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International Employment Law

ROSELYN SANDS, NICOLAS ETCHEPARRE, K. LESLI LIGORNER, SARA KHOJA, MASSIMO AUDISIO, JUAN NÁJERA, SUSAN DE SILVA, SONIA CORTES, AND GEORGINA MCADAM*

This article reviews developments in international employment law during 2013 in the following selected jurisdictions: China, France, the Gulf Cooperation Council member States, Hong Kong, Italy, Mexico, Singapore, and Spain.

I. China

A. RESTRICTIVE MEASURES ON SPECIFIC TYPES OF LABOR SCHEMES

On July 1, 2013, an amendment to the People's Republic of China (PRC) Labor Contract Law came into effect to further restrict the use of labor dispatch arrangements in China (except for representative offices).[1] The amendment limits the hiring of dispatched workers to temporary, auxiliary, or substitute positions; provides the first definitions of these positions; and provides increased penalties for breach of the labor dispatch provisions.[2] The percentage of an employer's workers hired under labor dispatch arrangements will also be capped (likely at 10 percent of the employer's workforce; measured by employing entity), and those positions that are deemed "auxiliary" are subject to employee consultation. Although the amendment was originally meant to take effect from July 1, 2013, enforcement is likely to be delayed for an additional two years in order to give companies more time to adapt to this substantial change to this business model used across the country and by multinational companies as well as domestic companies.[3]

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* Roselyn Sands and Nicolas Etcheparre served as committee editors. Ms. Sands also authored the section on France. K. Lesli Ligorner authored the sections on China and Hong Kong. Sara Khoja authored the section on the Gulf Cooperation Council Member States. Massimo Audisio authored the section on Italy. Juan Nájera authored the section on Mexico. Susan de Silva authored the section on Singapore. Sonia Cortes authored the section on Spain. Georgina McAdam authored the section on the United Kingdom.

1. *China Revises Labor Contract Law*, CHINA BRIEFING (Mar. 18, 2013), http://www.china-briefing.com/news/2013/03/18/china-revises-labor-contract-law.html.

2. *Id.*

3. *See* Jeanette Yu, *Newly Amended PRC Labor Contract Law Imposing Stricter Control over the Use of Seconded Employees*, LEXOLOGY (Jan. 14, 2014), http://www.lexology.com/library/detail.aspx?g=eec02e59-c329-4c77-aafb-4b4c19324c95.

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Also, on July 1, 2013, the PRC Exit and Entry Law came into effect, tightening regulation on the employment of foreigners in China.[4] A regulation issued by the State Council followed, effective on September 1, 2013, and made changes to the existing visas and permanent residency arrangements for foreigners, including introducing new visa categories and splitting existing categories.[5] These developments will assist the PRC government to regulate, monitor, and control foreigners' activities in the PRC more effectively, and it is expected that scrutiny of all foreigners living and working within the PRC will increase.

B. Non-Compete Compensation

On February 1, 2013, an interpretation of the Supreme People's Court came into force, which, among other things, addresses enforcement of non-compete covenants. The interpretation suggests a national benchmark for the minimum level of compensation that must be paid to a former employee for compliance with a non-compete, where the written agreement is silent; this minimum is 30 percent of the employee's average monthly remuneration. In addition, if an employer wishes to terminate the post-employment restriction before its expiry, the employer must provide three months' prior notice.[6]

C. Data Protection

New data protection guidelines issued by the Ministry of Information and Industry of China came into force on February 1, 2013.[7] The guidelines regulate the collection, use, processing, transfer, retention, and erasure of personal information and, importantly, impose an obligation to obtain consent of an individual whose data is being collected. Special rules apply to "sensitive" personal information.[8] Although the guidelines are not binding, all entities in the PRC are encouraged and expected to follow them as a matter of best practice.

II. France

A. New Procedure for Redundancy/Works Council Consultation

The French procedure for collective redundancies was the subject of a considerable overhaul in 2013. In 2013, the French socialist government introduced a law entitled the "law

4. Zhong Huá Rén Mín Gòng Hé Guó Chu Jìng Rù Jìng Guan Li Fa (中华人民共和国出境入境管理法) [Exit and Entry Administration Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., June 30, 2012, effective July 1, 2013), *available at* http://www.nyconsulate.prchina.org/eng/lsyw/lszjx/newentryexitlaw/.

