



Year in review and 2024 preview: Top trends for global employers

December 5, 2023

Agenda

Top trends for global employers

1. Focus on work-life fit and employee wellness continues
2. Pay equity movement gains steam
3. AI takes off – but not over (yet)
4. Discrimination and harassment protections increase
5. New ESG requirements take root, with some pushback
6. Whistleblower activity – and risk – remains high
7. Momentum for greater worker mobility and protections continues
8. Wage and hour and working time issues persist
9. The labor movement gains ground
10. Business expansion and contraction continue amid economic and geopolitical uncertainty



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1. Focus on work-life fit and employee wellness continues

Work-life fit and employee well-being

Employers and legislators alike are moving to improve the work-life framework through policy

Remote and hybrid working

Right to disconnect

Leave/family friendly laws

Employee health and wellbeing



Demand for remote work continues

But tensions as some employer push to return to office

Conflict over remote working could heat up in 2024

- The proportion of Americans working from home has fallen to the lowest level since the pandemic started, according to Census Bureau data
- Yet, according to one recent survey, about 70 percent of workers who can do their jobs off-site still work remotely either all or some days
- Data points to continued demand for remote work and benefits:
 - Higher job satisfaction and retention
 - Record labor force participation rate among women of prime working age
 - Better work-life balance
- The data is mixed on whether working from home or the office is more productive

Remote and hybrid working

New and upcoming laws include:

Czech Republic	Employees who telework must have a written agreement with their employer.
Mexico	The Telework NOM-037 (effective as of today, December 5) sets out health and safety requirements for those teleworking. Key obligations include a written telework policy; checklists on health and safety conditions and checks starting when telework starts and carried out periodically; health and safety verification by the Health and Safety commission established in the workplace; and special protections for cases of domestic violence.
Poland	Amendments to the Labour Code took effect in April 2023 and impose various requirements for remote work. From 1 July 2023, the Framework Agreement on cross-border teleworking took effect.
Thailand	The amended Labour Protection Act 2023 took effect on April 18, 2023. Key obligations include a written agreement with prescribed details, a right to disconnect, and entitlement to same rights as those working in the office.

Key issues when homeworking or returning to the office

Homeworking implementation

- Is consultation/consent required?
- What policies or agreements are required?
- Working hours, place of work, and health and safety
- Equipment, travel, and expenses
- Information security and data protection
- Time and attendance management
- Digital nomads – Immigration, tax (permanent establishment), choice of law
- Ending arrangements

Return to office implementation

- Is consultation/consent required?
- What steps are required to enforce a policy?
 - Does the policy need to be incorporated into internal rules/work rules? Or translated?
 - Are there other implementation requirements? (eg, notification)
- Is there an applicable CBA or other collective agreement or group that could be relevant?
- What exemptions are available to employees? (eg, statutory right to request work from home, accommodations), and can an employer refuse?
- What steps are required to enforce a policy? Can an employee be disciplined/dismissed?

Right to disconnect

More jurisdictions recognize a right to disconnect

- Countries that provide some form of right to disconnect generally require companies to have a policy in place that addresses:
 - The company's approach to disconnect from work and expectations for employees when working outside core business hours and during leave and
 - The use of IT tools outside of working hours
- Does not always mean that a policy must be implemented or that employees have an enforceable right to disconnect
- More jurisdictions are introducing the right to disconnect (eg, Belgium; Colombia; France; Ireland; Italy; Luxembourg; Thailand; Mexico; Portugal; Spain; Ontario, Canada)

Family friendly laws

Trends

Predictable work
schedules

Laws protecting
caregivers and
addressing challenges
specific to women

Improved parental and
family leave (eg,
increased benefits, new
programs, expanded
definition of family
members)

Protections for pregnant
and breastfeeding
employees

Expanded leave rights
(eg, sick, bereavement)/
more flexible use of
leave

Increasing PTO and
holidays

Reduced hours/flexible
working

4-day workweek

















2. Pay equity movement gains steam


Momentum around pay equity continues

- Countries continue to take up measures aimed at tackling pay equity issues
- According to the World Economic Forum's latest global gender pay report, the global gender gap score for 2023 stands at 68.4% closed (with no country at full gender parity)
- Data suggests new legislation is driving companies to improve pay data, pay structures and pay equity
- But it's complicated: Companies must contend with varying requirements and anticipate new risks



