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HR WORLD TODAY

Normality would appear to be slowly returning, and there have been several landmark rulings and important legislative developments in the last few weeks that are nothing at all to do with the health crisis. Perhaps the most pathfinding of these is Brazil's Supreme Court Decision that maternity pay should not be subject to social security deductions, as the payment is not in return for work. Although this depends on the particulars of Brazil's constitution, we can see this challenge arising in other jurisdictions.

Trade unions have recently lost ground on a number of fronts. This includes the European Court of Justice's rejection of their case in Spain for lost special holiday entitlements when an employee goes sick. In the USA, the National Labor Relations Board (NLRB) continues on its course to rectify its incongruous rulings from the past. This time it is the removal of union-side protection when discrimination occurs during their "concerted activity". The US Court of Appeals has also put its finger on unions, ruling that once a collective bargaining agreement is in place they must abide by its implications, even if it is not in their interests.

The most common legal reforms outside temporary pandemic measures remains on the "family friendly front. This has brought in new rules for adoption in Puerto Rico and rights to both lactation breaks and extended

family leave in New Jersey. Equal pay amendments will come into force in New Zealand this Autumn and maternity pay harmonisation is in prospect in the Cayman Islands.

Catch 22-variant laws are loved by many legal professionals. These are situations where liability should exist, but one "sin" neutralises another - as in the case of health and safety infringements in Italy. In **Ontario**, an even more bizarre example is to be found in a court's decision that because an invalid clause exists somewhere in an employment contract a case involving another clause in the contract is rendered null and void.

Other developments to note are the pending data security law in China, the 4th state corporate manslaughter law in Australia and the impact of Brexit on migration patterns.

The main driving force that persuaded so many people to vote against EU membership in 2016 was the presence of EU migrants in many skilled jobs. The vote seemed to have worked, as the largest national group of immigrants - Poles - have been leaving the UK in substantial numbers, largely to benefit Germany. However, more disturbingly, many UK nationals have also departed to work and live elsewhere. This could be the beginning of an unfortunate pattern - if erecting trade barriers to principal markets leads to a double whammy recession in the UK from next year.

AFRICA AND MIDDLE EAST

CYPRUS: Cyprus has agreed to capitulate to Russia's demand to impose a new 15% withholding tax on outflows of capital arising from dividends or interest. The renegotiation of the double-taxation agreement (DTA) is important, as Cyprus has been a favoured destination for both major and minor oligarchs. The strategy of the Russian government has clearly been to deal with Cyprus first and, once a breakthrough was achieved, move on to insist on the same deal with other favoured capital destinations - such as Malta and the Netherlands.

CYPRUS: The categorization of countries according to their epidemiological situation has been updated regularly by the Ministry of Health. For a picture of the latest situation, please click [here](#).

GAMBIA: The Forced Labour Amendment Bill has now been referred by the National Assembly to a committee stage, before moving on to a third reading. This law has, as its principal focus, the exploitation of women, and its drafting heralded "the trailblazer for the recognition, observance and the domestication of international obligations and commitments relating to women's rights into domestic law".

GHANA: The Deputy Commissioner of the National Labour Commission, Rose Karikari Annan, has revealed that 48% of contested job terminations are found to be legally "unfair". She also revealed that in the majority of cases referred to the Commission, employers had refused to serve any statutory notice and simply terminated workers with immediate effect.

GHANA: Most HR professionals will be familiar with the employee who refuses to

take annual leave. However, in a recent incidence of this seemingly workaholic problem, there has been a possible twist in its motivation. The State President of Ghana has long been pressuring the Auditor-General, Daniel Yaw Domelevo, to take his long accrued annual leave. Ghana's labour law makes it unlawful to forego leave and so, when it is untaken, it simply accumulates. One reason for a person in a position of power in a third world country not taking leave is that once someone takes over their job during their break, they may discover numerous financial irregularities, which can be kept hidden when the perpetrator is on duty. Could this possibility also be overlooked closer to home? It is certainly worth investigating.

SOUTH AFRICA: Lawfully issued visas that expired since 15th February 2020, and during the following lockdown period, are now automatically extended and deemed to be valid until 31st October 2020.

SOUTH AFRICA: Certain individual taxpayers may now deduct their home office expenses from their taxable income, as long as the requirements of the Income Tax Act No. 58 of 1962 are met.

UAE: Visitors who came to UAE legally with entry permits that expired after 1st March 2020 may now stay until 11th September 2020.

THE AMERICAS

ARGENTINA: A law regulating the conditions applicable to teleworkers has now been passed by the Senate. The law will come into force 90 days after the current health crisis is over. It requires employers to pay teleworkers in line with other workers,

requires that working arrangement must be voluntary, and that there must be a right to revert to office work on request. Employers must provide all necessary equipment, and pay expenses for additional employee costs - such as power, heat, and light. Employee monitoring should be strictly limited and once daily working hours have been completed, there must also be a right to disconnect.

BERMUDA: In order to cater for the health crisis, the Employment Amendment Act 2020 has been introduced to discount the period from 1st April to 30th June from the normal layoff limits. Normally, there is a 4-month maximum period for a job furlough, after which the employee must be made redundant and given severance compensation. If the amendment had not been passed, the majority of the island's businesses would have had to close.