5. *Update China Visa Rules And Policy in Shanghai, China*, Visa In China, http://www.visainchina.com/visa2.htm (last visited Mar. 22, 2014).

6. Victoria Ding & Ron Cai, *Chinese Supreme Court Guidelines Make It Easier for Employers to Enforce Non-Compete Covenants*, Davis Wright Tremaine (May 3, 2013), http://www.dwt.com/Chinese-Supreme-Court-Guidelines-Make-It-Easier-for-Employers-to-Enforce-Non-Compete-Covenants-05-03-2013/.

7. Graham Greenleaf & George Tian, *China Expands Data Protection Through 2013 Guidelines: A 'Third Line' for Personal Information Protection with a Translation of the Guidelines*, 122 Privacy L. & Bus. Int'l Rep. 1, 2 (2013).

8. *Id.*

for the safeguard of employment" that aims to simplify such redundancy procedures in France. The new law provides that a redundancy process may be more carefully managed through two potential avenues—a collectively bargained company-wide agreement with unions or a timeline submitted to and approved by the Labor administration. Both potential avenues require that the Works' Council be informed and be consulted twice on the redundancy project as well as the potential timeline. In addition, French employers are legally obliged to define a "plan for the safeguard of employment" that must contain social measures aiming to reduce redundancies. Under the new provisions of the law for the safeguard of employment, the labor administration now has the right to make any observations and ask any question regarding the contents of such a plan, and the employer is obliged to answer all of them, even if he must not necessarily modify his plan accordingly.[9]

B. Co-Employment

French case law has also seen a new concept emerge in the notion of "co-employment." Indeed, over the past few years, certain labor courts as well as courts of appeal rendered decisions where the employees of two distinct companies were considered as employed by both entities if the two companies shared "a common management, common interests and the same activity." The consequence of co-employment is that both "employers" now share, collectively, the burden of employment, which includes the payment of salaries and even damages for wrongful dismissal.

On August 30, 2013, a French Labor Court rendered a decision in which the German parent company of a French subsidiary of Continental was deemed liable for the wrongful dismissal of 678 employees and was ordered to pay damages to each employee amounting to thirty to thirty-six months of his salary, on average.[10] Both the parent and subsidiary have filed an appeal.

III. Gulf Cooperation Council Member States

A. Increased Employee Protection

Two thousand thirteen saw a continued trend across the Gulf Cooperation Council (GCC) region with regard to legislative reform in the employment field. In the United Arab Emirates, the Emirate of Dubai announced new legislation obliging employers to provide health insurance benefit to all employees. The legislation is due to come into force in 2014 and is modeled on the legislation currently applicable in Abu Dhabi that provides for extensive coverage, including dental care. Qatar also introduced similar legislation this year, and the obligation to provide this benefit to employees extends to the employee's spouse and up to three children.[11]

9. Roselyn S. Sands, *France - New French Labor & Employment Law Legislation Brings Significant Changes – Effective Date June 17, 2013*, The Int'l Emp. Law. (Am. Bar Assoc. Section of Int'l Law, New York, N.Y.), Aug. 7, 2013, *available at* http://intemploy.blogspot.com/2013/08/france-new-french-labor-employment-law.html.

10. *Continental 678 Employees Compensated*, Int'l & World Rep. (Aug. 31, 2013), http://eaforum.org/continental-678-former-employees-compensated/.

11. Rebecca Ford et al., *Roll out of Dubai's Compulsory Health Insurance Scheme*, Clyde & Co (Dec. 15, 2013), http://www.clydeco.com/insight/updates/launch-of-compulsory-health-insurance-in-dubai.

B. Job Protection for Nationals

In another regional trend, GCC governments sought to promote the employment of nationals within the private sector by limiting the availability of visas for foreign nationals to employers in the private sector. The Kingdom of Saudi Arabia (KSA) developed its Nitiqat system, introduced in August 2011 and designed to categorize employers by size and sector, applying a quota to every employer for employing KSA nationals within the business.[12] In 2013, the quotas were refined further and made stricter for smaller employers.[13] Alongside the Nitiqat system, the Ministry of Interior and Ministry of Labor launched a series of inspections designed to root out illegal workers. A seven-month amnesty period ending in November 2013 was declared, and regulations were issued to permit individuals to regularize their status or leave the country.[14] In Kuwait, measures were also introduced to limit expatriate workers and included limitation of day-to-day activities such as the issue of driving licenses.

