

WHITE & CASE

# Global employment and benefits **update**

Issue 2 2010

The newsletter of the White & Case executive compensation, benefits, employment and labor law group



**ECJ revisits  
compulsory retirement  
schemes and age  
discrimination**

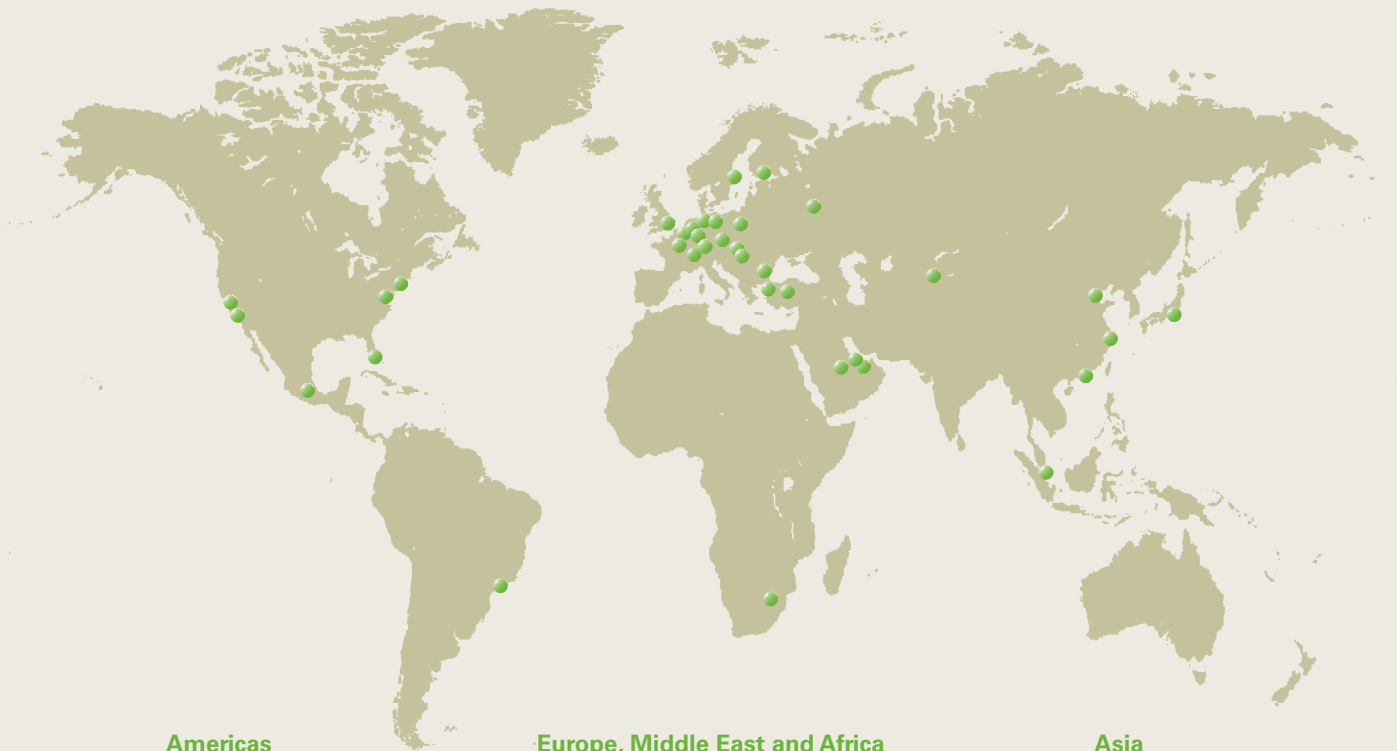
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# Our global offices



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## Editorial panel

### Americas:

**Tal Marnin**

Tel: + 1 212 819 8916  
tmarnin@whitecase.com

### Asia:

**Kazunori Fuse**

Tel: + 81 3 6384 3184  
kfuse@whitecase.com

### CEE:

**Ladislav Smejkal**

Tel: + 420 255 771 341  
lsmejkal@whitecase.com

### EMEA:

**Stephen Ravenscroft**

Tel: + 44 20 7532 2118  
sravenscroft@whitecase.com

### Germany:

**Björn Theis**

Tel: + 49 89 20 60 43 740  
btheis@whitecase.com

*Cover, page 1 and page 2 images courtesy of Court of Justice of the European Union*



# ECJ revisits compulsory retirement schemes and age discrimination

The European Court of Justice (“ECJ”) has again been called upon to consider the compatibility of compulsory retirement schemes with EU equal treatment laws. Ending age discrimination in the workplace is one the key tenets of the Equal Treatment Directive 2000/78/EC.

