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The IBA Global Employment Institute

Tenth Annual Global Report

National regulatory trends in human resources law



Prepared by

The International Bar Association Global Employment Institute

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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 Björn Otto (bjoern.otto@cms-hs.com) and 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 tenth AGR and is based on responses from lawyers in 55 countries. The methodology used is described in section 2. The tenth AGR covers trends in human resources law during the calendar year 2020 and, in some cases, parts of 2021. 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 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 and reactions by employers themselves to mitigate effects on health and safety at the workplace and in wider society.

Please note that it is not the intention or purpose of the AGR to set out the law on any particular topic; its aim is to highlight changes and trends. Any reference to a particular law is not intended to be a description or summary of that law and should not be relied 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 55 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 2020 (and the start of 2021) and very briefly explain them and their significance. The answers to the questionnaire have been consolidated and summarised in section 3 of this report (Trends and Developments). Although survey responses mostly reflect the status as of March/April 2021, 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 (in particular Amelie Spanehl and Anna-Laura Güntgen) 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 Termination of employment, retirement issues and employment disputes

Termination of employment

Most respondents surveyed indicated that employers in their countries generally comply with the regulations and procedures for terminating employees to avoid the significant costs resulting from non-compliance with statutory termination procedures. Only in Mexico were employers reported to not always observe the procedure (especially the obligation to pay a severance compensation). This might be one of the reasons why Mexican labour courts have to deal with so many employment complaints.

Although many respondents did not identify any new developments in this area (due to the Covid-19 pandemic), some countries reported legislative changes. Most notably:

- Bulgaria pointed out recent legislative changes introduced in the Bulgarian Labour Code to prevent employers from terminating teachers upon acquiring the right to a pension based on length of service, professional experience and retirement age. This change entitles teachers to use the opportunity for early retirement only at their own discretion.
- The United Arab Emirates labour law was recently amended to introduce a prohibition on employers terminating or giving notice to pregnant employees because of their pregnancy.
- In September 2020, the Indian government enacted the Industrial Relations Code, which requires industrial establishments (eg, factories) with at least 300 workers to obtain prior permission from the government to terminate any worker.
- In Romania, several measures have been implemented to restrict dismissals, meaning that they do not prevent or prohibit dismissals per se, but instead require the employer to reimburse all amounts collected for employees in short-time work.
- In Singapore, in March and October 2020, recommendations made by the tripartite partners were updated to provide clearer guidance on how retrenchment exercises should be carried out. The updated advisory now stipulates several compliance requirements for responsible employers conducting retrenchments.

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

- In Denmark, job clauses (also known as no-hiring clauses or non-solicitation of employee clauses) that limit or prevent employment of employees in companies other than their own are no longer valid as of 1 January 2021.
- Finland has implemented the EU Trade Secrets Directive via the national Trade Secrets Act to uniform the definition of trade secret and therefore increase legal security. In addition, the

Finnish government proposed changes in legislation on non-compete agreements. According to the proposed changes, which take effect on 1 January 2022, employers would be required to pay employees compensation in the amount of 40 to 60 per cent of salary if they are bound by the post-employment non-competition obligation.

- In April 2020, the Singapore Court of Appeal set out a modified approach for claims relating to breach of confidence in a landmark decision known as ‘I-Admin’. A breach of confidence will be presumed when the information qualifies as confidential and it was imparted in circumstances importing an obligation of confidence; this then shifts the burden to the defendant to account for their suspected wrongdoing.

Only a few countries, such as Kenya, Mexico, Myanmar and Nigeria, have not introduced any legal changes to avoid dismissals in the context of the Covid-19 pandemic. Most countries implemented measures such as extended furlough schemes (eg, *Expediente de regulación temporal de empleo* (ERTE) in Spain) or short-time work compensation to prevent large-scale terminations of employment relationships and ease the impact of Covid-19 on the labour market. In Chile, for instance, the Employment Protection Act offers employers and employees three main alternatives to protect employment in the country and avoid mass dismissals: suspension of the employment contract due to an action or declaration of the authority, temporary suspension agreement for companies in which the activity is totally or partially affected, or temporary working hour reduction agreement. In Argentina, a presidential decree has prohibited no-cause dismissals or dismissals attributable to lack of production or external and unpredictable force majeure.

Employers in many countries are supported by state subsidies or financial assistance to cushion the wages paid to the employees. For instance, the social security authority in Israel granted all employees placed on unpaid leave 70 per cent of their salary until June 2021. In Germany, access to short-time work was facilitated through the ‘reduced hours compensation’ (*Kurzarbeitergeld*); employers may temporarily reduce their staff’s working hours and remuneration, while having parts of the remuneration and the full social security contributions compensated by the Federal Employment Agency from public funds. In Luxembourg, employees entitled to short-time work could not be dismissed for economic reasons. A similar model was implemented in Belgium, which allows employers to temporarily suspend the employment contract and instead receive a state allowance during this suspension. In this regard, Brazil permitted to anticipate future vacation periods, suspend employment agreements and reduce work hours and salaries.

For its part, the Indian government advised employers to provide paid leave to employees during the lockdown period. In Spain, dismissal for causes linked exclusively to Covid-19 has been prohibited. Among other measures, the Canadian government implemented the Canada Recovery Hiring Program that provides a subsidy on eligible salary or wages to help hard-hit businesses hire the workers they need to recover and grow as local economies reopen. In Lithuania, employers receiving subsidies for employees were required to keep at least 50 per cent of the employees for whom this state support had been received for at least three months after the end of the subsidy. In Albania, the government guarantees bank loans taken out by companies to pay employee salaries and social and health contributions for a period of three months. Furthermore, employees employed in enterprises in which activity has been closed or stopped due to government orders received a monthly state funded payment. Russia, Thailand and Vietnam also provide loans and financial

support to employers. In Norway, a change in legislation gives employees who have their employment terminated due to the Covid-19 pandemic an extended preferential right to be offered new employment with the employer.

Retirement

In most countries surveyed, demographic change is a severe matter, which has a major impact on the stability of national pension systems. While most respondents report that retirement age is being continuously increased, employers for the most part still do not have the possibility of imposing early retirement unilaterally. Under certain conditions, however, early retirement is an option in some countries. In China, for example, there have been provisions for early retirement due to illness since 2020, and Romania recently adopted a new law that entitles employees of ambulance services, doctors, nurses, ambulance drivers or mountain rescuers to benefit from the reduction of the standard retirement age. In December 2020, a new regulation entered into force in Denmark that enforces a right to early retirement for employees who are three years or less from retirement age, started working at an early age and had a physically hard work life. Similar opportunities exist in other countries as well, for instance in Italy, where the possibilities for employees to retire early have been significantly increased since 2016, or in Germany, where employees who worked for at least 45 years have the right to early retirement without financial deductions.

In an effort to incentivise employees to work beyond the statutory retirement age, some countries, such as Hungary and Singapore, have provided enhanced redundancy payments for older workers. In 2020, Norway also changed its pension rules for employees in the public sector to incentivise employees to work longer, while in Vietnam employers and employees may enter into an unlimited number of fixed-term contracts with employees who have reached statutory retirement age. In other countries, such as Nigeria, some employers provide incentives to employees like housing or phone allowances, as well as bonuses to encourage them to work longer. Reasons for such efforts given by the respondents are: changing tendencies in the employment market (lack of qualified labour); longer life expectancy; demographic changes leading to a migration of younger workers; high unemployment rates; and the fragile financial situation of pension funds. Furthermore, most employers have come to realise that they can benefit from the experience of older workers.

In the United Kingdom, research recently found that Covid-19 is leading to fewer workers planning to work beyond the statutory retirement age in 2020 than in 2019. While a few countries, such as New Zealand, Singapore or Turkey, are not concerned by limited public pension funds, most respondents indicated that these are still a serious issue in their country. One of the main concerns regarding the public pension funds in some countries, such as Belgium, is that the growing costs of the pensions are creating a major budgetary deficit for the states. Other countries, such as Bulgaria and Chile, particularly noted the problem of the low pension level, which in some cases does not even cover the basic needs of the retirees. In this regard, the Chilean government proposed a social security reform to improve the pensions derived from both the solidary and the individual capitalisation systems. Similar measures were taken in Germany, where long-term insured employees are granted a state-financed supplement on their pension (*Grundrente*). The Irish government addressed this issue by gradually increasing the retirement age at which the state pension becomes payable, and the Polish government by increasing taxes. Meanwhile, Israel has legislation that forces employees and

employers to save about 16 per cent of their monthly salary in a personal pension fund. Furthermore, Lithuania reported that its Parliament is frequently changing applicable legal regulation. Thus, in recent years the society has become fragmented when deciding whether to accumulate pensions in the public pension system only, or to do so independently in private funds. In Thailand, the cabinet has passed a draft bill for a mandatory national pension fund; so far, many employers offer their employees pension schemes in the form of an establishment of provident funds whereby both employers and employees can make contribution to the fund.

Private (company-sponsored) pension schemes are not yet common in many countries, even though various recently adopted EU directives contain relevant provisions. For instance, Irish legislation transposing the EU directive on the activities and supervision of institutions for occupational retirement provision (IORP II) was enacted in April 2021, and a new Latvian law on Private Pension Funds transposing the Directive's requirements came into force in January 2020. For its part, Bulgaria introduced certain legislative amendments in its Social Security Code as a result of broad public debate regarding the management of the private pension funds.

Employment disputes

Only a few respondents noted changes in the way employment cases are heard before courts, except for temporary measures due to the Covid-19 pandemic. Generally, court proceedings are held publicly – often with the option to restrict public access in delicate matters, such as sexual harassment claims. Only Ireland reported that the first-instance proceedings are held in private under the Workplace Relations Act 2015, although the decisions are published online and freely available. The number of employment-related court cases in Hungary continues to decrease, since recent amendments to its general Civil Procedural Code led to more formalised procedures, meaning that the parties more often require the costly assistance of attorneys.

The vast majority of respondents report that employment disputes are mostly resolved before courts instead of through arbitration or mediation. In some countries (including Belgium, Bulgaria, Chile, Hungary, Latvia and in some Canadian jurisdictions) arbitration clauses in employment contracts are prohibited. The exception usually applies to jurisdictions where statutory arbitration or other conciliation procedures, such as mediation, are required before a claim is heard in front of a formal court or where such proceedings are embedded in statutory court procedures (eg, Argentina, Australia, China, Germany, Lithuania, New Zealand and Turkey). However, it is becoming common to include arbitration clauses in employment contracts in some countries, such as India or in Romania, where labour code provisions stipulating that employment disputes can only be resolved in court are no longer mandatory. In Myanmar, most employment disputes have been resolved via labour arbitration proceedings during the reporting period. In Spain, there is also a trend to encourage dispute resolution through arbitration, however this is more a matter of collective disputes.

