Alliant Global Services

Global Knowledge Center – Legal & Regulatory Updates

January 2023

Contents

Australia

Australia: Proposed Federal Budget to reform government-paid parental leave

Published 15 January 2023

On 25 October 2022, the Treasurer released the proposed 2022-2023 Federal Budget, that among its numerous measures includes a reform of parental leave and parental leave payment provisions to provide additional support to families and advance gender equality.

Proposed parental leave provisions

Based on the Budget Measures, Budget Paper No. 2, starting 1 July 2023 the government would introduce changes to modernize the Paid Parental Leave.

The expanded Paid Parental Leave scheme would transition from a total 20 weeks leave in July 2023 increasing by 2 additional weeks per year until it reaches 26 weeks starting 1 July 2026.

The parental leave entitlement would include a "use it or lose it" portion reserved for each parent to encourage and facilitate both parents to draw on parental leave and to share caring responsibilities more equally.

Single parents would be entitled to the full number of weeks of parental leave.

To further increase flexibility under the program, the government would introduce gender-neutral claiming to allow either parent to claim Paid Parental Leave first.

To expand access, particularly to women who are the primary income earner, eligibility will be expanded through the introduction of a AUD 350,000 family income test, which families can be assessed under if they do not meet the current individual income test, i.e., individuals with a maximum annual taxable income of AUD 151,350 (as of 2021).

Currently, 18 weeks of Parental Leave Pay is available under the Paid Parental Leave Act 2010, funded through general revenue.:

- The Parental Leave Pay which provides new mothers and primary caregivers with up to 18 weeks of paid parental leave after the birth or adoption of a child at a rate based on the national minimum wage; and
- The Dad and Partner Pay, which provides new fathers or partners with up to 2 weeks of paid parental leave at the same rate as Parental Leave Pay. Unlike the Parental Leave Pay, the Dad and Partner Pay cannot be taken with other paid leave.

The proposed Federal Budget document adds that "The Women's Economic Equality Taskforce will assist in the finalization of the changes to the scheme to ensure that the final model supports women's economic participation and gender equality, including the period of concurrence and the most appropriate proportion of "use it or lose it" weeks."

Next steps in the government's budget process

The Federal Budget is submitted to Parliament in early May, typically on the second Tuesday of May, which would be Tuesday 9 May in 2023.

On 5 December 2022 the Assistant Treasurer and Minister for Financial Services called for stakeholder submissions on their views regarding priorities for the 2023-24 Budget by 27 January 2023.

The 2023-24 Budget will build on the Government's work to build a better future for Australia. We invite stakeholders to share their submissions for the 2023-24 Budget by Friday 27 January 2023.

Resources

The 2022-2023 Federal Budget released on 25 October 2022 comprise the following documents:

Budget Paper No. 1: Budget Strategy and Outlook

Budget Paper No. 2: Budget Measures

Budget Paper No. 3: Federal Financial Relations

Budget Paper No. 4: Agency Resourcing

Women's Budget Statement

Belgium

Belgium: New law exempts employees from providing a medical certificate for the first day of a sick leave, resulting in potential obligations for certain employers

Published 3 January 2023

Effective 28 November 2022. employees are exempt up to 3 times per year from having to provide a medical certificate for the first day of a sick leave.

The exemption was introduced to amend regulations requiring the presentation of a medical certificate for sick leave is introduced by the Law on various provisions relating to work incapacity (*La loi du 30 octobre 2022 portant des dispositions diverses relatives à l'incapacité de travail*), which was published in the official Journal on 18 November 2022. The Law amends Article 31 of the Law of 3 July 1978 on employment contracts (*la Loi du 3 juillet 1978 relative aux contrats de travail)*.

Employee exemptions

To the extent that an obligation to provide a medical certificate exists at company-level (either via a collective agreement or based on work regulations) the employee is now exempt from this requirement up to 3 times per year for the first day of a sick leave. An employee may also resort to this exemption upon a request from their employer.

The exemption applies to both one-day sick leaves and to the first day of sick leaves of a longer duration.

Employee obligations

An employee who resorts to this exemption remains obliged to immediately inform their employer of taking sick leave. If the employee is not at their usual place of residence during the first day of sick leave, they must also immediately inform their employer of the address at which they are located during that first day of sick leave.

