Alliant Global Services

Global Knowledge Center – Legal & Regulatory Updates

May 2023

Contents

Australia 3
Australia: Minimum superannuation guarantee rate increases by 0.5%, starting 1 July 3
Belgium 5
Belgium: Annual leave interrupted for certain reasons, including illness, can be carried over, starting 2024 5
Brazil 7
Brazil: Employers must include employees' racial and ethnic classification in documents specified by law. 7
Canada 9
Canada: British Columbia's Pay Transparency Act entails employer obligations and prohibitions 9
European Union 11
European Union: European Parliament and the Council adopt the Pay Transparency Directive 11
Ireland 14
Ireland: Public hospital in-patient fees abolished 14
Netherlands 16
Netherlands: Pension reforms shifting all supplementary pensions to flat-rate contribution DC plans approved by Senate 16
Netherlands: Bill to control labor market discrimination under Senate review 20
Spain 21
Spain: Law introduces new paid sick leave provisions, including menstrual leave 21
Spain: Sick leave monitoring and administration rules amended 23
United Arab Emirates 25
United Arab Emirates: MoHRE announces Emiratization target-related penalties 25

United Kingdom 27
United Kingdom: Statutory neonatal care leave and pay approaching parliamentary approval 27
United Kingdom: Bill to extend the duration of protection from redundancy for employees taking maternity, adoption, and shared parental leave 29
United Kingdom: Government opens online consultation on reforms that include proposed changes to annual leave entitlements and pay 30

Australia

Australia: Minimum superannuation guarantee rate increases by 0.5%, starting 1 July

Published 29 May 2023

Effective from 1 July 2023 through 30 June 2024, the general minimum superannuation guarantee (SG) rate will increase from 10.5% to 11%. This rate represents the mandatory employer superannuation contributions made on behalf of employees, up to the cap of AUD 27,500 in 2023-24, which is known as the Maximum Contributions Base.

This increase is the second phase of a planned 0.5% annual increase that will continue each year until it reaches 12% on 1 July 2025. It is worth noting that the SG rate for Norfolk Island will increase from 7.0% to 8% and will continue to rise annually by 1.0% until it reaches 12%, beginning 1 July 2027.

These gradual increases were legislated in 2020 as part of the measures confirmed by the 2021 Federal Budget.

The table below summarizes the increases.

Dates	**General Superannuation Guarantee Rate** (%)	**Superannuation Guarantee Rate for Norfolk Island** (%)
1 July 2022 – 30 June 2023	10.5	7.0
1 July 2023 – 30 June 2024	11.0	8.0
1 July 2024 – 30 June 2025	11.5	9.0
1 July 2025 – 30 June 2026	12.0	10.0
1 July 2026 – 30 June 2027	12.0	11.0
1 July 2027 – 30 June 2028	12.0	12.0

Additionally, the maximum quarterly super contributions base for payments made on or after 1 July 2023 through 30 June 2024 will increase to AUD 62,270, up from previously AUD 60,220.

Employer Actions

Employers who have not yet updated their payroll system settings and who do not rely on payroll providers, must ensure their payroll system reflects the new SG rate of 11% of earnings paid on or after 1 July 2023 through 30 June 2024. Contributions are paid quarterly up to maximum of AUD 62,270 per quarter.

Employers must also account for the resulting increase in payroll expenses in their budgeting forecasts. Failure to pay the SG into the correct superannuation fund by the quarterly due dates requires reporting and rectifying any payment errors by submitting an SG Statement and paying a Superannuation Guarantee Charge (SGC) to the Australian Tax Office (ATO).

Additionally, administrative penalties ranging between 75% to 200% apply to the shortfall resulting from false and misleading statements, failure to submit a superannuation guarantee change statement by due dates and for failure to comply with the ATO's directions during an audit.

Employers are strongly advised to communicate with their employees on how the increase will impact their net pay and superannuation.

With the 0.5% increase, some employees who top up their SG through salary sacrifice or additional contributions may approach or exceed the annual concessional contributions cap of AUD 27,500 in the 2023-24 financial year.

Belgium

Belgium: Annual leave interrupted for certain reasons, including illness, can be carried over, starting 2024

Published 25 April 2023

Effective 1 January 2024, new annual leave rules introduced by a Royal Decree of 8 February 2023 ensure compliances with the provisions of the EU's Working Time Directive (2003/88/EC).

Statutory annual leave is accrued during what is referred to as the leave work year (*l'exercice de vacances*); and then drawn during the following year, which is referred to as the leave year (*l'année de vacances*). The Royal Decree does not amend existing annual leave accrual rules.

Currently and through 31 December 2023, employees must take their annual leave days accrued during 2022 by the end of the annual leave year, i.e., 31 December 2023. If they don't, they will in principle lose those days. However, this rule is not in compliance with the EU's Working Time Directive, which provides for at least 4 weeks of paid annual leave per year.

In particular, under the new rules, statutory leave days during which an employee becomes sick will be considered as sick days. Furthermore, amended rules apply in terms of carryover of statutory leave days.