The global landscape

Mandatory gender pay gap reporting					
EMEA		AsiaPac		Americas	
Austria		Australia		Canada	
Belgium		India		United States	
Denmark		Israel		Brazil	
Finland		Japan			
France		South Korea			
Germany					
Ireland					
Italy					
Israel					
Norway					
Portugal					
South Africa					
Spain					
Sweden					
UK					

 = legal sanctions for non-compliance

No mandatory gender pay gap reporting requirements					
EMEA		AsiaPac		Americas	
Czech Republic	Nigeria	China		Argentina	
Hungary	Kenya	Hong Kong		Chile	
Luxembourg	Uganda	Philippines		Colombia	
Netherlands		Singapore		Mexico	
Poland		Thailand		Peru	
Romania		Taiwan		Venezuela	
Slovakia		Malaysia			
Switzerland		New Zealand			
Bahrain					
Jordan					
Kuwait					
Oman					
Qatar					
Saudi Arabia					
UAE					
Morocco					

In Focus: The new EU directive

Presented by: Ciara McLoughlin, Employment – Dublin

The EU Equal Pay and Pay Transparency Directive

Pay audit if 5-percent unjustified difference in pay which is not remedied within 6 months of report



In Focus: Pay transparency in Canada

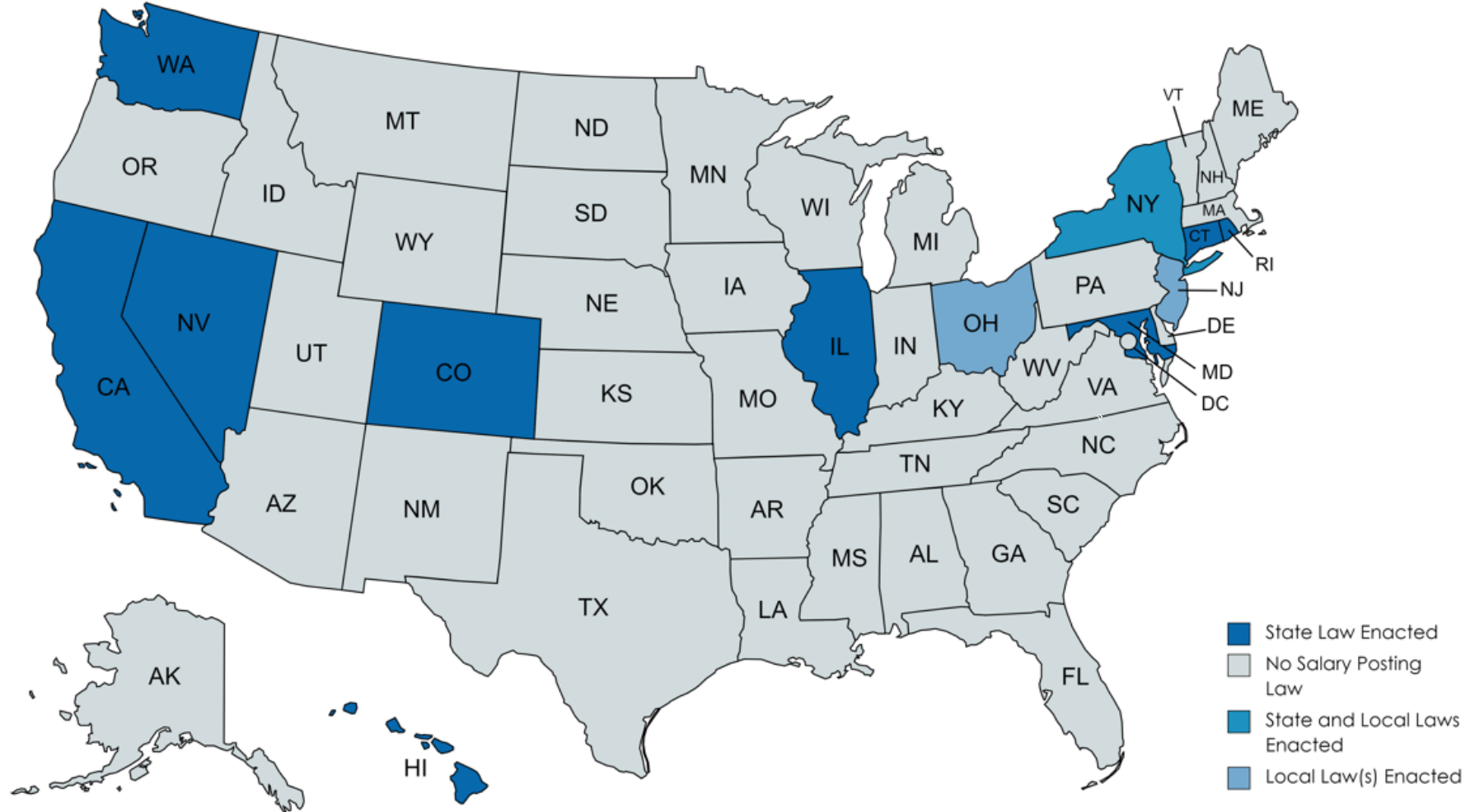
Presented by: Correna Jones, Employment – Calgary

