



# The Global Guide Quarterly

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## Fourth Quarter — 2018

Littler Global is pleased to present you with employment law updates from around the globe. Please visit [Littler.com](http://Littler.com) for a listing of our [global offices](#) and to browse our upcoming [global events](#).

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## Featured Article

### Littler's Executive Employer Survey – Europe 2018

This report summarizes the results of Littler's first annual European survey on which legal and HR issues are having the greatest impact on the workplace. It is based on survey responses from over 800 C-suite executives, HR professionals, and in-house counsel across Europe, conducted by an independent agency. This inaugural report reflects a broad range of HR perspectives, particularly the legal, social, technological and political issues having the most profound impact on the workplace. Within this report are findings broken down by country for: Germany, France, United Kingdom, Italy, Spain, the Netherlands, Belgium and Norway, as well as the differences in opinion between large and small companies.

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## Australia



### **Modern Slavery Act** **New Legislation Enacted**

**Authors:** Naomi Seddon, Shareholder & Merille Raagas, Counsel — Littler United States

On November 29, 2018, the Modern Slavery Bill 2018 was enacted, requiring companies operating in Australia that meet the requisite annual global revenue threshold to submit modern slavery reports. With an effective date to be announced, companies should plan for an early 2019 commencement as the act is obliging entities to publish a “Modern Slavery Statement” on company websites disclosing efforts to ensure that Australian business operations and their supply chain partners are free from slavery and human trafficking. Employers should conduct a risk analysis of their operations to ensure compliance, due diligence, update policies and train employees as necessary.

### **Domestic Violence Leave** **New Legislation Enacted**

**Authors:** Naomi Seddon, Shareholder & Merille Raagas, Counsel — Littler United States

Effective December 12, 2018, victims of domestic violence are entitled to five days of unpaid family and domestic violence leave, as long as they can establish that they are experiencing family and domestic violence; they need to do something to deal with the impact of the family and domestic violence; and it is impractical for the employee to do so outside their ordinary hours of work. The activity may include making personal safety arrangements, relocation, urgent court hearings and seeking assistance from the police. The leave is available regardless of length of service or work status and is accessible in full at the beginning of each 12-month period of their employment (not accumulated).

### **Casual Employee Conversion Clause** **New Order or Decree**

**Authors:** Naomi Seddon, Shareholder & Merille Raagas, Counsel — Littler United States

Effective October 1, 2018, casual conversion rights and obligations were inserted into a number of modern awards for casual employees who want to convert their casual employment into permanent. Businesses that employ casual workers must satisfy various requirements before the end of 2018 and review the Modern Awards that may apply to their casual employees in their business to familiarize themselves of any casual conversion clauses that have specific

requirements.

## **Employment Police Checks**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Authors:** Naomi Seddon, Shareholder & Merille Raagas, Counsel — Littler United States

In *Njau v Superior Food Group Pty Ltd*, the employee challenged his termination on the basis that the employer had full and complete knowledge of his criminal record for over a year before his dismissal and that the job did not require a clean record. The employer contended that the employee had been dishonest, failing to disclose the full extent of his convictions. The Commissioner of the hearing found that the dismissal was unjust as the employee had consented to a full criminal background check. Employers should ensure that their policies are applied fairly and do not unreasonably deny employment opportunity based on a national police check.

## **Difficulties of Terminating Employees with Mental Disability**

### **Trend**

**Authors:** Naomi Seddon, Shareholder & Merille Raagas, Counsel — Littler United States

In *Robinson v Western Union Business Solutions (Australia) Pty Ltd*, the employee went on an extended sick leave alleging a mental disability. After multiple attempts to confirm his return date, the employer terminated the employment, stating in writing that it was due to employee's "capacity to return to work." Holding that the termination was an adverse action due to the employee's mental disability, the federal court ordered the employer to compensate the employee. Employers should be careful when managing employees with disabilities to avoid a finding of discrimination. The reasons for termination must be clear and, if possible, due to the employee's inability to satisfy an inherent job requirement.

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## **Belgium**



## **Dismissals May Become More Expensive As of January 1, 2019**

### **New Legislation Enacted**

**Author:** Koen De Bisschop, Partner — Littler Belgium

As of January 1, 2019, all sectors are required to adopt a sectoral collective bargaining agreement (CBA), guaranteeing employees' right to a notice period of at least 30 weeks, with one third of the termination package consisting of measures increasing the employee's employability and the other two thirds of the severance package representing either the notice period or a payment in lieu of notice (which must be at least 26 weeks). Employers are subject to a sanction for non-compliance. To date, no sector has adopted a CBA. Therefore, employers are advised to seek counsel before dismissing an employee.

## **New Legislation Enacted**

**Author:** Koen De Bisschop, Partner — Littler Belgium

On October 23, 2018, the National Labour Board (NLA - *Nationale Arbeidsraad*) proposed to establish the next period for social elections — to elect the employee representatives in the Works council and/or the Health and safety committee — between May 11 and 24, 2020. Consequently, companies can now start to take organizational measures: determine whether to organize social elections, contact partners, prepare calendar, etc. The actual election procedure takes 150 days and will run from December 2019 until May 2020. All companies employing on average more than 50 employees in the reference period must organize social elections.

## **Training Clause May Be Used for Certain Fewer Paid Employees New Regulation or Official Guidance**

**Author:** Koen De Bisschop, Partner — Littler Belgium

A training clause is a clause in the employment agreement in which the employee undertakes to reimburse a part of the costs of an education or training, paid by the employer, if the employee leaves the company before the end of the agreed period. Such training clause is subject to certain conditions. One condition is that the employee's gross annual salary must amount to a minimum of 34,819 EUR (amount as from January 1, 2019). However, as of November 10, 2018, this condition will no longer apply for an education for a function/profession which is on the list of so-called '*bottleneck professions*' (i.e., hard to find personnel). As soon as this list will be established, employers can be better protected if they hire employees and let them follow an education to exercise a bottleneck function/profession.

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## **Canada**

### **Ontario's *Police Record and Checks Reform Act, 2015* Came into Force on November 1, 2018**

#### **New Legislation Enacted**

**Authors:** Monty Verlint, Partner & Rhonda Levy, Knowledge Management Counsel — Littler Canada

Ontario's Bill 133, the *Police Record and Checks Reform Act, 2015*, which applies to police record checks conducted to determine suitability for employment, among other things, came into force on November 1, 2018. The statute, inter alia, authorizes police services in Ontario to conduct three types of police record checks (criminal record checks, criminal record and judicial matter checks, and vulnerable sector checks), standardizes the process for conducting them, and prohibits the police record check provider from disclosing information unless authorized to do so under the law.