Recovery of annual leave interruptions

Effective 1 January 2024, days of work interruption that are due to any of the reasons provided by the Royal Decree, can no longer be charged as annual leave days, even if the reason arises during annual leave. These reasons are:

- accident at work
- occupational disease
- ordinary illness
- ordinary accident
- maternity leave
- paternity leave
- prophylactic leave
- adoption leave
- leave for foster care
- foster parental leave

In other words, any interruption of annual leave due to any of the above reasons will no longer result in loss of annual leave entitlement.

It is worth noting that current annual leave provisions do in fact provide that if work is suspended (including for sickness) prior to the start date of an employee's statutory annual leaves and continues through the scheduled annual leave dates, then any missed annual leave days can be taken at a later time. This provision remains unchanged.

Amendment of annual leave carry-over rules

Currently, accrued annual leave days must be drawn by the end of the leave year or they are lost, as they cannot be carried over to the following year.

From leave year 2024, employees will be able to carry over any unused annual leave days by up to 24 months after the end of the leave year, provided the days were not used due to one of the reasons provided by the Royal Decree for an interruption of the employee's annual leave (see above).

Employers must pay the employee, the annual leave pay relating to the days being carried over (i.e., to be taken within 24 months of the end of the leave year) no later than 31 December of the leave year for white collar employees, and during the leave year for blue collar employees.

Employer Actions

Starting 1 January 2024, employers must ensure that employees are effectively granted a minimum of 4 weeks of statutory annual leave, by allowing the carryover of any unused annual leave days by up to 24 months after the end of the leave year, provided the days were not used due to one of the reasons provided for by Royal Decree, which include sick leave, i.e., ordinary illness.

Although such unused annual leave days can be carried over to subsequent years, the corresponding statutory annual leave pay must be mad during the leave year.

Underlying legislation

The changes were introduced by the Royal decree of 8 February 2023 amending articles 3, 35, 46, 60, 64, 66 and 68 and inserting an article 67bis in the Royal Decree of 30 March 1967 setting the general procedures for implementing laws related to employee annual leaves (*Arrêté royal du 8 février 2023 portant modification des articles 3, 35, 46, 60, 64, 66 et 68 et insérant un article 67bis dans l'arrêté royal du 30 mars 1967 déterminant les modalités générales d'exécution des lois relatives aux vacances annuelles des travailleurs salariés*), which was published in the Official Journal (*le Moniteur belge*) on 16 March 2023.

Brazil

Brazil: Employers must include employees' racial and ethnic classification in documents specified by law

Published 4 May 2023

Effective 24 April 2023, private and public sector employers must include, in employment registers and specified employment-related documents. employees' racial and ethnic identification according to self-classification in previously defined groups.

Specified documents

According to the Article 8 of Law Nº 14.553 of 20 April 2023, the racial and ethnic identification requirement pertains to the following documents:

- Employment application and termination forms;
- Occupational accident forms;
- Registration forms filed with the National Employment System (*Sistema Nacional de Emprego. Sine*), or other registry with a similar content and purposes;
- Annual Social Information Reports (*Relação Anual de Informações Sociais, Rais*), or other future documents with a similar content and purposes;
- Documents, including those made available in electronic format, for the enrollment of covered employees and their dependents in the General Social Security System (*Regime Geral de Previdência Social, RGPS*); and
- Survey questionnaires from the Brazilian Institute of Geography and Statistics Foundation (*Fundação Instituto Brasileiro de Geografia e Estatística, IBGE*), or by any future public authority with the same attributions.

The legislation is intended to inform the National Policy for the Promotion of Racial Equality (*Política Nacional de Promoção da Igualdade Racial, PNPIR*), and to allocate subsidies based on IBGE surveys which will be carried out once every five years in the public sector.

The IBGE which implements the national census surveys, classifies population in five ethnic groups, namely: white, multiracial, black, Asian, and indigenous.

Employer Actions

Effective 24 April 2023, employers must ensure that employees' racial and ethnic identification according to a self-classification is included in employment registers and specified employment-related documents.

Given the purpose of the classification as outlined in the applicable legislation and the role of the Brazilian Institute of Geography and Statistics Foundation (IBGE) in achieving the government's goal via periodic surveys, employers are advised to utilize IBGE's classification of the population into five ethnic groups, namely: white, multiracial, black, Asian, and indigenous.

Underlying legislation

Law Nº 14.553 on 20 April 2023 amending Articles art. 39 and 49 of Law No. 12,288, of 20 July 2010 (Statute of Racial Equality), to determine procedures and criteria for collecting information regarding the distribution of ethnic and racial segments in the labor market. (*Lei Nº 14.553, de 20 de abril de 2023 Altera os arts. 39 e 49 da Lei nº 12.288, de 20 de julho de 2010 (Estatuto da Igualdade Racial), para determinar procedimentos e critérios de coleta de informações relativas à distribuição dos segmentos étnicos e raciais no mercado de trabalho*), published in the Official Journal (*Diário Oficial da União*) on 24 April 2023.