BERMUDA: In the last issue, we reported the introduction of a 1-year "nomad visa" by Estonia. Now qualified foreigners may alternatively apply for a 1-year Residential [Certificate](#) and work remotely from a base within this British Overseas Territory over the course of a year. The cost of the certificate is \$263. Application forms can be found [here](#).

BRAZIL: One significant difference between countries is how they treat maternity pay in respect to social security deductions. In Brazil, the Supreme Court has just ruled that "maternity salary" must not be treated as remuneration, or subject to employer social security contributions. According to the Federal Constitution, social security deductions may only apply in respect to payments made in return for work. As a consequence of this decision, employers will be able to save 20% on payments made to women on maternity leave, with a possibility

of recovering past payments made over a 5-year period [Extraordinary Appeal 576,967].

CANADA: The next period of the Canada Emergency Wage Subsidy (CEWS) program will open for applications on 17th August 2020. To calculate the subsidy, use this [online calculator](#).

CANADA: Income tax payment deadlines have been once again extended - now to 30th September 2020.

CANADA: Employers in Ontario should make a careful check of their employment contracts and take local legal advice to ensure that they do not contravene the Province's Employment Standards Act (ESA). This is because ESA does not incorporate the common law right of dismissal with "just cause". Only dismissal "without cause" is permitted under the Act. Previously, courts have ignored any error in wording where "without cause" was being invoked, but in a recent case [Ontario Court of Appeal in [Waksdale v Swegon North America Inc.](#) 2020 ONCA 391], the Court determined that its very existence voided the termination provisions in the contract as a whole. Consequently, the employee was required to be given common law reasonable notice of termination, even though their actions justified immediate dismissal.

CAYMAN ISLANDS: A Private Members' Bill has been submitted to the legislative Assembly that seeks to align maternity leave provisions between the public and private sectors. Currently, private sector female workers are entitled to 70 days' maternity leave – 20 days paid at normal rates, 20 days at half pay, and 30 days unpaid. However, in the public sector, the leave is 90

days, of which 30 days are on full pay and 60 days are unpaid.

CHILE: The new Protected Parenting Law has just been enacted. This provides entitlement to those who were undertaking postnatal leave, which ended after 18th March 2020, to continue to receive a similar ongoing level of assistance for up to a further 90 days. An additional scheme applies to caregivers of children born since 2013. Where the caregiver has been paying into the social security insurance system, they may unilaterally request that their employment contract be suspended and then receive an allowance equivalent to unemployment benefit.

HONDURAS: New names for the health crisis are gradually emerging and already in common use in this Central American state is "biosecurity". Policy makers in Honduras are concerned that although homeworking has become the new "norm", there is, in fact, no legal framework for it. A draft law is therefore being drawn up and is likely to be put to the National Congress this Autumn.

PUERTO RICO: House Bill 2424 has now been signed into law. This amends the existing Working Mothers Protection Act by extending maternity leave rights to those adopting a child 6 years old, or over. It provides five weeks leave, purely to working mothers, on condition that they give 30-days notice to their employer and claim a right to reinstatement after the leave has ended. They must provide the employer with adequate documentary proof of the adoption and when it shall commence. Under a previous amendment, in 2000, working mothers adopting a child aged five or younger were given a right to eight weeks

leave, provided the child was not enrolled in school.

USA: The US Department of Labor's investigation of a Southern **Californian** claims management company has led to payments averaging around \$1,000 each for employees under the FLSA minimum wage obligations. Earnings fell when the company stopped pay for 2 consecutive months. It also failed to keep accurate working time records.

USA: According to the **Minnesota** Supreme Court, the serving of an unpaid internship does not remove the rights of individuals to be protected from race and sex-based discrimination under the Minnesota Human Rights Act [Meagan Abel v. Abbott Northwestern Hospital and St. Mary's University Minnesota].

USA: Although the Federal Arbitration Act specifically excludes agreements with transport employees who are independent contractors, the **New Jersey** Supreme Court has qualified this exemption. According to the Court, the New Jersey Arbitration Act (NJAA) can still be applied to such workers and also any clause in a contract limiting class action can equally be enforced. Furthermore, a contract does not need to cite the NJAA in order for it to apply. Transport sector companies in New Jersey may therefore continue to limit litigation through building arbitration clauses into agreements with contract workers.

USA: Paid family leave in **New Jersey** is now 12 weeks – up from the previous level of 6 weeks. The benefit cap has also been increased to 70% of average earnings, currently standing at \$860 a week. The benefit is funded through a payroll levy, with

premiums rising this year in anticipation of this change.

USA: The tenth circuit of the US Court of Appeals has found that a new powerful challenge to employers can be made through a combination of "age plus gender". It is now much easier to convince a court on the basis of such a combination, and an older employee only has to establish that their employer showed bias against just them, without any need to demonstrate that the employer showed bias against the broader group to which they belonged. Previously, age was not easily recognised in combination with a Title VII claim because it was subject to a separate law – the Age Discrimination in Employment Act. This ruling has changed all that [[Frappied v. Affinity Gaming Black Hawk](#), No. 19-1063 (10th Cir. 2020)].

USA: Although the Fair Labor Standards Act (FLSA) requires employers to provide reasonable work breaks so that non-exempt female employees may express breast milk, the law only applies to companies with 50+ employees and for up to 1 year from the birth of the child. State laws tend to fill the gaps in the FLSA. The latest state to introduce a lactation break law is **South Carolina**. This does not apply a 1-year limit and coverage is extended to exempt employees. The state law also prohibits an employer from discriminating against an employee for expressing milk at work.