However differences in treatment on the grounds of age, are allowed as long as they are “objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives and if the means of achieving that legitimate aim is appropriate”.

This gives rise to the thorny question of whether compulsory retirement ages are lawful. Despite the Directive itself stating that it “shall be without prejudice to national provisions laying down retirement ages”, the ECJ has previously held that the Directive does, in fact, cover national retirement ages (C-411/05, *Palacios de la Villa v Cortefiel Servicios SA*, judgment of 16 October 2007). These would be, however, be permitted where objectively and reasonably justified by a legitimate aim. This was the case in the Spanish case *Palacios* and also the UK’s

Age Regulations, which allow the dismissal of employees aged 65 or over when the reason is retirement (Case C-388/07, *Age Concern (“Heyday”) v BERR*, judgment of 5 March 2009, and the subsequent judgment of the High Court [2009] EWHC 2336 (Admin)).

In this case, the ECJ considered the German Law on equal treatment (*Allgemeines Gleichbehandlungsgesetz*), which allows employers to adopt clauses forcing retirement at a particular age if there is a collective agreement in place a on the issue between employers and the relevant trades union.

The case was brought by Gisela Rosenblatt, who had worked as a cleaner for 39 years. Her employment contract, in accordance with the collective agreement for the commercial cleaning sector, provided for automatic termination at the end of the calendar month in which she could claim a retirement pension, or, at the latest, at the end of the month in which she reached the age of 65. On reaching the age of 65, she was given notice of the termination of her employment contract. Ms Rosenblatt claimed before the Hamburg Labour Court that this constituted discrimination on grounds of age.

The Hamburg Court referred the case to the ECJ, asking, essentially, whether the automatic termination of an employment contract at normal retirement age was consistent with the



prohibition on discrimination on grounds of age laid down by Directive 2000/78. The ECJ found that the clause was *prima facie* discriminatory on grounds of age, but that, in the circumstances, it was justified. It noted that:

- the measure did not establish a regime of compulsory retirement, but allowed employers and employees to agree, by individual or collective agreements, on a means, other than resignation or dismissal, of ending employment relationships on the basis of eligibility for a retirement pension;
- the measure was based on a balance between political, economic, social, demographic and/or budgetary considerations and the choice to be made between prolonging people's working lives or, conversely, providing for their early retirement;
- such clauses have been part of the employment law of many Member States for a long time and are in widespread use. By guaranteeing workers a certain stability of employment and, in the long term, the prospect of retirement, while offering employers a certain flexibility in managing their staff, the clause on automatic termination thus reflects a balance between diverging but legitimate interests, against a complex background of employment relationships closely linked to political choices in the area of retirement. These aims must, in principle, be considered to be objectively and reasonably justified, as provided in Directive 2000/78.

The Court considered it not unreasonable for national authorities or social partners to take the view that clauses on automatic termination of employment contracts may be appropriate and necessary in order to achieve legitimate aims. It pointed out that the clause applicable to Ms Rosenbladt did not allow her employer to terminate her employment unilaterally simply based on her age; it also took account of her entitlement to a retirement pension.

Moreover, the fact that such clauses would only be adopted by agreement allows social partners to take account of the situation in the labour market and specific features of the jobs in question. Furthermore, the German legislation required employers to seek the consent of workers to any clause on automatic termination on reaching an age at which he is eligible for a pension, when that age is lower than the normal retirement age.

Finally, the Court observed that the German Law in question did not have the automatic effect of forcing the persons concerned to withdraw definitively from the labour market, and thus did not establish a mandatory scheme of automatic retirement. Nor did it prevent a worker who wishes to do so, from continuing to work beyond retirement age. It does not deprive employees who have reached retirement age of protection from discrimination on grounds of age where they wish to continue to work and seek a new job.

In the light of these considerations, the ECJ held that the measure did not go beyond what was necessary to achieve the legitimate aims pursued, given the wide discretion granted to the Member States and social partners in the area of social policy and employment.

**This case will have ramifications for employers seeking to justify compulsory retirement ages. UK employers will need to be aware of this if the default retirement age is abolished, as it is expected to be in October 2011. However it remains to be seen whether national courts and tribunals will be as willing to follow the ECJ's liberal approach in justifying age discrimination.**

# News in Brief

In this section we highlight some recent legislative changes which may affect your business.

