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Spain

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Employment protection of false self-employment: resolutions regarding so-called *riders*

For the first time in our jurisdiction, an Employment Court has analysed the nature of the provision of services of a rider of Deliveroo, a British delivery company operating in Spain. This ruling has declared that these riders are falsely self-employed, that is to say, they are Deliveroo's employees.

The Tribunal considers that it had been evidenced that the provision of services complies with the requirements that the Spanish law requires in order for a worker to be deemed an employee. Due to this, the termination of the relationship by the company's decision has been declared an unfair dismissal and, therefore, the company has been obliged to choose between reinstating the employee or paying him/her the statutory compensation for unfair dismissal.

Amongst others, the Court has taken into account the following elements: (i) the company gives instructions to the riders; (ii) the conditions of the services are decided by the company because the rider has to download its mobile application in order to work; and (iii) the need to register with another internal corporate application owned by Deliveroo. Also, the judge has stated that it had been proved that the company decides the place of the provision of services, the schedules and the work shifts.

On the contrary, another Employment Court has resolved that workers of another company in the same sector, Glovo, are not employees.

In this case, the judge has stated that the relationship of the company and the rider complies with the legal requirements of a so-called "TRADE". This is a Spanish term which means "economically dependent self-employed worker". Thus, the judge has considered that Glovo's riders are not employees, but a kind of self-employed, due to the following arguments: they do not have fixed working hours; there is no need to justify absences; they have absolute control over the orders; they have responsibility before clients; and the working tools are the riders' property.

Nursing leave: men are entitled to use this right while women are on maternity leave

As a general rule, nursing leave cannot be enjoyed at the same time as maternity or paternity leave. However, this incompatibility only applies when one of the parents wants to use both rights simultaneously.

Therefore, and according to a recent ruling of the National Court dated 19th July 2018, if the mother is on maternity leave, the father can enjoy nursing leave at the same time, and *vice versa*.

In this ruling, the Court analysed whether or not it is legal for employers to refuse fathers' formal requests to enjoy their nursing leave once their paternity leave is finished, and the mother is on maternity leave by the time of the request, because the sixteenth week after the birth of the child has not concluded.

In this analysis, the Court settled that this refusal by the employer based on the aforementioned grounds entail an obstacle for the mother's right to share their maternity leave with the father, and also a limit on the exercise of paternity rights protected by the law, in the terms foreseen in article 48.4 of the Workers Statute. Therefore, the Court considered that Spanish law allows both parents to jointly care for their children in a very complex and demanding period of their lives, stating that another conclusion would be clear discrimination, which violates not only the Workers' Statute, but also the Spanish Constitution's fundamental provisions.

New judicial interpretation of the employees' right to two days of paid leave in the event of the hospitalisation of a close relative

During 2018, employees' leave and permits regulated in the Workers' Statute have been one of the main topics in Spanish case-law. Therefore, as was the case with nursing leave as explained above, employees' right to two days of paid leave in the event of the hospitalisation of a close relative has been also analysed by the National Court, particularly in its ruling of 26th July 2018.

When we refer to the term "hospitalisation", we do not identify it as a scheduled and punctual visit to a hospital, as it is clear that this term entails a certain submission by the patient to hospital life. The same conclusion can be drawn from Royal Decree 1030/2006, which establishes a portfolio of common services provided by the National Health System, which states that specialised health care can be provided: (a) in a scheduled visit; or (b) through a hospital admission with an overnight stay.

The interpretation of the term "hospitalisation" mentioned above is crucial, according to the ruling of the National Court of 26th July 2018, in order to understand and clarify which situations are included in employees' right to enjoy two days of paid leave in the event of the hospitalisation of a close relative, foreseen in article 37.3.b) of the Workers' Statute. Therefore, the Court concluded that, when article 37.3.b) regulates this paid leave, it refers to situations in which the close relative stays overnight in a hospital. This conclusion was reached since the only case that gives the right to enjoy this paid leave, even if the close relative does not have to stay overnight in the hospital, is specifically foreseen in the Workers Statute, which is the case of a surgical intervention of a close relative.

The Constitutional Court has declared that the fact that the duration of paternity leave is shorter than maternity leave is not discriminatory

In the case of childbirth (biological maternity), the main aim of the legislator is the protection of the health of working women, by means of the benefit for maternity, which is intended to replace the loss of earnings of working women during this period of rest. Paternity leave is different, and has a different purpose, which is the support for the conciliation of personal, family and working life, promoting the co-responsibility of mothers and fathers in childcare.