Ordinarily, meaning aside from this newly introduced exemption:

- An employee on sick leave must notify their employer of their inability to work, except in cases of *force majeure*. Except in case of *force majeure*, the employee must send or deliver the medical certificate within the timeframe provided for by a collective agreement or by the work regulations. If no time limit is provided, the statutory time limit is 2 working days, counting from the day of sickness or the day of receipt of the sick leave request.
- The employee's notification must allow the employer to verify the employee's incapacity for work and to reorganize work during the employee's sick leave';

- The employee must provide a medical certificate to their employer if a collective agreement or work regulations provide for it, or if the employer requests it. The certificate must establish the employee's incapacity to work, mention the expected length of sick leave, and specify whether or not the employee is authorized to go to another location for monitoring purposes.

Employer derogations

Employers with less than 50 employees on 1 January of the calendar year during which the sick leave occurs may derogate from this exemption by means of a collective agreement or work regulations.

To this end, the employer must conclude a new collective agreement or modify the work regulations in manner that clearly indicates that they derogate from this new exemption. In other words, an explicit derogation from this new provision of the law is necessary. An existing obligation under a collective agreement or in work regulations to provide a medical certificate is not sufficient.

Employer Actions

Employers with less than 50 employees on 1 January of a calendar year during which employee sick leaves occurs who wish to derogate from the new provisions exempting employees from having to provide a medical certificate for the first day of a sick leave (up to 3 times per year) by means of a collective agreement or work regulations, must conclude a new collective agreement, or modify their work regulations in manner that explicitly indicates that they derogate from the new statutory exemption.

European Union

EU: European Parliament and the Council reach agreement on the Directive on pay transparency

7 January 2023

On 15 December 2022, the European Parliament and Council reached an agreement reached on pay transparency measures initially proposed on 4 March 2021. Binding pay transparency measures provided for by the proposed EU Directive stem from the European Commission's (EC) Gender Equality Strategy 2020-2025.

Once this agreement is approved by co-legislators, the Directive will enter into force 20 days after publication in the EC Official Journal. EU Member States will then have 3 years to transpose the provisions of the Directive into their national legislation.

The new rules would enhance transparency and provide for effective enforcement of the equal pay principle between women, 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 would have to provide information about the initial pay level or its range in the job vacancy notice or before the job interview. Employers would not be allowed to ask prospective workers about their pay history.

Right to information for employees

Employees would 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.

Reporting on gender pay gap

Employers with 100 employees or more would have to publish their gender pay gap 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 3 years.

Within 5 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 gender pay gap every 3 years.

Joint pay assessment

In cases where gender pay gap 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 would have to 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.

Employer bears 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 would rest with the employer.

Penalties

EU Member States would have to implement specific penalties (including fines) for infringements of the 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.

Resources

Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

France

France: Maximum tax-exempt amount of employers' share of meal vouchers increased by 9.8%

Published 1 January 2023

Effective 1 January 2023, the maximum social contribution and income tax-exempt amount of employers' share of meal vouchers' face value increases to EUR 6.5, up from previously EUR 5.69 which applied to meal vouchers (*titres-restaurant*) issued between 1 September 2022 and 31 December 2022. Before that, the maximum tax-exempt amount of the employer's shared (as from January 2022) was EUR 5.92.

Tax-exempt meal voucher benefit limit

An employer's contribution towards the face value of meal vouchers is an employee benefit which is in principle to be included in an employee's base salary that is subject to income tax and social security contributions.

However, when the employer's share represents 50% to 60% of the face value of the meal voucher and is equal to or less than a given ceiling, then the benefit is exempt from income tax and from employer and employee social contributions, including from the generalized social contribution (*Contribution sociale généralisée, CSG*) and the social debt repayment contribution (*la contribution au remboursement de la dette sociale, CRDS*).

Given this inflation-driven increase, the maximum employer contribution towards the face value of a meal voucher (EUR 6.50) is fully exempt from income tax and social contributions, provided it represents between 50% and 60% of the meal vouchers face value. In other words, provided the meal voucher's face value EUR is between 10.84 (of which 60% is employer-paid) and EUR 13.00 (of which 50% is employer-paid).

