adoption, or foster of a new child.

The new Work-life Balance Directive of the EU (2019/1158), which entered into effect on 1 August 2019 aims to improve families' access to family leave and flexible work arrangements. It includes:

- Earmarked paternity leave – a minimum of at least ten working days of paternity leave;
- Parental leave – an individual right to four months' parental leave of which two months cannot be transferred between the parents and is paid;
- Carers' leave – five days of leave per year for workers providing personal care to a relative; and
- Flexible working arrangements – an extension of the right to request flexible working arrangements to carers and working parents of children up to eight years old.

Although not being common practice, there is a trend in some countries, including Australia, Malaysia, Mexico, Norway, Sweden, Taiwan and the UK, for companies to be willing to provide maternity and paternity benefits over and above those that are legally required, something which according to respondents seems to be more common among larger and multinational companies (Colombia, Ireland) or some progressive employers of the private sector (India, Kenya). However, employers in other countries, including Cyprus, China, Finland, Hungary, Lithuania, Romania, Russia and Venezuela, are reported as generally not being receptive to granting such enhanced benefits.

3.6 Absenteeism due to stress and mental health issues

Several survey respondents have noted either initiatives led by employers or governments to address mental health issues at the workplace and to provide employees who have mental health problems with assistance.

A focus on employer-initiated programs was reported by Australia, Chile, Germany, India, Italy and New Zealand. In Australia, employers are increasingly offering initiatives to support employees with mental health problems to encourage their participation in work or return to work. In the US, employers are known to make specific stress-relief/mindfulness/exercise programmes available to employees. Chile reported that, following the protests in October 2019, numerous employers

have taken specific measures to help their employees during the crisis and improve their working conditions, among other measures, by providing support groups led by psychologists or social assistants. In Germany, mental health in the workplace has also become a key issue for employers in 2020 from a compliance and corporate social responsibility perspective.

In China, Ireland and Serbia, national strategies have been put in place to better protect the mental health of employees. In China, the State Council distributed statements on the implementation of the Healthy China Initiative in June 2019. The plan for a Healthy China Initiative (2019–2030) encourages companies to set up a mental health team or purchase-related services for their employees. The Irish government has launched the Healthy Ireland Framework 2019–2025, which is described as a roadmap for building a healthier Ireland.

Estonia, Denmark, Mexico, Peru and Taiwan reported legislative changes in the field of stress and mental health issues. In Estonia, there have been legislative changes in the area of occupational health and safety regulations, which require the employer to assess psychosocial risks related to the working environment and to take measures to reduce such risks. Denmark reported on recent legislative changes that increase the powers and capacities of the working environment authorities to access information on the psychological working environment. These changes enable the Working Environment Authorities to consult employees individually or in groups without the presence of the employer or representatives. In Mexico, a law has come into force requiring employers to comply with specific rules to identify, analyse and prevent psychosocial risk factors in the workplace and to promote a healthy and favourable working environment.

Taiwan reports that although the government has amended labour laws to protect employees better, in practice, they are mostly ineffective.

3.7 Data protection, privacy and human rights

There have been legislative changes worldwide to create more legal certainty in connection with the protection of personal data. The use of social media in the workplace as well as the personal use of social media that can have an impact on the employer, was in some countries the reason for employers issuing guidelines on this topic.

The EU Member States reported on remaining changes of national legislation resulting from the General Data Protection Regulation (GDPR) that came into force in May 2018. Several non-EU Member States, such as Brazil, Canada, Chile, India, Kenya and Serbia also reported on legislative changes and planned legislation in the field of data protection, some of which were influenced by the GDPR. In Canada, a law came into force in 2019 to prevent the disclosure of irrelevant data to the employer in the context of record checks. Chile is in the process of implementing a new law that will raise the protection standards, mostly through the creation of a designated data protection authority. India introduced a Personal Data Protection Bill in December 2019, which seeks to provide for the protection of personal data of individuals and establishes a Data Protection Authority for the same. The new Kenyan Data Protection Act requires employers to register as data controllers with the Data Protection Commissioner when certain thresholds are met.

Regarding the surveillance of employees in the workplace, it can be noted that the legal admissibility

of surveillance in the workplace usually requires prior information of the employee and that the data processed must always be related to work. Accordingly, Hungary, Portugal and Taiwan make the admissibility of monitoring employees' work-related communications subject to prior notification. In Peru, a directive has come into force which contains guidelines on the processing of personal data using video-surveillance systems. The directive allows video-surveillance of employees only if the recordings cover places that fall under the employer's right of instruction.

Concerning the use of social media in the workplace, Ireland, Italy and New Zealand unanimously reported that there is a growing number of companies issuing guidelines for the use of social media in the workplace and for personal use to the extent that it may affect the company. Italy explained that, in the absence of legislation on the use of social media, many companies issue these guidelines to facilitate the imposition of disciplinary measures in the event of infringements. Italy, New Zealand and Portugal reported a steadily increasing number of court cases involving the dismissal of workers for publishing comments about their employers on social media. The US National Labour Relations Board has issued several opinions on the use of such guidelines over the past years, with a recent memo from September 2019 stating that provisions of an employer's social media policy prohibiting employees from posting inaccurate or false information about the employer and requiring employees to keep confidential the employers policies, procedures, and other 'private or confidential information' was overbroad and placed a disproportionate adverse impact on the employees' rights.

Several countries reported developments related to the protection of human rights in the workplace. Peru has enacted a law in 2019 that strengthens the applicable sanctions for breaches of workplace safety and health standards, including the possibility of criminal penalties and closure of the workplace. The National Industrial Court of Nigeria now bases its case law on the provisions of international conventions concerning the protection of human rights in the workplace, whether the National Assembly has domesticated them or not. As a result of the legalisation of same-sex marriage in Taiwan in May 2019, the scope of benefits for married couples at work will be extended to same-sex couples.

3.8 Discrimination in the workplace

Many countries reported developments in laws relating to discrimination in the workplace, among others, based on gender, religion, and disability.

Gender-related developments in anti-discrimination laws and practices were most prevalent. China published a guide to promoting gender equality in the workplace. Transgender rights were strengthened in India. As part of amendments in the context of the #MeToo movement, Denmark introduced new provisions relating to sexual harassment to their Act on Equal Treatment. The Supreme Court of the US recently held that protections against discrimination or harassment 'because of sex' under Title VII of the Civil Rights Act 1964 extend to members of the LGBTI community – the six-Justice majority held that Title VII prohibited employers from taking adverse action (ie, firing an employee) because the employee is gay or transgender. In Romania, rules for the application of provisions on equal treatment between men and women came into force in April 2019, under which employers are obliged to create internal policies on the prevention and sanctioning of gender-based discrimination. Belgium explicitly included paternity, adoption, breastfeeding, and in

vitro fertilisation to the list of protected criteria under anti-discriminatory legislation.

In Australia, drafts for a Religious Discrimination Bill are pending in legislative proceedings. Under this projected law, religious beliefs would be granted the same standard of protection that already exists for a variety of protected attributes, such as age, disability and sex.

In Bulgaria, Ireland and Japan, the rights of disabled people were strengthened. For example, the Act on Promotion on Employment of Disabled People in Japan requires that employers (with more than 100 employees) should hire at least 2.2 per cent disabled employees among all employees. By the end of 2020, the ratio will be increased to 2.3 per cent.

In a generalist approach to enable employers to pro-actively combat inequalities or discriminations in the workplace, Belgium laid down through Royal Decree of 11 February 2019 conditions for so-called positive actions (*actions positives*), which are temporary measures that would under normal circumstances be prohibited by the principle of equal treatment and that aim to correct existing inequalities or discriminations on grounds protected by anti-discrimination laws. A plan for positive action, which meets the legal requirements, is eligible for approval by the Minister of Work.