USA The **Alabama** Department of Labour now requires all employers to report new hires, those rehired after a 60-day gap, and recalled employees who departed up to 12 months ago. This report must be issued on the day of the hire, or rehire, and failure to do so will result in a \$25 fine per hire.

USA: The Second Circuit of the US Court of Appeals has reaffirmed that trade unions play a central role in determining terms and conditions - where they are established to operate within collective bargaining agreements (CBA). They cannot sidestep their responsibilities if employees are covered by their CBAs (whether or not they are actual union members), or ignore legitimate arbitration findings if they do not profit the employees concerned. Nor can employees unable to achieve satisfaction through their union switch to obtain it on an individual basis through the courts [ABM Industry Groups, LLC ("ABM") vs the International Union of Operating Engineers, Local 30].

USA: The long ban on employers taking action against employees, or trade unions, if they discriminate or harass during the course of "concerted activity" – during a dispute or union recruitment drive – is finally over. The National Labour Relations Board has finally reversed its position under S7 of the NLRA. Now an employer may take action against acts of, for instance, profanity, sexism or racism, in any labour relations context, provided they have a clear policy in place prohibiting the use of such language, that they have applied consistently in the past [General Motors LLC, 369 NLRB No. 127 (2020)].

USA: Just to make life more uncertain for employers, a Federal Judge in New York has struck down several points of Department of Labour guidance in respect to the Families First Coronavirus Response Act. This only relates to companies with less than 500 employees and should therefore not affect many FedEE member companies, but it remains uncertain whether this ruling relates to New York alone or has validity to the US

in general. For a good summary of the ruling we suggest this [NLR article](#).

ASIA PACIFIC

AUSTRALIA: It is now a serious offence in the State of Victoria for a company to commit workplace manslaughter. From 1st July 2020, the offence carries a fine of up to \$16.5M for companies and a jail sentence of up to 25 years for responsible individuals. This is the fourth state to introduce an Industrial Manslaughter Act, with Western Australia's Work Health and Safety Bill also currently making its way through the State legislature. An important characteristic of Australian laws in this field is that they are broadly framed. Thus, a possible offence exists if an employee commits suicide due to stress, or an employee has a road accident in a defective company vehicle.

CHINA: The public consultation period for the [Draft Data Security Law](#) will end on 16th August 2020. The current draft includes - inter alia - a requirement to set up data security management systems, conduct training, and take measures to safeguard people and systems (Article 25). For serious examples of non-compliance, fines could be up to CNY1 million (US\$143,890) for entities and CNY100,000 for the person in charge. Once adopted, this new law will be the first designated data security law in the country.

INDIA: The government of **Karnataka** has amended Chapter 5 (b) of the Industrial Disputes Act 1947. This means that companies do not have to obtain prior governmental permission before laying off, retrenching or closing a business unit, unless at least 300 jobs are at stake. It is estimated that 80% of companies operate with less

than 300 employees [Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance, 2020].

INDIA: The **Gujarat** government has just passed the Contract Labour (Regulation and Abolition) (Gujarat Amendment) Ordinance, 2020. This removes the applicability of the contract labour law in respect to groups of 50 workmen or less. Previously, the threshold was just 20 workmen.

INDIA: The grant paid to, or for, a pregnant woman covered by the Employees' State Insurance Corporation (ESIC) is to be increased to Rs7,500 (US\$99.87) if they have to use dispensaries not registered with ESIC. Those able to use such facilities will still qualify for a grant of Rs5,000 (US\$66.58).

JAPAN: The number of new job openings fell over the year to May by 32.1%, although this was not matched by job applications - that were only 3.1% down. The decline in activity was also reflected in a 9.3% annual reduction in hours worked and a 2.3% drop in average earnings (-4.5% in manufacturing).

JAPAN: In order to overcome the problem of poor occupancy rates and employees not having suitable space at home to undertake teleworking, a novel arrangement has been developed to allow employees to work at a distance in hotel rooms. The new app-based scheme drawn up by NEC and the travel agency JTB will be launched in Tokyo at the end of August. It is mainly geared to arranging face-to-face meetings when access to a normal office proves difficult, with rates starting at ¥200 (US\$1.90) per 15 minutes for co-worker spaces. What the organisers have not seemed to take into account, however, is that asking co-workers

to inhabit any space that is effectively a bedroom could give rise to sexual harassment allegations.

JAPAN: From next Spring, the Labour Ministry will be pressing employers to design jobs to enable them to be undertaken until the age 70. Already, one of the Tokyo area's largest electronics retailers, Nojima, has introduced a scheme to allow employees to work until they 80 years old. Staff of Nojima who choose to stay past 65 will be asked to renew their employment contracts on an annual basis.

MALAYSIA: An amendment to the Employment Act (1955) is currently being drafted. This will enhance maternity leave and introduce paid paternity leave into the private sector for the first time. Two other key elements will be full statutory protection from sexual harassment and a facility for employees to request either working time flexibility, or a change in work location. No timetable has been set for debating these changes, but they can be expected sometime early next year, pandemic crisis permitting.

NEW ZEALAND: Back in July last year, we [reported](#) that the Equal Pay Amendment [Bill](#) was waiting for a second reading. Parliament recently unanimously passed the Bill and it will now come into force during late October this year. For more information on this Bill, please click [here](#).