C. Creation of Labor Courts in Saudi Arabia

In the Kingdom of Saudi Arabia, new civil and criminal procedures were introduced, and a time frame for removal of the Labor Grievance Committees and their replacement with Labor Courts (as part of the wider civil courts) was put in place, to be effective in 2014.[15]

IV. Hong Kong

There were several statutory developments and one case law development of note in 2013 in Hong Kong. On May 1, 2013, the minimum wage increased to HKD $30 per hour.[16] Under the Employment Ordinance, an employer must now keep records of hours worked for employees who earn less than HKD $12,300 per month.[17]

A. Changes to Minimum Wage and the Mandatory Provident Fund

The government approved the proposal to change the minimum and maximum relevant income levels for contributions to the mandatory provident fund (MPF) regime. As of

12. Sara Khoja & Nouf AlJoaid, *Nitaqat: 18 Months on*, Clyde & Co (Jan. 15, 2013), http://www.clydeco.com/insight/updates/nitaqat-18-months-on.

13. Rebecca Ford & Sara Khoja, *Kingdom of Saudi Arabia Employment Law Issues "in a Nutshell," in* Emp. Int'l Newsletter (Clyde & Co, London, Eng.), Sept. 2013, at 10, *available at* http://www.clydeco.com/uploads/Files/Publications/2013/CC003810_Employment_International_Newsletter_17.09.13.pdf; *Destination Update: Saudi Arabia Introduces a Tax on Employing Expats*, Move One (Jan. 13, 2013), http://www.moveoneinc.com/blog/moveone-news/endestination-update-saudi-arabia-introduces-tax-employing-expats/.

14. *Raids Begin as Saudi Arabia's Amnesty Period for Illegal Workers Ends*, Saudi Gazette, Nov. 4, 2013, *available at* http://english.alarabiya.net/en/News/middle-east/2013/11/04/Raids-begin-as-Saudi-Arabia-s-amnesty-period-for-illegal-workers-ends.html.

15. Sara Khoja et al., *2014: GCC Employment in the Year Ahead*, Clyde & Co (Feb. 3, 2014), http://www.clydeco.com/insight/updates/2014-the-year-ahead-in-the-gcc.

16. *Statutory Minimum Wage*, Lab. Department, The Gov't of the Hong Kong Special Admin. Region, http://www.labour.gov.hk/eng/news/mwo.htm (last visited Mar. 22, 2014).

17. *Id.*

November 2013, the new minimum relevant income level is HKD $7,100.[18] A relevant employee earning less than this income level is not required to contribute to an MPF scheme, although the employer is required to make the relevant contributions. Effective June 1, 2014, the new maximum relevant income level is HKD $30,000.[19] A relevant employee earning more than this is not required to make any MPF contributions in respect of any earnings that exceed that maximum level. Further, the maximum mandatory contribution amount will increase from HKD $1,250 to HKD $1,500 per month, effective June 1, 2014.[20]

B. "Stigma" Damages in Unfair Dismissal Case

In a high profile case called *Grant David Vincent Williams v. Jefferies Hong Kong Ltd.*,[21] a former employee sought an entitlement to "stigma" damages when challenging his dismissal. In addition to terminal payments, the court held that the employer had breached the implied term of trust and confidence in effecting the dismissal and awarded, in respect of that breach, a substantial sum in damages to compensate the employee for the difficulties that the court deemed that he would have faced in seeking employment after his dismissal.

V. Italy

Following the major reform of the Italian Employment Law in 2012,[22] which introduced significant amendments to the regulation on termination, temporary contracts, unemployment compensation, and other matters, the Italian government in 2013 further engaged to promote employment and support companies.