In Focus: Pay transparency in the US

Presented by: Alison Lewandoski, Employment – New York

Jurisdictions with pay transparency laws

Focus on the US



Other jurisdictions may have pay equity and/or salary history laws (in addition to standard pay discrimination laws).

Pay equity: towards greater transparency

Benefits v. challenges of pay transparency

Benefits



- Pay equity for employees
- Market reputation - no naming and shaming
- Avoid financial sanctions
- Opportunity for accreditation
- Readiness for new laws on the horizon

Challenges



- May highlight local and global pay inequities and lead to:
 - Equal pay claims based on comparators in both local or other jurisdictions
 - Employee or industrial unrest, eg, strikes
- Pay audits may be disclosable in litigation unless privilege applies

3. AI takes off – but not over (yet)

Workforce Issues – the people impact of AI

Regardless of any new legislation, businesses need to determine how existing laws apply in the context of AI

Consultation and
process steps

Workforce reductions

Changes in
roles/duties or terms
and conditions

Skills gap and
resourcing: upskilling
and AI literacy

Resistance from
unions, works
councils and other
bodies

Performance
management

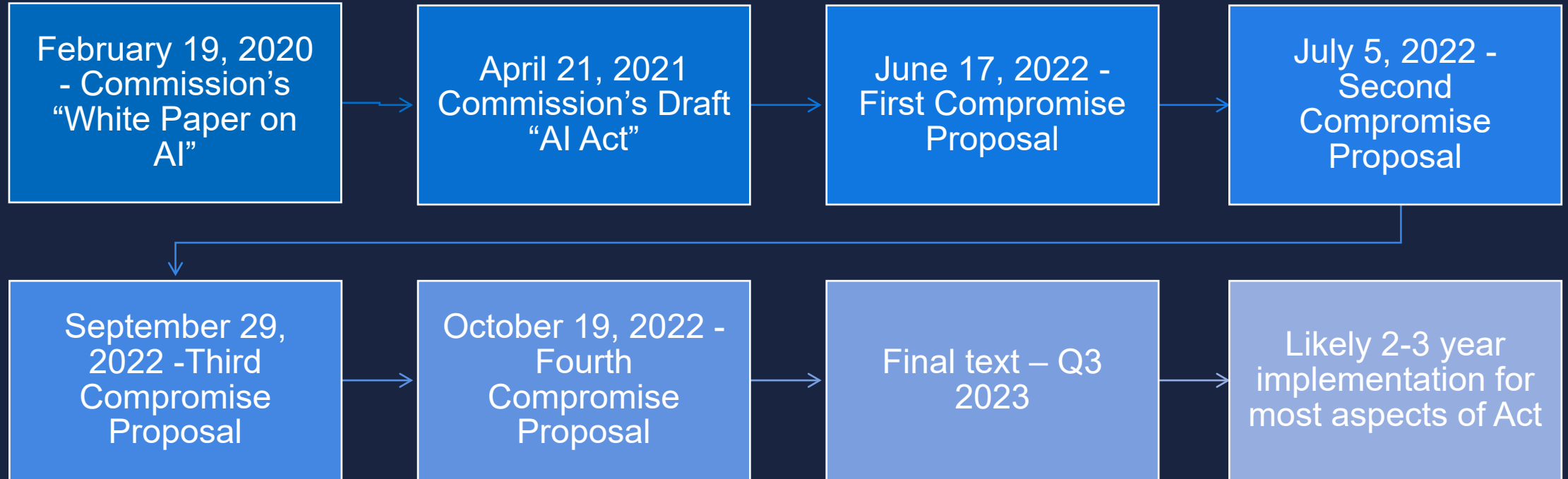
Employee mental
and physical
wellbeing

Impact on existing
statutory rights –
right to disconnect,
flexible working,
whistleblowing

In Focus: US AI legal and regulatory environment

Presented by: Todd Mobley, Employment – Dallas

EU AI Regulation



4. Discrimination and harassment protections increase

New discrimination and harassment laws

Focus on prevention and elimination of harassment in the workplace

Extend period to bring claims

Allow for increased damages and penalties

Strengthen government enforcement and oversight

Require training

Limit the use of non-disclosure, non-disparagement and confidentiality agreements

Impose bans on mandatory arbitration of sexual assault and harassment claims

In Focus: Australia Fair Work Legislation Amendment

Presented by: Clancy King, Employment – Sydney

In Focus: Significant changes in Singapore

Presented by: David Smail, Employment – Singapore

5. New ESG requirements take root, with some pushback

Environmental, social and governance (ESG)

Trends

Board, management
and workforce diversity

Pay equity

Human rights and
supply chain integrity

Climate risk

Enhanced reporting

ESG reporting

EU Corporate Sustainability Reporting Directive (CSRD)

- On 28 November 2022, the European Council gave its final approval to the CSRD