Most respondents indicated that holding court hearings by video transmission is legal and has increased significantly since 2020, even though it is still not very common. Some countries, such as Brazil, also noted that there is still controversy on evidentiary hearings being held online, since there is a relevant risk of influencing the witnesses. The Covid-19 pandemic has resulted in plenty of changes in this regard in most countries. In Belgium, for instance, all trials at the courts were

replaced by proceedings in writing only at the start of the pandemic, unless there was a good reason to arrange in-person hearings. In Latvia, most court hearings were also adjudicated in a written procedure or by video hearing if the court had sufficient resources and the parties had requested a video hearing.

3.2. Corruption and whistleblowing

Whistleblower protection has been or is being strengthened in many countries. New Zealand and Norway, for example, have enacted and specified provisions for the protection of whistleblowers. In Argentina, the Criminal Code was modified to incorporate the ‘disclosing agent’ or ‘whistleblower’, imposing reduced criminal sanctions to those who provide precise information in corruption cases. In Taiwan, a Whistleblower Protection Act has been drafted and is currently under deliberation with the government. In Switzerland, on the other hand, differences in the Federal Assembly led to the failure of political efforts to introduce general whistleblower regulations. Particularly noteworthy is a recent European Court of Human Rights (ECHR) decision which caused a stir by confirming the summary dismissal of a doctor who, according to the Court, had not sufficiently clarified his suspicions internally before reporting them to the public prosecutor’s office.

EU Member States were required to implement the EU Directive (2019/1937) on the protection of persons who report breaches of Union law, which came into force in December 2019, by 17 December 2021. 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. Whistleblowers are also to be effectively protected against retaliatory measures by the employer.

Regarding the fight against corruption, only a few recent developments were reported. In Germany, a draft law (*Gesetz zur Stärkung der Integrität in der Wirtschaft*) under which companies can be held criminally liable (sanctions up to ten per cent of the company’s annual turnover) for offences committed by their executives that were intended to enrich the company, such as bribery, was shelved by the Bundestag in 2021. In Poland, a similar draft is being processed by the legislator. One step ahead is Malaysia, where such regulations were enacted last year.

In Denmark, a whistleblower scheme to uncover fraud with compensation schemes for companies financially affected by the Covid-19 pandemic has been introduced; this led to the exposure of several cases of fraud.

3.3. Alternative workforce

As in previous years, numerous countries are faced with the task of legally addressing the increase in the alternative workforce (crowd workers, gig workers, freelancers, independent workers, contractors) that has accompanied the booming ‘gig economy’. Some sectors of the gig economy, such as delivery services, have accelerated their growth in the pandemic.

Courts and legislators alike are concerned by the legal qualification of this alternative workforce. In

India, for example, the Code on Social Security introduced a definition of ‘gig worker’ and ‘platform worker’ for the first time. Meanwhile, in Germany the highest labour court has ruled that a crowd worker may be qualified as an employee if they work for the platform operator in an externally determined and personally dependent manner; in Belgium the National Social Security Office has qualified an Uber driver as an employee; and in Spain the ‘Riders Act’ established ‘riders’ and similar delivery staff to be employees. Yet, the Brazilian Superior Court of Justice does not consider workers in the ‘gig economy’ as employees. The Russian government is considering the launch of an online platform where employees and employers could conclude an employment agreement online. Closely related to the issue of legal classification is the challenge of ensuring adequate working conditions and social security for the alternative workforce. The pandemic has had severe economic effects on gig workers (eg, in the sectors of chauffeur services or household services) and thus highlighted the importance of this issue.

While some countries already have regulations to this end (eg, Chile, where independent employees must enrol on the social security system and pay contributions, and are therefore entitled to the same social security benefits as dependent employees; or Italy, where legislation adopted in 2019 provides minimum standards for people delivering goods on behalf of a third party), numerous countries have recently adopted or amended measures, or intend to do so:

- In Australia, an amendment act introduced the employer’s duty to inform casual employees of their rights as well as a definition of casual employment, and a pathway for casual employees to move to full-time or part-time (permanent) employment.
- In April 2020, Japan implemented legislation under which employers are prohibited from treating regular employees and alternative workforce differently if they perform the same tasks and which requires them to explain the reasons justifying different treatment.
- In India, the Code on Social Security extended social security to the alternative workforce.
- Since 2020, freelancers hired by the Singapore government have a part of their pay automatically transferred to their national medical savings scheme.
- In Spain, gig workers have similar rights as employees, such as collective bargaining. As a result, a major delivery service is considering pulling out of Spain.
- In South Korea, for ‘employee-like’ jobs, protection is now provided not only by unemployment insurance, but also by workers’ compensation insurance.
- In the UK, the client company is now responsible for deducting and paying tax and national insurance contributions, rather than the personal service company.
- In China, the top court in Beijing ruled that a ‘996’ overtime policy, under which employees work 9 am to 9 pm six days a week – often practiced in the tech industry – is illegal.
- In Thailand, the Transport Ministry stipulates the registration of ride-hailing vehicles, and the Trade Competition Commission issued regulations governing the operations of food delivery platforms.

- The European Commission launched a first-stage consultation of European social partners on how to improve the working conditions for people working through digital labour platforms.

Some countries incentivise ‘regular’ employment. The Netherlands, for example, introduced a package of measures to encourage employers to enter into permanent contracts by reducing disparities between permanent and flexible employment; Serbia adopted legislation under which self-employed persons who work predominantly for one client must pay higher taxes on their income.

Temporary and contract arrangements both remain popular choices among non-traditional work arrangements. Where the regulations on such arrangements are not met, requalification into permanent contracts is a common penalty. In Australia, discussion about a national labour hire licensing scheme – as already exists in some states – continues. Due to the Covid-19 pandemic, the strict rules for temporary contracts in Belgium have been temporarily relaxed for employing specific categories of workers.

3.4. Flexible working

Overall trends

The use of flexible working practices is increasing, particularly because of the Covid-19 pandemic. The most common types are flexible working hours, part-time work and remote work/telework. The purpose of the increased flexibility of work is to retain talent and to satisfy family needs as well as to reduce Covid-19 infection risks. Norway, Switzerland and Ukraine specifically highlighted their expectation that the trend toward remote work will continue for the next years.

Legal rules

The volume of regulation increased mainly, but not only, in the context of the Covid-19 pandemic:

- Chile enacted a specific regulation about telework in 2020. It includes as its main features: a definition of the concepts of telework and remote work; it allows the parties to agree on a specific working schedule or to be excluded from it; it establishes a ‘disconnection right’ for employees; and requires the employer to provide all the necessary working tools for the employee to render their services.
- Similarly, Mexico introduced new legislation on remote working modalities in 2020. The new regulations contain the following issues: employers must provide, install and maintain the working tools required by remote workers to render their services remotely as well as pay the costs incurred and generated by remote workers due to remote work, including telecommunication and electricity costs.
- Spain passed the Remote Working Act in September 2020. Although this law excludes from its scope of application teleworking situations arising from the exceptional situation caused by the pandemic, it is certainly a boost to the flexible working system.
- In Finland, a recent bill introduced a definition of flexible working time arrangements, and a regulation on working time (any time used for work regardless of the time or the place of

work) and remote working.

- Latvia introduced the term of remote working and regulations for the prevention of work accidents were established.
- The Czech Republic instituted the so-called ‘shared job’. This is defined as a job shared by two or more employees with shorter working hours and the same type of work, with whom the employer has concluded a corresponding agreement.
- Russia introduced continuous remote work (for not more than six months) and periodic remote work (during the term of the employment contract). Moreover, a temporary transfer to remote work is possible without an employee’s consent.
- Luxembourg signed a new framework agreement on teleworking in 2020 that distinguishes between regular and occasional teleworking. For occasional remote working, a written confirmation of the employer’s authorisation to telework without any formal requirements is sufficient, whereas for regular teleworking, a written agreement between the employer and the employee is necessary. The adoption of the new framework agreement on teleworking has been accompanied by bilateral agreements with neighbouring countries (Belgium, France, Germany) to enable cross-border workers to continue their activity from home, where appropriate, without being subject to the tax and social security systems of their country of residence.

During the Covid-19 pandemic, countries used many different types of regulation to react to the increase of infections. In particular, the introduction of home offices has been simplified – during the pandemic and the reporting period, employers could unilaterally order home office work in Bulgaria, Italy, Peru, Romania, Singapore and Ukraine, among others. Numerous countries recommend remote work as a measure against the virus. While it is at the employer’s discretion whether employees can work from home in many countries, there is an obligation to work from home where possible in Belgium, Germany, Latvia, Lithuania, Norway, Portugal, Romania, Serbia, South Africa, Switzerland and the UK (or there was during the height of the pandemic). Germany, for instance, has announced its intention to introduce a right of discussion for employees seeking an agreement on teleworking; there are also considerations on a right to work from home within some political parties. In Italy, a detailed system of entitlements to smart working and leave for parents of disabled children or during school closures exists. In Norway, employees have been granted additional days of paid leave to relieve schools and nurseries. In Portugal, absence from work to care for children in the event of school closure is justified but not paid, and in Luxembourg a leave for family reasons and family support has been introduced in specific scenarios.

Right to disconnect

Discussions around health risks for employees related to work/availability during non-working hours continue to prevail, especially as a consequence of the increase of remote work during the pandemic. An express right to disconnect was introduced in Chile, France, Italy, Lithuania, the Netherlands, Peru, Spain and Ukraine: Colombia has adopted guidelines. In South Korea, some companies are taking the initiative by enforcing internal rules and executing collective agreements generally

prohibiting supervisors from engaging in work-related discussions with their subordinates after hours, and allowing subordinates to reject such after-hours contact.

Furthermore, the EU Parliament urged the EU Commission on 21 January 2021 to propose a bill containing minimum requirements for a right to disconnect.

In India, the implementation of an express right to disconnect is currently pending in legislative procedures. The Irish Workplace Relations Commission has issued a Code of Practice to provide guidance for the resolution of workplace issues arising from the right to disconnect both informally and formally. The Canadian government established the Right to Disconnect Advisory Committee to find potential policy solutions that would give workers in the federally regulated sector the right to disconnect. Meanwhile, countries such as Finland, Luxembourg and Thailand have regulations concerning statutory rest periods for the employee without expressly including a specific right to disconnect during these periods.

3.5. Family-friendly policies

As in recent years, some countries noted improvements in working parents' rights. Maternity leave continues to be well supported; paternity or gender-neutral leave has recently been expanded.

