ELLINT
Your Partners at Work

INSIGHTS

NEED TO KNOW : NEW EUROPEAN EMPLOYMENT & LABOUR LAWS IN 2017

JAN 2017

New Year | New Laws

A New Year and new laws are awaiting employers in Europe. Many are aimed at providing incentives to businesses in order to stimulate local labour markets while others may add additional red tape to already complex human resource management programs.

With this newsletter ELLINT provides employers with a snapshot what they need to know about new regulations which may impact their human resource management and strategies over the next 12 months in Belgium, France, Italy, The Netherlands, Spain, Switzerland and the United Kingdom.

BELGIUM

SALARY INCREASES:

Belgium is one of the few countries in Europe where in almost every industry employees' salaries are automatically adjusted to the cost of living through automatic indexation mechanisms. This means that as of January 1st, 2017 salaries will automatically increase by approximately 1.15%. However, local trade unions and the employer's federations are expected to start bi-annual negotiations to set the framework for the evolution of the salaries for the years 2017-2018. In order to protect Belgium's competitive position in terms of wage cost (compared to neighboring countries) it is expected that the margin for salary increases will most likely be capped at around 1% for the next two years.

BACK TO WORK?:
The Belgian government has introduced new measures for employees who would like to return back to work after a long term illness. As of January 1st, 2017 any employee on long term sick leave may request their old job back, or another role within the company - with adjusted employment conditions. When such a request is made, an occupational doctor must confirm that the employee is fit enough to return to the workplace. If they are, then the employer must either make an individual detailed proposal to the employee - or technically or factually justify why it is not possible, or reasonable, for the company to accept the employee back.

The dismissal of an employee with a permanent medical health condition will only be allowed if the occupational doctor confirms that the employee will never be able to perform any job within the company, or if no suitable alternative or adjusted job can be proposed - or is accepted by the employee.

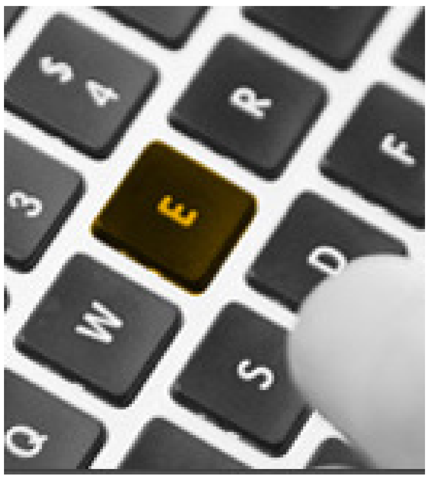
LABOR REFORMS:
The Belgian government has announced a great number of labor law reforms to increase the flexibility of the organization of work. For example the creation of a holiday savings account system, more flexible working time schedules and voluntary over-time work. However, it is uncertain whether these announced reforms will be implemented as negotiations with the local trade unions will be required before they can be put into practice.

Sotra
www.sotra.be

ITALY

OLD WORKERS:
The Italian government is looking to create more space for young workers by providing incentives for older workers to leave the workforce earlier. The current retirement age in Italy is 66 years and 7 months for those who have contributed to the pension system for at least 20 years. The recent Stability Law will allow those who have 63 years of age, and who have contributed to the Italian pension system for at least 20 years, to leave work instead 3 years and 7 months before their official retirement age and receive a ‘bridge salary’ (*reddito ponte*) from the government up until their official old age pension would take over. However, employers should note that female employees who have reached 57 years of age, and have contributed to the Italian national pension system for 35 years as of December 31st, 2015, will also be entitled to take early retirement under similar conditions as to those above.

NEW WORKERS:
Always seeking ways to stimulate the labour market and youth employment the Italian government has introduced a financial incentive from January



1st (up until December 31st, 2019) for businesses to hire new employees and apprentices for permanent work roles. The incentive is in the form of waiving €3,250 of social security contributions for a period of up to 36 months. For employers hiring in Southern Italy the incentives become even greater with €8,060 of waived social security contributions for 12 months. for taking new employees and apprentices on work-study programs.

LEXELLENT
www.lexellent.it

THE NETHERLANDS

LONG TERM ILLNESS:
In the Netherlands employers are obligated to continue to pay 70% of the (daily maximum) wage during the first two years of an employee's long term illness. In addition, employers are obligated to pay a mandatory severance payment (*transitievergoeding*) if the employment contract is terminated after two years of illness. Criticism against this double 'punishment' has led to a legislative proposal where employers will be compensated for the payment of the mandatory severance payment in such circumstances. This proposal still has to be approved by the Parliament but the expectation is that it will be approved in the coming months.

INDEPENDENT CONTRACTORS:
The government has recently decided to postpone the enforcement of the Deregulation Assessment Employment Relationship Act ("WDBA"), originally introduced on May 1st, 2016 until January 1st, 2018.

The WDBA was originally meant to protect independent contractors against false self-employment. However, in practice companies became less willing to hire independent contractors because of the uncertainty whether the relationship could be considered to be an employment contract – leading to a lot of criticism against the WDBA. Hence the decision to postpone the enforcement of the Act until 2018.

ELECTIONS:
There will be new government elections held in The Netherlands in March 2017. We expect, regardless of which party wins, there will be new proposals and regulations introduced to help stimulate the national labor market in the coming months.

