

Labour & Employment 2021

Contributing editors

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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First published 2006
Sixteenth edition
ISBN 978-1-83862-680-8

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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**Matthew Howse, K Lesli Ligorner, Walter Ahrens,
Michael D Schlemmer and Sabine Smith-Vidal**

Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.



London
April 2021

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This article was first published in May 2021
For further information please contact editorial@gettingthedealthrough.com

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Global overview

Matthew Howse

Morgan, Lewis & Bockius LLP

A tumultuous year

It has been a tumultuous year for the world as a whole and the worlds of work and employment law have been dramatically affected too. It has been fascinating to see how different countries and jurisdictions have adopted varied approaches and techniques to deal with the unprecedented challenges thrown up by the covid-19 pandemic. This Global Overview seeks to highlight those varied approaches and some of the similarities too.

Protecting jobs

Before the events of 2020, I had never used the word 'furlough' in many years of practising employment law. By the end of March 2020, the word was in common parlance not just among employment lawyers but across the United Kingdom generally as the government rapidly introduced the Coronavirus Job Retention Scheme (CRJS) that essentially compensated employers who furloughed employees rather than terminating their employment.

The UK's CRJS was not an isolated example as the sudden impact of the pandemic on businesses resulted in governments across the world scrambling to put in place schemes and plans that would encourage employers to retain rather than terminate employees. For example, in Australia, the JobKeeper scheme made payments to employers that met a decline in turnover test, whereas in Germany, employers could apply for short-time work in agreement with employees or works councils, with the difference in pay being partially covered by the government

Bans on terminating employees

If furlough schemes could be seen as governments taking a carrot approach to protecting jobs, some governments could be seen to be taking a more of a stick approach by prohibiting employers from terminating employees due to the pandemic. In Argentina, employers have been banned from dismissing employees without just cause or suspend them due to force majeure, lack or reduction of work. Dismissals and suspensions in breach of the law will be null and void. Further, in cases of uncontested dismissals without due cause, affected employees are entitled to twice the normal severance pay.

In March 2020, the Spanish government introduced emergency measures that were intended to make it easier for employers to temporarily suspend employment but at the same time prohibited dismissals based on force majeure as well as those grounded on economic, technical, organisational or productive grounds. As in Argentina, such dismissals would be null and void.

Similarly, in Turkey, a ban on the termination of employment contracts by employers was implemented and extended several times by presidential decree with limited exceptions. Employers breaching the ban were subject to an administrative fine at the amount of the monthly gross minimum wage for each employee terminated.

Adapting workplaces

As governments and employers adapted to the fast-changing impact of the pandemic, the focus moved to making sure that workplaces were

safe. In many jurisdictions, employers have a general legal duty to ensure that their workplaces are safe and that employees' and visitors' welfare were protected.

Employers had to consider how they needed to adapt their workplaces and practices to protect the health and safety of their employees in the face of the pandemic. Such measures may have involved social distancing, the wearing of face masks and hygiene requirements.

Employers with global workforces had to grapple with different requirements and regulations as there was, unsurprisingly, no global standard and very little commonality between countries on what was required. We also saw variations in approach – some countries were prescriptive in the adaptations required, whereas others relied more on existing health and safety regulations and gave employers more freedom to adapt their premises according to broader guidelines.

Working from home

Employers have also looked forward to what their workplaces and working practices will be like once the impact of the pandemic diminishes. Some employers are taking a wait-and-see approach but others are boldly stating their positions now. At one end of the extreme are employers who say that they believe that offices engender creativity and team spirit and that they will, when local regulations allow, return to their pre-pandemic method of working. At the other end, we have employers – often in the technology sector – that have stated that they will allow employees to work wherever they like.

Giving employees the freedom to work where they like may well have benefits from a recruitment and retention perspective but will also have implications for the employer in terms of personal and corporate taxation, social security, immigration and applicable employment laws. Employers contemplating such policies will need to carefully consider the laws in a wide range of jurisdictions.

Many employers are contemplating taking a middle road of a return to the office but with much greater flexibility for employees on how often they will attend the office. Employers who take the time to properly consult with their employees about future working practices are likely to have the most successful policies going forward.

Similarly, several governments have indicated that they are looking to change the law on flexible working by giving employees more scope for requesting a new working pattern. For example, the German government has proposed a new remote working law.

Vaccinations

Finally, employers have had to consider the complex cultural and legal issues that arise when considering their position on vaccines. While it is generally accepted that widespread vaccination is the path out of the restrictions caused by the covid-19 pandemic, an employer's stance on whether to encourage or compel employees to be vaccinated in circumstances where the vaccine programmes in different countries vary considerably in both the method and speed of roll-out has to be carefully considered. In most countries, there are considerable legal hurdles

for employers to clear if they are intent on compelling employees to be vaccinated, except possibly for certain high-risk sectors such as healthcare. Even then, employers need to be aware of the risk of discrimination claims.

Even merely encouraging employees to have a vaccine may be a step too far culturally for some employers in some jurisdictions. Similarly, asking employees if they have been vaccinated is likely to raise data protection or privacy issues too.

Conclusion

The past year has been challenging for all of us who have to advise on, consider or deal with labour and employment law issues as long-standing principles and ways of thinking have been eroded by the impact of the pandemic on economies and societies. As we hopefully move beyond the pandemic, there is little doubt that we will continue to be challenged and that there will be a plethora of new laws to assess.

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