NEW ZEALAND: Employees with an employer-assisted temporary work visa that is due to expire before 31st December 2020 will have it automatically extended by a further 6 months.

PAKISTAN: The Sindh Commission on the Status of Women, Civil Society and Labour Rights has issued a report calling for Hari Courts and District Vigilance Committees to be established in order to allow the practice of bonded and child labour to be challenged. The Commission believes that over six million workers are marginalised in the province and that the great majority of them are women.

PHILIPPINES: Foreign nationals with long-term visas, such as immigrant visas, may now enter the country. However, they must pre-book a coronavirus test plus accommodation at an accredited quarantine facility.

PHILIPPINES: The Muntinlupa City government has extended the deadline for the payment of business tax, fees, and charges for Q3 2020 until 18th September 2020.

SINGAPORE: The government is offering full foreign worker levy rebates to companies in the construction, shipyard and industrial processing sectors, which have been the most badly hit by the health crisis. This is in addition to the general support package for the construction sector that has already been announced. The rebates will cover the period from July to September, or such time as foreign workers are able to get back to work.

SOUTH KOREA: The Finance Ministry has proposed to the National Assembly that the top income tax rate on those earning 1BN Won or more (US\$844,000+) should rise from 42% to 45%. Moreover, a 20% capital gains tax is to be introduced for locally-based taxpayers on gains made through trading cryptocurrencies. However, there will

be a small annual tax-free income allowance of 2.5M won (US\$2,112).

SRI LANKA: The tripartite agreement first concluded in May 2020, and subsequently extended until September, is likely to be further extended until the end of the year. This accord allows private sector employers to pay employees either at half salary, or a minimum of Rs 14,500 (US\$78.69) a month. However, no wage subsidy exists and many of the hardest pressed employers have had to either terminate jobs or send staff on prolonged unpaid leave.

UZBEKISTAN: Visa expiry dates for foreign citizens who remain in the country have been further extended, penalty-free, until 1st November 2020.

EUROPE

CROATIA: This was one of the last EU countries to introduce wage subsidies. The subsidy that began in July is paid monthly in arrears and only where there has been a decrease of at least 60% compared with the equivalent month in 2019. The grant is worth HRK4,000 (US\$630), plus HRK250 (US\$39.38) by way of pension insurance contributions. Part-time workers receive pro-rata sums. A further grant is payable too where it has been necessary to significantly cut hours in a qualifying month.

CZECH REPUBLIC: There is no longer an obligation for employers to issue a certificate of employment on departure of an employee if they had not been enrolled on the sickness insurance system, or subject to other deductions.

CZECH REPUBLIC: From January 2021, holiday entitlement will be expressed in

hours rather than days, or weeks. This should make it easier for managing employees with variable working hours. Each week, total hours worked will be calculated and vacation hours set in an accumulated way for the holiday year as a whole. Moreover, employers will have a facility to reduce the accumulated leave by deducting from the total, hours of uncertificated absence.

ESTONIA: Reforms of the Alien's Act have now come into force, principally relating to workers on short-term visas. From now on, the responsibility for pay, terms and conditions of the foreign worker is primarily with the end-user company. If anyone is found to be receiving a low level of remuneration, their employer must prove that this is legitimate under special rules, such as a job placement facility, or be required to stop the work - pending payment at Estonia's average earnings level.

EUROPEAN COURT OF JUSTICE (ECJ): Spanish trade unions have long been seeking to claim that the numerous special leave periods allowed under Spanish law (to deal with marriage, bereavement, etc.) should be treated like annual leave when sickness arises during the taking of such leave. In its judgement of 4th June, the Court dismissed this claim, stating that the special leave periods are within "national competences" and not the powers of the ECJ itself [Judgement of 4th June 2020, [Fetico e.a. v Grupo de Empresas DIA SA e.a \(Grand Chamber\), C-588/18](#)].

FRANCE: The CSE election season is upon us, and in France CSE elections are held in two rounds. The first is reserved for trade unions, which may field candidates, and the second for independent candidates. Of

course, in companies with up to 49 employees, this only gives rise to a small, fixed set of delegates and substitutes. Things only get to be really uncertain and potentially "political" in companies with 50+ employees. During the course of CSE elections, employers are reminded that they must be seen to remain neutral at all times and not give one trades union advantage over another, however objectionable a particular union may be. They are free, however, to monitor propaganda sent to employees and take action if any material contains defamatory or abusive language. They are equally also able to continue to frame their own policies and undertake reforms that put one contender in a good light, provided this is done in a subtle way and under legal guidance.

FRANCE: The DUERP in France is a single document that must be maintained by an employer and contains a complete set of identified occupational risks in the workplace. Although the CSE (Works Council) has a number of statutory duties in respect to health and safety, the Labour Code remains silent as to whether any change to the DUERP must be subject to prior consultation by the CSE. The judicial court in Lyons has now confirmed that, in fact, no obligation to consult exists where risks are competently handled and that this applies even if the CSE had been consulted about the document on a previous occasion [Judicial Court of Lyon, 22nd June, 2020, n° RG 20/00701].