In Poland, an amendment to the Labour Code came into force in September 2017, where any unequal treatment of employees without objective reasons will be considered discriminatory, while previously only unequal treatments based on the criteria related to the person of the employee was considered discriminatory. Also, in UAE, amendments to labour laws were enacted, under which equal opportunities and equal access to employment are enhanced – acts of discrimination are subject to criminal and administrative liability.

Trainings about workplace discrimination based on employer-initiatives are not generally common according to the responses to this survey. Such trainings often only take place in large global companies or only for select groups of staff (ie, managers or employees of the HR department). Meanwhile, in most US states, such trainings are required under the respective state law. Almost all countries reported, however, that usually employers comply with anti-discrimination laws.

3.9 Diversity

Most countries report already having diversity laws in place, while some countries also stress the growing importance of diversity issues for companies in general. Thus, partly legislative changes are expected to increase diversity, as in Denmark where amendments to the Danish Act on Equal Treatment are supposed to contribute to the promotion of gender equality at work as well as the EU's new Work-Life Balance Directive (2019/1158), which is expected to increase diversity due to the more gender-balanced use of parental leave and flexible working arrangements in general. Another important legislative change can be seen in the Indian Transgender Persons (Protection of Rights) Act 2019. Some employers respond to the issue of diversity by changing their strategies, eg, in hiring, employer branding, or by establishing diversity and inclusion specialists. Furthermore, there are some government programs in New Zealand that are targeted at specific ethnic groups.

While many countries report that direct or indirect religious discrimination is prohibited by law, employers' accommodations for religious practices or beliefs beyond public holidays for the predominant religion in the country are rather uncommon. Many of these employers seem to keep

religion out of the workplace either because of relatively homogenous workforces or since it is not common to discuss religious issues with employers or at the workplace. Nevertheless, in Norway as well as in Romania, it is legally required for employers to grant at least two days leave for observance of religious holidays other than those recognised as public holidays. Even though there are no corresponding legal obligations in other countries, many employers in countries such as Canada, New Zealand and the UK have policies around accommodations for religious practices.

Women continue to be significantly underrepresented on corporate boards in 2019 and early 2020. In most of the countries surveyed, there are still no legal requirements that provide for a certain proportion of women, particularly on the board of directors. Yet, there have been recent changes, particularly in the public sector: requirements and incentives for increased representation of women in elected and appointed public positions were recently implemented by Argentina, Chile and Ireland. Meanwhile, in Kenya, a gender bill introduced in parliament failed to pass in February 2019. New laws imposing further obligations regarding board representations on the public sector were passed by the Australian state of Victoria in (entry into force in 2021) and the US state of California (passed 2018; requirements took effect as of 31 December 2019).

Regarding the private sector, parliament in Switzerland has adopted a regulation for a fixed quota of female board members of listed companies. In Italy, such quota has been increased in January 2020 and now is equal to 2/5. The Netherlands also plan a binding quota for supervisory boards of listed companies after a vote in the House of Representatives. In Japan, such legislation has shown effect, as the ratio of female corporate officers in the top 100 Japanese companies exceeded ten per cent for the first time in October 2019 following the introduction and further amendment of relevant legislation in 2016 and 2018. However, some companies in different countries have voluntarily imposed quotas on themselves, while in other countries, the debate on corresponding regulations is still ongoing. Moreover, in Chile, the participation of at least one female employee as a union representative at the bargaining table is required.

Several countries have imposed quotas or minimum target percentages on the recruitment of individuals with disabilities. In Argentina, four per cent of public employees must be hired among disabled individuals. Chile has implemented a one per cent quota for employers with 100 or more employees, just as Portugal did in the private sector for companies with at least 75 employees, a quota that increases to two per cent for particularly large companies. Similar laws exist in Italy. In some countries, such as India, Ireland or Japan, the government provides for financial assistance for employers and employees in order to increase the number of employed persons with disabilities. In Ireland, there is a Retention Grant Scheme to assist employers in retaining employees who are impaired in their ability to perform their work. A relatively similar regulation also exists in the UAE.

3.10 Code of conduct/behaviour in the workplace

In the last year, only a few countries have enacted new legislation to combat sexual harassment in the workplace. Japan, for example, amended its Equal Employment Act to prohibit any discrimination against employees who allege they have been victims of sexual harassment. For employers in Mexico, there is a newly introduced obligation to implement a specific protocol to manage cases of work-related violence, harassment, and sexual harassment. Also, Denmark introduced new legislation

including a specific prohibition on sexual harassment subject to punitive fines due to the victim. As a result of the #MeToo movement, the US has seen a significant number of laws on state and local level to combat sexual harassment in the workplace, of which new legislation New York passed under the 2019 Women's Agenda is particularly noteworthy: The law stipulates among other things, that (1) an act of harassment needs no longer be 'severe or pervasive' to violate the New York Human Rights Law; (2) employers must adopt a sexual harassment prevention policy and training or use a similar policy and training that meets or exceeds the law's minimum standards; and (3) effective 12 August 2020, the statute of limitations for filing a sexual harassment complaint with the New York Division of Human Rights is extended from one to three years.

From an economic standpoint, mainly the larger companies are becoming increasingly aware of their responsibility in combating sexual harassment in the workplace, for which the #MeToo movement is still a decisive reason. They have adopted ethical codes, codes of conduct and organised training on appropriate workplace behaviour. Orientation is provided in some countries by recent governmental or non-governmental guidelines such as the Notice on Promoting the Construction of Healthy Enterprises in China, the Sexual Harassment National Inquiry Report in Australia, or the Tripartite Advisory on Managing Workplace Harassment in Singapore, where more than 960 companies have signed up to adopt a voluntary scheme that sets out good practices to adopt in the workplace.

3.11 Technology and artificial intelligence

Artificial intelligence (AI) is moving further into focus. Both the G-20 countries and the OECD have drawn up principles for dealing with AI, and the European Commission has recently called for discussion with its white paper on AI. Numerous countries have set themselves the goal of deepening the implementation of AI and established guidelines to this end.

Concrete regulations on the use of AI in the workplace, however, have not yet been issued.

Even though AI is already used in many sectors for process optimisation, the country reports indicate that the employers' reliance on AI is growing only gradually.

Several country reports suggest that the use of AI will in the long term lead to the disappearance of certain occupational fields, especially in the industrial sector. On the other hand, the emergence of new occupational fields is also expected. Nevertheless, in most countries, the use of AI has not yet had an impact on the labour market. In Germany, the Qualification Opportunities Act, which came into force in 2019, is intended to anticipate this development. It promotes the further training of employees whose professional activities could be replaced by new technologies. Similarly, the US is also focused on improving education for STEM occupations in order to respond to future needs in this area.

3.12 Unions, collective bargaining, and industrial action

Many countries reported on new legislation relating to trade unions and collective bargaining. In many countries, there was a lot of activity in the area of industrial action. Most strikes took place in the health, education and public transport sectors.

The Australian government continues intentions to introduce reforms to regulate trade unions, despite similar proposals were voted down twice in recent years. Based on the latest version, the draft law would introduce a list of prescribed offences which, if committed, would automatically lead to the disqualification of registered organisations and provide the Federal Court with powers to sanction unions and their officials. Ukraine has simplified and digitalised the administrative procedures for unions and employers to register collective agreements. In Italy, the industrial employers' confederation and the main trade unions signed a new general national protocol in March 2018, which establishes a new model for collective bargaining and industrial relations. In Mexico, a reform came into force in May 2019 that modifies several provisions of the Federal Labour Law. Among other things, the reform strengthens the freedom of association and the right to strike by including a new model of union representation, which aims to guarantee the free choice of workers through personal, free, direct and confidential voting concerning union directives, the implementation and negotiation of collective agreements and the conduct of strikes. Part of the reform is also a regulation for the renewal of Collective Bargaining Agreements (CBA). According to this, the majority of employees covered by such an agreement must approve the content of the relevant renewal. On the contrary, the CBAs that are not renewed in the next four years following the above process will be terminated by operation of law. In Sweden, a new law restricting the right to strike entered into force on 1 August 2019. According to this law, industrial action against an employer already bound by a collective agreement with another trade union is only possible to a limited extent.