## Czech Republic



New policies for foreigners strike against recession

The Czech Republic is introducing an amendment to the Foreigners' Act that will bring about several changes to immigration regulation. The main purpose of the revision is to shift more responsibility from the government and the foreign employees to the employer, and to prevent abuse of trade licences as a reaction to increased unemployment due to the economic crisis.

One of the most significant changes is the implementation of the EU Blue Card that unifies labour and residency permit requirements for highly qualified workers. The government also promises to tighten up conditions for granting long-term visas (over 90 days) by introducing requirements such as a personal interview for a foreigner conducting business in the Czech Republic or the provision of documents demonstrating the capability of the foreign employee to financially provide for himself and his family during his stay in the Czech Republic. Another important change is employer's duty to provide health care for his foreign employee in case the employment relationship is terminated early.

The proposed changes are planned to come into effect as of 1 December 2010.

## Czech Republic



The Czech Republic opposes EU Directive on Intra-Corporate Transfers (ICT)

Proposals for a directive that was to set conditions for the migration of third-country national workers within corporations has been introduced by the European Parliament this summer. It is expected that the Czech Republic will not support the directive in its entirety.

The aim of the directive on ICT is to ease migration of qualified employees within multinational companies. Companies would no longer need to go through lengthy bureaucratic processes to obtain several different permits (residence, labour, residence permit for worker's family). Therefore companies will be able to manage their corporation more efficiently and will be able to have the right employees in the right place.

However, it is widely felt in the Czech Republic that certain issues have not been properly thought through. For example, whether payment of social security is to be made in the country of permanent residency or temporary residency or both. And whether as a result the worker may be obliged to participate in the social security system of the country of his temporary and permanent residency. It is also doubted whether the proposed ICT

regularisation has been given sufficient attention with respect to upcoming EU obligations regarding multilateral commerce treaties with third countries.

More on the topic will be revealed after parliamentary discussions that are anticipated to take place later this year.

## France



### Retirement Reform in France

On 27 October 2010 the French Parliament passed a bill concerning the reform of the French retirement regime. This bill will now be examined by the *Conseil Constitutionnel* and, subject to this review, the bill should be published in November and enter into force thereafter.

The two major changes to the regime that should be noted are:

1. The age of entitlement to a retirement pension will be raised from the current age of 60 to 62 for those born after 1 January 1956. However, this measure will start to apply to individuals born after 1 July 1951 and the age of retirement will be progressively raised each year in increments of 4 months until 1 January 1956 after which the retirement age of 62 will apply. These changes affect the general regime, the agricultural regime, merchants and craftsmen, independent professionals and lawyers and public sector workers (all three categories).
2. The age of entitlement to a full rate retirement pension will be raised from the current age of 65 to 67. This will happen progressively between 1 July 2016 to 1 July 2023 according to a calendar determined by decree at a later stage.

There are special exemptions for workers who:

- a) are able to justify permanent incapacity to work due to a work related accident or illness. The actual level of incapacity that a worker will have to demonstrate (this is likely to be around 20%) will be fixed at a later date; or
- b) have an incapacity level less than the threshold set under paragraph (a) above (although the worker will probably have to prove at least 10% incapacity) but are able to demonstrate that their incapacity is as a result of prolonged exposure to work related risks.

Workers who qualify under exemptions (a) and (b) above will be able to retire with a full pension at an earlier age to be decided (this is likely to be 60). This will rule will apply to pensions that are effective after 1 July 2011.

# News in Brief

## Germany



### New Ruling Changes Law on Termination of Employment for Petty Crimes

To date, the guidelines on this issue were rather strict. Employees who committed theft against their employers faced the prospect of dismissal for gross misconduct. This was the case even if the theft concerned was only of minor value. The highest German labour court decided more than two decades ago that any theft may lead to immediate and permanent termination irrespective of the value of the goods. This precedent ruling in 1984 was concerned with a piece of cake belonging to the employer. The employee ate it and was dismissed. The situation is now changing. A new ruling by the Federal German Labour Court (Ruling 'Emmely' of 10 June 2010) decided that the termination of a supermarket cashier was invalid. The woman stole a voucher worth EUR 1.30. The court argued that the dismissal was inappropriate given the low value of the voucher and her long employment with the supermarket company. The decision in Emmely was hotly discussed in the German press and even politicians became involved in the debate. Employers need to note that the validity of any dismissal based on petty crimes may not be valid in the future. If the dismissal is invalid, the only option is to formally caution the employee and to react in any further incident.