Background

During 2022, meal voucher-related regulations has undergone a number of changes, in addition to unexpected increases in their tax-exempt ceiling as well as their daily usage ceiling in response to inflation. Additionally, the scope of products that can be purchased with meal voucher was expanded until 31 December 2023, to include purchases of unprepared meat, starches, uncooked frozen food, etc., provided they are purchased from an individual or business running a restaurant, a hotel restaurant (or a similar business), or from a fruit and vegetable retailer.

Previously, meal vouchers could be used for purchasing directly consumable food, such as readymade meals, sandwiches, salads, dairy products and fruits and vegetables.

Underlying legislation

This latest increase in the maximum tax-exempt amount of employers' share of meal vouchers was introduced by Article 4 of the 2023 Finance Law (*Loi n° 2022-1726 du 30 décembre 2022 de finances pour 2023*), which was published in the Official Journal (*Journal officiel de la République française, JORF*) on 31 December 2022.

Germany

Germany: Employers incentivized to provide inflation bonuses of up to EUR 3,000

Published 5 January 2023

Effective 26 October 2022 through 31 December 2024, newly introduced tax and social contribution exemptions incentivize employers to grant their employees up to EUR 3,000 as an inflation bonus.

The inflation bonus is part of the federal government's third relief package of 3 September 2022 and was introduced by the Law on the temporary reduction of the sales tax rate on gas deliveries via the natural gas network (*Gesetz zur temporären Senkung des Umsatzsteuersatzes auf Gaslieferungen über das Erdgasnetz*), which was promulgated in the Federal Law Gazette (*Bundesgesetzblatt*) on 25 October 2022 and came into effect retroactively as of 1 October 2022.

Key features of the inflation bonus

The Federal Ministry of Finance has posted a detailed frequently asked questions (FOQ) and answers for employers (see Resources section below). The main features of the inflation bones are:

- The inflation bonus may be granted in cash, in kind, or a combination thereof.
- The inflation bonus need not be uniform across all employees or salary bands. The statutory equal treatment allows for differentiated treatment, provided the differentiation is based on objective reasons. For instance, the inflation bonus can be higher for lower paid employees who are proportionally more affected by inflation.
- The payment of the inflation bonus must refer to "inflation", for example in the employee's pay slip.
- Payments can be made in 1 or multiple tranches, provided total tax and social contribution exempt payments made by an employer to an employee between 26 October 2022 and 31 December 2024 do not exceed EUR 3,000.
- The tax-emption limit of EUR 3,000 applies per employer, as opposed to per employee. Meaning that an employee having already received the full inflation bonus from their previous employer, remains eligible to receive the inflation bonus from their new employer.

For additional details, please consult the government's FAQs provided in the section below.

Resources

Federal Ministry of Finance: FAQ on the inflation bonus provided by Section 3 number 11c of the Income Tax Act (*FAQ zur Inflationsausgleichsprämie nach § 3 Nummer 11c Einkommensteuergesetz*)

India

India: Per recent Supreme Court ruling certain employees may set EPS contributions and benefits based on uncapped pay

Published 14 January 2023

According to the Supreme Court ruling of 4 November 2022 on the Employees' Provident Fund Organisation v. Sunil Kumar case, certain employees and certain retirees who were employed prior to 1 September 2014 have until 3 March 2023 (up to 4 months after the ruling) to request that their employers contribute (including for past years of service) to the Employees' Pension Scheme (EPS) based on uncapped pay, and to have their EPS benefits calculated based on uncapped pay as well (i.e., on pay exceeding the current limit of INR 15,000).

EPF, EPS, and the 2014 amendments

Employer and the employee together contribute 12% of an employee's pay (up to a set limit) to the Employee Provident Fund (EPF). The employer's share of contribution (i.e., 8.33% of pay) is contributed towards the EPS and the balance (i.e., 3.67% of pay) is contributed to the EPF.

Prior to September 2014, employer and employees could mutually agree to contribute based on pay exceeding the set limit (which was increased in 2014 to INR 15,000, up from previously INR 6,500); and for pension benefits to be calculated in accordance with actual contributions.

However, amendments introduced by the Employees' Pension (Amendment) Scheme 2014 abolished this option for new EPS members and closed the EPS to new members earning over the newly set limit of INR 15,000.

Additionally, the 2014 amendments introduced a requirement for members exercising such option (i.e., jointly agreed between employer and employee to contribute based on pay exceeding the set limit) to contribute to the EPS an additional 1.16% of the salary exceeding the INR 15,000 cap.