- Who does the CSRD apply to?
 - All large companies meeting certain balance sheet/turnover/employee thresholds, whether listed or not
 - SMEs with securities listed on an EU regulated market, except micro entities (although an opt out option may be available for listed SMEs during a transitional period, exempting them from the application of the CSRD until 2028), and
 - Non-EU companies, if they generate a net turnover of EUR 150 million in the EU and have at least one subsidiary/branch in the EU exceeding certain thresholds
- When will the new rules apply?
 - The rules will be applied in 4 stages:
 - For the financial year 2024, reporting in 2025 will be for companies already subject to the Non-Financial Reporting Directive (NFRD)
 - For the financial year 2025, reporting in 2026 will be for large companies not currently subject to the NFRD
 - For the financial year 2026, reporting in 2027 will be for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings
 - For the financial year 2028, reporting in 2029 for non-EU enterprises with a net turnover of 150 million+ in the EU, if they have at least one subsidiary in the EU

ESG reporting

EU Corporate Sustainability Due Diligence Directive (CSDDD/CS3D)

- Proposals set out a comprehensive framework of corporate due diligence for companies to identify actual or potential risks to human rights and the environment and to establish processes to mitigate risks
- The rules will apply to a company's "chain of activities" and operations across the company's subsidiaries and value chain
- CSDDD will also establish consistency across different EU directives and harmonize ESG due diligence laws.
- Subjects under negotiation include:
 - The turnover and employee thresholds for companies in scope
 - The applicability of the Directive to financial service companies
 - The scope of directors' duties regarding due diligence
 - The scope of due diligence requirements across the "supply chain," the "chain of activities," or the "value chain"
 - The type of adverse human rights and environmental impacts that should be identified in due diligence and priorities
 - The liability for civil damages, and whether this should be dependent on proof of fault in the form of intent or negligence
 - The extent of penal sanctions for non-compliance
 - The ability for certain obligations to be met collectively, rather than at the entity level and
 - The interaction of the Directive with existing legislation adopted in a number of member states, namely Germany and France