Canada

Canada: British Columbia's Pay Transparency Act entails employer obligations and prohibitions

Published 22 May 2023

On 11 May 2023, British Columbia's Pay Transparency Act (Bill 13) received Royal Assent.

Effective 1 November 2023, British Columbia employers are required to include the expected salary or wage range for publicly advertised job opportunities.

The Act also introduces pay transparency reporting and data collection obligations, and certain pay-related prohibitions for employers.

Separately, by 1 June of each year, the province's Ministry of Finance must publish an annual gender pay report.

Employer reporting and data collection obligations

Reporting obligation

The Pay Transparency Act provides for pay transparency reporting obligations, that are phased over time based on employer size as detailed below.

- Staring 1 November 2024, employers with 1,000 or more employees as of 1 January 2024, are required to annually publish pay transparency reports and as soon as practicable following completion of the report, publish it on its publicly accessible website. The reports are due by 1 November of each year. Regulations providing guidance to employers for preparing pay transparency reports are expected to be released during the third quarter of 2023.
- Starting 1 November 2025, employers with 300 or more employees as of 1 January 2025, are required to annually publish pay transparency reports and make them publicly available.
- Starting 1 November 2026, employers with 50 or more employees as of 1 January 2026, are required to annually publish pay transparency reports and make them publicly available.

In case the employer does not have a publicly accessible website, it must:

- make a copy of the report available to its employees, and
- make a copy of the report available to any member of the public who requests one.

Employers' pay transparency reports must remain publicly available until the employer makes a subsequent pay transparency report available.

Data collection obligation

As part of preparing their annual pay transparency reports, employers must collect employee data on gender (as self-identified) and other attributes, provided employees are willing to disclose such information,

Employer prohibitions

Employers are prohibited from seeking pay history information about an applicant for employment by any means whether directly from the applicant or through a third party unless the pay history information is publicly accessible.

Furthermore, employers are prohibited from retaliating against employees who share their pay with co-workers or potential job candidates.

Employer Actions

British Columbia employers should familiarize themselves with the new pay transparency requirements and prohibitions, and revise their policies, practices, job posting procedures, and employment agreements to ensure compliance with the provisions of the Pay Transparency Act.

European Union

European Union: European Parliament and the Council adopt the Pay Transparency Directive

Published on 19 May 2023

On 17 May 2023, the EU Pay Transparency Directive was published on the European Union (EU) Official Journal, after having been adopted by the EU Parliament on 30 March 2023, and by the EU Council on 24 April 2023. The Directive will come into force on 6 June 2023 (i.e., 20 days after its publication in the EU Official Journal).

EU member states will have three years, i.e., until 7 June 2026, to transpose the provisions of the Directive, which are minimum requirements, into their national legislation.

Under the provisions of the Directive, EU employers will be required to disclose information on how much they pay women and men for work of equal value and will be required to take action if their gender pay gap (GPG) exceeds 5%.

The Directive also provides for compensation for victims of pay discrimination and penalties for employer non-compliance, including fines.

The new rules will enhance transparency and provide for effective enforcement of the equal pay principle between women and men, while improving access to justice for individuals subjected to pay discrimination. These key components of the Directive are detailed below.

Pay transparency measures

Pay transparency for job-seekers

Under the provisions of the EU Directive on Pay Transparency, employers will have to provide information about the initial pay level or its range in the job vacancy notice, or before the job interview. Employers will not be allowed to ask prospective workers about their pay history.

Employees' right to information

Employees will be entitled to request information from their employer on their individual pay level and on the average pay levels, broken down by sex, for categories of workers doing the same work or work of equal value. This right will exist for all employees, irrespective of the employer's size.

Furthermore, employees should not be prevented from voluntarily disclosing their pay for the purpose of enforcing equal pay.

Employer prohibitions

Employers should not be allowed to inquire or proactively seek to obtain information about the current or prior pay history of an applicant for employment.

Gender pay gap reporting

Employers with 100 employees or more will have to publish their GPG information. In a first stage, employers with at least 250 employees will report every year and employers with between 150 and 249 employees will report every three years.

Within five years after the transposition of the Directive's provisions into local legislation, employers with between 100 and 149 employees will also have to report their GPG every three years.

Joint pay assessment

In cases where GPG reporting reveals a pay gap of at least 5% or more and the employer cannot justify the gap on basis of objective gender-neutral factors, employers must carry out a pay assessment in cooperation with workers' representatives.

Better access to justice for victims of pay discrimination

Compensation for workers

Under the provisions of the EU Directive on Pay Transparency, workers who have suffered gender pay discrimination could receive compensation, including full recovery of back pay and related bonuses or payments in kind.

Employers bear the burden of proof

In case of employer non-compliance with their transparency obligations, the burden of proof of non-discrimination in terms of pay will rest with the employer.

Penalties for non-compliance

EU Member States will have to implement specific penalties (including fines) for non-compliance with equal pay rule.