GERMANY: An important new interpretation has been made by the Federal Labour Court (BAG) concerning the law on the promotion of pay transparency between men and women (EntgTranspG). Under the law, the works council is normally involved when an employee makes a statutory request for

information. But, according to BAG, if the employer alone takes direct responsibility for providing the requested information, the works council has no right to have access to the data. In fact, the works council does not even have the right of inspection and evaluation of pay lists under Section 13 (2), sentence 1 of the EntgTranspG. The employer's obligation is just to inform them of requests made and confirm that answers have been given [Decision of 28.07.2020, Az. 1 ABR 6/19].

GERMANY: The use of independent contractors and subcontractors in the meat industry will become unlawful from 1st January 2021. Temporary work in the sector will also be subsequently banned from 1st April 2021. The only exception will be where a company has less than 49 employees and is registered as "handwerk" businesses. The Labour Inspectorate will also, from next year, begin inspections of employer-provided accommodation in all sectors to ensure it is of an adequate standard.

GERMANY: How far may an employer go to discipline an employee who exhibits irresponsible public conduct during their own private time? The [Labour Court in Osnabruck](#) has accepted the graveness of any act that makes fun of the coronavirus risk. This will entitle an employer, in some cases, to summarily dismiss an employee if they believe the conduct puts its employees at risk. In the end, this case ended in a private settlement, but it does demonstrate how sympathetic a court may well be in relation to COVID-19 related infringements, even if they happen during free time.

GERMANY: It will be commonly assumed that individual employees will have the right to give, or withhold, consent independent of

the Works Council (WC) that represents them. However, according to the Federal Labour Court (BAG), this is not the case. In coming to this view, the Court was considering an agreement reached between a company and its workforce, represented by its WC. The council sought the views of employees and set a necessary support threshold for the agreement, although this was not a condition set by the company, or recognised by it. Therefore, when the required votes in support were not reached, the WC tried to withdraw. However, both lower courts and BAG agreed that under the Works Constitution Act, no obligation to consult exists as the WC, once elected, operates under its own authority [BAG judgment of 28.07.2020 (file number: 1 ABR 4/19)].

GERMANY: Foreign employers frequently overlook the rights of severely disabled employees in Germany to receive additional annual leave. This exists for employees whose disability is rated at 50 or above. Entitlement begins as soon as the pension office confirms the employee's right to it, and the leave amounts to 1 extra day per week for each day worked per week – up to a maximum of 6 days' extra leave each year for those working 6 days a week. If the first year of entitlement is less than a complete year, then it must be calculated pro-rata. This is extra leave, over and above normal annual leave entitlement. It must normally be taken in the year it is earned, but carryover to the next year is possible upon giving due advance notification. Otherwise, if not taken within the prescribed period, it is lost. In some cases, this leave is enhanced by collective agreement, or company policy.

GREECE: The Greek government has announced that it intends to liberalise the

pay rates of lower-ranked crew members on Greek-flagged merchant vessels. To date, these have been set independently by Greece, but in future they would revert to the international rates set by the ILO and other agreed industry scales. Greece is currently the leading ship-owning nation, with around 21% of international capacity, but only 12% of Greek ships are actually flagged as merchant shipping through Greece. This is largely due to the labour costs involved.

IRISH REPUBLIC: The Labour Court has asked the healthcare company Merck Millapore to engage with the trades unions "Connect" and "SIPTU" in order to deal with outstanding disputed issues. This is in spite of the fact that there is no requirement under Irish law for a company to recognise trade unions. Whilst no recognition law is in immediate prospect, the Department of Business, Enterprise and Innovation is currently working on a new law relating to how trade unions are registered.

ISLE OF MAN: The latest annual "[Living Wage](#)" has just been published by the Isle of Man (IOM) Government, and now stands at £10.19 per hour. This gives rise to a weekly gross wage of £386 and an annual salary of £20,083. It is £1.94 an hour more than the island's current minimum wage for over 18s and compares with £9.30 for the UK's living wage. What is most interesting about the research that went into compiling this figure is what it showed about spending habits. For instance, a single male in the IOM spends more on "Social and Cultural Participation" (SCP) than they do on food. However, this is 68% more than a single male spends on SCP in the UK. The biggest spenders on SCP are, curiously, married couples with 3+ children in the UK, whose joint spending on this item is 314% higher than for a UK single

male. General fun-loving activities in the UK, but not in the IOM, is clearly largely confined to those with large families.

ITALY: The Court of Cassation (Supreme Court) has found that meal vouchers should not be regarded as part of an employee's remuneration. Instead, they represent a welfare element in the employment relationship. As such, their disbursement may be unilaterally changed by an employer, including being replaced for a monetary sum [case no 16135/2020].

ITALY: According to the Court of Cassation, although an employee may be implicated in liability for a workplace accident if they violate safety rules, that violation will be overlooked if the employer had failed to undertake necessary safety training or provided essential precautionary information. The test for the balance of liability is "if adequate training had been given and information been provided, would it have been "very likely" that the accident would not have taken place" [Cass 6th July 2020 no 13912].

ITALY: Employers are apt not to be aware that an annuity granted by INAIL, due to a permanent workplace injury or other health condition, can be reviewed and amended at any time within 10 years of the assistance commencing. This has particular relevance where a health condition worsens over time. However, after the fourth year, the request for a revision may be made only twice: at the seventh and tenth year. All requests must be based on an independent health assessment and production of the necessary medical certificate.