## **Canada is First Major World Economy to Legalize Recreational Marijuana at a Federal Level**

### **New Legislation Enacted**

**Authors:** Monty Verlint, Partner & Rhonda Levy, Knowledge Management Counsel — Littler Canada

On October 17, 2018, Canada's *Cannabis Act* and supporting regulations came into force, making it the first major world economy to establish a legal framework for the recreational use of cannabis by adults at the federal level. The legalization of recreational cannabis does not provide employees with a right to use it in the workplace and employers are entitled to establish policies prohibiting its use and possession in the workplace. Employers have a duty to accommodate the use of cannabis by employees medically authorized to do so and those suffering from an addiction to it, unless such accommodation creates an undue hardship to the employer.

## **British Columbia Introduces Bill to Establish a Human Rights Commission**

### **Proposed Bill or Initiative**

**Authors:** Monty Verlint, Partner & Rhonda Levy, Knowledge Management Counsel — Littler Canada

On November 1, 2018, the government of the British Columbia introduced Bill 50, *Human Rights Code Amendment Act, 2018*, which in its current form will establish a Human Rights Commission responsible for promoting and protecting human rights. If enacted, Bill 50 will increase the time limit for filing a discrimination complaint from six months to 12 months from the last alleged instance of a contravention of the Code, and will give the Commission the right to intervene in complaints and jurisdiction "to assist a person or group of persons with any aspect of a complaint."

## **Date Ontario's Pay Transparency Act Will Commence Delayed Indefinitely**

### **Proposed Bill or Initiative**

**Authors:** Monty Verlint, Partner & Rhonda Levy, Knowledge Management Counsel — Littler Canada

On November 15, 2018, Ontario's government introduced Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018*, which received Royal Assent on December 6, 2018 (effective date to be determined). In its current form, the Act aims to "increase transparency in hiring processes and give women more information when negotiating compensation that is equal to their male peers." The Act, *inter alia*, prohibits employers from asking job applicants about their compensation history; permits employees to share information on their compensation with other employees; and prohibits employers from engaging in or threatening reprisal against employees who do so.

## **Alberta Securities Commission Creates a Whistleblower Program and Office of the Whistleblower**

### **Important Action by Regulatory Agency**

**Authors:** Monty Verlint, Partner & Rhonda Levy, Knowledge Management Counsel — Littler Canada

On November 1, 2018, the Alberta Securities Commission (ASC) established a whistleblower program and created the Office of the Whistleblower, all for the purpose of encouraging employees to voluntarily report potential breaches of Alberta's securities laws to the ASC, and to protect them from reprisals. The program simplifies reporting, protects the whistleblower's identity, prohibits reprisals (and makes them subject to administrative penalties of up to \$1,000,000 and, in an appropriate case, to prosecution as an offence, with fines up to \$5,000,000 and/or terms of imprisonment), and makes a civil right of action available should a reprisal occur.

*For additional Canadian federal statutory changes and other notable changes in the Canadian federal sphere, [click here](#).*

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## Central America

### Costa Rica | Congress Passes New Fiscal Plan

#### New Legislation Enacted

**Author:** Marco E. Arias, Partner — BDS, Member of Littler Global

On December 4, 2018, Law No. 9635, known as the "Law for the Strengthening of Public Finances" was published in the official gazette. As part of its objective, to overhaul Costa Rica's tax system to address the country's fiscal deficit and grant new sources of income to the government, this law creates new income tax brackets for employees with higher salaries and introduced many changes to limit benefits for public employees. Other provisions, such as the new value-added tax and taxing on some service providers, could impact the cost of hiring independent contractors or outsourcing companies.

### Nicaragua | Minimum Wage Increase for Free Zone Employees

#### New Order or Decree

**Author:** Francisco Cerda, Partner — BDS, Member of Littler Global

On January 1, 2019, the minimum wages for employees working in companies located at Free Zones will increase by 8.25%. This is the third consecutive year that this increase takes place, after a June 2017 agreement between representatives from management, employees and the government was reached.

### Panama | National Assembly Approves Data Protection Bill

#### New Legislation Enacted

**Author:** Ericka Muñoz, Associate — BDS, Member of Littler Global

On October 24, 2018, the National Assembly of Panama approved Bill No. 665, for the protection of personal data. This bill seeks to protect the personal information volunteered by individuals to

different platforms and services, so that their data cannot be handed over to third parties without express authorization or court order. The bill must be signed by the President and published in the official gazette before it goes into effect.

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## Colombia



### **Registration of Foreign Employees**

#### **New Order or Decree**

**Author:** Diego Chaparro, Associate — Littler Colombia

On October 9, 2018, the Ministry of Labor issued Order 4386, implementing an institutional record for all foreign employees hired in Colombia. All employers must register every foreign employee on the RUTEC online platform within 120 days of the date of enactment of this order or date of hire (going forward). Additionally, employers must notify when an employment agreement ends within 30 calendar days of the termination. Failure to register foreign hires or terminations is subject to a fine ranging from \$250 USD up to \$1.3 million USD.

### **Increases to Minimum Wage and Transportation Allowance**

#### **New Order or Decree**

**Author:** Diego Chaparro, Associate — Littler Colombia

On December 20, 2018, the three parties (government, employers and employees) reached an agreement to increase the minimum legal wage by 6% for 2019 and the transportation allowance by 10% for 2019. Accordingly, as of January 1, 2019, the minimum legal wage in Colombia is \$828,116.52 COP and the legal transportation allowance is \$97.032 COP, representing a grand total of \$925,148.52 COP, which is above the projected inflation for 2018. Additionally, also as of January 1, the integral salary increased to \$10,765,514.76 COP.

### **Proposed Bill Seeks to Expand Maternity Leave and Pregnancy Protection**

#### **Proposed Bill or Initiative**

**Author:** Diego Chaparro, Associate — Littler Colombia

On November 6, 2018, Congress approved a bill that, if enacted, would increase the maternity leave to up to 52 weeks whenever the newborn has a medical condition requiring continuous medical observation. The bill also looks to protect a pregnant woman from dismissal during the entire pregnancy and 12 months after the child's birth, and allow female employees to leave one hour early every day for the first six months of the newborn's life. This bill may be enacted during the first semester of 2019.