In view of Brexit, there will be significant effects on participation in European Works Councils (EWC) for UK companies. With the expiration of the transitionary period (31 December 2020), employees of UK companies will no longer have rights to be represented in an EWC established under the laws of another EU Member State and EWCs that had been established under UK law must be designated to another EU Member State to govern the EWC in the future.

In view of the Covid-19 outbreak, the Chilean government submitted a new draft law in April 2020 to temporarily suspend the legal provisions on collective bargaining processes. The Ukrainian government has amended and simplified the procedure for collective agreements registration.

Emergence of new forms of union activity

The Czech Republic reports that the trade unions have been looking for new types of structures in order to expand and exist also at employers where the employees do not establish their own formal trade union. In this context, the Supreme Court of the Czech Republic was presented with a case where a 'trade union' was merely established as a so-called 'grouping of members', which is a unit without its own legal subjectivity. The court ruled that in companies where no formal labour union exists, the interests of employees may be represented by the 'grouping of members', that is not regulated by law, is not a legal entity and whose existence is made possible by the statutes of 'another' labour union. Italy reported that in recent years there has been a process of progressive decrease of union popularity among employees and in the ability of unions to call for strikes effectively. However, the erosion of union power has not led to a corresponding emergence of new forms of union activity. On the contrary, workers' dissatisfaction seems to be better absorbed by populist political movements that are gaining popularity among younger generations, atypical workers, and blue-collar employees.

Strike action

Belgium reported a nationwide strike aimed at exerting pressure on employers and the government with regards to the wage formation negotiations of the national social partners. Further strikes followed, especially in the health sector, public transport, and education. Strikes in these sectors were also held in Ireland, Latvia, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal and the UK.

Further significant strikes in the transport sector occurred in Canada, Sweden and Taiwan. Canada has experienced one of the largest nationwide strikes in recent times initiated by employees of Canada's largest rail company in November 2019, which brought export deliveries to a standstill. Sweden and Taiwan experienced strikes, which had significant impacts on air travel. In Sweden, a seven-day strike by SAS pilots in 2019 resulted in hundreds of cancelled flights. Taiwan reported that the Taoyuan Union of Pilots initiated a strike against China Airlines in February 2019, which lasted one week. Also, in June, the Taoyuan Flight Attendant Union organised a 17-day strike against EVA Air, which resulted in losses of TWD 2.78bn.

In 2019, the US experienced the highest numbers of strike activity since 2001. The most notable of these strikes involved General Motors and the United Automobile Workers, where 48,000 workers stopped working for 29 days. In Chile, there was a major strike at Walmart in 2019, which involved Chile's largest union with around 17,000 members. The work stoppage ended after six days when the parties reached an agreement. In France, there have been significant strikes in connection with the reform of the rules governing statutory pension schemes. In Israel, Justice Department workers launched a strike in November 2019, which lasted for a month. Peru reported that the number of strikes and the number of workers involved increased compared to 2018. Among the notable strikes last year was a two-day strike organised by the National Federation of Mining, Metallurgical and Steel Workers of Peru. In Romania, there were strikes initiated by miners and judges.

3.13 Executive remuneration and banking reform

As in the previous AGR, only few survey respondents reported recent developments in the areas of executive remuneration, banking reform and executive accountability. Since the vastly common establishment of post-financial-crisis regulations, most notably in the banking sector, only a few recent changes occurred. Reports on recent amendments primarily relate to the transposition of EU legislation (eg, CRD V and Shareholder Rights Directive), while some survey respondents announced that a review or amendment of such frameworks would be expected within the next years. Initiatives to increase transparency of remuneration structures were reported from Denmark, Latvia and Taiwan.

Financial institutions/banking reform

The EU has adopted a revised Capital Requirements Directive (CRD V) in mid-2019, replacing the existing CRD IV-regime. Under the new Directive, existing rules on the requirement of deferred payments for so-called risk-takers are maintained and strengthened, while a minimum threshold for the application of such rules is defined, meaning that financial institutions below a balance

sheet limit of €5bn are exempt from such limitations. The transposition period of CRD V ends on 28 December 2020, meaning that actual changes to the respective Member State legislations are not expected to become relevant before 2021.

While the Australian Banking Executive Accountability Regime of 2018 (as reported in the previous AGR) already introduced certain requirements towards the deferral of variable pay, the government plans to extend and replace the existing regime by proposing a new Financial Accountability Regime applicable to all financial services – including amongst others insurance companies, banks, credit unions – by the end of 2020. New rules on the sustainable design of remuneration schemes (especially for performance-related incentives) are also reported to become effective during 2020 in Singapore, notably through revisions of the Private Banking Code as well as the Balanced Scorecard Framework

Denmark enacted new legislation on 1 July 2019 to increase the accountability of executives in financial institutions and requirements to ensure sufficient measures to avoid money laundering and to promote a healthy corporate culture. Ireland is reported to be currently working on a proposal of new rules aimed at increasing the individual accountability of senior bankers as well on an initiative by the Central Bank of Ireland with the possibility of the draft legislation being presented during 2020. Rules on increased responsibility and accountability were further reported by Malaysia.

UK's Financial Conduct Authority announced that it would be looking at a major review of all the UK's financial services regulations.

Executive remuneration

China introduced specific legislation aimed at security companies stipulating that in the event that such a company receives liquidity support from the Securities Investor Protection Fund, remuneration of directors and other management staff shall be limited, and no bonuses shall be awarded.

According recent court rulings in the US, lawsuits brought by stockholders against executives and directors regarding compensation issues stand improved chances to succeed, as courts increasingly apply the entire fairness standard of review (in lieu of the more board-deferential business judgment standard of review).

The transposition period for the EU's second Shareholder Rights Directive (Directive (EU) 2017/828) ended in 2019, requiring Member States to ensure strengthened shareholder rights such as 'Say on Pay' and extended transparency obligations. Except for Malta and Slovenia, all Member States have taken measures to transpose the Directive. In addition to the EU's requirements, the German transposition law (ARUG II) requires the Supervisory Board of listed companies to set a maximum remuneration for members of the Management Board. With new measures that entered into force on 1 January 2019, UK listed companies with over 250 employees are required to disclose the pay gap between executives and their average worker.

3.14 Gender pay gap/equal pay for equal work

Only few survey respondents reported recent legislative changes to enhance gender pay equality or

the guarantee of equal pay for equal work. Contrarily, in most countries, a noticeable gender pay gap prevails. Most countries report, that gender-based discrimination – also in terms of wages – would, by way of principle, be unlawful.

Among the countries reporting, that specific laws on statutory pay-equality were showing a positive effect on the closure of the gender pay gap are Hungary, Israel and Taiwan. In Canada, equal pay for equal work is guaranteed to all federally regulated employment relations. In New Zealand, an Equal Pay Amendment Act aimed at improving the process of raising and progressing pay equity claims and to eliminate and prevent discrimination based on gender in the remuneration and employment terms and conditions was passed in the summer of 2020.

In Sweden and Switzerland, recent legislation requires employers above a certain threshold of employees to periodically analyse pay equality within their companies. In the case of Switzerland, the obligation is lifted, if the equal pay principle is complied with. Furthermore, Australia, Norway, Portugal and the UK have recently established reporting obligations or obligations on transparent remuneration structures. The effect of such obligations remains uncertain for the time being. While legislation on this matter in the US had been mostly stagnant on a federal level since 1963, 11 states have recently enacted laws on pay equality, for example Alabama, California and New York.