Employees and retirees concerned by the ruling

In light of the intricacies and complexities that may be involved for employers in implementing this ruling, a Circular Pension 2022/54877 issued by the Employees Provident Fund Organisation (EPFO) on 29 December 2022 clarified that the following EPFO subscribers may, by 3 March 2023, elect for higher pension benefits in accordance with the Supreme Court's ruling:

- EPS members having contributed based on a salary that exceeded the prevailing cap of INR 15,000 or INR 6,500 prior to 2014;

- EPFO subscribers who under the EPS prior to the 2014 amendments mutually agree to contribute based on pay exceeding a set limit; and
- EPFO member whose exercise of such option was declined by the EPFO.

Additional contributions based on pay exceeding the set limit eliminated

As indicated above, the 2014 amendments introduced a requirement for employees to contribute to the EPS an additional 1.16% of their salary in excess of the set limit. While the Supreme Court ruling eliminates this requirement, the implementation of this part of the ruling is postponed by 6 months. This delayed implementation is to allow the Parliament to make the necessary amendments to the EPS.

Therefore, for a period of 6 months beyond the Supreme Court's ruling employees contributing on a salary that exceeds the set limit must, as a makeshift measure, continue to contribute the additional 1.16% calculated on pay exceeding the cap. The terms of eventual future adjustments would depend on further EPS amendments.

Employer actions to consider

With the EPFO Circular, the central government has directed regional EPFO offices to implement "the directions contained in para 44 (ix) of the Supreme Court judgement on November 4, 2022" within the stated timeframe and to ensure that the decision taken by the EPFO to implement the ruling is adequately publicized.

As a result of the ruling, employees may potentially opt to contribute more to the EPS moving forward. It is advisable to inform eligible employees who are already contributing on a salary exceeding the INR 15,000 limit that the additional 1.16% contribution requirement will continue to apply for 6 months beyond 4 November 2022, and that future adjustments would depend on pending legislative amendments.

Additionally, where applicable, employers will need to calculate employees' EPS contributions retroactively as from 1 September 2014, but also set processes for calculating and budgeting for the resulting additional contribution amounts designated for the EPF and the amounts to be transferred to the EPS.

Ireland

Ireland: Employer contributions to PRSAs no longer considered as in-kind benefits

Published 9 January 2023

Effective 1 January 2023, employer contributions to Personal Retirement Savings Accounts (PRSA) are no longer considered as benefits in-kind.

The change was introduced by the Finance Act 2022 (Act No. 44 of 2022), which was published in the Official Gazette (*Iris Oifigiúil*) on 20 December 2022. Other notable pension related provisions of the Act are as follows:

- Recipients of lumpsum benefits from a foreign pension plan may request tax-exemption up to a limit, beyond which favorable rates apply up to a higher limit; and
- Tax rules applicable to Pan-European Personal Pension Product (PEPP) in accordance with EU legislation are spelled out.

These pension-related measures of the Act are detailed blow.

Employer contributions to PRSAs

Effective 1 January 2023, employer contributions to PRSAs are no longer considered as benefits in-kind, making PRSAs a more attractive option for providing occupational pension benefits. The Finance Act 2022 amends relevant sections of the Taxes Act updated to ensure that employer and employee contributions to a PRSA will not both be treated as being made by the employee, as required under EU regulation.

The Finance Act 2022 implements the recommendations of the Inter-Departmental Pensions Reform and Taxation Group to the Government, which was pleased on 2 July 2019.

Previously employer contributions to Personal Retirement Savings Accounts (PRSA), in contrast with occupational pension plans, were treated as a benefit-in-kind from a tax perspective, which had swayed government efforts to develop the PRSA as a comparable alternative to occupational pension plans.

Other pension related measure of the Finance Act 2022

Lumpsum payments from foreign pension vehicles

Effective 1 January 2023, recipients of lumpsum payments from a foreign pension plan may claim a tax-exemption on payments of up to EUR 200,000, and a taxation rate of 20% on amounts exceeding EUR 200,000 but under EUR 500,000. All amounts above EUR 500,000 will be subject to the recipient's marginal income tax rate and to the Universal Social Charge.

Taxation of PEPPs

The PEPP is an EU cross-border voluntary personal pension scheme that offers EU citizens a new option to save for retirement. The PEPP pension scheme is complementary to existing national pension regimes. It was introduced by the Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP).