A substantial number of countries reported increases in the length of parental leave, including Belgium, Canada, Estonia, Finland, France, Hungary, Israel, the Netherlands, New Zealand, South Africa, Thailand and the UAE. Parents have more flexibility to decide when they take parental leave in Australia, Finland and the Netherlands. More flexible parental leave is under consideration in Luxembourg. In Japan, parents even can take a leave on an hourly basis.

Colombia, Ireland, Israel, (through the implementation of the EU's new Work-Life Balance Directive (2019/1158)), Italy, Switzerland and Ukraine enhanced paternity leave, while extended paternity leave is under consideration in Chile. Italy reported an increase in the actual use of such leave.

In Peru and Switzerland, employees are now entitled to paid leave to care for sick and injured family members (eg, for children with a serious illness). Belgium has extended bereavement leave.

Furthermore, parents' rights increased during the Covid-19 pandemic. In Chile, for example, it is possible to suspend the employment contract of certain employees, while at the same time it is prohibited to terminate employees due to unjustified non-attendance to work if such non-attendance is based on the necessity of taking care of a child born after 2013 and not having other reasonable alternatives to guarantee the child's wellbeing and integrity. In Germany, for parents whose children were born after 1 September 2021, the already existing parenting benefits (*Elterngeld*) were extended and modified to simplify combining family life with work.

In Portugal, as a result of Covid-19, a cash support was introduced for workers who are unable to work under a telework regime and must take care of children or dependents with chronic disabilities/diseases. In Germany, an entitlement to compensation for loss of earnings due to the closure of schools and kindergartens for a maximum period of 20 weeks was established.

For Latvian employees who were on parental leave and could not return to work due to the pandemic, the term of maternity/paternity allowance was extended until the end of the state of

emergency. In February 2021, the Latvian government also decided to pay state monetary support for each family with children. Germany took similar measures. In Argentina, the government has granted emergency family income to low-income, self-employed or unemployed workers on three different occasions.

Although not common practice, there is a trend in some countries, including Australia, Denmark, Kenya, Luxembourg, Mexico, Sweden and Taiwan, for companies to provide maternity and paternity benefits over and above those legally required – something that according to respondents seems to be more common among larger and multinational companies in Chile, Colombia, Ireland, Norway, South Africa or some progressive private sector employers in India. However, employers in other countries, including China, the Czech Republic, Estonia, Finland, Hungary, Portugal and Romania are reported as generally not being receptive to granting such enhanced benefits. In Belgium, employers provide for supplementary pension and hospitalisation insurance.

3.6. Absenteeism due to stress and mental health issues

Several countries pointed to initiatives led by either employers or governments to address mental health issues in the workplace and provide support to employees who experience mental health problems.

Mental health has become a greater focus for employers in Australia, Belgium, Canada, Kenya, Lithuania, New Zealand, Nigeria, Portugal, the UK and the UAE. Many companies have implemented stress policies to reduce the impact on workers of the pandemic-related increase in remote work. In Australia, most large employers offer ‘Employer Assistance Programs’ through which employees can access support services such as counselling. The Portuguese National Health Service has also established a psychological support service. This service focuses, among other things, on promoting psychological resilience and reducing the likelihood of developing mental health problems following the Covid-19 pandemic crisis.

The new national collective bargaining agreement on pandemic telework in Belgium provides, among other things, that teleworkers receive information and guidance from their employer on preventive measures that include the psychosocial dimension and health issues associated with telework.

Circulars, guidelines and frameworks have been issued by governments in Chile, China, Colombia, Denmark, Ireland, Mexico and Singapore, addressing issues such as stress and mental health in the wake of the pandemic-related increase in remote work.

The Danish guideline recommends employers to find an effective way to communicate, engage, collaborate and support employees to prevent them from feeling isolated and pressured without the usual social and physical contact with colleagues. The Work Safely Protocol, published by the Irish government in November 2020, places specific requirements on employers to manage stress and anxiety among the workforce. The Protocol requires employers to provide employees with information about publicly available sources of support and to ensure that employees are aware of and have access to any employee support programmes or occupational health services provided by the company. Mexico has introduced specific regulations related to the Covid-19 pandemic, requiring

employers to establish support mechanisms for employees suffering from stress related to the Covid-19 pandemic.

Singapore reported that an inter-agency advisory on supporting employee mental wellbeing was jointly released under Covid-19 in April 2020.

Ireland reported that in 2019, the Irish government launched the Healthy Ireland Framework 2019–2025, described as a roadmap for building a healthier Ireland. The economic cost of mental health problems in Ireland is estimated at €8.2 billion per year.

3.7. Data protection, privacy and human rights

Data protection and privacy

Data privacy has received further attention in 2020. Worldwide, countries have introduced new data privacy regulations or amended existing ones.

Brazil, Chile, New Zealand, Singapore and South Korea reported the enactment of new laws in the area of data privacy. In Vietnam, a tightening of data privacy law is imminent. Thailand's new Personal Data Protection Act (2019) will become fully effective in 2022. The new data privacy laws in Brazil and Chile are strongly influenced by the European General Data Protection Regulation (GDPR). The implementation of the GDPR is still causing difficulties for some companies, such as in Belgium and Poland. As a result, the Belgian data privacy authority has significantly expanded its activities and sanctioned several GDPR violations by employers, resulting in relatively high fines – with a record fine of €600,000 being imposed against the Belgian branch of one of the big tech companies.

Data privacy issues increasingly arose following the increase in remote work due to the pandemic. The Irish Data Protection Commission issued guidelines for employers to help them protect their data when employees work remotely, and the Data Protection Commission in Luxembourg published recommendations on the processing of personal data in the context of a health crisis. In Bulgaria, the Data Protection Commission affirmed that there is no legal basis that allows employers to require their employees who work from home to provide information about their health and the health of their family members.

The pandemic-induced rise in remote work around the world is therefore raising questions about the permissible scope of employer monitoring.

In this context, Latvia reported on the increasing demand by employers for more control over employees engaged in remote work. Portugal also reported that employers want to intensify monitoring of telecommuting workers. However, Portuguese labour law provides strict rules for employers' use of remote monitoring, which have recently been highlighted by the Portuguese Data Protection Supervisory Authority through the issuance of a guideline on remote monitoring in telework.

Italy and Poland reported that an increasing number of companies are adopting internal policies governing their employees' use of social media. 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. Israel has stated that the use of social media in the workplace has increased mainly due to employees working remotely because of the pandemic.

Human rights

Numerous countries reported new laws and national initiatives to strengthen human rights at work.

In Australia, the provisions of the Human Rights Act 2019 (Queensland) came into force on 1 January 2020. The Act provides individuals with the opportunity to initiate legal proceedings to seek redress or remedy if a public body fails to comply with its obligations under the Act. Denmark reported that, on 21 December 2020, the Danish government and labour market partners reached an agreement to ensure a better and safer working environment, thereby strengthening workers' fundamental rights. Among the goals of the agreement is a safer and healthier working environment, both physically and mentally. The agreement is in force until 2030. Mexico passed a labour reform that strengthened the protection of human rights such as freedom of association, the right to strike and protection against discrimination.

In Singapore, employers have been encouraged to adhere to the Tripartite Guidelines for Fair Employment Practices (TGFEP), issued by the Tripartite Alliance for Fair and Progressive Employment Practices. The TGFEP are not legally binding on employers but, as of March 2021, 14,569 organisations had signed the TGFEP pledge. Switzerland reported on the revised Gender Equality Act, which requires employers with at least 100 employees to conduct an internal pay equity analysis, have it reviewed by an external body and provide written information on the results. In Luxembourg, the government has announced the launch of the Business and Human Rights national pact, which implements the United Nations Guiding Principles on Business and Human Rights.

3.8. Discrimination in the workplace

Many countries reported developments in laws relating to discrimination in the workplace based on gender and disability (among others). Gender-related developments in anti-discrimination laws and practices were most prevalent.

For example, in Belgium, the Act of 4 February 2020 has made paternity, co-motherhood, breastfeeding, gender characteristics, adoption and medically assisted reproduction expressly protected criteria in the anti-discrimination legislation.

At the beginning of 2020, India enacted the Transgender Persons (Protection of Rights) Act 2019. In addition to giving legal recognition to the identity of a transgender person, this law also prohibits any kind of discrimination against any transgender person and makes welfare provisions to promote their participation and inclusion in society. The Transgender Protection Rules of September 2020 have introduced certain compliance requirements for every establishment to provide a safe working environment and to ensure that no transgender person is discriminated against in any matter relating to employment. Every establishment is required to publish an equal opportunity policy for transgender persons and display such policy, including the details of the complaints officer, preferably on their website, failing which, at conspicuous places in their premises.

In Argentina, a new statute has been enacted to prohibit discrimination practices against transgender workers. Moreover, transgender individuals are granted the right to occupy up to one per cent of all public service positions. In South Korea, the public is split regarding a proposed Anti-Discrimination Act that would prohibit unfavourable employment treatment on the basis of sexual orientation.

Mexico has introduced an obligation for employers to implement an action protocol to manage cases of work-related violence, harassment and sexual harassment. The Ministry of Labour and Social Welfare issued non-binding recommendations for the implementation of the protocol, including the following:

- the creation of a commission incorporated by representatives of the company and the employees, with the main purposes of implementing the protocol;
- awareness and training actions undertaken by the employer to promote violence-free workplaces;
- available mechanisms for employees to report these types of conducts; and
- processes to investigate the reported actions (ie, interviews with the affected parties), and determining and imposing sanctions to the employees incurring in such types of conducts.

Furthermore, in Bulgaria the rights of disabled people were strengthened. In 2020, the National Employment Agency introduced a new National Employment and Training Program for People with Disabilities. The focus is on increasing the employability and providing employment for unemployed people with permanent disabilities registered in the Labour Office Directorate, or who have successfully passed a course of treatment for drug addiction for people of working age.

Bulgaria, Chile and Vietnam expanded their lists of discrimination criteria. In Singapore, penalties for discrimination (eg, the length of time work passes can be revoked) have been increased. In China, the Ministry of Human Resource and Social Security recently issued the Administrative Provisions on Online Recruitment Services. It clarifies, among other things, that the online recruitment information must not contain discriminatory content such as ethnicity, race, sex and religious belief.

Workplace discrimination training based on employer-led initiatives is not common according to the responses to this survey, except in France. Such training often only takes place in large multinationals or global companies. However, almost all countries reported that employers usually comply with anti-discrimination laws. The most frequent discrimination is based on gender, origin and age.