POLAND: Employers sometimes overlook the fact that the national minimum hourly

wage excludes seniority allowances, where these are specified in individual or collective agreements, or work rules. The minimum wage also excludes payment of 20% night shift premia for each hour worked between 9pm and 7am.

RUSSIAN FEDERATION: Previously, the Russian government has offered e-visas for visitors, allowing them to visit a small number of specified areas such as St Petersburg, Kaliningrad or the Far East. With effect from 1st January 2021, foreign citizens from approved countries may visit any Russian city with a unified electronic visa and stay there for up to 16 days.

RUSSIAN FEDERATION: [New rules](#) regarding severance pay arising from liquidation or redundancy come into force today. Employees will be required to formally request severance if they believe they are entitled to more than one month's payment. The employer may then pay this as a lump sum, or on a monthly basis, but liquidation will be prohibited until all severance payments have been made.

SPAIN: Back in February, Royal Decree Law 4/2020 repealed a right to dismiss workers for poor work attendance. However, it did not come into force until 17th July 2020. The driving force for this change was the Supreme Court, acting itself on rulings by the European Court of Justice concerning discrimination against those who are (albeit temporarily) disabled. Thus, the law now generally protects those who are absent for justifiable health reasons, but simply take regular periods of sick leave to deal with their illness. However, the repeal does not necessarily prevent an employer from disciplining employees for taking uncertificated absence. Moreover, where an

employee takes regular justified absence dismissal is inadmissible, but is not rendered impossible (null) per se - it just automatically leads to automatic unfair dismissal.

SPAIN: The Economic and Social Council has now submitted its opinion to the Ministry of Labour and Social Economy concerning the draft law on distance working. This adds very little to the substance of the draft law as it stands. The law itself covers most of the conventional elements found in such laws, like the necessity for telework to be voluntary and be reversible, the right to training and promotional opportunities, the payment of expenses, and the facility to disconnect outside normal working time. There is a prohibition on very young workers operating remotely and special provisions for those who undertake telework on an occasional basis. Perhaps most important of all, the Bill includes a framework for those drawing up a collective agreement in respect to teleworkers. Overall, legislators seeking to regulate a working method that has already been around three decades as if the phenomenon was somehow new, succeed in doing little more than removing much of the attractiveness it has achieved over the years.

SWITZERLAND: Although a federal "Tax at Source Law" was enacted back in December 2016, it was not required to become effective until 1st January 2021. Companies therefore have just a few months to prepare for the payroll amendments. Amongst these are new requirements to submit declarations on a monthly basis and also ensure that registration for tax in respect to Swiss resident employees and non-resident weekly commuters is made to the individual's canton of residence. Tax in the canton where the employer is located will only apply to other non-resident employees. This will require

either registering with each relevant tax authority, or setting up an ELM ([einheitliches Lohnmeldeverfahren](#)).

UKRAINE/CHINA: Until 31st January 2021, Chinese nationals may enter Ukraine, or transit through it, without a visa, provided the period of stay in Ukraine does not exceed 30 days in any period of 180 days.

UNITED KINGDOM: It took months for the UK government to realise that not only was its Coronavirus Job Retention Scheme (**CJRS**) not preventing employers from making employees redundant, but - in some ways - encouraging permanent layoffs. The ending of the CJRS this autumn, just ahead of the Brexit deadline, would have led to a huge wave of unemployment by Christmas. It has therefore launched a Job Retention Bonus Scheme (**JRBS**) offering a £1,000 taxable gross payment for each employee covered by CJRS who is retained in employment up to 31st January 2021. The [eligibility criteria](#) are straightforward, but several aspects of the scheme remain a surprise. The bonus is not one meant to be passed on to employees on CJRS, but for the pure benefit of the employer. Moreover, all kinds of employees could potentially increase the sum claimed, such as "agency workers", company directors, and fixed-term workers whose contracts were extended under CJRS. In fact, self-employed contractors could even claim under their "umbrella company". So, is this £9BN being well spent? Well, with the UK's National Health System already overstretched, it could probably benefit from the 80 new general hospitals that such a sum would cost to build. But nihil facit sensu – nothing makes sense.

UNITED KINGDOM: Gross Domestic Product (GDP) declined by a total of 22.1% from Q4 2019 to Q2 2020. This was twice the fall officially recorded in the USA over the same period, although not quite the fall experienced by Spain. In Q2 alone, manufacturing output fell by 20.2% - with the biggest falls in transport equipment and the only significant gain in pharmaceutical products. The biggest sectoral fall, however, was in construction, with output falling 35% in Q2. Although there are signs of a general pickup in demand during June it is still too early to tell whether a concerted recovery is underway.

UNITED KINGDOM: Although a recent report has indicated a 30% rise in emigration from the UK to the EU between 2016 and 2018, the picture is not altogether as portrayed. Since 1994, the number of people coming to live in the UK each year has exceeded emigration. The EU has also not been the leading destination for UK emigrants, with Australia/New Zealand (33%) and USA/Canada (28%) being more popular destinations until 2017. Since then, 209,100 UK citizens have departed for the EU, many of whom are highly skilled workers. But also, at the same time, the flow of immigrants into the UK has fallen and many have departed for good. The reduced influx has been due to greater difficulties with student visas, whilst departures have been more directly linked to Brexit. The greatest EU minority in Britain are those of Polish nationality. In 2016, these accounted for over 800,000, but by the middle of last year the number had fallen to 695,000. Their primary destination has not been back to Poland, but to Germany, where greater opportunities are perceived to exist. Interestingly, Germany is also the most favoured EU destination for UK citizens leaving the country. From January next year,

all new immigrant numbers will fall dramatically because of tighter entry regulations and the outflux of UK citizens will no doubt rise further.