### **All Companies Must Have the Occupational Safety and Health Management**

## **System Completely Running by April 2019**

### **Upcoming Deadline for Legal Compliance**

**Author:** Diego Chaparro, Associate — Littler Colombia

The Ministry of Labor issued a statement reminding all employers to implement the Occupational Safety and Health Management System (SG-SST). This legal requirement must be fully implemented before April 2019. As of April 2019, the Ministry of Labor will start the control and surveillance phase. As a reminder, the implementation of the system in stages is as follows: Initial evaluation (deadline: June-August 2017); improvement plan (deadline: September-December 2017); implementation of the SGSST (deadline: January-December 2018); monitoring and improvement plan (deadline: January-March 2019); and surveillance and control (commences in April 2019).

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## **European Union**



## **Service Prior to Enactment of Law Should Be Factored into Calculation of Pension**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Dónall Breen, Associate — Littler United Kingdom

On November 7, 2018, the European Court of Justice ruled that periods of service accrued before the deadline for transposing the Part-Time Workers Directive (the PTW Directive) into domestic law should be taken into account when calculating pension benefits. The Court noted that pension adjustments should be backdated to when the employee first started employment and the entire period of service should count toward the calculation of his final pension. Further, on the facts, the employee's pension did not accrue in set periods, but the entire figure should be calculated from the final date of service. Therefore, the legal situation of the employee could only be definitively calculated on retirement, which occurred when the PTW Directive was in force.

## **Foster Carers Are Not Covered by EU Law Regulating Working Time**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Dónall Breen, Associate — Littler United Kingdom

On November 20, 2018, the Court of Justice of the European Union ruled that foster carers in Romania are outside the scope of EU law regulating working time. EU law excludes those working in certain public service activities from the application of law on working time (and health and safety at work). This decision means they are not entitled to EU minimum standards on rest breaks, paid leave, and working hours.

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## Finland



### **Amendment to Employment Contracts Act New Legislation Enacted**

**Author:** Maria Wesander, Counsel — Dottir Attorneys Ltd

An amendment to the Employment Contracts Act was passed by the Finnish Parliament, with an effective date of July 1, 2019. The amendment adds *the amount of employees employed by the relevant employer* to the circumstances to be considered by an employer when assessing whether there is a proper and weighty reason for terminating an employee's employment contract on grounds arising from the employee or related to the employee's person. The practical impact of the amendment is, however, expected to be minor and the threshold for dismissal will continue to be high even for small employers.

### **Amendments to Annual Holidays Act Effective on April 1, 2019 Proposed Bill or Initiative**

**Author:** Maria Wesander, Counsel — Dottir Attorneys Ltd

Amendments to the Annual Holidays Act were passed by the Finnish Parliament, with an effective date of April 1, 2019, to ensure compliance with EU case law. Under the Act, employees have the right to four weeks of paid annual leave, even if they have been absent from work due to sickness or medical rehabilitation. Additionally, employees whose annual holiday has been postponed due to incapacity for work will have the right to their summer holiday during the holiday period and their winter holiday before the start of the next holiday period, with some exceptions.

### **New National Incomes Register Applicable to All Employers on January 1, 2019 Upcoming Deadline for Legal Compliance**

**Author:** Maria Wesander, Counsel — Dottir Attorneys Ltd

As of January 1, 2019, employers must report all wages/salaries directly to the Incomes Register (in Finnish: "*tulorekisteri*"), a national online database of incomes information maintained by the Finnish Tax Administration. The information should be reported via a technical interface or the incomesregister.fi e-service. All wages shall be reported to the Incomes Register no later than five days after their payment date.

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## France



## **New Legislation Enacted**

**Author:** Guillaume Desmoulin, Partner — Littler France

Until March 31, 2019, companies can disburse an extraordinary bonus to their employees (or employees whose salary is below or capped to a certain limit). This bonus is exempted of social contributions and income tax (at a 1000 € limit), and the amount can be modulated depending on the beneficiaries' remuneration, classification level, effective attendance during 2018 or working time as determined by their contract. The bonus, which cannot supersede any other compensation component, can be negotiated with trade unions, the employee representative committee or an employer-drafted agreement ratified by 2/3 of the employees.

## **Employment Contract Between a Digital Platform and a Deliverer**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Guillaume Desmoulin, Partner — Littler France

On November 28, 2018, the French Supreme Court ruled for the first time over the qualification of a contract between a deliverer and a digital platform, where the company used a digital platform and a mobile app to partner with restaurants to pass clients' orders to deliverers under a self-employed status. The Supreme Judges found that the company had sanctioning power towards the deliverer and used geo-tracking to instantly track the deliverer. Given the company's directorial and controlling power over the deliverer, a subordinate relationship existed under French law.

## **International Compliance of the Termination Indemnity Scale Under the 2017 Macron Reform (CPH Le Mans/Troyes)**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Guillaume Desmoulin, Partner — Littler France

Two recent contradictory rulings have emerged from the termination indemnity scale introduced by the 2017 Macron reforms. The Labor court of Le Mans ruled that the scale is compliant with the ILO Convention, for being both "adequate" and taking into account "the appropriate form of compensation." However, the Labor court of Troyes ruled that the scale was contrary to both the ILO Convention and the UE Social Convention for not being "dissuasive to employers who plan to terminate employment for no real and serious cause" and for not allowing "judges to assess each individual case of unfair termination."

## **Equal Pay for Men and Women**

### **Proposed Bill or Initiative**

**Author:** Guillaume Desmoulin, Partner — Littler France

An initiative, to be confirmed by decree, will require companies with at least 50 employees to examine pay gaps between men and women every year, based on a five-factor criterion, and publish the results on their website. Companies scoring below 75/100 will be required to negotiate and agree on corrective and remedial measures, otherwise corrective measures may be taken unilaterally. Companies will have three years to conform or face a financial penalty of up to

1% of the salary mass at stake. Companies over 1,000 employees must publish their results by March 1, 2019; companies over 250, by September 1, 2019; and companies between 50 and 250 employees by, March 1, 2020.