Denmark and Ireland reported that the respective legislators had announced initiatives to introduce specific frameworks to enhance pay equality – in the case of Ireland through transparency and reporting obligations applicable to enterprises above a certain threshold of employees that is set to be incrementally lowered from an initial 250 employees to 50 employees during a transition period.

3.15 Immigration and talent issues

Relative to the current Covid-19 crisis, it must be noted that any representations of this section in particular can at least temporarily be subject to differing regulations or administrative orders applicable to the respective countries and regions. For clarity of presentation and hoping that international mobility, travel opportunities, and life in general will soon return to a pre-pandemic-state, we have decided for this year's report to differentiate between this section being represented 'as per usual' and a separate section dedicated to restrictions specific to the Covid-19 pandemic.

Responding to talent shortages

The vast majority of countries surveyed reported persisting shortages of skilled workers, excluding Chile and Colombia. Skills shortages exist in most occupations and vary depending on regional and/or internal factors relevant to the specific labour market. However, most countries that experience skills shortages name IT, STEM occupations and the healthcare sector as areas with a particular shortage of skilled workforce. Reasons for talent shortages are various, including the impact of talent migration, a lack of educational programmes or vocational training and insufficient economic incentives and initiatives. Several countries attribute the lack of skilled employees on internal local labour markets to an outflow of talent or so-called brain-drain (including Albania, Bulgaria, Lithuania, Mexico, Nigeria, Poland, Serbia, Taiwan, Ukraine). Other countries consider an ageing society and other demographic changes (Canada, Germany, Italy, Japan) as factors, that amplify shortages of skilled candidates on the labour market. Low or stagnant wages (Taiwan)

and unsatisfactory economic conditions (Sweden) in some occupations are also considered causes for labour shortages, for example in traditional technical occupations, trades and craftsmanship (Portugal). For areas, where specific knowledge and skills are mandatory, deficits in higher education (Mexico, Nigeria) and a lack of alignment between employer needs and vocational training (Brazil, Poland) or university curricula (Russia) are cited as further causes for talent shortages. With a specific focus on contemporary politics, the UK partly attributes current workforce shortages to the persisting uncertainties surrounding Brexit and a reduced EU to UK migration due to Brexit. Where the devastating economic effects of the Covid-19 pandemic contributed to rising levels of unemployment (eg, the US), it remains uncertain, whether this will also have a persisting effect on the abovementioned skills-shortages.

Nearly all countries surveyed take action to compensate an existing skills shortage or mitigate the prospect of such shortage (eg, in the case of Denmark). On a legislative or government level, measures aimed at compensating labour shortages often revolve around immigration. While countries as Australia and New Zealand have for some time been pursuing a dedicated skilled migration policy, more countries have recently made similar adjustments or intend to do so (eg, Denmark, Finland, Japan, Poland, the UK), in some cases specifically through relaxed administrative requirements towards working permits or working visas – such as a fast-track visa (Czech Republic, Germany, Ireland, Portugal). Other countries, which noted a particularly strong brain-drain (Latvia, Lithuania, Taiwan), aim to respond through a combination of re-emigration and outflow reduction plans. Brazil and Poland specifically noted that policies towards skills-development would aim to improve the alignment of labour market needs and vocational training and education. Canada, China, Malaysia and Singapore reported a specific focus on up- and re-skilling policies to adapt to changing skills-profiles required. In the case of China, the State Council expressed intentions to create a lifelong professional skills training system enabling workers to develop and adapt their skills as needed.

While skill development and re-training existing staff is also common among employers from most countries surveyed, outsourcing specific skills and trying to attract foreign workers are also often referred to as measures taken by employers. In the case of China and the Czech Republic, our survey respondents even reported ‘predator techniques’ or ‘talent poaching’ to become prevalent methods for employers to overcome workforce shortages.

Refugees

Almost half of the respondents to our survey consider their country as a common destination for populations seeking refugee status, which corresponds to the results of previous surveys. Not all countries that are considered common destinations for refugees are, however, actively encouraging the integration of refugees into society and/or the country’s workforce. Numerous EU and EEA countries have over the past years introduced such programs to promote the integration of refugees – concerning EU Member States, this was mostly as part of the participation in the EU Relocation and Resettlement program. As reported previously, also Argentina, Canada, Colombia, Kenya and Peru have developed procedures to favour the integration of refugees.

Even though being a country that experiences a particularly high influx of individuals seeking

refugee status, Italy only recently introduced a program to encourage integration through education, career guidance, and training as well as state-funded housing projects and social support, including mental health assistance. Bulgaria recently amended legislation in order to facilitate prolonged residence permits for the family of individuals who were granted asylum. Germany recently updated certain integration-encouraging measures in relation to the 'integration through qualification' program with new laws that were passed mid-2019; among other measures, these laws include prolonged residence permits for refugees enrolled in apprenticeship and vocational training programs to a period immediately ensuing the termination of such training. Brazil has introduced a program of state-assistance to find work for refugees. Mexico offers temporary work, medical assistance, food, housing, and education to individuals seeking refugee status during the administrative process of approval – if granted refugee status, individuals receive further assistance for permanent integration into workforce and society.

Under a new Russian State Migration Policy for 2019–2025, the development of institutes for the social and cultural adaptation/orientation of migrants aims to facilitate interaction across different ethnic groups including migrants and refugees.

In taking an opposite approach, Cyprus, which in the past has seen a high influx of individuals seeking refugee status by share of its population, changed its policies to discourage further immigration of refugees due to allegations of abuse of the previously generous welfare system. Denmark is also reported to have recently taken a more protectionist approach towards populations seeking refugee status, meaning that residence permits are only of temporary nature and that the number of family reunifications will be limited. The US aims to discourage refugees and asylum seekers from entering the country by gradually lowering the annual 'refugee ceiling'. While this cap was at 110,000 individuals in 2017, the Trump administration lowered the ceiling to just 18,000 individuals in 2020. Australia continues to apply a system to deter people from seeking asylum directly in Australia while providing a managed humanitarian migration scheme for individuals assessed to be refugees by the United Nations High Commission for Refugees.

Recruitment, residence and workers' rights

Several countries surveyed reported recent changes to immigration laws related to the recruitment of foreign nationals and the issuance of work permits. While most changes in these regards have been made to facilitate regulations or procedures, a few countries (Bulgaria, Japan, Russia and the US) have enacted restrictions on either working permits for long-term or short-term assignments, business visitors or permanent residence. Under new regulations, foreign companies with undertakings in Bulgaria are limited to assign no more than three foreign representatives with permanent residence to Bulgaria. Japan requires a payment record of social insurance as a prerequisite to the application for permanent residence. New laws in Russia introduced stricter obligations for companies to monitor and guarantee the timely departure of business visitors subject to administrative liability. During the Trump administration, US immigration policies became more restrictive, with amendments to the H-1B visa program lottery system favouring applicants holding advanced degrees from US colleges and universities.

Among the countries that relaxed immigration policies, there seems to be a division between such

countries, where relaxations are linked to the requirement of either a specific skillset or educational background (Estonia, Germany) or to the economic background of the applicant – the latter in terms of participation in businesses (Singapore) or favouring migration from economically strong regions (Lithuania). The UAE applies a combination of both approaches mentioned above. Switzerland has exempted refugees and temporarily admitted persons from the requirement of obtaining a work permit before engaging in self-employed or employed work in Switzerland – they may now take up work upon registration to the competent authority by the employer. Taiwan has relaxed its regulations for dual-citizenship and has granted foreigners with permanent residence access to public pension schemes.

There have also been a few countries that have introduced preferable immigration policies for certain groups of individuals. In the case of Albania and Argentina, these are regional preferences:

- Argentina relaxed immigration regulations for Venezuelan immigrants and political refugees. Currently, an estimated 250,000 Venezuelans are living in Argentina, amongst whom the unemployment rate is at almost 0 per cent.
- Albania has introduced laws, under which foreigners from the Western Balkan region are exempt from the requirement to obtain working permits and are guaranteed equal treatment to Albanian employees.