The Tribunal states that the difference of duration of these leaves and benefits does not infringe the principle of equality before law because the situations are different.

Motherhood, pregnancy and childbirth are biological facts of obligatory protection, derived directly from Article 39.2 of the Spanish Constitution, which refers to the integral protection of mothers. Thus, advantages for women cannot be considered discriminatory for men.

The Court emphasises the need to analyse the scope of the measures guaranteeing maternity and their negative impact on the equal treatment of women in the labour market. In this respect, although these measures may provide a relative guarantee for women already in the labour market, they are undoubtedly a clear barrier to entry for those who are outside and an obstacle to the promotion of those who are inside.

The Supreme Court has rectified its doctrine regarding transfer of undertakings: although the collective bargaining agreement states the contrary, the new company is liable for the debts of the transferor according to Article 44 of the Workers' Statute

There is a transfer of undertakings within the meaning of Article 44 of the Workers' Statute if, within the succession of contracts, there is a transfer of an economic entity between the companies, provided that this economic entity retains its identity after the transfer.

In activities where the workforce is an essential factor, there should be subrogation of the staff if a relevant part of the personnel assigned to the contract is assumed (in terms of number and skills). When this happens, the provisions of Article 44 apply.

The fact that the assumption of a relevant part of the workforce derives from the provisions of the collective agreement cannot imply that the subrogation (with assumption of the rights and obligations of the outgoing employer) is not effective. Therefore, in accordance with a recent decision of the European Court of Justice (case C-60/17, Somoza Hermo), the new employer is liable for the debts of the previous employer (jointly and severally) under the terms of Article 44 of the Workers' Statute.

An employee cannot be dismissed for unfair competition based on the competition of the employee's external activity with the activity of another company of the group, if it does not compete with the specific activity of his/her own employer – Ruling of the High Employment Court of Madrid

The High Court of Justice of Madrid has ruled that the duty of loyalty cannot imply the imposition of limitations on the worker's external activity on the basis that this activity is not in accordance with the interests of another company of the group. Given that the company group in the case was not a group of companies for labour purposes, the employer's liability for its workers' labour debts cannot be extended to the rest of the companies in the group. Therefore, the private activity of the employee cannot be limited according to the interests of a company that is not his/her employer. Thus, the dismissal was declared unfair because it did not have justified disciplinary grounds.

The Supreme Court has clarified its doctrine regarding compensation for termination in fraudulent successions of temporary contracts

In this case, the compensations corresponding to workers who had been hired under a series of fraudulent temporary contracts were analysed. If the temporary contracts are fraudulent, this means that the employment relationship is indefinite. The workers received the statutory severance pay at the end of each fixed-term contract.

The Supreme Court has changed its doctrine and understands that compensation for termination is possible, but only with respect to the last of the temporary contracts, because the final termination of the relationship between the parties is not due to the regular expiry of the last temporary contract, but an unfair dismissal, for which the legislator foresees a higher and specific compensation. This compensation includes the period of provision of services

corresponding to the same contract. The employee cannot be granted the corresponding compensation for two different reasons: unfair dismissal; and termination of the temporary contract.

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Sweden

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General labour market and litigation trends

The so-called "Swedish model" used to describe Swedish employment law comprising an employee-protectionist system based not on legislation but on collective agreements and a strong presence of various workers' unions is still valid today. Swedish employment contracts are generally governed not only by various employment legislation and contract law, but also supplemented by collective agreements relevant to a specific industry. For example, there is no law governing minimum wage in Sweden. However, a minimum wage is generally provided by the applicable collective agreement, *de facto* setting a minimum wage for the industry in question.

Collective agreements and the influence of workers' unions are difficult matters to avoid when conducting business that require personnel in Sweden. The workers' unions are industry-specific and very rarely compete with other unions about members, as there is usually just one for each sector. Thus, the influence of these few workers unions is strong. In 2018, 70% of the workforce in Sweden were members of their industry-specific workers' unions, that in turn exert influence over the working conditions for Swedish employees by being party to the collective agreements. When dealing with employment situations in Sweden, it is of the utmost importance to be aware of the applicable collective agreement as the provisions therein can sometimes be given priority over otherwise compulsory legislation.

A concern regarding how EU legislation may threaten the Swedish model has been raised on numerous occasions since Sweden's entry into the Union in the 1990s, but has yet to be realised.