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## Hungary



### **Changes to Labor Code Effective as of January 1, 2019**

#### **New Legislation Enacted**

**Author:** Zoltán Csernus, Attorney — VJT & Partners Law Firm

Several changes to the Labor Code take effect January 1, 2019. First, working hours' timeframe (a timeframe within which the daily working hours can be allocated unequally) can be increased from one to three years by a collective bargaining agreement (CBA) concluded with a trade union. Also, employers with a CBA may order 300 hours of overtime (OT) work yearly (increased from 250). Further, through a separate agreement between the employer and employee, the employer can order 150 (or respectively 100) hours of OT work (up to a total of 400 OT working hours) annually. The said agreement can be terminated by the employee only by the end of the calendar year.

### **Increase of Statutory Minimum Wage**

#### **New Order or Decree**

**Author:** Zoltán Csernus, Attorney — VJT & Partners Law Firm

Through a new government decree, the statutory minimum wage increased by 8%. Accordingly, as of January 1, 2019, the statutory minimum wage for unskilled employees is HUF 149.000 (approximately EUR 465) and HUF 195.500 (approximately EUR 610) for employees with at least secondary school.

### **Invalid Penalty Stipulation in Non-Compete Agreement**

#### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Zoltán Csernus, Attorney — VJT & Partners Law Firm

According to the Supreme Court, the penalty stipulation of a non-compete agreement is invalid if the penalty is stipulated for a breach of obligation of the former employee to report to his former employer about his current employment on a monthly basis during the non-compete period if the current employer is not a competitor of the former employer and the breach is only the failure of such reporting.

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## India

### **High Court Admits Petition Challenging POSH Rules** **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Manishi Pathak, Partner — Cyril Amarchand Mangaldas

In December 2018, a petition was filed before the Honorable High Court of Kerala challenging the POSH Rules. The petitioner in this case was found guilty of sexually harassing a former employee by the Local Complaints Committee (LCC) and ordered to pay INR 19 lakhs and issue an apology to the employee. In his petition to quash the LCC's decision, the petitioner contended, *inter alia*, that the complaint was invalid because it was made anonymously (and thus, not in writing, as required under law) and that Rule 7 of the POSH Rules (prohibiting parties from being legally represented at such proceedings) is unconstitutional and arbitrary. The High Court admitted the petition, issued a notice to the State of Kerala regarding the same, and stayed the LCC's decision.

### **Employees' State Insurance (General) Amendment Regulations, 2018** **New Regulation or Official Guidance**

**Author:** Manishi Pathak, Partner — Cyril Amarchand Mangaldas

Under newly introduced Regulation 96-B, published on October 30, 2018, a person insured under the ESI Act shall be entitled to receive reimbursement of medical treatment undertaken in the case of an emergency either for himself or his family members, provided they are insured. However, the rates at which such reimbursement may be claimed are to be prescribed and published by the respective State Government, the Employees' State Insurance Corporation or the Central Government Health Scheme.

### **Uttarakhand Allows Women to Work Night Shifts in Factories** **New Regulation or Official Guidance**

**Author:** Manishi Pathak, Partner — Cyril Amarchand Mangaldas

In addition to the notifications issued by the State of Maharashtra, State of Haryana, and State of Uttar Pradesh, the Government of Uttarakhand has issued a notification dated November 28, 2018 allowing women in the State of Uttarakhand to work night shifts in factories from 7:00 p.m. to 6:00 a.m. However, employers must ensure that the women working in night shifts do not face sexual harassment, that the workplace is safe for the women, and make arrangements for the women to be dropped off safely at their residence.

### **Proposed Maternity Leave Incentive Scheme** **Proposed Bill or Initiative**

**Author:** Manishi Pathak, Partner — Cyril Amarchand Mangaldas

On November 16, 2018, India's Ministry of Labour and Employment proposed the *Maternity Leave Incentive Scheme, 2018* to implement the Maternity Benefit Act, 1961. If enacted, under the Scheme, 7 weeks of wages would be reimbursed to employers who employ women workers with a wage ceiling up to INR 15000 (approx. USD 209), and provide them benefit of 26 weeks paid maternity leave, subject to certain conditions. The cost of implementing the Scheme is estimated at approximately INR 400 crores, which would not be borne by a Labour Welfare Cess since no such Cess is levied by the Ministry.

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## Ireland



### **European Court Holds WRC Can Dis-Apply National Law that Is Contrary to EU Law**

**Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Emmet Whelan, Partner — ByrneWallace

Three individuals who were excluded from recruitment to the Irish police force (as they were above the maximum age for recruitment set out in Irish Regulations) brought complaints claiming the rule was discriminatory on grounds of age and contrary to Ireland's Employment Equality Acts (which transposed EU Directive 2000/78 on equal treatment in employment). The Court of Justice of the European Union held that the primacy of EU law means that organs of the State have a duty to give full effect to EU law and, if necessary, refuse to apply a conflicting provision of national law. Accordingly, Ireland's Equality Tribunal (now the "Workplace Relations Commission") had the power to dis- apply a rule of national law that is contrary to EU law.

### **Court of Appeal Limits Legal Representation in Disciplinary Inquiries to "Exceptional Circumstances"**

**Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Loughlin Deegan, Partner — ByrneWallace

In the case of *Iarnród Éireann / Irish Rail v Barry McKelvey* [2018] ICEA 346, the Irish Court of Appeal held that employees who are the subject of internal disciplinary inquiries will not normally be entitled to legal representation during such inquiries. This clarifies the entitlements of an accused person during a workplace investigation and implicitly suggests that the previous decision of the Irish High Court in this area (i.e., *Lyons v Longford Westmeath ETB* [2018] 29 ELR 35) was incorrect in respect of the entitlement to legal representation.

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## Italy

## **Nullity of Dismissal “Because of Marriage” Applies to Women Only** **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Carlo Majer, Partner — Littler Italy

On November 12, 2018, the Supreme Court ruled on a dismissal for just cause, which occurred during the period between the day of the employee’s request for publications of marriage (which must be done before the marriage) and one year after the celebration. During this so-called protected period, it is forbidden to dismiss women. The worker argued that the law also applies to male employees to avoid discrimination between genders. However, the Court held that the law, which was included in the code to provide equal rights to female workers, applies only to women.

## **Dismissing Employee Who Applied for Vacation to Avoid Dismissal Due to Extended Leave, Unlawful**

**Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Carlo Majer, Partner — Littler Italy

In a case before the Supreme Court, an employee was dismissed after a protracted sick leave, after the employer declined the employee’s request to use vacation days to avoid the dismissal. The Court noted that, although the employer is not obliged to accept a holiday request, a refusal should be justified only when real and concrete organizational needs exist, in accordance with the general clauses of good faith and fairness. In this regard, the employer shall give evidence that the employee’s fundamental interest to avoid the loss of employment has been considered when refusing the request of holidays.