3.9. Diversity

Most countries report that they already have diversity laws in place, while more and more employers, especially multinational enterprises, have come to realise that diversity can spur innovation and are interested in mapping the diversity in their companies. Also, employers more commonly use diversity in their marketing, not only in their products and services, but also within the company itself. Even so, most respondents noted that true diversity has still not been achieved, despite the legislative changes made.

For instance, amendments to the Danish Act on Equal Treatment were supposed to contribute to the promotion of gender equality at work, but women remain underrepresented on corporate boards in most companies in Denmark. Meanwhile, the Indian Transgender Persons (Protection of Rights) Act of 2019, along with corresponding rules that came into effect in September 2020, is expected to increase diversity. As reported in the previous AGR, EU Member States must transpose the EU Work-Life Balance Directive (2019/1158) into national law by August 2022, which is expected to contribute to a more gender-balanced use of parental leave and flexible working arrangements in general. Some employers respond to the issue of diversity by changing their strategies around hiring, employer branding, or by establishing diversity and inclusion specialists.

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 heterogeneous workforces or because it is not common to discuss religious issues with employees at the workplace. Other countries, such as Chile or Estonia, indicated that the issue is losing its importance in the labour market due to a decreasing number of followers of religious practices. 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 most countries, many employers in countries such as Argentina, Kenya, South Africa, Sweden and the UK have implemented policies around accommodations for religious practices.

Women continue to be significantly underrepresented on corporate boards in 2020 and early 2021. 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 Chile and Israel. New laws imposing further obligations regarding board representations on the public sector were enacted by the Australian state of Victoria in early 2020. Notably, in March 2020, parliament in Chile approved gender parity for the body that will oversee drafting Chile's new Constitution.

Regarding the private sector, Switzerland introduced a regulation for a fixed quota of female board members (30 per cent) and the executive management (20 per cent) of listed companies, which took effect on 1 January 2021. In 2019, the Ministry of Social and Family Development of Singapore established the Council of Board Diversity, which set a target of women representing 20 per cent of the board members in the top 100 primary-listed companies on the Singapore Exchange (SGX) by 2020. Such legislation has proven effective, as the representation of women on the boards of top 100 primary-listed companies exceeded 16 per cent in December 2019.

In Italy, the quota to be met by administrative and control bodies of Italian listed companies was increased by law in January 2020 to 40 per cent. South Korea has a quota that prohibits publicly listed companies with total assets worth at least KRW 2tn won (around US\$1.6bn) from having a board that is fully one specific gender. In Spain, there are only recommendations in the regulations of the Spanish securities and market authority (CNMV) that recommend reaching a 40 per cent female presence on the boards of directors of listed companies by 2022. Some companies in other countries, such as Sweden, have voluntarily imposed quotas on themselves, while in other countries,

the debate on such regulations is still ongoing. To this end, in July 2020, the Confederation of Danish Industry (DI) gathered 25 influential Danish executives to set up a special commission to promote diversity and equality in the private sector and find solutions to attract and keep talent of different sexes, ages and backgrounds.

Several countries have imposed quotas or minimum target percentages on the recruitment of individuals with disabilities. In Bulgaria, for instance, a mandatory quota for hiring employees with permanent disabilities exists under the rules for implementation of the Law on People with Disabilities. In 2017, Chile implemented a one per cent quota for employers with 100 or more employees, which was supplemented by a series of obligations aimed to facilitate the labour inclusion of disabled employees in October 2020 (eg, one employee in HR with specific knowledge in matters that promote the labour inclusion of people with disabilities; annual reports to the Labour Board). These quotas often flank reporting obligations.

In some countries, such as Ireland or Israel, the government promotes assistance programmes to integrate people with disabilities into the labour market and increase the number of employed persons with disabilities, while at the same time improving the standard of living, wages and working conditions. In Ireland, there is a Retention Grant Scheme to assist employers in retaining employees who are impaired in their ability to perform their work. In Norway, general guidelines have been implemented in the public sector that favour not only individuals with disabilities, but also individuals with a gap in their resume in the application process.

3.10. Code of conduct/behaviour in the workplace

In the last year, only a few regulatory developments in the context of work-related sexual harassment have been reported. This is because some countries (eg, Canada and Sweden) already have comprehensive regulations regarding sexual harassment in the workplace. Romania has enacted a law that penalises discrimination at work, including sexual harassment, with fines. In South Africa, a draft Code of Good Practice on the Elimination of Violence and Harassment in the World of Work has been published for public comment. The Danish government has suggested that the implementation of the EU Whistleblower Directive should be expanded to cover reports of sexual harassment at the workplace. The UK Government has announced that it plans to introduce legislation with a view to preventing the misuse of confidentiality provisions in employment contracts and settlement agreements (ie, non-disclosure agreements), while Vietnam's new Labour Code requires employers to add a chapter to their internal labour regulations (the working rules of the company) prohibiting and defining sexual harassment and setting out how complaints will be dealt with, including victim compensation.

Companies are continuously becoming aware of their responsibility in combating sexual harassment in the workplace, for which the #MeToo movement is still a decisive factor. 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.

Some countries (eg, Chile) reported that the widened consciousness about sexual harassment at the workplace has resulted in an increase of work-related sexual harassment complaints and investigations.

3.11. Technology and artificial intelligence

Artificial intelligence (AI) is moving further into focus. The G20 countries and the Organisation for Economic Co-operation and Development (OECD) have each drawn up principles for dealing with artificial intelligence; numerous countries have set themselves the goal of deepening the implementation of artificial intelligence and established guidelines to this end. Concrete regulations on the use of AI in general and at the workplace, however, have – as far as can be seen except from Russia – not yet been issued.

Yet, the Prime Minister of Vietnam issued Decision No 127/QĐ-TTg on the promulgation of the National Strategy on Research, Development and Application of Artificial Intelligence and Vietnam launched its first artificial intelligence research centre at the Hanoi University of Science and Technology. The European Commission has also taken a significant step in this direction with its Proposal for a Regulation laying down harmonised rules on AI (the Artificial Intelligence Act). According to the Proposal, AI systems used in employment, worker management and access to self-employment – notably for the recruitment and selection of persons, for making decisions on promotion and termination, and for task allocation, monitoring or evaluation of persons in work-related contractual relationships – should be classified as ‘high-risk’ and therefore be subject to strict obligations (eg, adequate risk assessment and mitigation systems, high quality of the datasets feeding the system to minimise risk and discriminatory outcomes, and appropriate human oversight measures to minimise risk) before they can be put on the market. Supporting this approach, Germany introduced new legislation that requires the works council to be involved when the employer intends to use AI.

Even though AI is already used in many sectors for process optimisation, most country reports indicate that the employers’ reliance on AI regarding HR-specific use (eg, workforce analytics, recruiting pre-selection, background checks) is only growing gradually. While Lithuania has a strong AI community with an ever-evolving AI ecosystem, there is no significant increase in employer reliance on AI/workforce analytics software yet. In contrast, the use of other technologies, especially for collaboration, communication or data exchange, has increased significantly due to the Covid-19 pandemic.

Several country reports suggest that the use of AI and new technologies will, in the long-term, lead to the disappearance of certain occupational fields. Activities that can be automated or digitised, such as in the industrial sector, logistics or customer services, are particularly affected by this development. On the other hand, the emergence of new occupational fields is also expected. Nevertheless, according to the respondents, in most countries, the use of AI does not yet seem to have had a significant impact on the labour market.

3.12. Unions, collective bargaining and industrial action

Legal changes

Some countries reported on new legislation relating to collective bargaining and freedom of association.

Italy reported that, with regard to trade unions in recent years, there has been a process of progressive decline in the popularity of trade unions among workers, especially among younger employees. The erosion of union power has not been compensated by the emergence of new forms of union activity.

Others, meanwhile, report legislation that empowers unions and collective bargaining. In September 2020, a law requiring workplaces with registered unions to have a bargaining union was enacted in India. In Vietnam, a drastic change in the trade union system is imminent after the conclusion of international free trade agreements, so that the establishment of independent trade unions may soon be possible.

On the other hand, the impact of the pandemic has in many cases set back freedom of association and unions. For example, the Ministry of Labour in Chile recommended in March 2020 to temporarily suspend collective bargaining by agreement during the pandemic. A law temporarily suspending union election procedures and extending the terms of union leaders and delegates was also passed. The government in Thailand enacted regulations to prohibit strikes and lockouts during the Covid-19 pandemic under the Emergency Decree on Public Administration in Emergency Situations. In Singapore, temporary arrangements have been made under the Covid-19 Act, passed in April 2020, for alternative arrangements relating to the calling, holding, conducting or postponing of union meetings. In Malaysia, a new labour relations law was enacted that allows the Minister of Human Resources to order the termination of a strike if it endangers the life, safety or health of the entirety or parts of the population.

Germany, in contrast, passed the Works Council Modernisation Act. Among other things, it is intended to promote the establishment of works councils and sets out the possibility of virtual works council meetings as well as a right of codetermination in the introduction of mobile work. It also requires the works council to be involved in the use of AI and strengthens the rights of the works council in professional development.

Strike action

Strikes took place in many countries due to the pandemic-related restrictions, especially in sectors that were most affected by the pandemic, such as healthcare, catering industry and aviation. For example, in Bulgaria, Israel, Latvia, Peru, Portugal and Ukraine, the health sector and the catering industry were especially affected by strikes.

Due to the Covid-19 measures, which include the closure of bars and restaurants, many bar and restaurant owners organised protests to demand more flexible and less restrictive measures, as well as increased financial support for their closed businesses. In the healthcare sector, the high workload

caused by the pandemic led to strikes by medical staff.

Mexico, Portugal and South Africa reported on strikes in the aviation sector. Mexico's largest airline was the subject of a strike carried out by its union. The strike, which affected more than 5,000 unionised employees nationwide, was initiated due to the lack of payment of salaries and benefits by the company, which was in a critical economic situation due to the Covid-19 pandemic and its impact on the airline industry.

In April 2021, a strike was started by the dockworkers at the Port of Montreal in Canada. It was only a few days before the Canadian Government passed Bill C-29 to force an immediate return to work. Had the strike continued, it would have cost the Canadian economy \$40–100m per week.

Ireland, Italy and South Korea experienced strikes by (food) delivery workers. During the pandemic, demand for food delivery services has soared.

Influence of the Covid-19 pandemic on trade unions

Due to the uncertain labour market situation, the number of union members increased in many countries during the pandemic. Belgium, Ireland, Israel, Italy, Mexico, New Zealand, Norway, Peru and Sweden reported an increase in union members and increased activity.