Legal and administrative proceedings

National public institutions set up across the EU to promote equality for all and tackle discrimination (i.e., Equality bodies) and workers' representatives may act in legal or administrative proceedings on behalf of workers.

Employer Actions

EU member states will have until 7 June 2026, to transpose the provisions of the Directive into local legislation. Employers operating in EU member states would be well advised to prepare for forthcoming

changes by reviewing their recruitment, compensation and promotion policies, practices, and procedures to ensure alignment with the provisions of the Pay Transparency Directive.

Ireland

Ireland: Public hospital in-patient fees abolished

Published 08 May 2023

Effective 17 April 2023, acute public hospital in-patient and day service fees are abolished. That is, daily public hospital fees for public patients no longer apply as of this date. Acute care services diagnose, treat, and care for seriously ill or injured patients, and include:

- inpatient scheduled care
- unscheduled or emergency care
- maternity care
- outpatient and diagnostic services
- cancer care
- blood transfusion services
- organ donation and transplantation

Public patients, as opposed to private patients, do not have to pay for consultants' services and do not have a choice of consultants – medical practitioners who assume full clinical responsibility for patients in their care, without supervision related to professional matters by another individual.

Public patients, as opposed to private patients, do not have to pay for consultants' services and do not have a choice of consultants. The Health Insurance Act, 1994 (Minimum Benefit) Regulations, 1996 defines hospital consultants as, "a registered medical practitioner who holds a current full registration with the Irish Medical Council and is engaged in hospital practice and who, by reason of his or her training, skill and experience in a designated specialty, is consulted by other registered medical practitioners and undertakes full clinical responsibility for patients in his or her care, or that aspect of care on which he or she has been consulted, without supervision in professional matters by any other person."

Previously, according to the provisions of the Health (Acute In-Patient Charges) Regulations 2021, public patients accessing care in public hospitals were subject to public in-patient service fees for acute care ranging from EUR 80 (per day) up to a maximum of EUR 800 (including day-case fees over a period of 12 consecutive months). Medical card holders and children under 16 years of age were exempted.

Individuals who opt to be treated as a private patient when they are admitted to a public hospital, continue to be liable for inpatient service fees. The fees for private patients in public hospitals depend on the category of the hospital and the type of room for overnight stays. These service fees range from EUR 329 for day cases to EUR 1,000 overnight stays in a single occupancy room. In addition, private patients also continue to pay the service fees of any consultants involved in their care.

Underlying legislation

On 11 April 2023, Health (Amendment) Act 2023 (Commencement) Order 2023 set 17 April 2023 as the effective date of the Health (Amendment) Act 2023, provisions, revoking the Health (Acute In-Patient Charges) Regulations 2021. The Act was published in the official journal (*Iris Oifigiúil*) on the same day.

The Health (Amendment) Act 2023 removed section 53C of the Health Act 1970 regarding acute public in-patient fees. The removal of the public in-patient fees is part of the government's commitments in Budget 2023 to ensure individuals have access to affordable healthcare services.

Netherlands

Netherlands: Pension reforms shifting all supplementary pensions to flat-rate contribution DC plans approved by Senate

Published on 26 May 2023

On 30 May 2023, the Senate adopted the Bill on the Future of Pensions Act (*Wet toekomst pensioenen – WTP*). The WTP will now be sent to the Cabinet for the King's signature and then to the relevant ministry for signature. With these required signatures, the Bill becomes law. The law must then be published in the Official Journal (*Staatsblad*), in order to come into force. The WTP is expected to come into force on 1 July 2023. As of the date of publication of this article, the WTP has not been published in the Official Journal.

Once in force, all pension accruals would be based on defined contribution (DC) plans with a flat contribution rate that would apply irrespective of the participant's age.

As such, the WTP would entail the renewal of all employee pension agreements, as well as all agreements with pension providers. Employers and pension providers would then have until 1 January 2027 to implement the provisions of the reform.

It is worth noting that on 17 May 2023, the Minister of pensions has requested an extension of the transition period by one year, i.e., from 1 January 2027 to 1 January 2028. This amendment would require Parliamentary approval.

Although this transition period could be extended by one year, the reform is extensive and would entail considerable planning and implementation to comply with the anticipated legislation.

Key reform measures are detailed below.

Defined benefit plans no longer allowed

Once the WTP enters into force, defined benefit (DB) plans will no longer be allowed. DB accrued pension entitlements would remain unaffected, until they are converted into a DC plan.

Currently, approximately 70% of all employees are DB plan participants.

Existing DC plans would remain authorized during the WTP's transition period, i.e., until 1 January 2027.

Introduction of three new types of agreements

Under the proposed new pension system, three plan agreement types would be possible. Social partners would decide according to what best meets the specific features and circumstances of a given sector or employer. The three options would be:

- Solidarity contribution plans (for pension providers)
- Flexible contribution plans (for pension providers)
- Contribution benefit agreements (for pension insurers)

Upon social partners' decision, the pension fund would have an obligation to assess the request from various perspectives, e.g., feasibility and compliance with statutory regulations.