ARBOR
www.arboradvocaten.nl

UNITED KINGDOM

IMMIGRATION SKILLS CHARGE:
In April 2017 an Immigration Skills Charge will be introduced which is effectively a new Government fee for hiring non-EEA nationals to work in the UK. The Charge will cost employers an additional £1,000 per year for each non-EEA national employee that they sponsor to work in the UK. Employers would be best advised to bring in any new overseas sponsored staff before April 2017 to avoid this additional cost.

GENDER PAY REPORTING:
As of April 2017 employers with

250+ employees in the UK will be required to take a snapshot of pay data within their organisations which must be published on their websites within the following 12 months. Employers must divide their employees into 4 pay quartiles and publish data relating to the proportion of men and women in each. Other data must include the differences in average and median pay earned by the men and women and the difference in average bonuses paid to men and women within the preceding year. This new regulation intends to highlight discrepancies between male and female pay within organisations.

Affected employers are advised to implement systems and processes without delay to capture the information. It would also be helpful to carry out test runs to identify any particular pay discrepancies which might be addressed before taking the first snapshot of publishable data in April 2017. Once the data has been published it could possibly lead to an increase in the number of equal pay claims in the private sector, as well as lobbying by groups interested in pay matters within various industry and professional sectors. Employers with 250+ employees will be required to publish this data on an annual basis.

Doyle Clayton
www.doyleclayton.co.uk

SWITZERLAND

FOREIGN WORKERS:

Employers in Switzerland who intend to hire foreign nationals from beyond the EU/EFTA (European Free Trade Area) countries and service providers from EU/EFTA countries who will provide services in Switzerland for more than 90 days are encouraged to make their applications for work visas as soon as possible due to the limited number of work permits which will be available this year.

In particular only 250 long term 'B' work permits (assignment period in Switzerland of more than 120 days) and 2000 short term 'L' work permits (assignment period in Switzerland of more than 90 days) will be available for service providers from EU/EFTA countries in 2017.

In terms of foreign nationals being hired by Swiss employers from beyond the European Union and EFTA there will only be 3000 long term 'B' and 4500 short term 'L' work permits available from the government.

Once these quotas are used up no new foreign national workers from non-EU/EFTA counties can be hired in Switzerland until 2018.

Graf & Partner
www.grafundpartner.ch

FRANCE

RIGHT TO DISCONNECT

On January 1st, 2017 the French government introduced a new law (Law Number 2016-1088), the first of its kind in Europe, requiring employers to put in writing that they cannot disturb their employees outside of working hours. More importantly they are required where trade unions are present to negotiate in order to establish a new collective agreement on this

point. Where trade unions are not present then employers must establish a unilateral work charter outlining their legal obligations in terms of this new law - which will also require authorization from the local Works Council.

Of particular note, this new 'Droit à la Déconnexion' regulation will require businesses with more than 50 employees in France to negotiate this obligations with either a trade union or Works Council annually. Here employers are encouraged to prepare and create a human resources policy addressing the issue – also taking into account executives and employees who may be required to work with colleagues, clients, and contacts based in different time zones.

To date, it is not clear which government imposed sanctions an employer will face if they fail to respect this new law. More immediate though is the risk that an employee could take their employer to court claiming a breach in their Health & Safety for having to answer work related phone calls or emails outside of their established working hours. Again, a well written and defined human resource policy on this subject would be a positive defensive move against potential claims.

MGG LEGAL
www.mgglegal.com

SPAIN

COMPENSATION FOR TERMINATION OF A TEMPORARY CONTRACT.

Under the Spanish Workers Statute, temporary replacement employees have worse termination conditions than a comparable permanent employee doing the same duties. In the first case, a replacement fixed-term employee would not be entitled to any severance compensation due to termination of contract, while a non-temporary employee would accrue a 20 days' salary per year compensation upon contract termination.

However, such legal scheme has been recently challenged by the High Court of Madrid, by requesting a preliminary ruling from the European Court of Justice (ECJ Case – Ana de Diego Vs. Spanish Defense Ministry - Judgement of 14th September 2016), stating that Spanish national rules breach the non-discrimination principle established in Clause 4 of Directive 1999/70/EC (Framework Agreement on fixed-term work).

The ECJ has finally stated that such Spanish provisions in dispute do indeed breach the rights of fixed-term workers under Directive 1999/70 and that temporary replacement employees should not be treated less favorably than comparable permanent ones when calculating severance compensation due to termination of contract. The ECJ stated that the meaning of the term "employment conditions" under EU law includes compensations that the employer must pay to an employee on account of the termination of his/her fixed-term employment contract. The mere fact that the worker carries out his/her work on the basis of a temporary replacement contract, cannot constitute an objective ground justifying the failure to grant such compensation to that worker.

This ruling will have significant repercussions in Spain due to a significant increase of cost of severance compensations. Not only for employers using temporary replacement contracts, but also for those using other types of fixed-term employees.

Abdón Pedrajas & Molero
www.abdonpedrajas.com

ELLINT

Your Partners at Work

INSIGHTS

The information provided here above is in no way intended to replace legal counsel.

This document is being provided to educate and to highlight matters which may impact business today and in the future.

We invite you to contact our specialised experts for more in-depth detail on any of the matters discussed within these pages at info@ellint.net.

ELLINT
Employment & Labor Lawyers International
Avenue Louise 65
B-1050 Brussels
Belgium

info@ellint.net
www.ellint.net