Ireland stated that Irish unions have been very active in protecting workers' health and safety, and dismissal rights during the pandemic. Therefore, Irish union membership may even increase in the future as a result of the Covid-19 pandemic.

There was a decline in union membership in some countries during the pandemic, such as Brazil and the Czech Republic. In Brazil, union membership has been declining since 2017. Covid-19 has exacerbated this trend, as many unions in Brazil were inactive for part of 2020 due to the pandemic.

3.13. Minimum wage, banking reform and executive remuneration

Minimum wage/remuneration models

There is a statutory hourly minimum wage in many of the countries, such as Belgium, Canada, New Zealand and South Africa, which is in some cases periodically readjusted. Other countries, such as Albania, Colombia, Lithuania, Nigeria and Romania, implemented a statutory minimum wage that is calculated on a monthly basis. In Argentina, a minimum monthly salary and an hourly salary is set, whereas in Myanmar there is a daily minimum wage. Spain has a government commitment that ensures that the minimum wage will reach 60 per cent of the average wage in Spain by 2023.

While the minimum wage has increased in many countries in the last few years, employers often reacted adversely and stated that the increase of the minimum wage would lead to job losses. To counter this matter, the Portuguese government, for instance, granted companies financial support, such as the creation of a non-refundable subsidy. Albanian experts noted that employment of foreigners had 'discouraged' a salary increase, since there are several categories of foreign workers deriving from poorer countries that accept employment under the current salary levels. In Mexico, there is both a general and a professional minimum wage, which applies to certain employees

depending on their specific profession, craft or activity, and which is higher than the general minimum wage; Luxembourg has a similar system. In Russia, regions are entitled to set a local level for the minimum monthly wage, as long as it is not lower than the federal statutory minimum.

In October 2020, the EU proposed the Adequate Minimum Wages Directive, which should guarantee fair working and living conditions. However, it is uncertain whether there is a legal basis for the EU Commission to introduce such a directive. Meanwhile, some countries, such as Denmark or Finland, have no statutory minimum wage but entrust the social partners to negotiate minimum wages in industry-specific collective bargaining agreements. In Chile, a guaranteed minimum monthly income has been implemented within the context of the Covid-19 pandemic; the Italian Government granted special Covid-19 shock absorbers to employees suspended from work to the maximum amount of €1,200 (gross).

While most respondents report that the compensation structure of employees still includes base salary and variable profit sharing, the overall trend has moved toward more tailored total compensation packages. Belgium, for instance, reports that more and more companies are introducing a ‘mobility budget’, which makes it attractive to exchange a company car for a more eco-friendly car or alternative means of transport (eg, e-bikes or public transport). In some countries, such as Denmark or Finland, an increase in interest with respect to employee share-based remuneration is expected due to recent legal changes regarding stock options. South Africa has introduced increased transparency obligations for remuneration models and compensation structures, and greater scrutiny of performance incentives and bonuses.

The Covid-19 pandemic has made it difficult to reach certain targets set out in bonus plans. While Ireland reports that the expectations of employers making bonus payments have lowered significantly, Belgium indicates that many employers seem to have been flexible with the targets.

Financial institutions/banking reform

As reported in last year’s AGR, the European Union adopted a revised Capital Requirements Directive (CRD V) in mid-2019 with a transposition period that ended on 28 December 2020. In Germany, for instance, it was implemented into national law (*Risikoreduzierungs-gesetz*) on 14 December 2020 and in Luxembourg on 21 May 2021. The new European requirements necessitated changes to German remuneration regulations in the banking sector, including the proportional application of specific remuneration requirements and the requirement for gender-neutral remuneration systems.

While Brazil implemented new measures regarding financial institutions, such as the prohibition to increase remuneration of their officers and members of the board of directors as well as the prohibition of reducing the capital stock and repurchasing its own shares, China tried to increase the efficiency of regulation of non-banking institutions by issuing measures cancelling some administrative licensing issues and simplifying the examination and approval process for certain matters.

Meanwhile, Ireland is currently working on a proposal to legislate new rules to provide the Central Bank with additional powers to make senior bankers more accountable individually for failing or wrongdoings. Rules on increased responsibility and accountability were further reported by Malaysia.

A suite of new regulations came into force in March 2021 in New Zealand as part of a more consumer-focused approach from financial institutions, which require certain disclosures to be made when providing regulated financial advice. Thailand has continued to introduce more corporate governance regulations in respect of financial institutions and their executives, which include, inter alia: regulations on components of capital for locally incorporated banks; regulations on components of capital for foreign bank branches; and regulations on the preparation and announcement of financial statements of the commercial bank and holding company that is the parent company of a financial business group.

Executive remuneration

Most respondents reported no changes with respect to executive remuneration, as well as the absence of laws on executive remuneration. Belgium and Lithuania, for instance, noted that existing regulations only cap the remuneration of the management of public companies or public institutions.

Some countries, such as Israel, emphasised an increase in discussions regarding the pay ratio of senior officials in public health companies. As of February 2021, there is a bill under discussion at the Chilean Congress intended to force employers to disclose the relevant financial information to employees who receive variable remuneration based on the commercial results of the company. For its part, India pointed out that there are ongoing debates on the gender pay gap and pay disparity with respect to executives – that is, different categories of employees (hierarchical pay gap).

Most Member States have taken measures to transpose the EU Shareholders Rights Directive II (SRD II). For instance, the directive has been implemented into Polish law since 31 August 2020, so that public companies are obligated to implement remuneration policies for management and supervisory board members. 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.

Legislation also entered into force in Portugal in August 2020 to facilitate transparency rules for institutional investors and to simplify the exercise of their rights, as well as to strengthen control over directors' remuneration policy. Meanwhile, China introduced guidelines, effective as of 28 January 2021, which made clear that remuneration of senior executives and key staff in banking and insurance institutions should be clawed back in some cases. If they refuse to cooperate, banking and insurance institutions may take reasonable measures, such as warnings and judicial litigation.

3.14. Gender pay gap/equal pay for equal work

General anti-discrimination laws have been implemented in most countries, and only a few respondents reported specific legislative actions relating pay disparity on the grounds of gender (ie, the guarantee of equal pay for equal work). However, in most countries a significant pay gap between men and women remains.

Some of the countries that introduced specific laws on statutory pay equality, such as China, Italy, and Latvia, reported that the pay gap is gradually narrowing, but still exists. In 2020, Norway introduced

an obligation for public enterprises and private companies with more than 50 employees to declare how they are complying with the provisions concerning gender equality in their annual report. In New Zealand, new amendments were made to the Equal Pay Act, which intended to improve the process of raising and resolving pay equity claims regarding work done by women which is different but of equal value to work done by men. There have already been claims based on this regulation that are currently being processed as of February 2021.

In South Korea, employees can now file a complaint against their employers with the Labour Relations Commission for gender discrimination (gender discrimination includes pay, promotion, hiring, etc), sexual harassment, or failure to take certain actions in response to reports of sexual harassment, with the employer bearing the burden of proving that no discrimination occurred. Spain passed a Decree in October 2020 to guarantee equal pay for women and men. Companies must first carry out an internal analysis, including a pay audit, to identify the inequalities, disadvantages and difficulties women face in the company; after this, they must define objectives to achieve real and effective equality between men and women.

Many countries try to prevent wage gaps by setting incentives for fewer and shorter family-related career breaks through the expansion of childcare or other family benefits (eg, temporary part time). For example, Hungary brought in Grandparent Child Care Benefits in January 2020 to support women when they are re-entering the labour market.

In Mexico, employers have the obligation to implement a protocol to prevent gender discrimination. As of 1 July 2020 in Switzerland, public and private employers above a certain threshold of employees are required to periodically carry out an internal wage equality analysis. However, the obligation is lifted if they comply with the equal pay principle. As reported in last year's AGR, at the federal level in Canada, new pay equity legislation came into effect with respect to employees in the federally regulated sector. Among other things, this legislation requires employers to establish a pay equity plan within three years of becoming subject to the legislation, and to then conduct periodic reviews at least every five years. Ireland announced an initiative to introduce transparency and reporting obligations applicable to enterprises above a certain threshold of employees. This is currently set at 250 employees, but will be incrementally lowered to 50 employees during a transition period. Although the Irish Parliament has not yet passed the Bill, there have already been some adjustments to ensure that the obligations apply to all public institutions and government departments.

Meanwhile, other countries, such as Germany or Norway, have recently implemented obligations for employers to disclose remuneration information where a worker suspects discrimination. In order to reduce the gender pay gap, the Lithuanian Ministry of Social Security and Labour recently decided that data on average wage, based on the gender mix of each employer with at least eight employees, will be publicly available in the portal of the State Social Insurance Fund Board under the Ministry of Social Security and Labour. In Norway, the gender pay gap is diminishing, meaning such laws are showing effect.

3.15. Immigration and talent issues

Responding to talent shortages

As in previous years, and despite the Covid-19 pandemic, most countries surveyed reported persistent shortages of skilled workers, excluding Chile and Colombia. Skill 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 skill shortages name information technology, STEM occupations (science, technology, engineering and mathematics) and the healthcare sector as areas with a shortage of skilled workers. The situation has worsened in the healthcare sector due to the ongoing Covid-19 pandemic. Some countries also reported a shortage of skilled workers in the construction industry and in skilled trades. In Argentina, there is also a shortage of unskilled personnel holding a high school diploma.

Reasons for talent shortages are many, 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 labour markets to an outflow of talent or so-called ‘brain drain’ (including Italy, Mexico, Nigeria, Poland, Russia, Serbia, South Africa, Taiwan and Ukraine), even if this effect was partially mitigated by Covid-19-related border crossing restrictions. Causes of brain drain are low or stagnating wages (Taiwan) and unsatisfactory economic conditions in the home country combined with more attractive employment opportunities and/or working conditions abroad. The UK states skill shortages will be exacerbated by the UK’s departure from the EU.

Those countries that have skill shortages in the hospitality, transport and construction industry (eg, Spain) see the main reason for this as low wages with poor working conditions. Some countries consider an ageing society and other demographic changes as factors that amplify shortages of skilled candidates on the labour market (including Canada, Finland, Germany, Hungary, Japan and Russia).

For areas where constant indepth expertise is mandatory, deficits in higher education (eg, India, Mexico and Nigeria) and a lack of alignment between employer needs, university curricula or vocational training (such as in Brazil, Kenya, Poland, Russia, Thailand and Vietnam) are cited as further causes of talent shortages. Specifically, the high demand for suitable candidates in the rapidly developing technology sector, where numerous new professional profiles are emerging, is often not satisfied (according to respondents from Brazil, Estonia, Israel, Malaysia, Portugal and Vietnam).