Redundancies, business transfers and reorganisations

As a general rule, an employer in Sweden has the right to reorganise its business as it sees fit. A reorganisation may have an impact on the workforce and, as a result, the employer may need to dismiss redundant employees. A redundancy situation as a result of a reorganisation is generally considered as a "just cause" (a legal requisite) for the dismissal of employees under Swedish employment law. There is generally no burden of proof for the employer to prove redundancy. The right to dismiss employees on the basis of redundancy is, however, not without its conditions.

First of all, there cannot be a "just cause" for dismissal because of redundancy if it is deemed reasonable that the employer gives the employee a replacement offer for another position within the organisation. A replacement offer can generally only be presented if the employee is already qualified for the position, in practice requiring that the employee is qualified enough to perform in accordance with the demands of the new position within four to six

months after moderate, on-the-job, training. In other words, the reallocated employee should perform as well as would be expected of a new hire for the same position.

If there are no suitable vacant positions, or if it is not reasonable for the employer to offer the employees any of the open positions within the organisation, the employer may proceed with dismissing the redundant employees. During the dismissal procedure, the employee must adhere to a certain order. This order is called the "last-in-first-out" principle and entails that the last hire must be the first to be dismissed in the case of a reorganisation. The purpose of this principle is to protect employees with seniority and to prevent the employer from using a reorganisation as a pretext to terminate certain employees. Please note that there are exceptions to this principle; for example, for employees with special competences as well as for smaller businesses.

Recent developments have shown a shift from strong employment protection to a focus on the right for companies to reorganise their businesses at their own discretion. In the Labour Court's judgment AD 2016 no 53, an employee had accepted a replacement offer for a position with a lower salary but argued to keep the higher salary until the expiry of the notice period as set forth in the in the employee's employment agreement. The employee argued that the acceptance of the replacement offer had been involuntary and, as such, was to be considered as a *de facto* dismissal with a notice period attached thereto. The employer, on the other hand, wanted to implement the conditions attached to the new position directly after the transfer into the replacement position had taken effect. The Court stated that the objective of replacement offers is to protect the employees' right to employment, not to protect the right to certain conditions attached to a particular position that had been made redundant. A replacement offer of a position with a lower salary cannot automatically be considered as a dismissal.

A replacement offer may be considered to be a *de facto* dismissal when there is no objective, just cause for the dismissal in the first place. This was the case in the Labour Court's judgment AD 2012 no 16, wherein a municipality gave youth workers the alternative of either taking a 25% leave of absence for a period of two years, or to accept an employment of 75% of full-time. The employees were also notified that they would be dismissed if they did not accept one of the alternatives. The Court concluded that since the municipality had not given the employees replacement offers of other full-time positions within the area, there was no just cause for the dismissals. In this regard, it is important to note that public entities more often than not have the possibility of transferring employees to other positions that would qualify as reasonable replacement offers. Private companies, especially small and medium-sized enterprises, are not under the same scrutiny to find reasonable replacement offers in cases of redundancy.

In redundancy cases, a dismissed employee who has been employed by the company for at least 12 months has the right to re-employment should a new position become available. The right to re-employment lasts for a period of nine months calculated from the end of the applicable notice period. It has yet to be tried whether a former employee preserves the right for re-employment if the former employee previously declined a replacement offer. Some argue that the employee should not be able to decline a replacement offer, only to have the right to re-employment when a better job offer is made available. Others argue that since the right to re-employment only materialises when there has been a dismissal, the right to re-employment is intact even for employees who decline replacement offers.

It should further be noted that redundancy always takes precedence over dismissal or termination for personal reasons. If there is a redundancy situation, the employee cannot

protect his or her employment by claiming that the redundancy is a pretext by the employer for a dismissal for personal reasons. However, if there is a dispute regarding the cause for dismissal, the employer must be able to show redundancy. As exemplified in AD 2017 no 7, in which a company dismissed an employee citing redundancy only four days after he had applied for paid paternity leave, an employer cannot simply state redundancy to avoid the requirement of "just cause". The Labour Court stated that if there is a suspicion of so-called "forged redundancy", the employer has the burden of proof to show that there was actual redundancy. This is particularly the case when the employee has requested a leave of absence to which the employee has a legal right. In this case, the Court concluded that the redundancy was forged, and the company was obligated to pay damages to the employee.