## Poland



### Controversial changes to the working time regulations

The Polish Parliament is currently proposing changes to working time regulations, effective from 1 January 2011. The draft amendment to the Polish Labour Code has already been accepted by the Sejm and presently awaits the Senate's and the President's approval. Currently, each holiday occurring in a settlement period and on a day other than a Sunday decreases the amount of working time by eight hours. However, if the proposed amendment enters into force as planned, a holiday occurring on a day which pursuant to the adopted settlement period is work-free this will not decrease the amount of working time.

In practice such a regulation would give employers the possibility to save costs by adopting appropriate settlement periods in such a manner that a work-free day in an average five-day working week occurs on a holiday. Thus employers would not have to grant employees an additional work-free day.

However, the proposed amendment is viewed critically by some labour law and HR experts. If the new law enters into force, employers seeking cost saving opportunities will have to be extra careful while applying the new regulations to artificial arrangements of settlement periods as this could result in a violation of the weekly rest period and, in extreme cases, could also be deemed an abuse of the employer's rights or even a breach of the principle of equal treatment.

## Romania



### Proposed amendments to the Romanian Pensions' Law

Important amendments to the Pensions' Law are expected to be adopted soon in Romania, as part of a reform package concluded with the IMF and the EU in exchange for EUR 20 billion in aid, designed to help Romania emerge from the financial crisis. The main amendments relate to the calculation mechanism of pensions which generated extensive debate between political parties on whether the new mechanism eventually leads to a decrease of pensions or not.

Furthermore, under the draft amendments to the Pensions' Law, all special pensions (e.g. diplomats, auxiliary personnel from courts, public clerks from the Parliament, aeronautic civil seagoing personnel, personnel working in the national defence sector, public order and national security sectors) will be integrated in the public system and will be recalculated depending on people's contributions, which means that special pensions will be reduced. In addition, retirement age is set at 65 for both men and women.

### New labour safety and health measures

Extensive new measures for health and safety at work were introduced by Government Decision No. 955/2010 for the amendment and supplementation of the norms for the application of Law No. 319/2006 on health and safety at work.

The amendments relate to, among other matters, evaluation of risk, authorisation procedure for external prevention and protection services and conditions for the mandatory labour safety activities depending on the number of employees within a Romanian company. Other amendments relate to the training of workers in the field of health and safety, to the procedure for investigation, acknowledgement and report of occupational diseases. Nevertheless, natural or legal persons who have undergone a similar authorisation procedure in another Member State or a State from the Economic European Area may, temporarily or permanently, perform activities in Romania, subject to notification to the relevant Authorisation Committee from the Labour Inspectorate where the actual activity is performed.

### New Collective Bargaining Agreements executed at industry sector level

Collective Bargaining Agreements have been agreed upon between employers' and employees' representatives for the following industry sectors: (i) construction materials, (ii) chemistry and petrochemistry and (iii) ferrous metallurgy, metallurgy of non-ferrous metals and heat-resistant products.

## Russia



### Highly qualified foreign specialists

Substantial amendments to Russian migration legislation simplifying the procedure for employing foreign personnel entered into force on 1 July 2010. Federal Law No. 86-FZ of 19 May 2010 (the "Law") amends, in particular, certain provisions of Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation" (the "Law on Foreigners") with respect to the employment of highly qualified specialists and work permits issued to foreign citizens working for Russian individuals. The Law established a new category for highly qualified foreign specialists, where the only criterion for such categorisation is dependent on the amount of the specialist's remuneration. For a foreigner to be considered a highly qualified specialist, he/she should earn no less than 2 million rubles (approximately USD 67,000) per year (the "qualification threshold").

Employers are no longer required to obtain quotas to employ highly qualified foreign specialists nor submit reports on vacancies to the employment authorities on a monthly basis. Work permits and visas for highly qualified foreign specialists are issued irrespective of the relevant quotas. A work permit for such a foreign specialist is issued for the term of the employment agreement, but for no more than three years (with the possibility of further prolongation). A work permit may be issued with respect to several constituent entities of the Russian Federation in the event that an agreement with a specialist requires that he/she works or provides services in more than one region of Russia. The overall time period for obtaining a work permit for a highly qualified foreign citizen is 14 business days. By the time the employer applies to FMS to request the work permit for a highly qualified foreign citizen the employment agreement with him/her must be signed but come into force subject to receipt of the work permit. A highly qualified foreign specialist also enjoys a more favourable tax regime. Such employees will now enjoy a reduced tax rate of 13%, irrespective of the duration of their stay in Russia whether they are Russian tax residents or not.