UNITED KINGDOM: The dust has barely settled on the [Supreme Court finding that Barclays Bank](#) was not vicariously liable for the assault of 126 job candidates by an independent doctor contracted by them to undertake pre-employment medical examinations. Much legal debate has been stirred up by the case because it was so closely linked to similar questions concerning employment status. However, what remains now undisputed was the court's finding that there was no controlling connection between the bank and the errant doctor, in spite of being sometimes referred to as "our company doctor" by HR staff. In the end, it was concluded that what was decisive was the fact that the doctor had not been paid a retainer, had other independent patients, and was free to decline work.

UNITED KINGDOM: Employers should take note that when calculating claims under the job retention scheme, they are only able to seek 80% of the gross salary actually applicable. If an employee is subject to a "salary sacrifice" scheme, this will reduce the amount of subsidy that may be claimed. For this reason, current sacrifice arrangements may need to be reviewed.

UK/VENEZUELA: The UK Visas and Immigration service recently announced that "*Venezuelan passports that were issued or expired on or before 21st May 2019 may be considered valid by UK authorities for 5 years beyond their expiry date, with no requirement for an extension stamp/sticker/official marking, up to a*

maximum of 10 years from the date when the passport was issued".

GLOBAL

KEEPING COOL: When temperatures rise employers often revert to the use of fans, especially in large workspaces such as factories and warehouses. However, the discomforting nature of Summer temperatures is not due to the prevailing temperature alone, but also its humidity. Furthermore, fans can also make things worse rather than better. Back in 2001, the International Labour Organisation asked a group of experts to look at "ambient factors in the workplace". They pointed out that "if the air temperature is below about 36 °C, increasing air movement (for example by fans) will cool the workers; above that temperature it will heat them further." (8.3.4).

IF, WHEN AND BY HOW MUCH? The billion-dollar question facing all multinationals is how far should they "cut labour to deal with the next 2 to 3 years?" What cannot be relied upon are GDP forecasts, because they are too generalised and say nothing about demand over the longer term or in a particular sector. They are, in any case, both so politically massaged and reliant on official guesswork that they mean very little. Recovery is also likely to take different shapes, with perhaps bounce back for some companies' leading brands, followed by a massive slump. Supply chains too have often been badly damaged and any new channels will remain uncertain for some time. In many countries, government wage subsidy schemes are operating to encourage companies to put off redundancy decisions, but such schemes are not cost-free and furloughed employees are just building up vacation rights and

service periods to make any eventual permanent layoffs even costlier. For some companies this crisis comes at a time when labour-displacing technologies were at various stages of adoption and evaluation, even in the service sector, with paybacks for many devices down to just 3 to 9 months. Homeworking is calling into question the need for bricks and mortar investment, and the gig economy continues its onward march, in spite of regulations that attempt to contain it.

The adage of company turnaround consultants has long been "cut, cut, cut until it hurts". However, there is an equal, and more revealing, saying: "You never feel pain until you notice a cut." The trick therefore lies in motivation, delegation, total customer orientation (TCO), and the removal of effectiveness barriers for those who remain in the business, so that any gaps just disappear as work begins to flow a very different (and perhaps better) way.

TECHNOLOGY AND INEQUALITY: Back in 2018, [McKinsey reported](#) extensive research indicating that a huge driver towards overall income inequality during the last two decades had been automation. Now research undertaken at Kings College, London has advanced this concern further by finding a causal link between automation and gender pay inequality. This gap was even quantified, such that for every 10% increase in the number of robots in a workplace, a 1.8% increase was found in the pay gap between male and female employees. However, it was observed too that automation did also raise the overall pay level for both genders in such workplaces. [IZA DP No. 13482: Robots and the Gender Pay Gap in Europe. July 2020].

ROBOT LAWS: When intelligent robots take over the majority of workplace tasks the term "human resources" will either apply to a shrinking element in the enterprise, or it will need to be changed to encompass the new resources, and a greater emphasis placed on human-machine interaction. Robots, of course, do not need to be recruited and working conditions may seem irrelevant. However, as long as humans are involved with their installation, programming, operation and maintenance safety laws will apply. Back in 1987, the US agency OSHA issued guidelines on robot safety. Now, in

the era of AI driven automation, cobots and autonomous vehicles, these guidelines are being updated. Amongst the principal concerns is training, particularly of maintenance crew members, and also the safety devices built into programmable logic controllers. Mechanical failures can also lead to erratic behaviour and human injury. Of course, robots themselves have no individual liability when things go wrong, but their owners and operators do and the scope for safety hazards multiplies greatly when the movement envelope is 360 degrees.

DATES FOR YOUR DIARY	
August 31 st 2020	End to extension of agreements on taxing cross-border workers in Luxembourg .
September 22 nd 2020	Deadline for the parties to file briefs on Contract Bar Doctrine in the USA .
October 31 st 2020	The Coronavirus Job Retention Scheme will close in the UK .
January 1 st 2021	The use of independent contractors and subcontractors in the meat industry will become unlawful in Germany .