A business transfer as defined by Swedish employment law, i.e. the transfer by a company, a business or part thereof, from one employer to another, has the same meaning as provided by EU Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. In the event of a business transfer, the new employer takes over all the previous employer's rights and obligations with regard to the employees (unless the employee opposes being part of the transfer, which must then be communicated to the new employer within a reasonable time).

Business protection and restrictive covenants

The principle of loyalty between contracting parties is always an implied term within contracts under Swedish law. This principle becomes perhaps most applicable on employment contract wherein the parties' relationship is over an extended period of time. The parties are expected to act in a loyal manner towards each other for the entire duration of the employment relationship, i.e. from the signing of the employment contract until the end of the notice period.

In accordance with the Swedish Act on the Protection of Trade Secrets, the loyalty can under certain circumstances be extended beyond the duration of the employment, obligating former employees not to reveal nor take advantage of information they became privy to during their employment. Many employers wish to extend this loyalty further than provided by law and on their own terms through restrictive covenants, e.g. through non-competition and non-solicitation clauses.

As restrictive covenants present a conflict of interests between the employer and the employee, the practice of the courts has been to interpret non-competition clauses restrictively to the benefit of the employee as the weaker party of the contractual relationship. The legislator has also recognised the potential issues with restrictive covenants in employment relationships and there is a specific provision within the Swedish Contracts Act wherein it is stated that employees are not bound by non-competition clauses "to the extent that the commitment goes beyond what can be considered as reasonable". To decide whether or not a non-competition clause is "reasonable", the courts will take the following into consideration: 1) the time period for which the non-competition clause is in effect; 2) the damages payable to the employer would the employee be in breach; and 3) other circumstances relevant to the individual case (i.e. the position the employee has had within the company, if the employee has been properly compensated to offset the effects of the non-competition clause, etc.).

Recently, there has been two cases in the Labour Court (October 2018) regarding the application of non-solicitation clauses: AD 2018 no 61; and AD 2018 no 62. Both cases concerned a computer game development company and its former employees, who the

company accused of trying to recruit former colleagues in breach of the non-solicitation clause. The company requested that the District Court through an interim judgment place a prohibition sanctioned by a fine upon its former employees citing a non-solicitation clause in the employment contract as a ground for the claim to be secured by the District Court. The District Court granted the injunction and the former employees appealed the interim judgment to the Labour Court. The Labour Court stated that the former employees' personal relationships with former colleagues were not equal to trade secrets or such company-specific knowledge that non-solicitation clauses have the purpose to protect. Further, relationships with colleagues are not the same as relationships with customers or clients, which the company has a legitimate interest to protect through restrictive covenants.

However, the court stated there is a legitimate interest for the company that its employees are not recruited in connection with the former employee leaving, as this employee may have an advantage over other competitors when recruiting employees during the notice period or a short time thereafter. Therefore, it is considered reasonable to have a non-solicitation clause in place during the time of the former employee's transition. Having said that, the Labour Court still concluded that the specific non-solicitation clauses in these cases were unreasonable as the non-solicitation clauses prohibited the recruitment of all personnel from the company by the former employees, including administrative staff and employees employed after the former employees had left the company. Furthermore, the non-solicitation clause did not only concern the active recruitment of employees from the company, but also a prohibition for the other company to employ employees that, on their own accord, sought employment.

Formerly, non-solicitation clauses have been considered to be applied without any consideration of whether or not it is within the employer's legitimate interest. The precedence given through both these cases is that it is not only with regard to non-competition clauses the company has to have a legitimate interest, but the same is applicable to non-solicitation clauses. The cases thus mean that many companies in Sweden should review their templates for non-solicitation clauses to ensure that they can be enforceable under Swedish law.

Discrimination protection

The Swedish Discrimination Act (Sw. *Diskrimineringslagen*) is a fusion of several previous acts concerning various forms of discrimination, as well as the product of several EU Directives. As such, the judgments by the EU Court concerning cases of discrimination must be taken into account whilst applying the Discrimination Act. The Discrimination Act protects individuals from both direct and indirect discrimination.