A. Fiscal and Social Incentives

During 2013, taxes on salaries were reduced and should increase employee benefits by an average of €200 a month compared to the previous year. Fiscal incentives were introduced in favor of companies hiring with an unlimited contract individuals between eighteen to twenty-nine year olds who have been unemployed for more than six months. The

18. Legislative Counsel, LC Paper No. LS58/12-13, Paper for the House Committee Meeting on 7 June 2013: Legal Services Division Report on Proposed Resolutions under Section 48 of the Mandatory Provident Fund Schemes Ordinance (2013), *available at* http://www.legco.gov.hk/yr12-13/english/hc/papers/hc0607ls-58-e.pdf.

19. *Id.*

20. Baker & McKenzie, *MPR Relevant Income Levels Set to Increase – Date for the Diary*, Lexology (Nov. 29, 2013), http://www.lexology.com/library/detail.aspx?g=6539d17e-15d2-46d7-8e73-130fc55af763.

21. Pattie Walsh & Naveen Qureshi, *Summary Dismissal in Hong Kong – An Expensive Lesson Learnt*, DLA Piper (Sept. 24, 2013), http://www.dlapiper.com/china/publications/detail.aspx?pub=8530.

22. Baker & McKenzie, *The Reform of Italian Employment Law (92/2012): A Practical Overview*, *in* Recent Employment Law Developments in Italy (2013), *available at* http://www.bakermckenzie.com/files/Publication/cc01e63a-7215-4efa-a8dd-6f43adfc5c21/Presentation/PublicationAttachment/9511e28b-8a19-46ad-9bdb-71466b7d4b4f/bk_employment_lawdevelopmentsitaly_13.pdf.

incentive cannot exceed €650 per employee and lasts three years. The administrative aspects for the regulation on apprenticeship contracts were also significantly simplified.[23]

B. Labor and Union Relationships

The Italian Constitutional Court confirmed that the values of "pluralism and freedom of union activity" deserve constitutional protection.[24] Consequently, each time an employer wishes to sign an internal collective agreement, all the union bodies present in the company (not only the more representative at the national level) must be invited to the negotiation. This judgment is even more significant for Italy, given that it was issued in a proceeding involving FIAT Auto. The decision will likely strengthen the role of local unions.

VI. Mexico

A. Limits and Controls on Outsourcing

The Mexican Labor Law Reform (LFT) entered into force on December 1, 2012. The LTF has forced companies using a dual corporate structure (involving an operating company and a labor outsourcing company) to either merge or restructure the outsourcing company as all companies within a group may now be jointly liable to pay salaries, fringe benefits, profit sharing, and any other labor obligations of employees in Mexico. Compliance supervision is now also required, as contracting companies must supervise outside contractors to ensure that they comply with all applicable environmental, health, and workplace safety laws. A government authorized "verification unit" may also perform this supervision.[25]

The new types of labor agreements have provided for additional flexibility for employers, as more employees are being hired for the season or by the hour. The extended trial period for new hires (now allowed for a period of thirty days or 180 days for employees for management positions, managerial, and other persons involved in the management or the company) has been a great tool for employers.[26]

B. Labor Implications of the 2013 Tax Reform

The government has also passed a tax reform, which entered into force on January 1, 2014, that will also impact social contributions for both employers and employees. Starting in 2014, fringe benefits will now be accounted for in employees' income tax declara-

23. Sofia Sanz, *New Law Promotes Employment of Young and Disadvantaged*, Eurofound (Nov. 22, 2013), http://www.eurofound.europa.eu/eiro/2013/07/articles/it1307039i.htm?utm_source=EIRO&utm_medium=RSS&utm_campaign=RSS.

24. Racc. uff. corte cost., 23 luglio 2013, n. 231, 7 (It.); *see also* Gianna Elena De Filippis, *Commento a Corte Constituzionale Sent. n. 231/2013* [*Comment Sent to the Constitutional Court. n. 231/2013*], Professione Giustizia (Nov. 8, 2014), http://www.professionegiustizia.it/notizie/notizia.asp?id=363.

25. Brian Arbetter & Terese Connolly, *Mexican Federal Labor Law Reform: What Business in Mexico Need to Know*, JDSupra Bus. Advisor (May 16, 2013), http://www.jdsupra.com/legalnews/mexican-federal-labor-law-reform-what-c-09503/.