Where the devastating economic effects of the Covid-19 pandemic contributed to rising levels of unemployment in the review period (eg, US), it remains uncertain whether this will also have a persisting effect on the above-mentioned skill shortages. As of now, the unemployment rate has at least almost returned to pre-pandemic levels in most countries.

Almost all countries surveyed take action to compensate an existing skill shortage or mitigate the prospect of such shortage. On a legislative or government level, measures aimed at compensating labour shortages often revolve around immigration. While countries like Australia and New Zealand have been pursuing a dedicated skilled migration policy for some time, more countries have recently made similar adjustments (eg, Denmark, Finland, Latvia, Luxembourg, Portugal, South Africa,

Singapore and Taiwan), in some cases specifically through relaxed administrative requirements toward working visas – that is, fast-track visa, or relaxing rules around family reunification rights for employment permit holders (eg, Albania, Argentina, Estonia, Germany, Ireland, Portugal and Turkey).

The impact of the Covid-19 pandemic in this context is still unclear: in New Zealand, applications for most temporary visas have been temporarily suspended; in Argentina, business visas were only granted to a reduced number of foreign visitors and under the condition that they have a formal invitation from a previously registered local host and return tickets; whereas in Ireland the number of visas issued remained constant. However, there are countries (eg, Vietnam) which tightened immigration restriction despite talent shortages.

Other countries which noted a strong brain drain, aim to respond through a combination of re-emigration (eg, Albania) and outflow reduction plans by improving working conditions. In Hungary, for instance, the government and the Medical Chamber have agreed on a substantial wage hike for medical doctors.

In countries such as Brazil, Bulgaria, China, Hungary, Ireland, Lithuania, Malaysia, Poland and Singapore, upskilling and reskilling schemes are being implemented – often in cooperation with the private sector – to adapt to changing skill profiles.

In Germany, the Qualification Opportunities Act promotes the further training of employees whose professional activities could be replaced by new technologies. Similarly, the US also has a focus on improving education for STEM occupations in order to respond to future needs in this area. The Luxembourg Employment Development Agency (ADEM) launched the Future Skills Initiative in 2020, which supports reskilling and upskilling of employees. It allows recruiting employers to provide training to employees on transversal, specific and digital skills.

Numerous countries emphasise vocational training for young people, such as India with its ongoing Skill India programme or Mexico with its Young People Building the Future programme. Many of these programmes focus on technical education (eg, Argentina, Belgium, Israel, Kenya and UK).

While skill development and retraining existing staff is common among employers from most countries surveyed (eg, Spain, where companies are rewarded if they offer training), outsourcing specific skills and trying to attract foreign workers with appealing working conditions (raising wages, flexible working, etc) are also often referred to as measures taken by employers. China even reported that ‘talent poaching’ had become a prevalent method for employers to overcome workforce shortages. In addition, employers try to attract potential candidates at an early stage through university cooperation programmes, at university career days or at other job fairs. These were often held online in 2020 due to the Covid-19 pandemic.

In this respect, the specific impact of the Covid-19 pandemic is still difficult to assess: for instance, Japan and Taiwan report that regular recruiting plans have been postponed or cancelled due to the pandemic. Instead of seeking experienced workers, Canadian employers are focusing on a candidate’s attitude and potential fit with their company’s culture, with the intent of filling gaps in experience through training. Poland and Thailand state that employers are actively looking for foreign employees.

Refugees

As in previous years, almost half of our respondents consider their country to be a common destination for persons seeking refugee status. Numerous countries have introduced schemes to promote the integration of refugees into society and/or the country's workforce over recent years. As an example, Portugal created 'RefuJobs', an online platform that aims at improving the skillset of refugees and identifying available employment opportunities.

Furthermore, the European Commission has recently presented the new EU Action Plan on Integration and Inclusion (2021–2027), the main priorities of which include inclusive education and training, improving employment opportunities and skills recognition.

Sometimes, the integration of refugees into society and/or the country's workforce does not go as smoothly as hoped. In South Africa, for instance, many refugees are subject to exploitation and target to repeated xenophobic attacks by local communities.

The Covid-19 pandemic has widely affected both refugee figures and refugee integration programmes: in many countries (excluding Chile, Singapore and Taiwan), the number of refugees has fallen dramatically due to the pandemic and related entry restrictions (eg, in Spain, 25 per cent fewer asylum applications were lodged in 2020 than in 2019). Although the European Commission has urged EU Member States to ensure access to asylum, some Member States suspended asylum procedures despite these restrictions. Others have made efforts to help refugees under the adverse pandemic conditions. Particularly noteworthy is Portugal, where asylum seekers have been temporarily granted residence rights, full access to the healthcare system and to employment. In February, New Zealand resumed its Refugee Quota Programme, whose key focus areas are (virtual) health and mental health assessments, settlement planning and education.

Refugees are affected by the pandemic to a significant extent. Finding employment has become even more difficult and integration courses were often not allowed to take place in person. Social distancing rules have complicated participation in social life and the integration process as a whole. Some of our respondents expect the number of refugees to increase in the coming years as a result of the economic impact of the pandemic.

Recruitment, residence and workers' rights

Several countries reported recent changes to immigration laws related to the recruitment of foreign nationals and the insurance of work permits. Most of these changes have been made to facilitate regulations or procedures for skilled workforce/talents (eg, Canada, Denmark, Israel, Singapore, Taiwan, UAE and Ukraine), and investors/other persons with a strong economic background (eg, Estonia, Italy, Singapore and UAE).

On 31 December 2020, the Brexit Withdrawal Agreement transition period expired. Therefore, EU citizens wishing to settle in the UK are now subject to the same rules as third-country citizens and vice versa. But, according to Lithuanian amendments, UK citizens and their family members who acquired the right of residence in the Republic of Lithuania before the end of the transitional period will be subject to the same provisions as citizens of the EU and their family members after the transition period.

Due to the Covid-19 pandemic, numerous countries have temporarily adopted dynamic entry restrictions (border closures, test requirements, quarantine) and paused immigration procedures. At the same time, visas/residence permits already issued were extended automatically in some countries or under eased conditions to take account of the exceptional situation (eg, in Bulgaria, Czech Republic, Israel, Luxembourg, Poland and South Africa). Cyprus, for example, states the government has become very reluctant to grant work permits to third-country nationals, particularly in areas where there is high unemployment.

It remains to be seen how the pandemic will affect migration flows in the future. Chile anticipates an increase in migration after the pandemic. It has therefore accelerated the enactment of a new Migration and Foreigners Act.

3.16. Covid-19

The Covid-19 pandemic continues to have a major impact on labour markets and workplaces. Though not all the surveyed countries have been equally affected by the pandemic, most respondents reported similar measures taken to protect employees and employers.

In 2020, some respondents had already reported a state of emergency in their countries, leading to various legislative actions to address the effects of the pandemic on human resources issues. As a result of the pandemic, many shops and institutions that did not meet essential needs (and schools) were closed in many countries.

Companies that did remain open faced numerous regulations introducing specific limitations and requirements, such as the compulsory wearing of face masks at the workplace, the provision for thermal scanning, handwash or sanitiser, the frequent sanitisation of the entire workplace or the staggering of work. All these measures must be observed at workplaces in many countries, such as in India, which issued periodic orders in this regard during the reporting period. The testing of employees' temperatures at factory entrances has also become common practice in some countries, such as the Czech Republic. In Germany, employees were required to be tested for, vaccinated against or recovered from Covid-19 during much of the reporting period if they did not work exclusively from home.

As part of social distancing measures, many countries imposed strict curfews in 2020 and declared states of national and sanitary emergency, as well as imposing various restrictions such as the closing of borders, mandatory social isolation and nighttime curfews. Lately, due to falling case numbers, some governments have started to reduce the imposed restrictions to allow the progressive resumption of economic activities in countries like Peru.

Working from home

One aspect of working life that gained considerable importance during the Covid-19 pandemic, and that was mentioned by almost all respondents, is teleworking/remote working. Where possible – technically and otherwise – many companies resorted to forms of remote working, which also helped accelerate the adoption of technology at the workplace. While the introduction of telework is only possible with the consent of employees in many countries, countries such as Bulgaria, Hungary and

Poland allow employers can unilaterally order the employee to work from home. In Germany, it was mandatory for employees to temporarily work from home if possible, since a ‘federal emergency brake’ (*Bundesnotbremse*) entered into force in April 2021. Belgium and Switzerland reported that it has become popular to award lump sum compensation for the use of a ‘home office’. Other countries, such as Latvia or Germany, stipulated that employees’ expenses related to the performance of remote work can, under certain conditions, reduce taxes.

Most respondents reported that the Covid-19 pandemic has changed how people in organisations interact, and consider it likely that remote working will become ‘the new normal’. On the other hand, Spain reports that most companies returned to work after the summer of 2021, even though they also recognise that there will be changes in the future in terms of more remote work.

Labour market

The labour market has also been affected by Covid-19 in many countries. Most respondents noted that the tourism, hospitality and travel sectors, as well as restaurants, retail, cultural institutions and nightlife, were most affected. Other sectors, such as the postal services and delivery industry, have grown considerably.

While a few countries, like Australia or Denmark, reported only minor impacts on the labour market, many countries – such as Argentina, Bulgaria, Canada, Israel, Lithuania, Myanmar, Russia, South Africa, Spain, Thailand and the UK – reported that the Covid-19 crisis led to a significant increase in the level of unemployment in the end of 2020 and the beginning of 2021. Chile and China noted that the decrease in employment mostly affected women, as female workers are the main force in the domestic cleaning industry and catering service industry. Spain also reported that the number of women in employment has fallen slightly more than that of men. According to Estonia, the unemployment rate increased among non-skilled employees and, consequently, provided some relief of the lack of workforce which characterised the market in the previous years. As of the end of 2021, the employment rate has increased in most countries again.

Another problem regarding the labour market noted by many respondents is missing staff due to quarantine or childcare duties during periods with closed schools.

Financial government support

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, many countries adopted new rules on payment deferral of taxes and employers’ social security contributions. Furthermore, several governments enacted financial support plans for small businesses and self-employed/informal employees, providing credits or non-repayable emergency aids. Meanwhile, in some countries (eg, Brazil) the measures adopted by the government to address the pandemic’s effect on human resources have already ended.

Furlough schemes

In some countries, provisional measures were adopted to allow companies to temporarily suspend employment agreements or decrease working time. At the same time, employees were still entitled to (parts of) their remuneration for the duration of suspension of work – either to be paid by the employer or by unemployment insurance (eg, *Kurzarbeit* in Germany, NOW in the Netherlands, ERTE in Spain and *korttidsarbete* in Sweden).