## **Sanction for Salaries Paid Without Traceable Instruments and Illegal Work** **New Regulation or Official Guidance**

**Author:** Carlo Majer, Partner — Littler Italy

The National Labour Inspectorate recently provided guidance on sanctions for payment of wages without traceable instruments (such as bank transfers), under the legislation on “illegal” work. The Inspectorate explained that the offense is committed only when the actual payment of remuneration in cash has been ascertained. However, given that in the case of “illegal” work the frequency of payment of remuneration may not follow the ordinary monthly payment, if daily payment of remuneration is ascertained, there could be as many offenses as the number of “illegal” work days carried out.

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**Japan**



**New Visa Category for Japan to Welcome Blue Collar Employees from Overseas**

## **New Legislation Enacted**

**Author:** Aki Tanaka, Special Counsel — Littler United States

On December 14, 2018, the Amendment to the Immigration Act was enacted and will become effective April 1, 2019. The Act creates a new visa category for “Designated Skills,” which will allow so-called blue collar workers to work in Japan in industries where a workforce shortage is critical. The applicable industries would include elderly care, building cleaning, material industry, industrial machinery manufacturing, electronics relate industry, construction, shipbuilding, vehicle maintenance, aviation, hotels, agriculture, fishery, food and beverage manufacturing, food service.

## **Initiative to Tighten Regulations on Anti-Harassment in the Workplace Proposed Bill or Initiative**

**Author:** Aki Tanaka, Special Counsel — Littler United States

On December 14, 2018, the Ministry of Health, Labor and Welfare (MHLW) announced its intention to introduce a new law to further regulate harassment in the workplace. The proposal will seek to create a law against “power harassment” (i.e., bullying in the workplace) and require employers to take appropriate measures to prevent it. The proposal also seeks to impose additional obligations on employers to prevent sexual harassment, including taking appropriate measures to protect employees from sexual harassment by third parties (e.g., clients or subcontractors). It also will clarify the prohibition against retaliation for bringing harassment claims.

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## Malaysia

### **Increase in Minimum Wage Effective January 1, 2019**

#### **New Order or Decree**

**Author:** Tan Su Ning, Senior Associate — Skrine

The increase to the minimum wage throughout the nation is effective January 1, 2019. The new minimum wage is: (1) Monthly: RM1,100.00 and (2) Hourly: RM5.29. The daily minimum wage, based on number of working days in a week is: RM42.31 (for six working days in a week); RM50.77 (for five); and RM63.46 (for four).

### **New Employment Insurance System Regulation**

#### **New Regulation or Official Guidance**

**Author:** Tan Su Ning, Senior Associate — Skrine

The Employment Insurance System (Registration and Contribution) (Amendment) Regulations

2018 (“Regulations 2018”) was published on October 5, 2018 and came into operation on November 1, 2018. Regulations 2018 provides the penalties for failure to pay any contribution, arrears of contribution or interests (if any) to the Social Security Organization.

## **Social Security Protection for Foreign Workers**

### **Proposed Bill or Initiative**

**Author:** Tan Su Ning, Senior Associate — Skrine

As of January 1, 2019, employers hiring foreign workers (including expatriates) must register their employees with the Social Security Organisation and contribute to the Employment Injury Scheme (EIS) under the Employees’ Social Security Act 1969. Under the EIS, foreign workers may receive various benefits, including medical benefit, temporary/permanent disablement benefit, dependants’ benefit and rehabilitation, as well as a RM6,500 repatriation cost, including funeral expenses. However, they will not be covered under the Invalidity Pension Scheme under the Act.

## **Employment of Children and Young Persons**

### **Proposed Bill or Initiative**

**Author:** Tan Su Ning, Senior Associate — Skrine

The Children and Young Persons (Employment) (Amendment) Bill 2018 seeks to enhance the protection of children and young persons in the workplace. Passed by the Senate (in December) and currently pending Royal Assent, the bill’s effective date is to be confirmed. The bill, *inter alia*, seeks to increase the penalties for all related offenses, prohibiting exposing children to hazardous work or chemicals, dusty conditions, extreme temperatures, noise and vibration. However, a young person may engage in hazardous work with personal supervision through an apprenticeship or vocational training program

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## **Mexico**



## **New Minimum Wages and Geographical Zones Confirmed**

### **New Order or Decree**

**Author:** Mónica Schiaffino, Shareholder & Tania Terrazas, Associate — Littler Mexico

On December 26, 2018, Mexico's National Minimum Wage Commission (CONASAMI for its acronym in Spanish) published in the Official Gazette of the Federation its resolution establishing the new general and professional minimum wages, effective January 1, 2019, and confirming the new geographical regions for minimum wage purposes. The minimum wage in the Northern Border’s Free Zone will be \$176.72 Mexican pesos per daily work shift, while the minimum wage for the General Minimum Wage Zone will be \$102.68 Mexican pesos per daily work shift.

## **New Regulations to Prevent and Address Psychological Risks in the Workplace**



## **New Order or Decree**

**Author:** David E. Leal González, Shareholder & Ignacio D. Bermúdez Elizondo, Associate — Littler Mexico

On October 23, 2018, Mexico's Labor Ministry (known as STPS for its acronym in Spanish) published in its Official Gazette of the Federation regulations requiring all employers in Mexico to establish, implement, maintain and disseminate a policy for the prevention of psychological risks in the workplace. The policy must inform employees of the employer's adopted measures to prevent psychological risks and procedures for filing a complaint. The new regulations will become effective on October 23, 2019, with some special provisions coming into effect on October 23, 2020.

## **New Immigration Policy Program Seeks to Restructure National Institute of Migration**

### **Proposed Bill or Initiative**

**Author:** Mónica Schiaffino, Shareholder & Carola Vidal, Associate — Littler Mexico

On December 19, 2018, Mexico's Secretary of Interior and the Commissioner of the National Institute of Migration (INM for its acronym in Spanish) announced the "Migration Policy Program 2018-2024," an initiative to restructure and modernize the INM. The main objectives of the program are to enhance respect for immigrants' human rights, regulate mobility across the Central American and southeastern Mexican regions, guarantee the transparency of the immigration process, and prioritize the interests and repatriation of Mexicans living abroad.