Only: (i) Russian commercial organisations; (ii) foreign legal entities having accredited branches in the Russian Federation with respect to employees of such branches; and (iii) Russian scientific, educational and healthcare organisations, provided that the administrative liability for violating the Russian migration legislation has not been imposed on any of them during the last two years may use the simplified procedure to employ highly qualified foreign specialists.

## Slovakia



### Discussion on extensive amendment to Slovak Labour Code launched

The Slovak government has recently opened official discussions with employers' representatives and trade unionists regarding the anticipated extensive amendment to the

Labour Code within the Economic and Social Council of the Slovak Republic (the tripartite). Two groups will be dealing with the issue. In the political group, the highest representatives of the parties to the tripartite will meet. The second working group will consist of experts chosen by representatives of the social partners. As a part of this initiative, the American Chamber of Commerce (AmCham) also presented its views on the Labour Code amendment at a meeting with the Minister of Labour. The Chamber proposed that the definition of dependent work be more precise; the termination of employment be more flexible; the regulation of working hours, including overtime work, be eased; the restrictions for definite term employment be liberalised; and the inadequate benefits of trade unionists be cancelled. The Minister of Labour commented that the proposals were a good topic for discussion and reacted positively to most of them. White & Case (Bratislava) is an active member of AmCham's Social Affairs Committee that prepared the above-mentioned presentation for the Minister of Labour. It is anticipated that the extensive amendment to the Labour Code will be adopted sometime in the first half of 2011.

## South Africa



A partnership is not considered to be a legal person distinct from its partners according to South African law. Unlike companies, the partners are therefore liable for the debts of the partnership equally, unless otherwise agreed.

Partnerships are also taxed differently to companies. The income and capital gains of a company are taxed in the hands of the company. A company also pays "dividend tax," called secondary tax on companies, when a distribution is made to shareholders.

Since a partnership is not a "person" as defined in the South African Income Tax Act it is not subject to tax, being so called "tax transparent." For income tax purposes, income and expenses of the partnership are considered to be those of partners. The proceeds on disposal of a partnership asset are deemed, for capital gains tax purposes, to have accrued to the partners.

Some other jurisdictions, for example the United Kingdom, allow limited liability partnerships which provide for legal personality separate from that of their partners, although the partners are still taxed in their own hands.

Because of their legal nature, LLPs may be seen to be corporate entities, not partnerships, for purposes of South African tax law, so the partnership (and not the partners) may be subject to tax in South Africa.

Changes are now planned so that a foreign partnership will be considered to be a partnership which is formed outside South Africa, the partners of which (and not the partnership) are subject to tax under the laws of the country in which the partnership is established.

# News in Brief

## Sweden



### The Laval judgment and Lex Laval

#### Background

The construction company Laval un Partneri Ltd ("Laval"), incorporated under Latvian law, was engaged by a Swedish company, L&P Baltic Bygg AB, to post workers to work on a construction site in Vaxholm, Sweden. Laval was not bound by any collective bargaining agreement in Sweden, but had signed an agreement with the Latvian building trade union. The Swedish Building Workers' Union initiated negotiations with Laval in order to establish a collective bargaining agreement under Swedish law. The negotiations were not successful and the trade union initiated collective actions against Laval. Laval commenced proceedings before the Swedish Labour Court alleging that the collective action taken was illegal and demanded a court ruling that the actions should cease and also claimed damages.

#### The court's judgment and the legislative bill

The Swedish Labour Court made a reference to the ECJ for a preliminary ruling on whether or not the Swedish labour law allowing the blockade was compatible with rules of the EC treaty and the directive concerning posting of workers in the construction industry. The EC Court ruled that the national legislation allowing a trade union to initiate collective action against a foreign company which is temporarily active in Sweden in order to make them sign a collective agreement, even though the company already is bound by a foreign collective agreement, was in conflict with the EC rules regarding the freedom to provide services. The Swedish Labour Court ruled in favor of Laval.

As a result of the judgment the Swedish government has issued a bill which came into force on April 15, 2010. According to the bill, it will not be possible for trade unions to force foreign companies temporarily active in Sweden to pay their employees the same wages as national companies do. The prohibition on initiating collective action will apply as long as the foreign company can prove that it is bound by a foreign collective agreement or that the company pays the minimum wage prescribed by law in the home country.