In other cases, (eg, Chile and Turkey), temporary suspension meant that employees did not work and that employers did not pay remuneration. Where the employer was not able to provide the employees with work to the agreed extent, or to provide safety and protection of life and health at work, employer and employee could agree on the use of unpaid or paid leave to bridge periods of reduced workload (eg, Peru); the exact conditions and rules varied from country to country.

Vaccination and testing at the workplace

There are various global human resources issues that are expected to arise with respect to the Covid-19 pandemic. Firstly, more privacy issues relating to the vaccination status of the workers will probably emerge. For example, some US airlines insist all US staff must be inoculated with an approved Covid-19 vaccine, while in Moscow a vaccination against Covid-19 is mandatory in the service and trade sectors. There are also data privacy concerns regarding the companies' right to require employees to be tested for Covid-19 and receive the test results.

As of December 2021, all employees in Italy are required to be certified as vaccinated, recovered or tested, thus providing a so-called Super Green Pass. The Hungarian government has given employers the right to make it compulsory for employees to be vaccinated against Covid-19. According to the decree, an employer can, in the interests of health protection and considering the specific characteristics of the workplace and the job profile of employees, impose vaccinations on unvaccinated employees as a condition of employment.

Outlook

There is evidence to suggest that many employees will retain key aspects of the model of remote working once the pandemic subsides. An Irish survey conducted in June 2020 pointed out that 70 per cent of organisations will facilitate more employees to work remotely after Covid-19 than before the crisis. For example, in October 2021 PwC allowed 40,000 staff in the US to work remotely from anywhere in the country. Staff choosing to work from home will be required to come to the office no more than three days a month. However, US PwC employees risk a pay cut if they move to places with a lower cost of living, as compensation packages are determined by location. In any event, the pandemic has given a major boost to digital communication methods at the workplace, and it is likely that many physical meetings will also be replaced with digital alternatives in the future.

Lastly, there are expected issues in connection with mental health, productivity and culture dissemination as the lack of physical interaction between individuals is still a new scenario.

3.17. Impact of other political and world events

Compared with the effects of the pandemic, other events have had far less significance. Few of our respondents detected any direct tangible impacts of trade conflicts (US/China, China/EU, EU/US) on labour markets, even though it is likely that such conflicts can at least have an indirect impact. Taiwan, however, reported to have benefited from the trade conflict between the US and China, and businesses and professionals have relocated from China to Taiwan. Many manufacturers have also moved their operations to Vietnam due to the conflict. New jobs were therefore created in Vietnam; Thailand has also seen some investment inflows. India also sees the possibility of a similar development. It is yet to be seen how the relations between these trading powers will evolve with the Biden administration.

On 31 December 2020, the Brexit Withdrawal Agreement transition period expired, leading to administrative hurdles relating to immigration issues/issues concerning the mobility of workers between EU and the UK (see section 3.15), as well as implications regarding the transfer of (employee) data in the UK under the GDPR.

The European Commission has adopted an adequacy decision under the GDPR to ensure that cross-border transfer of (employee) data between the two countries can continue in the future. The UK reported that labour and employment laws have generally remained unchanged because the trade agreement between the UK and EU contained an agreement that neither side would weaken or reduce their labour and social standards below the levels in place at the end of transition ‘in a manner affecting trade or investment’. Significant changes or issues arising in employment law are not expected.

3.18. Global leadership issues

Current human resources challenges

The reporting countries enlisted various topics as current human resources challenges, of which several were unique challenges to the respective legislation or socio-political environment. As in previous years, some global trends could be identified.

The main challenge worldwide is to manage the pandemic and its economic impact. To this end, restructurings and mass layoffs are being considered. At the same time, government measures such as short-time working allowances and/or investment programmes are intended to prevent unemployment from rising further.

The pandemic has led to a situation in which, even in places where employers were persistently opposed to mobile forms of work some time ago, such forms of work (especially working from home) are now common practice, partly because of government regulations. In some countries, a right of employees to work from home is being discussed (see section 3.4). This development raises numerous legal questions. For instance, occupational safety standards must be complied with in home offices, as must an appropriate work-life balance. The employer’s interest in preserving the productivity of its employees working from home by means of telecommunication and/or monitoring must also be sensitively balanced against the employee’s right to privacy. Respondents from many countries pointed out that there is not yet an adapted legal framework to address these issues. Employee

representatives often have a right to be heard/right of codetermination concerning matters related to flexible working forms. They are faced with the challenge of maintaining contact with an increasingly decentralised workforce to properly enforce their interests.

As per last year, a shortage of skilled and/or qualified workers, especially in areas relating to IT and digitalisation, the classification of the alternative workforce (self-employed/employee) and managing retirement and pensions within an ageing workforce were cited as important current human resources challenges.

Litigation

The subjects of litigation before labour courts remained largely unchanged from the previous year. Almost all our respondents cited disputes relating to employers' alleged unlawful terminations as one of the most litigated issues.

Claims for remuneration and benefits in various forms (salary, remuneration for overtime, performance-related remuneration and vacation entitlements) are also frequently the source of labour courts disputes.

In recent years, litigation involving allegations of gender-related discrimination and/or harassment and other forms of discrimination has grown in importance.

Future human resources challenges

Survey responses show that many respondents consider most of the current challenges as remaining relevant, or even becoming critical challenges, over the next years. It is expected that the fight against the pandemic and its economic consequences will remain a central issue in the coming years. It is also expected that flexible working forms and associated rules will proliferate over the next few years. Although flexible working is a general social trend, mobile working/working from home offices is currently possible for less than half of all occupations in principle, and it is not always desired by employees. Accordingly, our respondents predict an increase in hybrid solutions (office work/mobile work).

One of the most cited future challenges was responding to advancements in technology and the corresponding challenges of data privacy and cybersecurity in general, as well as issues of vocational training related to shifting job profiles. The challenges associated with atypical working arrangements, such as the gig economy, platform work and self-employed service providers, are commonly referred to as future challenges, especially regarding the difficulties in the qualification of such arrangements under current or future legal provisions.

Even though the current Covid-19 situation acts as a (temporary) dampener in this regard, several countries (eg, Denmark and Singapore) noted that the cross-border mobility of workers, as well as immigration and integration of foreign workforces, will remain major challenges over the next five to ten years.

4. Conclusions

The developments in 2020 and 2021 follow the challenges and trends of previous years, such as various labour shortages, the wish for increased diversity in the work environment, demands for alternative work arrangements and more flexibility, or conquering and adapting to digitalisation. However, new problems arose: mostly tendencies and trends connected to the Covid-19 pandemic, such as required vaccination or testing at work. The beginning of 2020, which was characterised by the global outbreak of Covid-19, can be seen as a starting point of many human resources developments, trends and issues, and the event that most shaped employment law in the time period of this report.

Even though specific developments are already notable, long-term impacts of the pandemic on human resources law and the labour market are still uncertain in many ways. Therefore, global reports such as this one can serve to help analyse specific global or regional long-term changes.

Labour market

Despite the Covid-19 pandemic, skills shortages remain a relevant challenge for most countries participating in this report, and persist in a wide range of sectors. The reasons for a lack of skilled employees vary between different regions and sectors, although most common are the impact of talent migration, a lack of educational programmes (specifically, in the rapidly developing technology sector) or vocational training and outflow of talent. In lower-paid jobs, bad wages and poor working conditions are mentioned as another factor.

To combat labour shortages, most governments (sometimes in cooperation with private companies) implemented different educational programmes. In addition, a focus was laid on managing migration flows by improving working conditions to keep skilled labour in the country and to attract skilled foreign workers, while making immigration laws more attractive to foreigners. As a result of the Covid-19 pandemic, new immigration has declined sharply. Pandemic-related social distancing rules have not only been an obstacle to the integration of refugees, but were also a challenge for managing and connecting workforces remotely.

Discrimination and diversity

Around the world, promoting diversity and eliminating gender-related discrimination in the workplace are ongoing concerns. Another key topic is improving the rights, working conditions and representation of people with disabilities. Besides adding new types of discrimination to laws regarding the combat of discrimination, quotas are often implemented to enhance diversity at work. Legislators have even introduced specific targets or quotas to address the widespread underrepresentation of women on corporate boards. Gender equality also continues to influence rules on benefits associated with childcare, which are increasingly being designed as gender-neutral benefits.

Alternative work arrangements/demands for greater flexibility

As in past years, platform-based and other modern working arrangements were recognised by most respondents as a newly emerging economy – sometimes referred to as the ‘gig economy’. Like last year, this trend has prompted tangible impacts on legal practice and debate. A widespread topic was the legal classification of those working relationships, which was the subject of new legislation or supreme court rulings in many countries. In most cases, the outcome of these disputes leaned toward granting protection and social security to gig economy workers – an issue underlined by the pandemic. It is therefore quite likely that in the next few years, most countries will follow the increasing trend that we have already seen in some countries this year: greater regulation of the gig economy. Temporary and contract arrangements both remain popular choices among non-traditional work arrangements.

Even before the outbreak of the Covid-19 pandemic, another persistent trend was the increasing demand for a healthier work-life balance, and therefore more flexible working conditions, and work-from-home or remote work arrangements. There was a tendency among employers to be more compliant with these demands even before the pandemic. However, remote working arrangements in particular have seen a very sharp increase due to social distancing and health regulations. Many respondents have described this as a trend that will continue in the post-pandemic future, or even called it ‘the new normal’.

In addition to the right to disconnect from work, there was also discussion about a right to work remotely, independent of the employer’s will. That said, it should also be noted that, with employers having been partially forced by governments to implement work-from-home arrangements, this may have opened their eyes to the effectiveness of this mode of work, especially in terms of lower office rental costs. This has the potential to render the whole debate over a right to remote work moot, replacing it with a permanent obligation to work from home. Though it seems clear that the world of work is changing, it remains to be seen what developments will prevail in the longer term.

Covid-19

The Covid-19 pandemic raised new challenges and problems in human resources law that had never been seen before, and which had an unprecedented impact on labour markets and workplaces. Measures taken by authorities and employers to protect the health and wellbeing of workers and wider society have at least temporarily resulted in many changes to the world of work, including: remote work; social distancing; new hygiene strategies; and testing or vaccination as prerequisites for workplace access. Remote work and the requirement to be tested or vaccinated at work also presented new challenges for data privacy.