## **Senate Passes Bill Granting School-Related Leave to Working Parents**

### **Proposed Bill or Initiative**

**Author:** Rogelio Alanis Robles, Associate — Littler Mexico

On December 5, 2018, Mexico's Senate Joint Commissions on Education and Legislative Studies approved a bill to amend the Education General Law and the Federal Labor Law to grant working parents the legal right to take time off from work to participate in their children's school activities. This initiative — pending approval by Mexico's House of Representatives — would require the Ministry of Labor to implement the necessary regulations to allow flexibility for working parents to take school-related leave without being required to make up that time so long as they provide proof of such school activities.

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## Norway



**Joint Employer Responsibility Within a Company Group  
Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Ole Kristian Olsby, Partner — Hombly Olsby advokatfirma AS

In December 2018, the Norwegian Supreme court gave their judgment in a matter concerning an airline. One of the main questions was whether a group of pilots and cabin crew, who were employed in a subsidiary in the group, could also claim employment in the parent company and in the operating company (another company in the group). The court concluded that the subsidiary was their employer.

### **Refusal to Shake Hands with Women Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Ole Kristian Olsby, Partner — Hombly Olsby advokatfirma AS

A temporary employee claimed that he was subject to discrimination as the employer, a school, demanded that he shake hands with both men and women if he wanted a prolongation of his temporary employment. The Anti-Discrimination Tribunal concluded that his practice of refusing to shake hands with women was protected by the freedom of religion. However, the Tribunal found that the employer's requirement to shake hands with both sexes was reasonable and proportional and, therefore, not contrary to the prohibition against discrimination on basis of religion.

### **Provisions in Certain CBAs Made Generally Applicable New Regulation or Official Guidance**

**Author:** Ole Kristian Olsby, Partner — Hombly Olsby advokatfirma AS

The Tariff Tribunal has extended the regulations that make certain work and pay conditions from certain collective bargaining agreements in specific industries, generally applicable. The regulations apply regardless of whether a company is bound by a CBA. The Tribunal changed the provisions regarding coverage of travel, diet and lodging for the ship, shipbuilding, cleaning, construction and electro industries. As of December 1, 2018, these costs are covered only for travels in Norway.

### **New Cooperation Agreement on a More Inclusive Working Life (IA-Agreement) New Regulation or Official Guidance**

**Author:** Ole Kristian Olsby, Partner — Hombly Olsby advokatfirma AS

On December 18, 2018, the Norwegian government and the four main employer and employee organizations signed a new Cooperation Agreement on a more inclusive working life (NO: IA-avtale). The agreement, which now applies to all companies in Norway from January 1, 2019, through December 31, 2022, provides, *inter alia*, different measures to meet the two main aims of the agreement, which is to reduce sick leave with 10% compared to the annual sick leave average for 2018, and reduce the number of persons dropping out of the working life.

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## **Special Protection for Employees with Diabetes**

### **New Legislation Enacted**

**Authors:** César Gonzáles Hunt, Partner & Mariella Antola Rodríguez, Associate — Littler Peru

Law N° 30867, enacted on November 9, 2018, mandates that diabetes and/or its sequels cannot be an impediment to start a new job and cannot be used as a reason to terminate an employment relationship.

## **Referential Guidelines for Pay Equity**

### **New Regulation or Official Guidance**

**Authors:** César Gonzáles Hunt, Partner & Mariella Antola Rodríguez, Associate — Littler Peru

Through Ministerial Resolution N° 243-2018-TR, the Labor and Employment National Authority approved guidelines for employers to evaluate job positions, and define job categories and functions. This is a mandatory obligation under Law N° 30709, which prohibits salary discrimination between women and men. The guidelines, which seek remuneration equality, are focused on job categories, salary policies, and salary equality measures.

## **Virtual System to Process Foreign Employee Work Contracts**

### **New Regulation or Official Guidance**

**Authors:** César Gonzáles Hunt, Partner & Mariella Antola Rodríguez, Associate — Littler Peru

On November 14, 2018, the Ministry of Labor and Employment Promotion approved Ministerial Resolution N° 291-2018-TR, which implements the use of the Foreign Employee Work Contract Virtual System (SIVICE). With SIVICE, the approval, extension and modification of the work contract with foreign employees is automatic. This means that the employer and the employee no longer will wait five days for the Labor National Authority to issue an authorization.

## **Tax Unit for 2019**

### **New Regulation or Official Guidance**

**Authors:** César Gonzáles Hunt, Partner & Mariella Antola Rodríguez, Associate — Littler Peru

As of January 1, 2019, the new Tax Unit (UIT) in Peru is S/ 4,200.00 (approximately USD \$1,257.50). It is important to consider this modification as the UIT forms the basis to calculate various concepts (such as administrative fines, for example).

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**Philippines**



## **New Regulation or Official Guidance**

**Author:** Emerico O. de Guzman, Managing Partner — Angara Abello Concepcion Regala & Cruz

On December 6, 2018, the Department of Labor and Employment (DOLE) issued Department Order No. 198, otherwise known as *An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof*. DO 198 provides, *inter alia*, for additional rights and obligations for both employers and employees, new classifications for hazardous workplaces, new standards for compliance in terms of occupational health and safety and an employee's right to refuse unsafe work. Fines range from Php 20,000.00 to an additional Php 100,000.00 per day with an additional 50% thereof for every instance of repeat violation.

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## **Portugal**



## **New Rules on the Retirement Fund Certificates**

### **New Legislation Enacted**

**Authors:** Ricardo Grilo, Attorney & Gonçalo Machado dos Santos, Attorney — Garrigues Portugal SLP Sucursal

By Decree-Law no. 82/2018 of October 16, 2018, and effective November 1, 2018, employers may contribute to employees' Retirement Fund Certificates, as long as the employees have registered with the Public Capitalization Regime (PCR). The PCR is a non-mandatory public retirement savings system into which employees contribute on a monthly basis, to create a financial complement to other pensions (such as retirement or disability). Employers can now contribute into these individual accounts.

## **Early Retirement for Former CGA Subscribers**

### **New Legislation Enacted**

**Authors:** Ricardo Grilo, Attorney & Gonçalo Machado dos Santos, Attorney — Garrigues Portugal SLP Sucursal

By Decree-Law no. 77/2018 of October 12, 2018, and effective on November 1, 2018, all employees formerly enrolled in the *Caixa Geral de Aposentações* (CGA) (i.e., public employees' pension system), who contribute or have contributed to the CGA and ceased the exercise of the functions that justified their discounts to that entity, may access early retirement on equal footing as the beneficiaries of the general Social Security Regime. Various conditions apply, including whether they subscribed to the CGA for at least five years and cannot access another social security regime.