26. Karina Angel & Rafael Mercado, *Top Ten Recent Mexican Labor Law Amendments*, Assoc. of Corp. Counsel (June 4, 2013), http://www.acc.com/legalresources/publications/topten/ttrmlla.cfm.

tion, which will result in higher taxes for employees with such benefits in 2014. In addition, the manner in which social contributions are calculated has been modified, which will translate in a 20 to 40 percent increase in contributions. Some local payroll taxes are also being increased by 20 to 30 percent.[27]

VII. Singapore

A. Increase in Scope of the Employment Act

Following on the Singapore government's policy to improve employment terms and benefits for employees, the Singapore Employment Act was amended in November 2013 to increase coverage for rank and file employees and junior executives.[28] Before this round of amendments, only rank and file employees were covered by the Employment Act, with those earning up to SGD $2,000 per month being entitled to additional protections on working hours, annual leave, and overtime benefits.[29] Junior executives earning up to SGD $4,500 per month were entitled to limited protection for salary disputes. With the amendments, the salary threshold for working hours, annual leave, and overtime protection has been raised to SGD $2,500 (although overtime computation will be based on a maximum salary of SGD $2,250 per month).[30] Junior executives will now be entitled to full coverage under the Employment Act, including for sick leave and for the right to complain of unfair dismissal so long as they have been employed for at least twelve months.[31] These changes are expected to come into force in April 2014.

B. Job Protection for Singapore Nationals

To help Singaporeans compete for jobs, companies that apply for employment passes for foreign workers must first satisfy new rules under a "Fair Consideration Framework," which requires employers to advertise jobs in a national job bank for at least fourteen days, ensuring that jobs advertised are open to Singaporeans and are non-discriminatory in accordance with official guidelines. These rules are aimed at reinforcing policy under which employers are expected to consider Singaporeans fairly before hiring foreigners. Companies with discriminatory practices may have their work pass privileges curtailed. Small companies with twenty-five or fewer employees and jobs that pay a fixed monthly salary of SGD $12,000 or more will be exempted from the rules. The Fair Consideration Framework requirements will come into effect on August 1, 2014.[32]

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27. PWC, Mexico: 2014 Tax Reform Passed (Dec. 6, 2013), *available at* http://www.pwc.com/en_GX/gx/hr-management-services/newsletters/global-watch/assets/pwc-mexico-2014-tax-reform-law-passed.pdf.

28. Xue Jianyue, *Changes to Employment Act to Protect More*, Today Online (Nov. 13, 2013, 4:02 AM), http://www.todayonline.com/singapore/changes-employment-act-protect-more-workers.

29. *Changes to the Employment Act*, Ministry of Manpower (Apr. 8, 2013), *available at* http://www.mom.gov.sg/aboutus/cos-2013/Pages/changes-to-ea.aspx.

30. Jianyue, *supra* note 28.

31. Lyndon K. Tan, *Singapore: Proposed Changes to the Employment Act*, Lexology (July 8, 2013), http://www.lexology.com/library/detail.aspx?g=fdfb799e-d205-4b38-b416-9a8da59e79e4.

32. *Firms to Consider Singaporeans Fairly for Jobs*, Ministry of Manpower (Sept. 23, 2013), *available at* http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=523.

VIII. Spain

A. Implementation of Labor Reforms

During 2013, employers have been implementing the broader scope provided by the 2012 labor reform to implement changes where the business so required, including salary reductions, flexibility of working hours, redundancies, etc.[33] Courts have declared, in a number of decisions issued in 2013, that, despite the 2012 law being silent in defining the scope of the reasons justifying such changes, employers should apply the test of reasonableness when assessing the measure justifying the need to restructure. They have also declared that employers should proactively consult collective measures with employee representatives. Courts' restrictive interpretation in assessing employers' compliance of procedural requirements for collective redundancies has led the government to approve, in August 2013, an amendment to the October 2012 regulation so as to provide a clearer and straightforward procedure to ensure that employers may implement collective redundancy plans with no risk of nullity challenges.