D&I remains a high priority

Trends

- D&I is a key focus of the “S” in ESG metrics
- New board and workforce diversity laws
 - EU directive on improving gender balance on corporate boards
 - US: SEC board diversity disclosure rule (litigation ongoing), California Diversity Reporting Law for venture capital and private equity firms
 - Netherlands quota for female members in leadership positions in large companies
 - South Africa Employment Equity Act 1998 (EEA)
 - Brazil reporting of race and ethnicity data
- Increasing transparency and measurement of progress
- Shift in focus towards belonging
- Diversity initiatives face new risks in some jurisdictions

In Focus: Impact of the US Supreme Court decision in *Students for Fair Admissions* on employer diversity initiatives

Presented by: Brian Kaplan, Employment – New York

6. Whistleblower activity – and risk – remains high

Recap: EU Whistleblower Protection Directive

Directive

- EU 2019/1937 of 23 October 2019 on the **protection of persons who report breaches of Union law**

Implementation

- Implementation deadline for Member States was **17 December 2021**, but many only complied in 2023
- 25 out of 27 now implemented (Poland and Estonia in progress)
- For businesses with 250+ workers most country deadlines for implementing internal reporting channels now passed
- Deadline for businesses with 50-249 workers can be delayed to **17 December 2023**, many countries using this option

Scope

- Breaches of certain EU laws including:
 - Public procurement
 - Public health
 - Financial services
 - Product safety
 - Transport safety
 - Environment protection
 - Radiation protection/ nuclear safety
 - Food and feed safety, animal welfare
 - Consumer protection
 - Protection of privacy and personal data
- Scope extended in most Member States

Protection

- Protection covers a wide range of individuals who report breaches, including **current and former**:
 - Workers including part-time, fixed-term, and agency workers
 - Self-employed
 - Shareholders
 - Contractors, subcontractors, suppliers
 - Volunteers
 - Trainees
 - Job candidates/new recruits

Key provisions

- Comprehensive protection against retaliation for people who report relevant breaches
- Obligation for employers to **establish internal reporting and follow-up channels**
- Whistleblower can choose to report internally or externally

In Focus: EU directive implementation challenges

Presented by: George Nicholson, Employment – Manchester

Sanctions

Consider potential sanctions when assessing risk tolerance level.

	Criminal sanctions	Administrative sanctions	Individual enforcement action	Risk of personal liability
Not implementing internal reporting channel	Denmark, Ireland, Belgium	Netherlands, Romania, Italy, Portugal, Sweden, Germany, Belgium		France Ireland Portugal Denmark Belgium
Preventing or hindering reporting	France, Ireland, Belgium	Italy, Portugal, Belgium, Germany, Romania	Netherlands, Sweden	
Retaliation / Penalisation	Belgium, Ireland	Italy, Spain, Belgium, France, Portugal, Germany, Romania	Romania, Belgium, France, Portugal, Denmark, Sweden, Germany, Ireland	
Breach of confidentiality	Sweden, Netherlands, Belgium, Ireland, Denmark, France	Italy, Spain, Belgium, Portugal, Germany, Romania	Ireland	

Other recent developments

New laws and enforcement activity

- US:
 - The SEC received another record high number of whistleblower tips
 - The agency is scrutinizing provisions in employment agreements and separation agreements for violations of Rule 21F-17, which protects against actions taken to impede whistleblowers
 - The US Supreme Court is expected to weigh in next year on the issue of whether whistleblowers must prove their employer acted with a “retaliatory intent”
- New Zealand:
 - The Protected Disclosures (Protection of Whistleblowers) Act 2022 extends the definition of serious wrongdoing to cover private sector use of public funds and behaviour that is a serious risk to the health and safety of an individual
 - The Act allows for reporting directly to an appropriate authority at any time, rather than being required to report internally in the first instance
 - The Act strengthens protections for disclosers by specifying what a receiver of a disclosure should do when they receive a complaint

7. Momentum for greater worker mobility and protections continues

Greater worker mobility and protections

Employers are reviewing their agreements, policies and practices in response to new laws that:

Promote worker mobility

Focus on protections for gig and “employee-like” forms of work

Limit the use of fixed-term and replacement contracts

Impose new data privacy protections



Employee mobility

Employers could see more limitations on non-competes in 2024

- US
 - Federal Trade Commission proposed rule banning non-competes
 - FTC and DOJ enforcement activity
 - NLRB GC memo and litigation
 - New state laws
 - Recent court decisions
- Australia: The Government has requested advice from the Australian Competition and Consumer Commission about competitive impacts of post-employment restraints, which could result in legislation limiting or prohibiting their use in 2024
- UK: New reforms to post-termination restrictions are expected in 2024

In Focus: Data privacy protections

Presented by: Johnny Choi, Employment – Hong Kong

8. Wage and hour and working time issues persist

Wage and hour trends

Minimum wage increases/
minimum exempt salary
increases

Increasing risk related to
misclassification of workers

New time recording
requirements

New protections for gig and
“employee-like” forms of
work

Focus on wage theft, with
increased enforcement and
penalties

In Focus: Time tracking legislation in Germany

Presented by: Henriette Norda, Employment – Hamburg

In Focus: Wage and hour risk in the US

Presented by: Julie Dunne, Employment – San Diego

9. The labor movement gains ground

A resurgence in labor activity

- Economic uncertainty, new laws and regulations, and other drivers are contributing to a surge in union and works council activity worldwide
- For example:
 - US
 - Presidential Memorandum outlining United States' First Global Labor Strategy
 - National Labor Relations Board (NLRB) rules, decisions and memoranda
 - State laws (eg, New York ban on captive audience meetings)
 - EU
 - Draft Directive on European Works Councils
 - Australia
 - Increase in streams and scope for multi-employer enterprise bargaining and agreements

In Focus: Labor developments in the US

Presented by: Joseph Piesco, Employment – New York

10. Contraction and expansion continue amid economic and geopolitical uncertainty

Expansion

Key considerations when going global

- Geopolitical developments
- Corporate and tax considerations
- Engagement options:
 - Professional employer organization/employer of record
 - Global employment organization/global employment company
 - Contractors
 - Acqui-hire
 - Direct hire
 - Secondments
- Payroll and benefits
- Immigration
- Local employment law compliance
- Exit strategy