Bulgaria and Poland have introduced immigration policies that treat respective foreigners of either Bulgarian or Polish descent favourably:

- Foreign full-time students enrolled in higher education in Bulgaria and with Bulgarian origins are granted the right to permanent residence.
- Poland has extended the scope of the so-called Pole Card (Karta Polaka; formerly only applicable to persons with Polish origins from former soviet states) to persons of Polish descent globally. Tenants of this card are allowed to take on work in Poland without the prerequisite of a work permit and they are automatically eligible for permanent residence upon first arrival in Poland.

While Denmark had previously imposed stricter regulations on permanent residency, during last year, the legislature has enacted a new bill providing for accelerated family reunification in favour of children who apply for reunification within the first three months after their parent was granted a residence permit.

With the prospect of the transition period for Brexit ending on 31 December 2020, the UK has introduced the EU Settlement Scheme, under which all EU and EEA nationals residing and working in the UK on that date will have continued right to live and work in the UK and to acquire permanent residence after five years of qualifying residence. From 2021 onwards, the UK envisages to introduce a consolidated points-based immigration system applying equally to EU and non-EU immigrants, which aims to decrease overall levels of immigration and give top priority according to the level of skills and talent of each applicant.

Regarding short-term assignments, Denmark has introduced regulations, under which one person may utilise their working permit more flexibly, meaning, that one permit may cover several postings

within a certain period and continues to apply, if working conditions change within the duration of the permitted assignment. Under new Polish regulations effective as of 27 April 2019, non-EU nationals holding a valid EU ICT residence permit from either Member State may under certain conditions take on short-term assignments in Poland without a work permit, but only upon formal notification to Polish authorities by the sending entity within 21 days prior to the posting. Restrictions on short-term business visa have been introduced in the US, where pregnant women on business trips are required to provide proof that their travel is not for the purpose of giving birth in the US. Also, the access to Optional Practical Training for foreign students in the US is being continuously restricted by the Trump administration.

3.16 Impact of recent political and world events

While the topics of trade conflicts, Brexit and a continued trend of isolationism and nationalism across many regions were widely debated on the political stages of 2019, there are only minimal effects on labour markets and employment law related to these topics or other political developments.

Relative to current trade conflicts (ie, USA-China and USA-EU), only China, the US and Singapore reported tangible effects on labour markets. In Singapore, the USA-China trade conflict is said to have contributed to an increase in unemployment rates for non-PMET (professionals, managers, executives, and technicians) employees from 4.0 per cent in 2018 to 4.7 per cent in 2019. China is experiencing adverse effects on the circulation of workforces and expects a possible drop in demand on the labour market and reduced credit of companies, in case of a large-scale trade war. According to survey responses from the US, current trade conflicts have forced US companies which operate internationally to reduce staff in foreign countries, which means that foreign subsidiaries of such companies have to deal with termination proceedings under the respective laws applicable, which usually differ from the US concept of at-will employment. Other countries that expressed concerns towards the possibility of adverse effects related to the USA-China conflict on local labour markets are Taiwan and Nigeria. India however could become a possible beneficiary of the USA-China trade conflict according to our survey respondents, as production may move from China to India as a result.

The USA-EU conflict meanwhile doesn't seem to show tangible effects on labour markets yet; however, export-focused markets in Europe such as Belgium, Germany, Hungary, Italy, Norway and Romania are concerned that an ongoing trade conflict may entail possible decreases in wages or redundancies in exporting sectors.

Ukraine reports to be another beneficiary of current trade-conflicts, as the local currency's exchange rate has been strengthened by an inflow of foreign capital into corporate and government debt securities through the reaction of several central banks taking measures against negative effects of the trade-conflicts on financial markets.

The situation surrounding Brexit and its effects on labour markets remains mostly unclear. Even though the UK formally left the EU on 31 January 2020, EU-regulations continue to apply during a transitional period until the end of the year with the possibility of a formal agreement regulating the future relations between EU and UK including worker rights and travel regulations to be concluded.

Even within the EU, most respondents to our survey haven't yet noticed material or tangible changes to labour law or labour markets. General concerns include administrative hurdles in case of a no-deal scenario that relates to immigration issues and the mobility of workers between the UK and EU Member States, as well as implications of GDPR towards the transfer of employment data as UK countries would have to be considered 'third countries' from 2021 onwards. Hungary and Latvia expect possible returns of workers currently employed in the UK, which may lead to questions regarding their re-integration into national social security systems. Portugal expressed concerns regarding dropping exports to the UK, and Germany reported that in a no-deal scenario, permissions for agency work to UK-based agencies operating in Germany will lose their validity. The UK itself does not expect significant changes or issues in the field of labour law – except for the abovementioned topics and the possibility that UK courts might take the opportunity to review certain doctrines passed down by the EU once they step outside the jurisdiction of the EU Court of Justice.

Outside the EU, only a few survey respondents noted an impact of Brexit in their respective countries. India and Nigeria identified possible benefits, as an increased demand for skilled workforce in the UK may create economic opportunities for their workforce. According to survey-responses from Japan, Japanese companies operating in Europe are shifting or have already shifted operations from the UK to mainland Europe in order to mitigate the effects of Brexit.

Although topics and tendencies of isolationism or nationalism are politically present in many parts of the globe, there are no significant effects or trends in the fields of employment law or HR practices on a global or regional stage according to this survey. However, Nigeria reported that according to an Executive Order, the Ministry of Interior is prohibited from issuing work visa to foreign nationals if their skills are readily available on the Nigerian labour market. Also, Chile is experiencing an increase of nationalism related to high numbers of foreign nationals seeking work on local labour markets.

3.17 Global leadership issues

Current human resources challenges

The reporting countries enlisted various topics as current HR challenges, of which several were unique challenges to the respective legislation or socio-political environment. As in previous years, however, some common trends could be identified. Many respondents named issues surrounding the termination of employment relationships as challenging – depending on the jurisdiction both in terms of a lack of flexibility for employers but also as deficits towards protection against unfair dismissal. Further trends, that continue to provide challenges for employers and legislators are the increasing demand for flexible work arrangements and an improved work-life balance, meeting the demands for digitalisation of the workplace and corresponding privacy issues as well as the challenges related to retirement and pensions within an ageing workforce.

Almost 30 per cent of our survey respondents considered a shortage of skilled and/or qualified workers a main challenge, Canada names this their 'first and most important challenge'. Depending on the economic strength of reporting countries, skills-shortages are either attributed in part to the inability to retain qualified workers or, vice versa, the challenges of attracting foreign talent under existing immigration policies – Belgium and Germany specifically refer to the administrative burden

of the single-permit procedures under EU and EEA regulations. Finland on the other hand expects an upcoming labour shortage due to large scale retirements within an ageing workforce. The lack of skilled workers seems most apparent in work areas surrounding IT and digitalisation.

According to this year's survey, the so-called gig economy and other forms of atypical working arrangements provide for growing challenges across many regions. A specific concern for practitioners, especially judges, is whether to qualify workers under such arrangements as employees or self-employed workers.

The US report a specific concern related to the Trump administration's handling of recent events related to demands for social justice. Among other measures the Trump administration ordered a ban for trainings on matters of racial sensitivity within federal agencies as well as private contractors doing business with the federal government or receiving grant funds.

Litigation

More than 75 per cent of survey respondents noted disputes in virtue of termination of contracts – most specifically alleged unfair dismissals and redundancies – as one of the most litigated issues.

Besides that, we observe a continuing trend of increased litigation relative to allegations of discrimination and harassment, which 15 countries listed as important topics. Previously in this report, this trend was partially attributed to the effects of the #MeToo movement. It will be interesting to see, whether current movements addressing racial injustice and social inequalities as well as discrimination based on ethnicity (eg, Black Lives Matter) will have a similar impact on labour disputes and litigation, which would mean that this trend is likely to be carried forward into the coming year(s).