The Finance Act 2022 entails amendments of the Taxes Act to provide for the tax treatment and the tax relief rules applicable to PEPPs (which are similar to Irish PRSAs) and will be treated in the same way from a tax perspective. The tax code will be amended upon the introduction of PEPPs to ensure that they qualify for the same tax treatment as PRSAs. Employer contributions to a PEPP (as is now the case for PRSAs) will be exempt from taxes applicable to employer-provided in-kind benefits.

Ireland: Employer obligation to disclose reportable benefits to Revenue

Published 9 January 2023

Effective 1 January 2023, section 9 of the Finance Act 2022 (Act No. 44 of 2022), entails a new employer obligation to automatically disclose reportable benefits to Revenue.

Employers are required to report details in a return for the following benefits paid to employees in any income tax month:

- Payments of daily remote working daily allowance of EUR 3.20 (in 2023);
- Small benefits availing of the Small Benefit Exemption; and
- Travel and subsistence allowances paid to employees that are treated as tax-exempt.

The Finance Act 2022 (Act No. 44 of 2022) was published in the Official Gazette (Iris *Oifigiúil*) on 20 December 2022.

Employer Actions

In addition to complying the new obligation to automatically disclose reportable benefits paid to employees, employers must ensure that their relevant record keeping procedures are suited for Revenue inspections to avoid unnecessary interest and penalties.

Ireland: Cycle to Work Scheme and the Small Benefit Exemption Scheme amended

Published 9 January 2023

The Finance Act 2022 brings several changes to the terms and tax-exemption limits of the Cycle to Work Scheme and the Small Benefit Exemption Scheme.

The changes were introduced by the Finance Act 2022 (Act No. 44 of 2022), which was published in the Official Gazette (*Iris Oifigiúil*) on 20 December 2022.

Small Benefit Exemption Scheme

Retroactively effective from 1 January 2022, the Finance Act 2022 amends section 112 B of Principal Act (granting of vouchers) so that the total value of the small benefit exemption, i.e., income tax exemptions for up to 2 vouchers or other non-cash benefits which can only be used to purchase goods or services, is increased from previously EUR 500 to EUR 1,000 per year.

Furthermore, the number of tax-exempt benefits, typically in the form of vouchers, that an employer can provide each year to an employee is increased from 1 to 2, subject to the maximum annual cumulative tax-exempt amount of EUR 1,000.

Cycle to Work Scheme

Effective 1 January 2023, the Finance Act 2022 amends section 118 of Principal Act to extend the scope of the Cycle to Work scheme to include cargo bikes and ecargo bikes.

Furthermore, the tax-exempt threshold is increased to EUR 3,000 where the expenses covered (in full or in part) is in connection with the provision of a cargo bicycle,

The Cycle to Work Scheme covers bicycles and equipment up to EUR 1,250. The scheme is a tax-exemption program incentivizing employees to cycle to and from work.

Under the Cycle to Work scheme, employers pay for bicycles and bicycle-related equipment for their employees. The employer reimburses the employer via a salary-sacrifice arrangement. The reimbursed amounts are then exempt from income tax, Pay Related Social Insurance (PRSI), and Universal Social Charge on your repayments.

Japan

Japan: Public disclosure of childcare leave utilization mandated by law

Published 31 January 2023

Effective 1 April 2023, employers with 1,000 employees or more must publicly disclose information pertaining to employees taking childcare leave each year.

More specifically, companies must disclose:

- the percentage of male employees taking childcare leave, or
- the percentage of male employees taking childcare leave or any day off for childcare purposes during the year immediately preceding the data disclosure year.

The disclosure can be made on the employer's website or the designated website prepared by the Ministry of Health, Labor and Welfare.

The mandatory reporting is intended to encourage parents to use childcare and other leave entitlements. The requirements were introduced by Revised Act on Child and Family Care Leave Act (育児・介護休業法が改正されました).

Resources

Explanatory material "Regarding the revision of the Child Care and Family Care Leave Act - Encouraging men to take childcare leave（説明資料「育児・介護休業法の改正について～男性の育児休業取得促進等～」).