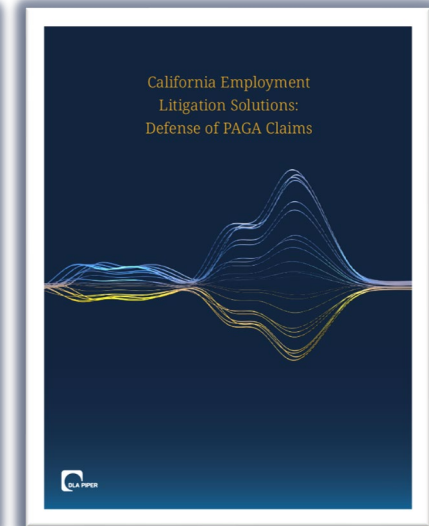
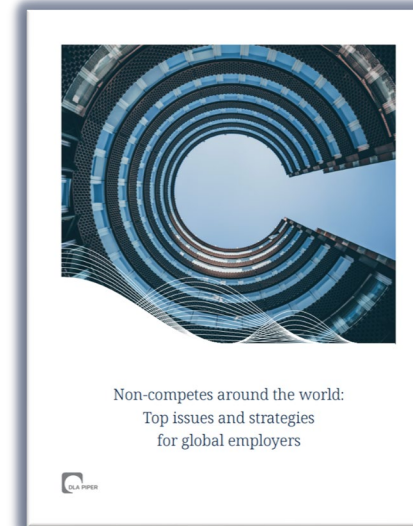
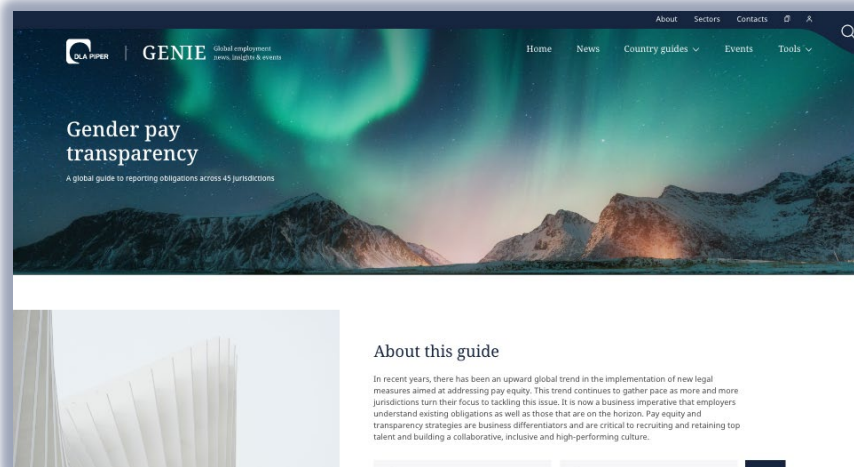
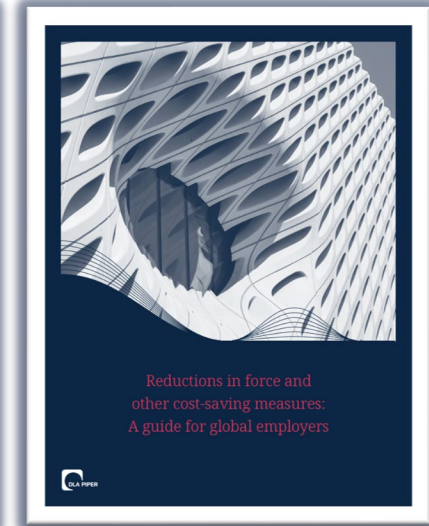
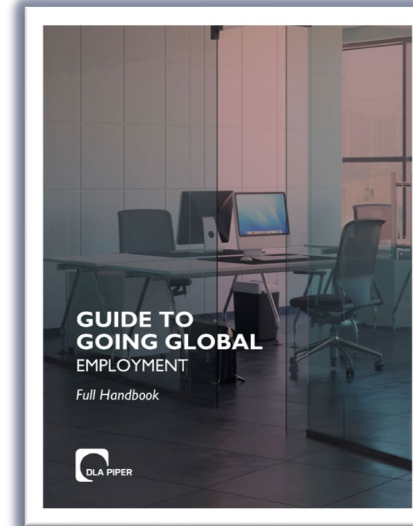
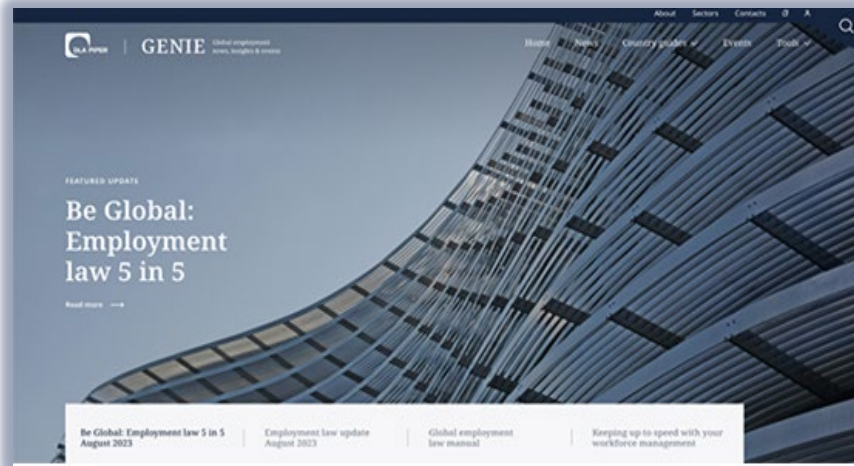
Reductions in force

Key issues



Global employment resources

[Click here to check out our new GENIE site \(www.dlapipergenie.com\)](http://www.dlapipergenie.com)



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