Other areas commonly litigated are claims for payments of benefits and/or severances as well as the qualification of employment relationships under agency work arrangements or within atypical working schemes (eg, gig economy, self-employment).

Future human resources challenges

Survey responses show, that many respondents consider most of the current challenges as becoming critical challenges over the next five to ten years as well. Responding to advancements in technology and the corresponding challenges of data privacy and cybersecurity remains the most common answer in this regard. The challenges associated with atypical working arrangements such as gig economy, platform work, and self-employed service providers are also commonly referred to as future challenges, especially regarding the difficulties in the qualification of such arrangements under current or future legal provisions. Another repeatedly named challenge is the need to accommodate for enhanced flexibility in the workplace and meeting the sustaining demands for a better work-life balance.

However, despite being named as one of the most important current challenges, only few respondents, among others Latvia, Poland, Singapore and the UK, name skills shortages as a main challenge for future years. The same applies to the implication of an ageing workforce and retirement issues, which only Australia, the Czech Republic and Israel cite as future challenges. Even though, the

current Covid-19 situation may act as a (temporary) dampener in this regard, several countries noted that cross-border mobility of workers, as well as immigration and integration of foreign workforce, would remain major challenges over the next five to ten years.

3.18 Covid-19

Covid-19 has already had a significant impact on all the countries surveyed and their workplaces, with the measures taken to protect employees and employers being similar in many aspects.

As of April 2020, some respondents reported a state of emergency in their countries leading to various measures that address the effects of the pandemic, inter alia, on human resources issues. One effect, for example, is the compulsory wearing of face masks at the workplace in many countries. As a result of the pandemic, shops and other institutions that were not considered to cater to essential needs for daily life were closed to a large extent, for example restaurants, sport and entertainment establishments and shopping centres. Also, schools were closed in most regions to avoid an uncontrollable spread of the virus. Therefore, numerous companies have been obligated to stop operating or reduce their regular production. Only those areas deemed necessary have been maintained, especially companies that provide access to public services and goods or vital services, provided that the employees' health is ensured. Yet, in Sweden, for example, no general lockdown was imposed.

One aspect that therefore gained considerable importance during the Covid-19 pandemic and was mentioned by almost all respondents is teleworking/remote working, as curfews and other regulations on social distancing measures rendered traditional work from the office either impossible or irresponsible. Where technically and otherwise possible, many companies resorted to forms of remote working. While in many countries, the introduction of telework is only possible with the consent of employees, in Bulgaria, Poland and Hungary, for example, employers can unilaterally order the employee to work from home. In Italy, according to Presidential Decrees of 25 February 2020 and 1 March 2020, 'smart working' was allowed automatically, at first for areas considered at specific risk during the pandemic, later for the whole country. Anecdotal evidence suggests that many employees favour retaining key aspects of this model once the pandemic subsides.

As part of the social distancing measures, some countries have imposed strict curfews. In Kenya, for example, it was forbidden to be outside between 1900 and 0500, so workers had to leave their workplaces by 1600. There were comparable curfews in Serbia. In other countries, (stricter) curfews only applied to specific groups of people, especially older people and people with serious diseases. Further, in some countries the right of free movement was restricted. Therefore, in order to be able to travel to work, employers in countries such as Romania or Serbia had to issue a certificate indicating the employee is essential for the company's business and that the activity cannot be performed under teleworking conditions. In other countries, such as Turkey, entries and exits to and from 31 cities were stopped for a period of 15 days. There were comparable regulations in Kenya. In most of the countries, borders have also been temporarily closed. This led to special regulations for cross-border workers and to restrictions for business trips. In the Czech Republic, all cross-border workers had to submit a proof of foreign employment and the relevant documentation when crossing the border. Also, when returning to the Czech Republic, most cross-border workers automatically

had to submit to a 14-day quarantine which meant in practice that cross-border workers had to find accommodation at their place of work. However, especially medical personnel were exempt from the quarantine restrictions.

In order to avoid a massive concentration of people in public transport and at the workplace, many employers have agreed on deferred schedules to begin and end the workday or shift systems for employees whose tasks could not be fulfilled remotely. They also adopted other measures to avoid a build-up of people in common areas of the facilities.

Intending to prevent large-scale redundancies and terminations of employment relationships, in many cases, working time had to be reduced with the remuneration being adjusted accordingly. Employers in many countries are therefore supported by state subsidies or financial assistance to cushion the wages paid to the employees. In Germany, one of the most important measures was the renewed and facilitated access to short-time work and, accordingly, the state sponsored reduced hours compensation benefit (*Kurzarbeitergeld*). This means that employers may reduce the working hours and remuneration of their staff temporarily, while having parts of the remuneration and the full social security contributions compensated by the Federal Employment Agency through public funds. A short-time work subsidy also exists in other countries, such as Chile, Hungary, Poland, Sweden, Taiwan or Turkey. In the US, temporary restrictions on the right to terminate employees were enacted to offer protection, especially where stay-at-home orders affect the ability to work.

In some countries, new provisional measures allowed companies to temporarily suspend employment agreements. At the same time, the employees were still entitled to their remuneration for the duration of suspension of work – either to be paid by the employer or by the unemployment insurance. Yet, in other cases, temporary suspension means that employees do not work and that employers do not pay remunerations. In cases where the employer is not able to provide the employees with work to the agreed extent or to provide safety and protection of life and health at work, there often also is the option, that employer and employee may agree on the use of unpaid or paid leave to bridge periods of reduced workload, whereby the exact conditions and rules vary from country to country.

Employees who are sick are usually entitled to sick leave and sick pay. In some countries, there have been changes to the effect that sick leave is paid for by the state and no longer by the employer at an earlier point than usual during the employees' absence due to a Covid-19 infection. In the event of employees being placed under official quarantine, employers in Germany may request full compensation from the authorities. In Sweden, the procedure to provide a certificate of illness were relaxed for employees, in the way that they may present a doctor's certificate after 21 days instead of seven days. Several US states, including New York, have enacted specific regulations on paid sick leave relative to a Covid-19 infection or a government-issued quarantine/isolation order.

In many countries, the paid leave while caring for a healthy child under a certain age while their educational facility is closed, was prolonged and the child's age was increased (eg, Czech Republic: nine days to the whole closing time for children aged 10–13 years; Norway: from ten days to 20 days; Poland: 14 days to 28 days; US: up to 12 weeks if a school or childcare was closed due to Covid-19). The Japanese government established a temporary subsidy system for companies that paid full salary to their employees who were absent from work to take care of their children under 12 years.

Comparable regulations also exist in other countries.

Additionally, governments have implemented several economic support packages to help companies in the current situation. To mitigate temporary liquidity problems experienced by companies because of Covid-19, new rules on payment deferral of taxes/VAT and employer's social security contributions have been adopted in many countries. Furthermore, in different countries, the governments enacted financial support plans for small businesses and independent/self-employed and informal employees, providing credits or non-repayable emergency aids.

4. Conclusions

In general terms, the developments of 2019 contributed to the continuity of various trends and challenges, that were also present in previous reports, such as various socio-economic labour market challenges, enhancing diversity in the workplace or the management of increasing demands for flexibilisation and digitalisation. In some regards, the beginning of 2020, which was marked by the global outbreak of the Covid-19 pandemic, may have acted as a catalyst and dampener alike to various labour market-related trends and issues. Based on the still uncertain long-term impacts of this pandemic, we may experience radical changes in the ways we work and perceive common working practices. Therefore, reports such as this one, situated on the verge of a globally impactful period, can serve the purpose of a global benchmark to evaluate specific long-term changes related to such event or in other aspects the process of eventually returning to the pre-pandemic state of working.