While direct discrimination is quite straightforward and easily recognisable, indirect discrimination is more difficult to establish. Indirect discrimination is discrimination that comes from applying a rule, a policy or a practice that seems neutral, but *de facto* results in certain groups of people being discriminated. Recently, the Labour Court ruled on a case of indirect discrimination after a company refused to hire a Muslim woman as an interpreter after she declined to shake the interviewer's hand during the interview due to her religious conviction. Instead, she greeted the interviewer by smiling and placing her hand over her heart whilst explaining to the interviewer that she was religious. The interviewer abruptly ended the interview, stating that the woman was not suitable for the job. The company referred to their company policy, which stated that the employees shall shake hands. The Labour Court concluded that the woman had been discriminated on grounds of religion by the company's policy, stating that while a company is free to have a policy for how its employees should greet each other and others, the purpose thereof must be in proportion to

what is required. Although a policy regarding how the employees are expected to greet other people may have a purpose of creating equality between the genders in the workplace, it may be disproportionate if it discriminates someone's religious beliefs. Through comparing this case with a notable case regarding a midwife who refused to perform abortions (whose claim was denied by the Labour Court), one can draw the conclusion that when two grounds for discrimination are in collision, the requirements of the employment are key to determining whether or not religious beliefs will prevail as a reason not to conform with the employer's instructions. In this case, the company was obligated to pay the woman SEK 40,000 in damages for indirect discrimination.

In the workplace, there are several measures employers have to undertake to avoid discrimination. Most notable is the recent legislation which increased the demands of the active actions the employer must take against discrimination. This legislation came into effect on 1st January 2017. Before, such active actions were only connected to certain types of discrimination, namely gender, ethnicity and religious beliefs. Now the employer has to take active actions regarding all seven grounds for discrimination set out in the Act: gender; gender identity; ethnicity; religion; disability; sexual orientation; and age.

Other news includes a responsibility for the employer to establish and keep a pay survey to ensure the workplace is not discriminatory. Basically, a pay survey is a list of the employees' respective salaries which should be kept as a record regarding equal pay. Furthermore, the requirement of active actions also includes that documentation must be kept of how the employer is working to ensure that there are no discriminatory elements in the workplace. This documentation is to be ongoing and updated. If an employer fails to adhere to the documentation obligations of the Act, the employer will be sanctioned with a fine. Formerly, such sanctions were under the discretion of the Discrimination Ombudsman (Sw. *Diskrimineringsombudsman*) or the employee's union. This development will have the effect that employers will be subjected to a much higher standard regarding actions against discrimination and the legislation will demand that more resources be put into such measures. Effects of the Act are, among others, that the employer may have to arrange that the employees have vacation during certain religious holidays and use formal and open recruitment channels. The rules also include instructions of how the active actions against discrimination should be carried out: explore; analyse; amend; and follow-up.

Protection against dismissals

Redundancy and termination for personal reasons are the only "just causes" for dismissal under Swedish law. Termination for personal reasons, however, covers a broader spectrum than redundancy and includes all possible issues relating to the employee. Unlike redundancy, termination for personal reasons or immediate dismissal demand that the employer present evidence to establish a just cause. Under Swedish law, legislation differentiates between "termination" and "immediate dismissal". Immediate dismissal means that the personal reasons for which the employer no longer wishes to have the employee employed are so serious that the employee is dismissed without a notice period. Immediate dismissal is a very serious matter under Swedish labour law and such an action requires the employer to show that the employee is guilty of *grave* misconduct. Termination for personal reasons is also only allowed in a situation of misconduct on behalf of the employee, but the misconduct is not so grave that the employee should not be permitted to continue to work during the notice period. Both termination and immediate dismissal must, regardless of what issues the employer has with the employee, be based on objective reasons.

A case which demonstrates the demarcation between a termination and an immediate dismissal is AD 2017 no 1. The situation was as follows: an employee had been hired as a security guard but did not comply with the instructions given by the employer, despite receiving a warning regarding his conduct. The employee, according to the employer, also turned up late for work and displayed aggressive behaviour towards his employer. The Labour Court tried the case and found that there was no just cause for the employer's immediate dismissal of the employee, although there was just cause for termination. As a result of the wrongful immediate dismissal, the former employee was awarded damages from the employer in the total amount of SEK 86,200.

For both terminations and immediate dismissals, the personal reasons that constitute the ground for the termination must have been known to the employer for less than two months. This means that a termination or immediate dismissal can never be based solely on events which occurred more than two months prior to the employer taking action. If the reason for the termination is recurring (frequently arriving late, for instance) and at least one of these events has taken place within the two-month time frame, then the employer may also base its decision on such misconduct that has taken place outside of the two-month limit.