## **Minimum Monthly Wage for 2019**

### **New Legislation Enacted**

**Authors:** Ricardo Grilo, Attorney & Gonçalo Machado dos Santos, Attorney — Garrigues Portugal SLP Sucursal

Effective January 1, 2019, the minimum monthly wage is increased to €600. The minimum monthly wage determined by law prevails over any inferior wage established in employment contracts or in collective bargaining agreements. Therefore, any employee currently receiving a wage inferior to €600 will be entitled to have the wage updated, at least, to that amount. In case of part-time employees, the minimum monthly wage is calculated proportionally.

## **Amendments to Early Retirement Legal Framework**

### **New Legislation Enacted**

**Authors:** Ricardo Grilo, Attorney & Gonçalo Machado dos Santos, Attorney — Garrigues Portugal SLP Sucursal

Decree-Law no. 119/2018, of December 27, 2018, reduced the age upon which employees may request their early retirement and lowered the cuts currently in force for retirement pensions. As of January 1, 2019, employees who are at least 63 years old and with 40 or more years of contributions to Social Security may access early retirement. As of October 1, 2019, early retirement is available for beneficiaries who are at least 60 years old and with 40 or more years of contributions to Social Security. Other rules apply for those not meeting all the legal requirements under these amendments.

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## **Puerto Rico**



## **New Regulation Adopted to Administer Unemployment Insurance**

### **New Regulation or Official Guidance**

**Author:** Erika Berríos-Berríos, Member — Littler Puerto Rico

On November 8, 2018, Puerto Rico's Department of Labor and Human Resources published the *Regulation to Administer the Unemployment Insurance Program*, which implements Puerto Rico's Employment Security Act. The new regulation, which became effective on December 8, 2018, implements the changes made in weekly benefit amounts for employees, revises partial payment plan requirements, and extends the time for employer appeals of tax deficiency determinations. Employers are advised to review the new regulations to benefit from the extended deadlines and more lenient debt payment plans.

## **Treasury Department Changes Tax Reporting on Act 80 Payments During Tax Year 2018**

### **New Regulation or Official Guidance**

**Authors:** Elizabeth Perez-Lleras, Capital Member & Ana Maria Bigas-Kennerley, Special Counsel —

## Littler Puerto Rico

On October 22, 2018, the Puerto Rico Department of the Treasury issued Publication 18-03, revising tax reporting obligations on certain severance payments for tax year 2018, which must be reported by January 31, 2019. The new guidance eliminates double reporting and provides that “compensation or severance pay received by an employee by reason of dismissal, without the need to determine just cause thereof, up to a maximum amount equal to the severance pay that the employee may receive pursuant to Act 80”, which is excluded from the employee’s gross income, will be reported for both Puerto Rico income (as exempt salaries) and FICA taxes (as wages) on a single form.

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## Sweden



### **New Ruling on Unauthorized Absence Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Anna Jerndorf, Partner — Advokatfirman Törngren Magnell KB

An employee sued his employer for wrongful termination after returning from an unauthorized vacation. The Labor Court held that the employee’s unauthorized absence constituted such a gross breach of his obligations towards the company that there was just cause for dismissal with immediate effect. The employee was therefore not entitled to any damages for wrongful termination. The company was obliged to pay SEK 10,000 for breach of the formal requirements in the Employment Protection Act.

### **Audit on the 150 Largest IT Companies in Sweden Trend**

**Author:** Anna Jerndorf, Partner — Advokatfirman Törngren Magnell KB

The Equality Ombudsman is conducting an audit to ensure that companies within the IT sector have guidelines and routines to prevent harassment, sexual harassment and retaliation. The audit is a continuation of the audits initiated by the Equality Ombudsman in 2017 in connection with the new rules regarding active measures in the Swedish Discrimination Act entering into force. So far, the Equality Ombudsman has conducted audits on municipalities, companies within the construction, cultural, media and legal industry.

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## The Netherlands

## **Trade Secrets Now Expressly Protected by Law New Legislation Enacted**

**Authors:** Eric van Dam, Partner & Jasper Hoffstedde, Legal Assistant — Littler Netherlands

On October 22, 2018, the Trade Secrets Protection Act (the Act) entered into force. The new legislation lays down the rules on implementing Directive 2016/943/ EU of June 8, 2016, of the European Parliament and the Council on the protection of undisclosed know-how and business information (trade secrets) and against the unlawful acquisition, use and disclosure thereof. The Act further specifies what is meant by a trade secret, against which forms of infringement (unlawful acquisition, use or disclosure) action can be taken and which measures, procedures and remedies can be used.

## **Parental Leave for Partners Extended New Legislation Enacted**

**Authors:** Wouter Engelsman, Partner & Jasper Hoffstedde, Legal Assistant — Littler Netherlands

The new Act on Introduction of Extra Parental Leave, which extends parental leave for partners, takes effect January 1, 2019 in two steps. As of January 1, the parental leave of the mother's partner is extended from two days directly after child birth to once the number of working hours per week, to be taken within four weeks after the child is born. The second change, scheduled for July 1, 2020, allows partners to take additional birth leave up to five weeks, to be taken within six months after the birth of the child, with the remuneration capped at 70% of the maximum daily wage.

## **Transition Payment Is Fixed and Thus Not Susceptible to Reasonableness and Fairness**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Authors:** Eric van Dam, Partner & Coco de Munk, Associate — Littler Netherlands

On October 5, 2018, the Supreme Court of the Netherlands ruled that employees who are dismissed shortly before reaching state retirement age have a right to the full transition payment. Here, the fact that the employee was receiving a benefit payment for fully disabled employees was not a reason for the employer to award a lower transition payment. The Court noted that the legislature did consider the fact that an employee dismissed shortly before state retirement age has a right to a transition payment that is more than the salary that would have been awarded if he or she had remained in employment until reaching state retirement age.

## **The Newly Created Netherlands Commercial Court Important Action by Regulatory Agency**

**Authors:** Dennis Veldhuizen, Partner & Jasper Hoffstedde, Legal Assistant — Littler Netherlands

The Netherlands Commercial Court will launch as of January 1, 2019. The NCC, constituted from a pool of judges with extensive experience in complex international disputes, will be based in Amsterdam and use Dutch procedure. Proceedings and judgments will be in English. The NCC Rules outline the main procedure and practice rules and reflect global best practices. The eNCC

will be the web portal with secure access through the NCC site, allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents. Parties need to expressly agree upon the NCC's jurisdiction as a forum of choice.