B. Privacy at Work

The Spanish Constitutional Court has, for the first time, declared that an employer who monitored employees' emails was not infringing on employees' privacy, because it was exercising its right to monitor employees' compliance and had previously informed employees that they should not have expectations of privacy.[34]

C. Termination of Collective Bargaining Agreements

Finally, 2013 was to be the year when a number of collective bargaining agreements were to cease to be in force because unions and employer representatives had failed to reach agreements after one year of negotiations as set forth by the 2012 law.[35] But Spain's High Court limited the effect of those (fairly common) cases where the collective bargaining agreement contained the same wording as that of the previous law, whereby the agreement was to remain in force until the parties reached a new agreement.

IX. United Kingdom

The United Kingdom introduced several legislative changes in 2013, including the Enterprise and Regulatory Reform Act 2013 (Act)[36] and other changes that are a potpourri of measures covering various areas of employment law.

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33. *See* Franci Vier, *Mass Sackings Increase in Spain Following Labour Reforms*, World Socialist Web Site (July 3, 2013), http://www.wsws.org/en/articles/2013/07/03/spai-j03.html.

34. Cynthia O' Donoghue, *Spain: Spanish Court Ruling Validates Employee Monitoring*, Mondaq (Jan. 6, 2014), http://www.mondaq.com/x/284652/Data+Protection+Privacy/Spanish+Court+Ruling+Validates+Employee+Monitoring.

35. Herbert Smith, Graeme Smith & Peter Frost, *Spain: Collective Bargaining Agreements*, Lexology (Oct. 26, 2012), http://www.lexology.com/library/detail.aspx?g=5fd7d5a2-2f8f-47f1-aec6-fa142154b701.

36. *See* Enterprise and Regulatory Reform Act, 2013, c. 24 (U.K.) *available at* http://www.legislation.gov.uk/ukpga/2013/24/pdfs/ukpga_20130024_en.pdf.

A. Protection of Pre-Termination Negotiations

The Act includes changes to pre-termination negotiations (i.e., any discussion or offer of proposed settlement terms) to prevent their reference in unfair dismissal cases, except when there has been "improper behavior." In essence, employers and employees are now able to negotiate termination of employment openly without the need for a genuine dispute to arise, though there are some restrictions in the small print of the Act, so employers should continue to act cautiously. The Act also includes a new limit for compensatory awards in unfair dismissals that are set as the lower of the current cap (£74,200) or one year's gross pay.[37]

B. Reduction in the Consultation Period for Collective Redundancies

The collective redundancy consultation period was reduced from ninety to sixty days or from forty-five to thirty days, depending on the number of people being made redundant.[38] The Employment Appeal Tribunal (EAT) has held that, when calculating the number of proposed dismissals in a redundancy to establish if the collective redundancy consultation obligations are triggered, the concept of separate establishments should be disregarded. But, this case is being appealed to the Court of Appeal as there are conflicting EAT decisions on this point. For now, the calculation of the number of people being dismissed should be based on an employer's entire business.

C. Creation of Disincentive up-Front Litigation Costs

Finally, anyone bringing a claim in an employment tribunal now has to pay a fee between £160 and £250, when filing a claim, depending on its nature.[39] Fees between £230 and £950 are also payable for hearings.[40] These fees may be awarded as costs if the claimant wins. Previously, claimants had been able to bring a claim and have their claim heard for free. This reform is intended to reduce the number of claims being brought to tribunal, which in turn will reduce the strain faced by tribunals and employers in the United Kingdom. An assessment of the practical impact of the law is expected sometime in 2014.

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37. Dep't for Bus. Innovation & Skills, Enterprise and Regulatory Reform Act 2013: Policy Paper (2013), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209896/bis-13-905-enterprise-and-regulatory-reform-act-2013-policy.pdf.

38. Helene Mulholland, *Redundancy Consultation Period to be Halved to 45 Days*, The Guardian (Dec 18, 2012, 05:33 AM), http://www.theguardian.com/money/2012/dec/18/redundancy-consultation-period-45-days.

39. Simon A. Hurry, *Anger Across the Pond As UK Employment Tribunal Fees Are Introduced*, Emp. News (Collas Crill, London, Eng.), Aug. 9, 2013, *available at* http://www.mondaq.com/x/257004/employment+litigation+tribunals/ANGER+ACROSS+THE+POND+AS+UK+EMPLOYMENT.

40. *Id.*

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