For example, grounds for termination may be lack of cooperation, serious lack of competence, criminal actions conducted within the framework of the employment and similarly disruptive behaviour. In these cases, it is important for the employer to keep a record of the employee's behaviour, as the employer carries the burden of proof that misconduct has taken place. In regular termination cases, the employee must be given at least a one-month notice period. Please note that this period may be up to six months depending on the duration of employment. If the employee is a member of a workers' union, the union must also be given notice of the dismissal. If either the employee or the union objects to the notice, the employer must engage in negotiations before proceeding with the termination.

It is further relevant to discuss the difficulties related to the termination or immediate dismissal of an employee within the public sector, even when they give voice to less than democratic opinions. There are several cases exemplifying this. In the case AD 2007 no 20, a police officer had, through email correspondence with two people working in the municipality, made statements that included both political and racist content. The police officer in question was dismissed, yet the Labour Court found that there had been no objective ground for dismissal as the officer had only made use of his constitutional right to freedom of speech.

Please note that the rules and regulations regarding termination for personal reasons are complex under Swedish law and usually require expert legal advice.

Statutory employment protection rights

Under Swedish law, employees are entitled to, *inter alia*, holiday, parental and maternity leave and leave of absence for studies, taking care of a close relative, conduct another non-competing business for a limited period of time and also to test a new job due to long-term sickness.

The Annual Leave Act (Sw. *Semesterlagen*) is applicable to all employments, including part-time employees and interns. The only exception is if the employee is hired for a limited period of time, not exceeding three months. If that is the case, the employer and employee have the rights to make their own arrangement regarding the employee's right to holiday in accordance with applicable contract law. The act stipulates five weeks of mandatory holiday per vacation year (1 April – 31 March) with or without pay depending on how long the employee has been employed during the previous year (earning year).

Under Swedish law, parents are entitled to a generous parental allowance, which is administered through the public insurance agency Försäkringskassan. Parental allowance is paid out for 480 days per child, whereof 60 days are individual for each parent and cannot be transferred to the other. The allowance amounts to 80% of the salary. In addition, maternal leave is granted during the pregnancy and in connection with childbirth under certain circumstances.

Worker consultation, trade union and industrial action

As mentioned above, the workers' unions have a lot of influence over Swedish employment law. The applicable law centres around disputes between the employer and employee to be solved with the influence and involvement of the workers' union. Under Swedish law, the parties to a dispute have to negotiate before taking any other action and the collective agreements always contain provisions with regard to industrial action, which usually entail that unsanctioned strikes are uncommon in Sweden.

The Co-Determination in the Workplace Act (Sw. *Medbestämmandelagen*) provides protection and transparency for employees in relation to their employers. Some of the Act's most distinctive principles can be summarised as follows:

The employer has a responsibility to initiate negotiations with the workers' union, so-called primary negotiations, before any decision which may have an impact on the employees is taken. In the event of a dispute, there are rules regarding the employee's prevailing interpretation regarding their work duty and/or pay.

Another notable aspect is the existence of workers' representatives on the board of directors in companies with more than 25 employees, which is regulated by the Representation for Employees in the Private Sector Act (Sw. *Lag om styrelserepresentation för de privatanställda*).

Employee privacy

Personal data is any data that can, directly or indirectly, identify a person. The General Data Protection Regulation (2016/679) ("**GDPR**") entered into effect on 25th May 2018 and harmonises the processing of personal data within the European Union. The GDPR regulates almost all processing of personal data, including employers' processing of their employees' personal information. This entails that companies have to implement certain measures and procedures not only when dealing with third party personal data, e.g. clients/customer personal data, but that they also have to ensure they comply with the regulations of the GDPR for the processing of their employees' personal data.

The processing of personal data must always have legal grounds. In the context of employment, the legal ground is mostly the employment agreement itself. It is important to bear in mind that human resource departments should start paying more attention to how they process the employees' personal data and be more cautious with their data-processing routines. Special consideration should be given to personal data regarding matters such as health or union affiliation, as such type of information is deemed as "sensitive information" by the GDPR and must be handled with special care. All processing must be done in accordance with the general principles listed in Article 5 of the Regulation. Furthermore, information regarding former employees must be limited and records should not be kept without a legal basis for the processing thereof.

During recruitment procedures, companies should bear in mind that the processing of potential employees is not to be based on the same ground as actual employees as there is no employment agreement to speak of. Instead, the processing of personal data of potential employees is done on the basis of consent, which can be revoked by the data subject at any time. Further, the retention time should be limited to the time of the recruitment proceedings, i.e. it is recommended that the personal data of people who were not hired for the position is deleted as soon as possible.

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