Solidarity contribution plans

Solidarity contribution plans *(solidaire premieovereenkomst)* have an age-independent (fixed) contribution. The contributions would be collectively invested. The pension provider would assess whether the contributions are sufficient to achieve the intended pension objective (agreed to by social partners) based on a uniform scenario analysis. Investment returns are distributed among the employees via a predetermined distribution key. The premise is that younger plan members take on more risk but are also more affected by investment results than older plan members. The solidarity contribution plan entails a solidarity reserve.

Flexible contribution plans

Flexible contribution plans (*flexibele premieovereenkomst*) are similar to the existing DC plans, in that there is separation between individual pension assets in the accrual phase and pension assets of pensioners in the benefit phase. Plan members could make a number of investment choices themselves. Investment returns are processed in the individual pension capital. Upon retirement, the accrued individual pension capital is converted into a lifelong fixed or variable pension benefit. The member would have the choice between a lifelong fixed (but lower) pension benefit or the option to invest their pension capital (with the prospects for a higher benefits).

The essential difference with the current DC plans is that even within the flexible plan there is a flat contribution for all.

Contribution-benefit agreements

Contribution-benefit agreements (*premie-uitkeringsovereenkomst*) would be available for pension insurers. Contributions are invested individually, much like in flexible contribution plans. Under certain conditions, contribution-benefit agreements would offer participants the option to use their accrued pension capital to purchase (15 years prior to their statutory retirement age) a guaranteed nominal fixed or a partially fixed lifetime benefit from their retirement date.

More flexible solvency rules

The WTP would make occupational pension fund solvency rules more flexible. Currently, pension plans' assets must at least be equal to 105% of liabilities the coverage ratio (i.e., ratio of assets to liabilities) falls below this threshold, pension funds must adopt a recovery plan to restore solvency. If the coverage ratio falls below 90%, pension funds are required to implement benefit entitlement reductions.

The WTP would temporarily reduce the minimum coverage ratio from 105% to 100%, granting pension funds more time to address solvency issues, and introduce a more malleable pension contract, thereby providing more flexibility for occupational pension funds to respond to coverage ratio variations.

Survivors' pension

Partners' pension

The WTP would primarily change the coverage of a partner's pension prior to a participant's retirement date. Survivors' pension would continue to be related to the pension benefit amount, which depends on the retiree's length of service.

However, before retirement, a partner's pension would only be possible on the basis of risk coverage. The coverage would be a maximum of 50% of the participant's last salary, irrespective of their time in service.

According to the provisions of the WTP married individuals, registered partners and those who manage a common household are considered as partners. The WTP further specifies what is considered as a being part of a common household (including registered or cohabiting partners).

Orphans' pension

Under the provisions of the WTP, orphans' pension would be as follows:

- Half orphans would be entitled to a maximum of 20% of pensionable salary. This compares to currently 14% of retirement pension.
- Full orphans would be entitled to a maximum of 40% of the pensionable salary. This compares to currently 28% of retirement pension.

Employer Actions to consider

The most important change affecting employers would be the conversion by 1 January 2027 at the latest, of all average pay plans and DC plans with age-based contributions into a DC plan with a flat-rate contribution that applies across all participants. The flat-rate contribution rate would be at a maximum of 30% of pensionable earnings. Therefore, in the shorter run, company-level consultations would be required to rearrange employment conditions.

The transition to the new system would have to be completed by 1 January 2027. Employers and employees would therefore have three-and-a-half years to discuss and make adjustments to their pension plan.

Following consultations, an employer-employee transition plan would have to specify the nature of the new pension plan being adopted, whether and how employees who are adversely affected would be compensated, and how existing pension entitlements would be dealt with.

Background

On 5 June 2019, after 9 years of negotiations, the government, trade unions and employers' associations reached an agreement in principle (*principe akkoord*) on the core features of a reformed pension system,

according to which, by 1 January 2027 at the latest, employers and pension providers must have adapted pension plans to the new system. The Bill currently under Senate review stems from the 2019 pension agreement.

Netherlands: Bill to control labor market discrimination under Senate review

Published 16 May 2023

On 14 March 2023, the Bill on the supervision of equal opportunities in recruitment and selection (*Wetsvoorstel toezicht gelijke kansen bij werving en selectie*) was passed and submitted by the Lower House to the Upper House of Parliament. This Bill aims to combat labor market discrimination.

If passed, the provisions of the Bill would enter into effect at a time to be determined by Royal Decree, which could result in different dates for the various articles or parts of the Bill.

Key provisions of the Bill

According to the provisions of the Bill, employers with more than 25 employees and recruitment intermediaries would be required to have written working methods that indicate how their recruitment and selection processes are structured and ensure that discrimination is not a factor in the recruitment process. The working method would show that the employer or intermediary is aware of the risk of direct and/or indirect discrimination and how they arise.

Human resources staff engaged in recruitment processes would have to be informed by the employer about labor market discrimination risks as well as the preventive measures being taken by the employer and instructed to prevent discrimination.