Labour market

Persisting skills shortages remained to be a major challenge for most countries surveyed and are prevalent in various sectors. Reasons for skills shortages differ between regions and sectors and include insufficient training and education, the effects of (talent) migration, and the economic initiatives and incentives specific to the respective labour markets. A common focus to combat labour shortages is laid on managing the impact of migration flows. Countries that are known to attract refugees and work-related migration commonly aim to promote the integration into society and workforce in order to mitigate certain skills shortages and social challenges alike. Various other countries have either implemented facilitations in immigration laws in order to attract foreign talent or focus on enhancing the attractiveness of local labour markets in order to retain skilled and qualified workforce locally or attract skilled migration.

Discrimination and diversity

We continue to identify a trend across many countries towards enhancing diversity and combating discrimination related to gender (including effects of the #MeToo movement) and to enhancing the rights and representation of disabled people at the workplace. Gender equality has also continued to influence regulations on benefits associated with childcare, which are increasingly designed as gender-neutral benefits.

Legislators often introduce specific targets or quotas to achieve increased employment opportunities for individuals with disabilities and to address gender disparities. However, there is a prevailing under-representation of women on corporate boards. Also, the gender pay gap remains significant in many countries, even though some countries report a positive impact of laws on statutory pay equality. Furthermore, there seems to be a trend especially in larger and/or international companies to address discrimination through internal policies and the training of employees.

Alternative work arrangements/demands for greater flexibility

During recent years, we have noticed and reported on a disruption of the traditional working environment through mostly platform-based working arrangements under the so-called gig economy.

This year's survey responses show this trend has prompted tangible impacts on legal practice and debate during 2019 and early 2020, as reported, and that legal disputes over the qualification of such work relationships under existing labour laws were brought to supreme courts in several countries and with different outcomes. Other countries reported on projects to assure the protection and social security of workers in gig economy schemes. It is therefore likely, that the gig economy will be increasingly regulated in the following years, in particular with regards to platform work. Moreover, a development in line with previous reports shows, that a growing number of countries proposed or adopted legislation that is intended to enhance the protection of agency workers and other temporary or hired staff.

Another continuing trend is the increasing demand for more flexible working conditions in order to improve work-life balance and for reconciling work and family life, including most notably flexible working time arrangements and teleworking. In most countries, the latter has seen a substantial increase prompted by the Covid-19 pandemic and social distancing regulations related thereto, which poses the question of whether the current situation will benefit employees in terms of employers being more receptive to demands for home offices in the future. Before the Covid-19 pandemic, there have already been changes in practice and partially in legislation, that would favour so-called hybrid arrangements, where employees can work remotely part but not all of the time or have flexibility with respect to when some of their work is completed but are still required to work and be present during certain core hours.

Covid-19

The impact of the Covid-19 pandemic on society has been unprecedented during the first part of 2020 already. Measures taken by local authorities and employers alike have in many cases rendered traditional work from the office either impossible or irresponsible at least during short periods, with the result, that where possible companies resorted to remote working. Going further, many countries experience at least temporary economic downswings resulting in measures aimed at preventing large-scale redundancies. Such topics are likely to dominate public and legal debate for the entire year of 2020. Also, the closure of borders meant, that business-related travel was effectively suspended. While some measures are by nature limited to temporary effects only, others could provide long-term changes to working environments.

For the purposes of this report, some of the key questions associated with the effects of Covid-19 on the world of work will be, whether the public health concerns will have a lasting impact on the recent trends that included various facilitations in immigration laws in order to attract foreign talent and most notably on the possibility of short-term assignments and business travel. While the pandemic could provide notable restrictions for the latter, broadly affecting globalised group structures, we might experience a significant acceleration in terms of digitalisation of workplaces and the availability of remote working to a majority of employees in office-bound occupations.

Other notable trends

- *Recent political and social developments*

Labour markets seem to be vastly resilient to recent political developments. The current trade

conflicts emerging from the US under the Trump administration only show limited effects on labour markets and only a few survey respondents noted future concerns related thereto. Also, Brexit has shown very few labour law-related effects, although significant effects on labour markets and laws may emerge, once the prevailing uncertainties, whether the transitional period will conclude in a no-deal scenario or not, will be resolved at the end of 2020.

- *Retirement*

Responses to our survey and previous reports indicate that there is a common trend towards the increase of the statutory retirement age, which corresponds to demographic changes associated with an ageing population. Other measures relating to these social changes are enhanced pension benefits, also through private or company-sponsored schemes as well as incentives to work longer.

- *Stress and mental health*

Employee wellbeing and reducing risks associated with mental health challenges are increasingly addressed among the countries surveyed. Several governments have initiated strategies or legislation to address such challenges. At the same time, in countries where this is not the case, employers take it on themselves to create initiatives to assist employees in improving mental health issues related to the workplace.

- *Data security and privacy*

We continue to receive reports from countries outside the EU that amend data protection laws following the model of the EU's GDPR – possibly in order to benefit from advantageous conditions under the GDPR rules on data transfers to third countries. Besides that, there is a growing number of companies issuing internal guidelines on the use of social media.

- *Artificial intelligence*

Despite the importance of AI in many modern workplaces and the growing digitalization, legislation on the use of such instruments and the adaptation of labour markets and training of employees vastly remains underdeveloped.

- *Union activity/strikes*

There still is minimal legal development in this field, even though we receive occasional reports on a shift from employees joining traditional trade unions towards less formalised and in parts strongly politically influenced structures and activities. However, throughout 2019 there continued to be a fair amount of strike activity in the health and medical sector as well as the transport and education sectors.

- *Executive remuneration and banking reform*

New regulations and amendments of existing post-financial crisis regimes continue to focus on financially sustainable remuneration structures and individual accountability of highly paid individuals and so-called risk-takers.

- *Corruption and whistleblowing*

A number of countries and also the EU have adopted new rules on the protection of whistleblowers – EU Member States are required to transpose the new directive until 2021 only.

- *Disputes and litigation*

The most commonly reported human resources disputes – and the most frequently litigated – have continued to be unfair dismissals and issues surrounding the termination of employees.

5. About the IBA and GEI

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

The Executive Council Officers of the IBA GEI are:

- Co-Chair: Els de Wind
- Co-chair: Gunther Mävers
- Vice-Chair for Institutions: Oscar de la Vega
- Vice-Chair for Multinationals: Ignacio Funes de Rioja
- Vice-Chair for Knowledge Management: Peter Talibart
- Vice-Chair for Internal Affairs: Jelle Kroes
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- Vice-Chair of Membership: Todd Solomon
- Vice Chair for Diversity And Inclusion: Todd Solomon
- Treasurer: Chris Van Olmen
- Secretary: Gerlind Wisskirchen
- Council Members:
 1. Donald Dowling
 2. Regina Glaser
 3. Peter Talibart
 4. Philip Berkowitz

Schedule 1: Countries and Lawyers

Albania

Jonida Melani Braja (Wolf Theiss)

Argentina

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

Australia

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

Belgium

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

Brazil

Patricia Barboza and Maury Lobo (CGM Advogados)

Bulgaria

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

Canada

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

Chile

Francisca Corti (Carey) – Employment and immigration law

China

Annie Li and Dorothy Guang (Chen & Co) – Employment and immigration law

Cyprus

Andreas Thoma and Alexey Rudenko (Hadjianastassiou, Ioannides LLC) – Employment and immigration law