Mexico

Mexico: Significant increase in statutory annual leave entitlements apply from employees' next work anniversary

Mexico: Published 4 January 2023

Effective 1 January 2023, the number of days of annual leave entitlement upon an employee's first year of employment doubles from previously 6 days to 12 days, and thereafter gradually increase based on years of service. The minimum number of continuous days of annual leave that employees are entitled to are also increased.

Change in employee entitlement

Employee entitlement to annual leave is governed by Article 76 of the Federal Labor Law (*Ley Federal del Trabajo*). The table below presents the new minimum statutory annual leave entitlements by number of years of service, as detailed above.

Years of service	Annual leave days
1	12
2	14
3	16
4	18
5	20
6 to 10	22
11 to 15	24
16 to 20	26
21 to 25	28
26 to 30	30
31 to 35	32

Prior to the amendments, employees with more than 1 year of service were entitled to employer-paid annual leave, which under no circumstances could be less than 6 working days per year, and which increased by 2 working days, up to a total of 12 days for each subsequent year of service. After the fourth year, the annual leave entitlement increased by 2 days for every 5 years of services.

Furthermore, the Decree stipulates that its provisions apply to both individual agreements and collective labor agreement that are in force on 1 January 2023, provided the entitlements under the provisions of the Decree are more favorable to the employee than those of any agreement.

Changes in drawing on annual leave rules

Article 78 of the Federal Labor Law sets the rules for drawing on annual leave entitlements. Article 78 has been amended to state that an employee is entitled to draw at least 12 days of their annual leave entitlement continuously, and that the entitlement, at the discretion of the employee, may be drawn in a manner and time desired. Prior to the amendment, Article 78 provided that employees had to draw at least 6 days of their annual leave entitlement continuously.

Implementation of increases in employee entitlements

The new provisions apply to all employers and their employees but apply to each employee in accordance with their work anniversary for their employer. The new annual leave entitlement may be implemented for each employee as of 1 January 2023, and the employer must grant the annual leave days within 6 months after the completion of a year of services.

This gradual implementation over the first year, ensures that that the budgetary impact of this change will be automatically smoothed over the months of this first year of implementation.

Other annual leave related expenses

Per Article 80 of the Federal labor law, employers must pay their employees' salary and benefits during their annual leave days. In addition to the paid entitlement, employees are also entitled to an annual leave bonus (referred to as *prima*) representing at a minimum 25% of their corresponding base salary that is payable during the annual period. Therefore, as the annual leave period is increased, so is the annual the corresponding annual leave bonus.

Underlying legislation

The change was introduced by the Decree amending articles 76 and 78 of the Federal Labor Law regarding annual leaves (*Decreto por el que se reforman los artículos 76 y 78 de la Ley Federal del Trabajo, en materia de vacaciones.*) which was published in the Official Gazette (*Diario Oficial de la Federacion*) on 27 December 2023. The Decree amends Articles 76 and 78 of the Federal Labor Law (*Lei Federale del Trabajo*).

Employer Actions

Effective 1 January 2023 all employees with more than 1 year of service are annually entitled to a minimum of 12 employer-paid days of annual leave starting with their first year of service (from previously 6 years). This entitlement gradually increases to in line with the employee's years of service at a more rapid pace that prior to the amendments.

Employers will therefore have to revise their leave policies and any individual or collective agreements that provide less favorable terms than the new minimum annual leave entitlements.

Separately, employers will need account for these significant changes in leave entitlement including the increase in the corresponding annual leave bonuses as part of their annual budgeting exercise, However, given that the new provisions start applying to each employee starting within 6 months of their next work anniversary, the immediate budgetary impact will be automatically smoothed over the months of the 2023 – the first year of implementation.

Finally, employers would be well advised to up-date employee communication materials and inform their employees of their new entitlements.

Poland

Poland: First mandatory PPK auto-enrollment starts in 2023, and employees' past declaration of resignation from PPK expire

Published 15 January 2023

Starting 1 January 2023, certain provisions of the Act of 4 October 2018 on Employee Capital Plans (*Ustawa z dnia 4 października 2018 r. o pracowniczych planach kapitałowych*) come into effect requiring employers to periodically (once every 4 years) auto-enroll their employees aged 18 to 55 years in an employee capital plan (*Pracownicze Plany Kapitalowe - PPK*), regardless of when they initially joined a PPK plan.

This automatic enrollment (provided for by the PPK Act at its inception), or so-called autosave starts in 2023, subject to a mandatory advance notice provided by the employer, prior to 28 February 2023.