Furthermore, intermediaries would have to report discriminatory requests from clients to the Dutch Labor Inspectorate if a client refuses to revise their request. The steps that would need to be followed by intermediary recruiters if they suspect a request is discriminatory are outlined in the Bill.

The Bill entails a nine-month grace period after it enters into force, during which awareness campaigns and supplemental materials will be made available to employers.

Subordinate legislation (e.g., implementation decrees, regulations) would establish the rules to be followed by the employers' and intermediaries' working method. Employer and employee organizations could also be made responsible for the design of recruitment procedures and the working methods.

Spain

Spain: Law introduces new paid sick leave provisions, including menstrual leave

Published 17 March 2023

Effective 1 June 2023, new legislation introduces additional situations entitling employees to paid sick leave, namely in case an employee:

- Experiences menstrual pain or secondary dysmenorrhea;
- Undergoes voluntary termination of a pregnancy or experiences a miscarriage while receiving medical care from public health service; or
- Is in the beginning of their 39th week of a pregnancy.

These are detailed below.

Menstrual leave

Effective 1 June 2023, employees with menstrual pain or secondary dysmenorrhea will be entitled to government-paid statutory sick leave, provided the leave is authorized by a physician. This leave is commonly referred to as menstrual leave. The law does not specify the duration of the leave.

Leave eligibility

Employees with menstrual pain or secondary dysmenorrhea can request the leave. Employees will need to provide a note from a physician confirming their condition and stating the number of leave days needed.

Payment during leave

Employees' pay during menstrual leave days will be covered by the social security system starting on the first day of the leave, and until medical discharge.

Termination of pregnancy leave

Effective 1 June 2023, employees who are unable to work following a voluntary termination of a pregnancy or who experience a miscarriage while receiving medical care from public health service will be entitled to paid statutory sick leave.

An employee's pay during voluntary or involuntary termination of pregnancy leave will be covered by the employer on the first day of the leave, and then covered by the social security system starting on the second day of the leave.

End phase of pregnancy leave

Employees during the beginning of their 39th week of a pregnancy will be entitled to paid-statutory sick leave. Section 1 of Article 169 of the Law indicates that employees during that period are considered as being in a special situation of temporary disability (*incapacidad temporal*) due to common contingencies.

Payment during leave

An employee's pay during the end phase of pregnancy leave will be covered by the employer on the first day of leave, and then covered by the social security system starting on the second day of the leave.

A contribution period is required for receiving social security benefits for the following individuals:

- Employees between the ages 21 and 26: minimum of 90 days within the first seven years or 180 days throughout the work life
- Employees between the ages 27 and above: 180 days within the first seven years or 360 days throughout the work life

Employees who had a risk situation already initiated during pregnancy will not be entitled to the end phase of pregnancy leave.

Employer Actions

In light of the introduction of three new statutory leaves, two of which entail employment financial obligations, employers must ensure granting the new statutory leaves to eligible employees; and making any leave-related payments required by law.

Additionally, employers would be well advised to account for the new leaves in their future budgeting exercises, and to update their leave policies and any relevant employee communication materials.

Underlying legislation

Organic Law amending Organic Law 2/2010, of 3 March, on sexual and reproductive health and the voluntary termination of pregnancy (*Ley Orgánica por la que se modifica Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo*), published in the Official Journal (*Boletín Oficial del Estado, BOE*) on 1 March 2023.

Spain: Sick leave monitoring and administration rules amended

Published 6 May 2023

Effective 1 April 2023, Royal Decree 1060/2022 abolishes employees' obligation to provide a confirmation and discharge medical certificates to their employer within a year of a temporary disability (*incapacidad temporal*) entailing sick leave.

All communications related to employee sick leave certificates issued by an occupational physician (i.e., a public health services physician, a mutual insurance company physician, or a company physician) will take place between the public health administration and the employer.

In particular, the Social Security Institute (*Instituto Nacional de la Seguridad Social, INSS*) will send employee sick leave certificates directly to the employer.

Separately, a related Ministry of Inclusion, Social Security and Migration decree, Decree ISM/2/2023, replaced the previous temporary disability communication forms with the following 3 new forms:

- Medical certificates of sick leave/discharge due to temporary disability
- Confirmation certificates of sick leave due to temporary disability
- Financial data to be completed by employers

These forms are to be used for all employee sick leaves occurring on or after 1 January 2023.

Employer Actions

For all medical certificates related to employee sick leaves occurring on or after 1 April 2023, employers must communicate directly with the public health administration, using new forms. Employees are no longer required to provide a confirmation and discharge medical certificates to the employer.

Underlying legislation

Royal Decree 1060/2022, of 27 December 2022, which amends Royal Decree 625/2014, of July 18, which regulates certain aspects of the management and control of processes for temporary disability in the first three hundred sixty-five days of its duration (*Real Decreto 1060/2022, de 27 de diciembre, por el que se modifica el Real Decreto 625/2014, de 18 de julio, por el que se regulan determinados aspectos de la gestión y control de los procesos por incapacidad temporal en los primeros trescientos sesenta y cinco días de su duración*), published in the Official Journal (*Boletín Oficial del Estado - BOE*) on 5 January 2023.