Czech Republic

Andrea Krásná (Baroch Sobota) – Employment and immigration law

Denmark

Anders Etgen Reitz (IUNO) – Employment and immigration law

Estonia

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

Finland

Jani Syrjänen (Borenius) – Employment and immigration law

France

Caroline André-Hesse (Ayache Salama) – Employment law

Germany

Michael Magotsch (MMAC ArbeitsrechtCoaching) – Employment and immigration law

Hungary

Hedi Bozsonyik (Szecskay) – Employment and immigration law

India

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

Ireland

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

Israel

Tsvi Kan-Tor and Daniel Aspiro (Kan-Tor & Acco) – Employment and immigration law

Italy

Marco Mazzeschi (Mazzeschi Srl) – Immigration law

Angelo Zambelli (Grimaldi) – Employment law

Japan

Masako Banno (Okuno) – Employment and immigration law

Kenya

Sean Omondi (Bowmans) – Employment and immigration law

Latvia

Sintija Radionova (Primus Derling) – Employment and immigration law

Lithuania

Robert Juodka, Greta Bagdanavičiūtė and Aneta Blaževičė (Primus Derling) – Employment and immigration law

Malaysia

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

Mexico

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

Netherlands

Martin Beijneveld (Adriaanse van der Weel) – Employment law

New Zealand

Carl Blake (Simpson Grierson) – Employment and immigration law

Nigeria

Kunle Obebe, Solomon Oshinubi and Kelvina Ifejika (Bloomfield) – Employment and immigration law

Norway

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

Peru

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

Poland

Tomasz Rogala, Marcin Snarski and Piotr Kozłowski (Bartłomiej Raczkowski Paruch) – Employment and immigration law

Portugal

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

Romania

Ileana Glodeanu (Wolf Theiss) – Employment and immigration law

Russia

Irina Anyukhina, Olga Pimanova and Irina Cherkhintseva (ALRUD) – Employment and immigration law

Serbia

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

Singapore

Jenny Tsin (WongPartnership) – Employment and immigration law

South Africa

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

South Korea

Thomas Pinansky (Barun Law) – Employment and immigration law

Spain

Diana Rodríguez Redondo (Ashurst) – Employment and immigration law

Sweden

Jonas Lindblad (VINGE) – Employment and immigration law

Switzerland

Ueli Sommer (Walder Wyss) – Employment and immigration law

Taiwan

Christine Chen (Winkler Partners) – Employment and immigration law

Turkey

Maria Celebi, Batuhan Sahmay, Ozlem Ozdemir (Bener Law Office) – Employment and immigration law

United Arab Emirates

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

United Kingdom

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

United States

Brian S. Cousin and Christina S. Dumitrescu (McDermott Will & Emery) – Employment and immigration law

Ukraine

Oksana Voinarovska (Vasil Kisil) – Employment and immigration law

Venezuela

John Tucker (LEA Abogados) – Employment and immigration law

Schedule 2: Questionnaire

2020 Annual Global Report Questionnaire

Please briefly respond to each question. When relevant, please describe both legal rules and employee/ employer practices (whether or not legally required).

I. Country:

II. Attorney name(s) and Employer to list in the Annual Global Report:

I. Immigration and talent

A. Skills shortage and changing skills requirements

1. Is there a skills shortage in your country? In which industries? What are its causes?
2. How is the government responding to any skill shortage?
3. How are employers responding to any skill shortage (outsourcing, recruiting foreign workers, training, etc)?
4. How are the government and employers addressing changes in skills needed in the workplace?

B. Foreign nationals and business visitors

1. What changes have there been to your country's laws regarding foreign nationals, including the right to obtain permanent residence and changes in the rights and benefits of their family members?
2. Have there been any changes in your country regarding short-term assignments for business visitors (eg, limits on length of stay, reporting requirements, specific visa obligations)?

C. Refugees

1. Is your country a common destination for foreign populations seeking refugee status? If so, how is your country encouraging the integration of refugees into society and the workforce?

II. The Work Environment

A. Work-life balance

1. What changes have there been in your country's laws that are intended to have an impact on flexible working practices, including remote working and flexible hours?
2. Are employers applying flexible working practices to a greater degree?
3. What types of flexible working arrangements are most common in your country?
4. Have there been any changes in legal rules or corporate practices regarding the 'right to disconnect' from work (ie, certain hours or days when an employee is not obligated to monitor or respond to work communications)?
5. Have there been any changes in the rules relating to maternity, paternity, or dependents? Are employers receptive to paying enhanced benefits over and above their legal obligations?

B. Alternative workforce

- a. Have there been any developments relating to the use of temporary workers, including independent contractors, agency workers, the 'gig economy', and crowd-working schemes?

C. Stress and mental health

1. Have there been any legal developments or employer-led changes in response to employee stress and mental health issues?

D. Collective bargaining

1. Have there been any significant strikes or other organised employee/industrial action in the public or private sectors?
2. What legal changes have there been in relation to collective bargaining, freedom of association, strikes or other industrial action?

E. Remuneration

1. Since the introduction of post-financial-crisis regulations, have there been legal developments regulating financial institutions and their executives?
2. Have there been changes with respect to executive remuneration (eg, CEO pay ratio, etc.)? Are laws on executive remuneration enforced (and how – by the government or in the courts)?
3. What changes have there been with regard to gender equality in remuneration, including legislation addressing the gender pay gap and the reporting of gender pay disparities? Are such laws showing effect?

F. Corruption and whistleblowing

1. Have there been any legal or employer changes to address corruption and bribery in the workplace, including whistleblowing procedures? Have these been effective?

G. Privacy

1. Have there been any legal or employer changes related to privacy, surveillance, data protection, and the use of social media in the workplace?

H. Human rights

1. Please describe any developments related to the protection of human rights in the workplace, including legal requirements and employer practices.

I. Discrimination

1. What changes have there been in laws on discrimination in the workplace by reason of gender, sexual orientation, age, race, ethnicity, religious belief or disability?
2. Do employers in your country provide training to their employees about workplace discrimination laws? Do employers generally comply with anti-discrimination laws?

J. Diversity

- a. To what extent do employers in your country make accommodations for religious practices or beliefs?
- b. Have there been any developments in law or employer practice relating to the imposition of government quotas or targets for gender parity, including board membership, or employment of individuals with disabilities?
- c. Have there been any other changes in law or corporate practices designed to increase diversity in the workplace?

K. Sexual harassment

- a. Have there been any changes in laws or employer practices regarding sexual harassment in the workplace?

L. Artificial intelligence

- A. Has there been an increase in employer reliance on artificial intelligence in your country?
- B. In which areas / industries of your country have artificial intelligence tools resulted in a loss of jobs or in the creation of new jobs?
- C. Have there been any laws adopted in your country related to the use of artificial intelligence?

III. Separation from service

A. Termination

1. What changes have there been that affect the ability of employers to dismiss employees? Do employers in your country generally observe these procedures?
2. Have there been any significant changes in relation to enforcement of restrictive covenants and obligations of confidentiality?

B. Retirement

1. Have there been any legal or employer changes related to early retirement, including the ability to impose early retirement?
2. Have there been government or employer efforts to incentivise employees to work longer due to longer life expectancies, financial need, lack of qualified workers, or other demographic or corporate needs?
3. Are limited public pension funds a concern, and how are the government and employers addressing this issue?
4. Have there been any developments regarding private (company-sponsored) pension schemes?

C. Employment disputes

1. Have there been any changes in the way employment cases before the courts and tribunals are reported, including the power to restrict reporting at the request of the parties?
2. Are employment disputes resolved more often in court or via arbitration proceedings?

IV. Impact of recent political and world events

- A. What global HR issues have arisen, or do you expect to arise, with respect to current trade conflicts (eg, USA – China; USA – EU) and the resulting impact on the economy?
- B. Have you seen labour and employment issues and legal changes in relation to the uncertainties surrounding Brexit, and do you expect additional developments once Brexit takes place?
- C. Have you seen any other changes in the workplace as a result of increased isolationism/nationalism?
- D. Have there been notable HR issues or regulatory developments in relation to other political developments (on a global and/or regional scale)?

V. Summing up current and future trends

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

Additional Covid-19 question

Please describe how Covid-19 has impacted the workplace and whether any legislation has been adopted to address the effects of the pandemic on human resources issues in your country.