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## United Kingdom

### **Supreme Court Rules that Refusal to Bake “Gay-Cake” Was Not Discriminatory Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Lisa Rix, Associate — Littler United Kingdom

On October 10, 2018, the UK Supreme Court held a bakery and its Christian owners had not directly discriminated against a gay customer on the ground of sexual orientation, religious belief or political opinion when they refused to provide him with a cake stating the words "Support Gay Marriage." The Court noted that the rights to freedom of religion and freedom of expression under the European Convention on Human Rights required that a service provider could not be compelled to express a message with which they disagreed, unless that compulsion could be justified.

### **Court of Appeal Finds Employer Vicariously Liable for Employee’s Deliberate Data Breach**

**Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Deborah Margolis, Associate — Littler United Kingdom

On October 22 2018, the UK Court of Appeal held that a supermarket chain in the UK was vicariously liable (but not directly liable) when an employee committed a deliberate criminal act and disclosed the personal data of 100,000 employees. The supermarket chain has expressed its intention to appeal this case to the UK Supreme Court.

### **Non-Executive Directors Found Personally Liable to Whistleblower for Post- Termination Losses**

**Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Ben Smith, Trainee Solicitor — Littler United Kingdom

On October 19, 2018, the UK Court of Appeal found that two non-executive directors were personally liable to a whistleblower for losses flowing from the termination of his employment. This case clarifies that, in the whistleblowing context, while it is not possible to make a claim against the employer for losses flowing from a detriment, where that detriment is dismissal, a claim may prevail against individual employees. An employer could potentially, however, be vicariously liable in this claim, despite there being no direct liability. In practice, this decision is likely to lead to claimants pleading multiple claims against both the employer and relevant



individuals to maximize their chances of success.

## **Company Vicariously Liable for Managing Director's Assault of Employee at Social Event**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Hannah Mahon, Partner — Littler United Kingdom

On October 11, 2018, the Court of Appeal found that a company was vicariously liable for its managing director's assault of an employee, which occurred during a heated discussion of work matters while some employees were having drinks following the company's Christmas party. The Court of Appeal found that the assault was "in the course of employment" because, among other factors, the director had been discussing work matters when the assault took place and the company had partially funded the social event. The facts here are unusual, but the case is a reminder that employers should be conscious of the risks of vicarious liability arising from employees' actions at social events.

## **Court of Appeal Clarifies Law on Less Favorable Treatment of Part-Time Workers**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Kate Potts, Associate — Littler United Kingdom

The UK Court of Appeal on November 2, 2018, ruled that a part-time worker required to be available for work for 53.5% of the days of a full-time employee, but paid only 50% of the full-time employee's salary was prima facie treated less favorably than full-time employees. Less favorable treatment of part-time workers is prohibited, unless it can be objectively justified. This case reaffirms that the starting point for fair treatment of part-time workers should be to pro rate benefits and conditions. The case now returns to the High Court to consider whether the difference in treatment was justified.

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## **United States**

## **ACA Still in Effect, Despite New Federal Court Ruling**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Authors:** Anne Sanchez Lawer, Shareholder & Finn Pressly, Shareholders — Littler United States

On December 14, 2018, a Texas federal court declared the entire Affordable Care Act (ACA) unconstitutional. Despite this broad holding, employers should not expect to see any significant changes to the ACA in the near future as the court did not issue an injunction invalidating the law, and the White House press secretary stated: "We expect this ruling will be appealed to the Supreme Court. Pending the appeal process, the law remains in place."

## **Requirement**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Robert W. Pritchard, Shareholder — Littler United States

On November 8, 2018, the U.S. Department of Labor's Wage and Hour Division clarified the circumstances under which an employee who is paid on an hourly, daily or shift basis (subject to a weekly guarantee) may qualify as an exempt executive, administrative, or professional employee under section 13(a)(1) of the Fair Labor Standards Act of 1938. While not establishing a bright-line rule, the opinion letter confirms that: (a) a ratio of 1.5-to-1 between an employee's usual weekly earnings and the weekly guarantee is acceptable; (b) a ratio that exceeds 1.5-to-1 is vulnerable to challenge; and (c) a ratio of 1.8-to-1 or more is probably not acceptable.

## **DOL Guidance on Applying a Tip Credit to Employees Who Perform Dual Jobs**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Author:** Eli Z. Freedberg, Shareholder — Littler United States

On November 8, 2018, the U.S. Department of Labor reissued and adopted a nearly decade-old opinion letter to clarify how employers must pay tipped employees who perform dual jobs. The applicable regulation provides that if a tipped worker, such as a server or bartender, is also employed in an entirely separate occupation, such as a maintenance worker or a security guard, then the employer can only apply a tip credit towards the employee's wages when he or she is working as a waiter or bartender, and cannot apply the tip credit when the employee is working as a maintenance worker or security guard.

## **DOL Extends PAID Program, Presenting Employers with "Third Option" to Release FLSA Claims**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Authors:** Whitney Ferrer, Shareholder & Tammy McCutchen, Shareholder — Littler United States

The Department of Labor has extended the Payroll Audit Independent Determination (PAID), its pilot compliance program, called to help employees get paid for wages they have earned and to help employers correct past payroll mistakes. Under PAID, employers may self-report a wage violation to the DOL, along with a calculation of back wages owed. In exchange for an agreement by the employer to pay 100% of back wages owed over a two-year period, the DOL will supervise the settlement and issue a release of the claim, limited to the reported issue.

## **OFCCP Issues Three New Directives to Maximize Efficiency and Increase Transparency**

### **Precedential Decision by Judiciary or Regulatory Agency**

**Authors:** David Goldstein, Shareholder & Lance Gibbons, Shareholder — Littler United States

On November 30, 2018, the Office of Federal Contract Compliance Programs (OFCCP) issued three new directives to reinforce its "enforcement mission with more accountability and efficiency," as well as "to maximize the effectiveness of compliance assistance outreach to assist contractors in meeting their responsibilities." The directives, inter alia, give OFCCP staff greater flexibility to

conduct audits, and creates an avenue for early resolution of certain types of violations. The OFCCP will also make certain inquiries and responses available and searchable on OFCCP's website.

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