DATES FOR YOUR DIARY	
January 1 st 2021	Employers in Colorado (USA) with 16 or more employees must provide paid sick leave to their employees.
January 1 st 2021	EU free movement is set to end and a new points-based immigration system is to take effect in the UK .
April 6 th 2021	Changes to the treatment of termination payments and post-employment notice pay for Income Tax will take effect in the UK .
May 1 st 2021	The hourly minimum wage in Virginia (USA) will increase to \$9.50.

TRAVEL WARNINGS

BELARUS/KAZAKHSTAN: The Belarusian national air carrier Belavia is set to resume flights to Almaty and Nur Sultan on 17th August 2020.

BELGIUM: The wearing of a face mask is compulsory in all public places in Brussels. A demonstration about anti-COVID-19 restrictions has been planned in Brussels for Sunday, 16th August 2020. Visitors are advised to avoid large crowds and all demonstrations.

BHUTAN: The government has imposed a nationwide lockdown due to COVID-19.

CANADA: The state of emergency has been extended in Nova Scotia until noon Sunday, 23rd August 2020.

CAYMAN ISLANDS: The government has postponed plans to reopen borders until 1st October 2020.

CUBA: Lockdown restrictions have been reimposed in Havana following a rebound in coronavirus cases.

CYPRUS: It is now mandatory to wear masks in indoor crowded spaces, such as malls, banks, supermarkets, hospitals and churches. Those failing to do so will be fined €300. People arriving from category C countries must take a coronavirus test 48 hours before their 14-day self-isolation ends. This will be at their own expense. The test results must be sent to monada@mphs.moh.gov.cy. Additionally, Jet2 has cancelled all flights and holidays to Cyprus until 17th August 2020.

FINLAND: The national flag carrier Finnair will reduce flights to European destinations in September 2020.

FRANCE: A ban on gatherings of more than 5,000 people has been extended until the end of October 2020 as new coronavirus infections have nearly doubled in recent weeks.

GREECE: All passengers arriving in Greece must fill in a Passenger Locator Form ([PLF](#)) at least a day before arrival.

LITHUANIA/POLAND/UK: The LOT Polish Airlines will resume flights from Vilnius - Lithuania's capital - to London on 31st August 2020.

MALAWI: The wearing of a mask is mandatory in public places. Non-compliance will lead to a fine of around \$15.

MALDIVES: The public health emergency has been extended until 6th September 2020.

NAMIBIA: Air Namibia has temporarily suspended all domestic flights for 18 days - until 29th August 2020.

NORWAY: The government has reimposed a 10-day quarantine for travellers from foreign countries. To see the list of which countries and regions that are exempt from quarantine, please click [here](#).

QATAR/USA: The national carrier, Qatar Airways, will increase flight frequencies to Los Angeles daily from 12th August and double flights daily to New York from 1st September 2020. It will also resume flights to Houston from 2nd September and Philadelphia from 15th September 2020.

SWITZERLAND: Large gatherings, with more than 1,000 people, are banned until 1st October 2020. Masks have been compulsory on public transport and during flights in and out of Switzerland.

THAILAND: Over recent weeks, thousands of students and anti-government demonstrators have staged rallies across the country. Expect more rallies over the next few weeks, anticipate a heightened security presence and transport disruptions.

UNITED KINGDOM: Some rail services between Edinburgh and Glasgow remain disrupted following torrential rain and thunderstorms.

FedEE NEWS

JOBS POSTING: We have issued for "Members Only" some important guidance on the [Directive](#) that must now have been incorporated into EU country laws. This is essential reading if your organisation operates in the European Union and you ever send employees to work in another EU country. [Here](#) is our principal guidance document and [here](#) our note on individual Member State compliance.

CUTTING LEGAL COSTS: Under the present climate, many companies will be seeking to curtail the often substantial expenditure involved in using law firms. Whilst conventional firms are invaluable for problems heading for litigation, or where complexity necessitates face-to-face meetings with a legal professional, there are numerous tasks that could be handled effectively and more economically by services such as FII-Law. The FII-Law team is an independent spin-off from the Federation and can offer savings of over 80% on using a conventional law firm. Please contact them on enquiries@fedeeglobal.com for further details. If Members do need assistance directly from a leading law firm, FedEE will be happy to recommend highly competent firms - especially in locations such as Germany, Japan, India, Italy, the UK and across the USA.

EXCHANGE RATES: It has been our long-standing practice to convert the majority of monetary figures given in local currency to US dollars. This is to assist when making points of comparison. It should be noted that the exchange rates used are those at the time of writing and are subject

to fluctuation, even over short periods. If a precise exchange rate is necessary, please undertake the [conversion](#) on the date it is required.

SERVICE PROVISION: FedEE membership services have, from the outset, been provided via specialist service companies established to reflect FedEE's global geographical coverage and to keep costs to a minimum. In 2016, due to Brexit, our administrative services were moved from the UK in order to remain within the European Union, which continues to be our centre of gravity. However, our knowledgebase, legal helpline, and some administrative functions are also provided independently through FedEE International Inc in the Americas. To FedEE members, these arrangements should be seamless and The Federation, as guarantor of service quality, remains registered as a company limited by guarantee in the UK.

NEWSWIRE LINKS: If you wish to explore newswire links, **please first login to the members' area** of our website [here](#). Up to date salary tables are available in our Knowledgebase.

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