Decree ISM/2/2023, of 11 January 2023, which amends Decree ESS/1187/2015, of 15 June 2015, which creates Royal Decree 625/2014, of 18 July 2024, which regulates certain aspects of the management and control of processes for temporary disability in the first three hundred and sixty-five days of temporary disability (*Orden ISM/2/2023, de 11 de enero, por la que se modifica la Orden ESS/1187/2015, de 15 de junio, por la que se desarrolla el Real Decreto 625/2014, de 18 de julio, por el que se regulan determinados aspectos*

de la gestión y control de los procesos por incapacidad temporal en los primeros trescientos sesenta y cinco días de su duración), published in the BOE on 13 January 2023.

Resources

New temporary disability communication forms are provided as Annexes I, II, and III of the Ministerial Decree ISM/2/2023,

United Arab Emirates

United Arab Emirates: MoHRE announces Emiratization target-related penalties

Published 25 May 2023

On 4 May 2023, the Ministry of Human Resources and Emiratization (MoHRE) announced in a press release, that employers that circumvent the Emiratization targets will be subject to a fine of up to AED 500,000.

Separately, MoHRE announced in another press release that 30 June 2023 is the deadline for employers with 50 employees or more, to achieve their semi-annual Emiratization targets, set at 1% of skilled jobs.

The Emiratization process initially started from 6 June 2022, and employers were required to meet the first 2% increase in Emirati employees between 1 May 2022 and 31 December 2022.

The target Emiratization percentage will continue to gradually increase by 2% annually, until achieving the desired rate of 10% by 2026 in accordance with Ministerial Resolution No. 279 of 2022.

The new penalties apply as of 1 January 2023.

Penalties for non-compliance

Different fines apply depending on the nature of non-compliance with Emiratization targets. These are detailed below.

Circumventing the Emiratization targets

The following non-compliance penalties apply to all employers with more than 50 employees registered with the MoHRE:

- AED 100,000 for the initial breach
- AED 300,000 for a repeated breach
- AED 500,000 for three or more repeated breaches

The press release noted that examples of non-compliance include reducing the number of Emirati employees, and/or modifying their labor classification, and/or any other form of avoiding the Emiratization targets.

Breach of semi-annual Emiratization targets

Employers will be fined AED 42,000 (AED 7,000 per month) for every Emirati employee not hired to achieve the employer's semi-annual Emiratization target by 30 June 2023. The fine will increase by AED 1,000 annually until 2026.

Employer Actions

Employers must ensure compliance with Emiratization targets, in order to prevent the newly announced penalties.

Separately, employers must hire the number of required Emiratis to make sure they meet their sein-annual targets, in order to avoid a penalty of AED 42,000 (AED 7,000 per month) per employee not yet hired by 30 June 2023.

Resource

https://www.mohre.gov.ae/handlers/download.ashx?YXNzZXQ9ODA0NA%3D%3D

United Kingdom

United Kingdom: Statutory neonatal care leave and pay approaching parliamentary approval

Published 18 May 2023

The Neonatal Care (Leave and Pay) Bill – a private member's bill with the backing of the government, is currently undergoing its third reading in the House of Lords.

Prior to becoming law, the Bill which on 20 January 2023, completed its third reading in the House of Commons, must complete its third reading in the House of Lords.

The expected timing for the corresponding legislation is currently unknown. However, the Bill's Explanatory Notes as introduced in the House of Lords on 23 January 2023, indicate that if all parliamentary stages are completed in 2023, the provisions of the Bill would likely be implemented within 18 months of coming into force.

Neonatal care leave entitlement

The Bill would create a statutory paid leave entitlement for parents or individuals with a personal relationship with a baby admitted to the hospital for at least seven continuous days in the first 28 days, beginning with the day after the date of the child's birth.

The maximum entitlement to this leave would be determined by regulations. The new neonatal care leave would be in addition to existing family-related leave entitlements.

The entitlement to the neonatal care leave would apply from an employee's first day of employment. However, there would be a qualifying period for statutory neonatal care pay (see below).

Neonatal care leave pay

The Bill would amend the Social Security and Benefits Act 1992 to add a new Part 12ZE on Statutory Neonatal Care Pay. This would create an entitlement to statutory neonatal care pay for eligible employees during periods of neonatal care leave, provided they have been employed an employer for a continuous period of at least 26 weeks. The entitlement would also be subject to the lower earnings limit of National Insurance (i.e., GBP 123 per week for 2023-24 tax year).

Regulations would determine the weekly amount, and duration of pay. However, the statutory neonatal care pay would be able to be claimed for at least 12 weeks.

The regulations would also spell out when an employee is not eligible for statutory pay, and that employees would select the start and end dates of their statutory neonatal care pay week.