All employers are now required to automatically enroll existing and new employees over 18 years but less than 55 years of age in a PPK. Older employees up to the age of 70 may decide to opt into a PPK plan. Employees beyond the age of 70 years are not eligible for enrollment.

Nevertheless, PPK enrollment remains optional, and employees may resubmit (in writing) a declaration of resignation from PPK membership to their employer.

Enrollment of new employees

In terms of the timing of enrollment, Article 16, Para. 1 of the Act of 4 October 2018 on Employee Capital Plans provides that the employer must enroll an employee (aged between 18 and up to 55 years) no earlier than after 14 days after the start of employment and no later than the tenth day of the month following the month in which the employee completed 3 months of employment, unless the employee declares , in writing to the employer, the deadline for not making PPK payments, or they separate from the employer.

Enrollment of existing employees

Regarding employees aged 18 to 55 years who opted out in the past, but do not resubmit a new declaration opting out of the PPK plan by 1 April 2023, the employer must automatically enroll them in a PPK starting 1 March 2023; and must pay contributions (both employer and employee contributions) based on the employee's pay in March 2023 to the PPK by 17 April 2023 at the latest.

However, participation in a PPK remains voluntary, so employees who omitted to submit a new declaration opting out of the PPK prior to 1 April 2023, can still opt out but at a later date. Employees will be able to submit a renewed declaration of resignation from PPK from 1 March 2023.

The next automatic enrollments will be in 2027, then 2031, etc. Auto-enrollment dates and deadlines are the same for all employers, regardless the PPK implementation dates.

Noteworthy dates

By 28 February 2023, employers must inform all employees who have submitted a declaration of resignation from participating in the PPK about the automating resumption of enrollment and contribution payments to the PPK. This date is also the last day of validity of any previously submitted declaration of resignation.

The first payments will be calculated and withheld based employees' salaries paid in March 2023. The employer will transfer them to the financial institution between 1 April 2023 and 17 April 2023. If an employee submits a declaration of resignation from the PPK before the withheld contributions are transferred to the financial institution, the employer will have to adjust the recorded contribution amounts and reimburse the employee.

There is no statutory date for the start of the information dissemination specifically related to PPK auto-enrollment. However, the required auto-enrollment information campaign is not to be melded with employee training activities. It is worth noting that this information must also be communicated to new recruits before 1 March 2023.

Declarations of resignation cease to apply from 1 March 2023, regardless of when the declaration was submitted to the employer.

Employer Actions

Starting 1 January 2023, certain provisions of the Act of 4 October 2018 on Employee Capital Plans come into effect requiring employers automatically enroll their employees aged 18 to 55 years in a PPK, regardless of when they initially joined a PPK plan.

Additionally, the provisions of the Act require employers to implement an information campaign to inform their existing and new employees of the automatic PPK enrollment and of their rights by 28 February 2023. While there is no statutory start date for the information campaign, it is not to be combined with ordinary employee training activities.

Employers are therefore advised to design and implement a PPK auto-enrollment information campaign,

Poland: Human Rights Commissioner triggers the delayed implementation of the EU Work-Life Balance

Published 26 January 2023

On 26 January 2023, the Sejm (the Lower House of Parliament) held its first reading of the Bill amending the Labor Code and some other acts (*Ustawa z dnia o zmianie ustawy – Kodeks pracy oraz niektórych innych ustaw*). The Bill would transpose the provisions of 2 EU Directives into Polish legislation, namely:

- The Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (also referred to as the EU Work-Life Balance Directive, and
- The EU Directive 2019/1152 on Transparent and Predictable Working Conditions

After the first reading, the Bill was referred for further work by the Parliamentary Social Policy and Family Committee. The due date for the report by the committee has been set for 7 February 2023.

Poland is one of the few EU Member States that has missed the early August 2022 deadlines for implementing the above EU Directives.

The final provisions of the Bill would enter into force 21 days after being published in Official Journal (*Dziennik Ustaw)*.

This focus of this article is placed on the implementation of the EU Work-Life Balance Directive,

Human Rights Commissioner triggers the delayed implementation of EU Directives

On 9 January 2023 with a publication in Poland's Public Information Bulletin [Work-life balance for parents and carers. RPO: the deadline for implementing the directive has expired] the Commissioner for Human Rights drew the attention to the need to implement Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

The deadline for transposing the provisions of the EU Work-life Balance Directive into EU Member State's national legislation expired on 2 August 2022.