Although most countries have suffered noticeable economic difficulties, including an increase in unemployment, the overall trend largely appears to be toward recovery. To mitigate the severe economic impacts on the labour market, various furlough schemes or different methods were implemented to save jobs during pandemic-induced periods of reduced demand for labour. Closed borders effectively suspended much business travel, with digital means of communication increasingly used as a substitute. Digital substitution even crept into certain areas where it had previously been rather uncommon, such as court proceedings. In general, it can already be noted that the pandemic

has brought a significant acceleration in terms of digitalisation in almost all regions. In this and future reports, one of the key questions associated with the impact of Covid-19 on the world of work will be whether lasting effects on human resources law will remain.

Other notable trends

RECENT POLITICAL AND SOCIAL DEVELOPMENTS

Labour markets have proved remarkably resilient in the face of recent political developments. Current trade conflicts have shown only limited effects on labour markets, and in these cases positive rather than the negative effects for individual countries were highlighted. The trade dispute between the US and China was reported to have had a positive impact on several Asian countries in particular. Similarly, no major labour law changes were reported as a result of Brexit. However, data privacy and immigration law/mobility issues continue to arise.

RETIREMENT

Responses to our survey and previous reports indicate that demographic change is putting a strain on retirement systems in numerous countries. As a result, the statutory retirement age is being raised and/or incentives to work longer are being offered. Company-sponsored schemes remain uncommon.

STRESS AND MENTAL HEALTH

Mental health issues in the workplace are receiving more attention, both from employers and governments. Employers in several countries have adopted stress policies, particularly in relation to telework, which has become increasingly prevalent due to the Covid-19 pandemic. Governments are responding in large part with circulars, guidelines or frameworks.

DATA SECURITY AND PRIVACY

Data privacy continued to gain attention during the reporting period. Numerous countries have reported the introduction of new data privacy regulations and the adaptation of existing ones. The Covid-19 pandemic has raised the question of whether and to what extent employers may monitor the activities of their employees while they are working remotely.

ARTIFICIAL INTELLIGENCE

Employers' reliance on artificial intelligence regarding HR-specific use is growing only gradually, especially when compared with the massive uptake of other technologies due to the pandemic. HR-specific regulation concerning artificial intelligence has yet to be issued, but the European Commission has released a proposal for a regulation laying down harmonised rules on artificial intelligence.

UNION ACTIVITY/STRIKES

While many countries report an increase in union membership during the pandemic due to labour market uncertainty, others report a decline. In 2020, there continued to be a fair amount of strike activity in the health and medical sectors, as well as in aviation and catering, mainly due to pandemic-related restrictions.

REMUNERATION

Minimum wage regulations are controversial in several countries. The gender pay gap remains significant, even though some countries report a positive impact of laws on equal pay. 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

Whistleblower protection has been or is being strengthened in many countries. EU Member States were required to implement the EU Directive (2019/1937) on the protection of persons who report breaches of Union law by 17 December 2021.

DISPUTES AND LITIGATION

The most reported human resources disputes – and the most frequently litigated – have continued to be unfair dismissals and issues surrounding the termination of employees. Against the background of the Covid-19 pandemic, new forms of court hearings (eg, by video) have also gained in importance, although they are still not very common.

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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- Secretary: Gerlind Wisskirchen
- Chair, Advisory Board: Anders Etgen Reitz
- Council Members:
 1. Regina Glaser
 2. Peter Talibart
 3. Philip Berkowitz

Schedule 1: Countries and lawyers

Albania

Jonida Braja Melani (Wolf Theiss) – Employment law

Argentina

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

Australia

Adrian Morris (Ashurst) – Employment and immigration law

Belgium

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

Brazil

Patricia Barboza and Maury Lobo (CGM Advogados) – Employment law

Bulgaria

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

Canada

Patrick L Benaroch (Stikeman Elliott) – Employment and immigration law

Chile

Oscar Aitken (Carey) – Employment and immigration law

China

William Zhang and Annie Li (Chen & Co) – Employment and immigration law

Colombia

Lorena Arámbula and Laura Mateus (Dentons Cardenas & Cardenas) – Employment and immigration law

Cyprus

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

Czech Republic

Andrea Krásná (Baroch Sobota) – Employment and immigration law

Denmark

Anders Etgen Reitz (IUNO) – Employment and immigration law

Estonia

Heili Haabu (COBALT) – Employment and immigration law

Finland

Jani Syrjänen (Borenius) – Employment and immigration law

France

Caroline André-Hesse (Ayache Salama) – Employment law

Germany

Björn Otto and Carolin Millgramm (CMS Hasche Sigle) – Employment law

Hungary

Hédi Bozsonyik (Szecskay) – Employment and immigration law

India

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

Ireland

Triona Sugrue (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) – Immigration law

Angelo Zambelli (Grimaldi) – Employment law

Japan

Masako Banno (Okuno & Partners) – Employment and immigration law

Kenya

Sean Omondi and Allan Kakai (RONN Law Advocates) – Employment and immigration law

Latvia

Sintija Radionova (WALLES) – Employment and immigration law

Lithuania

Robert Juodka, Jaroslav Pavlovskij, Greta Bagdanavičiūtė and Aneta Blaževič (PRIMUS Legal Advisors) – Employment and immigration law

Luxembourg

Anne Morel, Pauline Wirtzler and Alexandra Simon (Bonn Steichen & Partners) – Employment law

Malaysia

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

Mexico

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

Myanmar

Pimvimol (June) Vipamaneerut, Zac Robinson and Joel Akins (Tilleke & Gibbins) – Employment and immigration law

Netherlands

Martin Beijneveld (Adriaanse van der Weel) – Employment law

New Zealand

Carl Blake (DLA Piper) – Employment law

Nigeria

Kunle Obebe and Solomon Oshinubi (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, Piotr Kozłowski and Marcin Snarski (PCS Paruch Chru ciel Schiffter Littler Global) – Employment and immigration law

Portugal

Susana Afonso (CMS Rui Pena & Arnaut's) – Employment and immigration law

Romania

Ileana Glodeanu (Wolf Theiss) – Employment and immigration law

Russia

Irina Anyukhina and Elena Chershintseva (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

Stuart Harrison (ENSafrica) – Employment and immigration law

South Korea

Soojung Lee and Christopher Mandel (Yulchon) – Employment law

Spain

Diana Rodríguez Redondo (Marimón Abogado) – 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

Thailand

Pimvimol (June) Vipamaneerut, Zac Robinson and Joel Akins (Tilleke & Gibbins) – Employment and immigration law

Turkey

Maria Celebi, Batuhan Sahmay, Özlem Özdemir (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, Chris Lynn and Ryan Clarke (McDermott Will & Emery) – Employment and immigration law

United States

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

Ukraine

Oksana Voinarovska and Oleksandr Melnyk (Vasil Kisil & Partners) – Employment law

Venezuela

John Tucker (LE A Abogados) – Employment and immigration law

Vietnam

Pimvimol (June) Vipamaneerut, Zac Robinson and Joel Akins (Tilleke & Gibbins) – Employment and immigration law

Schedule 2: Questionnaire

2021 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), in particular with regard to the Covid-19 pandemic?

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?
2. Have refugee/migration flows changed due to the Covid-19 pandemic? If so, in which way?

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. Are employees entitled to remote working/flexible hours due to the Covid-19 pandemic (eg, to ensure childcare while schools and nurseries are closed)?
5. 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)?
6. 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

1. Have there been any developments relating to the use of temporary workers, including independent contractors, agency workers, the 'gig' economy, and crowd-working schemes?
2. Have regulations been enacted to ensure adequate payment, working conditions or social security (insurance) for 'gig' economy workers?

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 resulting from the Coronavirus pandemic, in particular with a view to remote working?
2. Have there been any legal developments or employer-led changes in response to employee stress and mental health issues unrelated to the Coronavirus pandemic?

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?
3. Did Covid-19 have an impact on the level of employee organisation/union membership?

E. Remuneration

1. Has a statutory minimum wage been introduced or modified in your country? What effects on the labour market can you identify in this context?
2. 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?
3. What trends can you identify in terms of remuneration models and compensation structure?
4. Since the introduction of post-financial crisis regulations, have there been legal developments regulating financial institutions and their executives?
5. Have there been changes with respect to executive remuneration (eg, CEO pay ratio, etc.)? Are laws on executive remuneration enforced and, if so, how – by the government, or in the courts?
6. What remuneration related changes have there been, if any, with regard to the Covid-19 pandemic (eg, remote working packages, special bonuses, salary cuts)? If workforces become more agile due to Covid-19, is geographic location still a relevant factor for determining pay?

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 and inclusion

1. 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?
2. To what extent do employers in your country make accommodations for religious practices or beliefs?
3. Have there been any other changes in law or corporate practices designed to increase diversity in the workplace?

K. Sexual harassment

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

L. Sustainability/ethical business

1. Have there been any changes in laws or employer practices regarding sustainability/ethical business/green behaviour in the workplace (eg, anti-modern slavery regulation, corporate social responsibility initiatives)?

M. Technology/artificial intelligence

1. Has there been an increase in employer reliance on artificial intelligence/workforce analytics software in your country?
2. Have artificial intelligence tools resulted in a loss of jobs or in the creation of new jobs in your country? If so, in which areas/industries?
3. Have there been any laws adopted in your country related to the use of artificial intelligence?
4. How is responsible (state/government, employee, employer) for ensuring that employees obtain the skills required in an increasingly digitalised economy? Are there specific programmes of government bodies/authorities providing training/support in this respect?
5. Have you noticed any effects of digitalisation/technical systems on employee representation?

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?
3. Have measures been taken in your country to ease the impact of Covid-19 on the labour market and to avoid dismissals/redundancies? If so, what laws and measures have been implemented (eg, extended furlough schemes, etc)?

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?
3. Is it legal and common to have employment court hearings held by video rather than on site in your country? Have there been changes due to the Covid-19 pandemic in this respect?

IV. Impact of Recent Political and World Events

A. Covid-19 pandemic

1. How has Covid-19 impacted the workplace in your country?
2. How has Covid-19 impacted the labour market in your country?
3. Please shortly summarise the main legislation adopted to address the pandemic's effect on human resources issues in your country.
4. What global human resources issues have arisen, or do you expect to arise, with respect to the Covid-19 pandemic and the resulting impact on the economy?

B. Other recent and political world events

1. What global human resources issues have arisen, or do you expect to arise, with respect to current trade conflicts (eg, US–China; US–EU) and the resulting impact on the economy?
2. Have you seen labour and employment issues and legal changes in relation to the uncertainties surrounding Brexit, and do you expect additional developments now that Brexit has taken place?
3. Have you seen any other changes in the workplace as a result of increased isolationism/nationalism?
4. Have there been notable human resources issues or regulatory developments in relation to other political developments (on a global and/or regional scale)?
5. Have you noticed any effects of climate change/climate change-related regulations on the labour market in your country?

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?