Employers' payment liability

Employers would be liable to pay neonatal care pay to their employees, provided employees notify their employer of their intention to take leave (in writing if required). An employee's entitlement to statutory care pay would not be able to be "diluted or denied in an employee's contract", nor employees be required to contribute to the costs.

Regulations would specify conditions under which the liability to pay during neonatal care leave would shift from the employer to the National Insurance.

The entitlement to pay during neonatal care leave would be available to all employees with at least 26 weeks' continuous service and whose weekly earnings are at or above the lower earnings limit of the National Insurance.

The amount and duration of pay would be set by regulations but concerned employees would be able to claim at least 12 weeks of pay.

In addition to potential costs related to the statutory neonatal care leave, employers and their HR teams would need to account for more employees being absent from work for family-related reasons.

Background

In 2019 the government launched a consultation, Good Work Plan: Proposals to support families which included the now proposed neonatal care leave from day one of employment, and neonatal care leave pay subject to the same time in service requirement as maternity leave pay. The government's response of March 2020, committed to introducing a statutory neonatal care leave and corresponding pay.

Measures to introduce neonatal care leave and pay were included in the Employment Bill proposed in the Queen's Speech of December 2019, but was not introduced in the 2019-21 session nor in the Queen's Speeches of 2021 or 2022. However, in response to a parliamentary question on 25 May 2022, the government committed to introduce Neonatal care leave and pay.

United Kingdom: Bill to extend the duration of protection from redundancy for employees taking maternity, adoption, and shared parental leave

Published 19 May 2023

On 6 February 2023, The Protection from Redundancy (Pregnancy and Family Leave) Bill – a Private Member's bill – was submitted to the House of Lords, where it is currently undergoing its final reading since 19 May 2023, prior to becoming law. Article 3, paragraph (2) of the Bill states that: "the Act comes into force at the end of the period of two months beginning with the day on which this Act is passed."

Under the provisions of the Bill, employees expecting a child would have enhanced protection from redundancy during pregnancy, and new parents would receive extended protections when returning from maternity, adoption and shared parental leave.

If passed, the Bill would extend the duration of the employee's employment protection in redundancy cases to start at the time the employee notifies their employer (that they would be the primary care giver of an expected child or that would take shared parental leave), and last up to 18 months after that child's birth, or reception in the case of adoption.

Currently, under the redundancy during maternity leave provisions of the Maternity and Parental Leave etc. Regulations 1999, an employer must offer an employee on maternity leave, adoption leave, or shared parental leave, another suitable position (if available) within the company or group upon their return to work (before the end of their employment under their existing contract), prioritizing them over any other employee being considered for redundancy, and this during the full duration of the leave. Otherwise, the termination of an employee on such leaves is automatically considered as unfair. In other words, the period of protection is limited to the duration of leave, offering no protection once the employee has returned to work.

United Kingdom: Government opens online consultation on reforms that include proposed changes to annual leave entitlements and pay

Published on 18 May 2023

On 10 May 2023, the government published a policy paper on Smarter regulation to grow the economy, proposing reforms of employment law, including reforms to annual leave pay, Working Time Regulations (WTR), and the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). The government's policy paper also proposes to limit the duration of non-compete clauses to a maximum of three months.

On 12 May 2023, the Department for Business and Trade (DBT) opened an online consultation seeking views on reforms to the WTR, annual leave pay, and the TUPE.

This online consultation documents on the proposed reforms (see below), provide further details on the government's proposals. The public consultation process closes at 11:59 p.m. on 7 July 2023.

The underlying Retained EU Law (Revocation and Reform) Bill and the government's Retained EU employment law reforms consultation together entail significant amendments to the current statutory annual leave and holiday framework, among other proposed changes.

Proposed changes to annual leave entitlement

The government is proposing to consolidate the four weeks of statutory annual leave, referred to as the WTR leave, and the 1.6 weeks' leave, referred to as the additional leave into one statutory annual leave. These leaves stem from the EU's Working Time Directive (2003/88/EC) and remain part of post-Brexit national employment law. Pay for these two types of annual leave is currently calculated differently. Although the consultation documents do not propose an annual leave pay calculation method, it is likely that the pay calculation will also be simplified. The consultation documents state that the government is "seeking views from employers and workers on how holiday pay is currently calculated and how they think it should be defined in legislation."

Proposed changes to atypical workers' annual leave pay

The government further proposes to allow employees to receive annual leave pay in each monthly pay slip (i.e., rolled-up annual leave pay), which would simplify pay calculations which are currently based on patterns of work. This is particularly an issue in the case of atypical workers, such as agency workers. Currently the payment for annual leave cannot be separated from drawing on the leave. With the reforms employers would be able to include an element of rolled-up holiday pay in an atypical worker's wages. The consultation documents refer to paying an additional 12.07% of an atypical worker's hourly wage.

Resources

Consultation-related documents

- Retained EU Employment Law: Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations
- Reducing the administrative burden of the working time regulations: impact assessment

Respond online by 11:59 p.m. on 7 July 2023.