On 10 January 2022, the government adopted a Bill amending the Labor Code and some other acts (No. UC 118) that would implement 2 EU directives, including the EU Directive on work-life balance for parents and carers.

On 11 January 2023, the Bill was submitted to the Sejm, and on 12 January 2023, the Bill was referred for its first reading by the Sejm.

On 26 January 2023, the first reading of the Bill was held in the Sejm,

Key work-life balance provisions of the Bill

Key current provisions of the Bill that would *inter alia* transpose the provisions of the EU Work-Life Balance Directive into local legislation (subject to amendments) are summarized below.

The proposed amendments by the Bill would provide the minimum requirements to achieve equality between women and men in terms of labor market opportunities and treatment at work by making it easier for employees who are parents or carers to reconcile work and family life and obligations. To this end, The Bill would amend existing family-related leave and working time provisions as summarized in the sections below.

Parental leave

The Bill would bring a number of changes to current parental leave provisions. In particular, employees would have individual entitlements to parental leave. Currently parental leave is a per family entitlement.

The total duration of parental leave for both parents is to be up to 41 weeks (in the case of giving birth to 1 child) or up to 43 weeks (in the case of multiple births). The total length of the leave for both parents of a child that is seriously ill would be increased by 24 weeks, i.e., up to 65 weeks (in the case of the birth of 1 child), or up to 67 weeks (in the case of wins),

Currently, 32 weeks of parental are provided for the mother and the father, i.e., 32 weeks per family in total. This means that is the mother takes 28 weeks, the father can only take 4 weeks in total.

The entitlement to parental leave would become independent of the child's mother remaining employed (i.e., contributing to social insurance) on the day of a child's birth.

A non-transferable parental leave of up to 9 weeks would be introduced for each parent (up from currently 1 month). Meaning that each parent could take up to 32/34 weeks of the parental leave, and 56/58 week in the case of parents of seriously ill children,

The Bill also provides for a a social security allowance for the entire duration of the parental leave corresponding to 70%. of base salary for both parents. Currently the payment during parental leave depends on the payment option selected by the mother when taking her taking Maternity leave, and is either 60% of pay or 80% of pay.

Unpaid carer's leave

Employees would be able to take unpaid carer's leave of 5 days per calendar year to care or provide support to a relative (i.e., a child, a parent, a spouse, or household member) who needs care or significant support for serious medical reasons.

Partially paid force Majeure leaves

The Bill would introduce a family-related *force majeure* leave of 2 days or 16 hours per calendar year, during which the employee would remain entitled to half of their employer paid salary.

Flexible work arrangements

The Bill's provisions would allow for wider use of flexible working arrangements, including through remote working, flexible working schedules (e.g., flexible working time, individualized working time, weekend working time, shortened work weeks and intermittent working time) as well as part-time work.

Employee protection measures

The Bill includes protection measures against any unfavorable treatment by an employer or negative consequences for an employee exercising their entitlements under the provisions proposed by the Bill;

The Bill's provisions would prohibit termination and/or any preparatory work by the employee to terminate an employee during an employee's pregnancy and maternity leaves, as well as from the date of an employee's application for: maternity leave, paternity leave, parental leave, or carer's leave. This employment protection would last through the end of these family=-related leaves.

Similarly, employees would be protected against termination for exercising their right to apply flexible working arrangements.

Sanctions for non-compliance

The Bill provides for sanctions for violation of national legislation within the scope covered by the provisions of the EU Directive and any provisions related to its implementation.

Delays in implementation of EU Directives and employees' ability to derive rights directly from the EU Directive

Once approved by the European Parliament, an EU Directive is translated in each Member state's official language(s) and then published in the EU Official Journal. EU Member States then have (typically) 2 years, and this case 3 years to ensure that the provisions of the Directive are transposed into their national legislation in order to become effective at national level.

When a Member State fails to transpose a EU Directive in a timely manner (as is the case of Poland in this case) or fails to do it at all, the EU Directive takes "direct effect", meaning that individuals become able to derive rights from that EU Directive directly despite its provisions not being transposed into domestic legislation.

Resources

Government Press Release of 10 January 2023 (in Polish)