## Turkey



On 12 September 2010 Turkish citizens approved a number of constitutional amendments with a large margin of 58% in favour, and 42% against. Amongst others, the constitutional amendments introduced the following changes to labour and employment law matters:

- **Data Privacy:** The concept of "data privacy" is set out in the Constitution for the very first time. Data privacy is considered one of the key elements for protection of private life. Everyone will now have the right to request information on his/her personal

data, to access the data, to request the correction or the deletion thereof and to verify whether the data is used for the right purposes. Personal data can only be processed under specific circumstances which will be set out by laws to be enacted or in the event of receipt of the express consent of the individual.

- **Multiple memberships to multiple unions:** The right to union membership is expanded by removing the former restriction on multiple memberships of multiple unions from the 1982 Constitution.
- **The right to strike and lockout:** Prohibitions on politically motivated strikes and lockouts, solidarity strikes and lockouts, the occupation of work premises, labour go-slows, a decline of productivity and any other forms of obstruction are abolished.
- **The liability of unions:** To strengthen unions, the liability for damages arising from strikes is shifted from unions to those employees at fault.
- **Public officials' right to enter into collective bargaining agreements:** Public officials are now granted the right to enter into collective bargaining agreements with the government. Prior to the amendment, public officials only had the right to participate in collective negotiations and in the case of any dispute, the Council of Ministers was entitled to render the final decision. As a result of the amendment such authority is now transferred to another newly formed governmental entity, "Public Officials Arbitration Committee".

## UK



### Additional Paternity Leave Regulations

The government has recently announced that the right to request flexible working will be extended to parents with children under the age of 18 from April 2011. Although this is an increase of only one year (from under the age of 17) this new right will benefit an estimated further 300,000 people. The Additional Paternity Leave Regulations will remain in force as an interim measure until a new system of flexible parental leave has been introduced. The regulations were implemented in April 2010 and will have effect for parents of children whose birth is due on or after April 2011. Additional paternity leave will give employed fathers a right to up to six months extra leave which can be taken once the mother has returned to work. This will give parents more choice in child care responsibilities and for the first time ever, the option of dividing a period of paid leave between them.

### Compromise Agreements under Equality Act 2010

There is a potential problem with settling discrimination claims under the Equality Act 2010 (the "Act") arising from the drafting in section 147 of the Act. One of the conditions of a valid compromise agreement under the Act is that the complainant must have

received independent advice from an independent adviser (section 147(3)(c)). The circumstances in which someone is not an independent adviser are specified in section 147(5) and includes a person who is party to the contract or the complaint, or someone who is acting for that person in relation to the contract or the complaint (section 147(5)(a) and (d)). This would seem to effectively rule out anyone who is advising the employee about a possible claim and/or the terms of a compromise agreement signing off on that same compromise agreement.

The Government Equalities Office (the "GEO") issued a statement on its website in mid-October indicating that it was clear, if section 147 is "read as a whole," that there is no drafting error and the position is as it was previously, i.e. to rule out those acting for the employer or an associated employer advising the employee.

Until and unless this drafting is rectified, employers and lawyers might wish to consider what other options are open to them when settling claims on termination of employment. The only unassailable solution is for employers to use a COT3 (the ACAS form for recording an agreement between employer and employees). However, this may not be appropriate in all cases. Where a COT3 is not appropriate, lawyers will need to warn clients about the possibility of a challenge being made to a discrimination waiver.

## United States



The U.S. Department of Labour recently issued two rules to enhance the transparency of plan servicing arrangements. On 15 October, 2010, a final rule was issued requiring defined contribution plan administrators to disclose detailed information regarding plan investment options and fees and expenses to plan participants who direct their own plan investments. The final rule, to become applicable beginning with the 2012 plan year for calendar year plans, comes at the heels of a separate interim final rule. The interim final rule, issued on 16 July, 2010 and to become effective a year later, requires service providers to defined contribution and defined benefit plans, including investment vehicles holding "plan assets," to disclose detailed information regarding their fees to plan fiduciaries.

# Upcoming Events

## HR Forum 2010

**8 December 2010,  
Czech Republic**

Attending and presenting at HR Forum 2010 (Ladislav Smejkal). Please contact Dagmar Novakova for details.  
E-mail: [dnovakova@whitecase.com](mailto:dnovakova@whitecase.com)

## "How to handle unfair dismissal cases in practice"

**16 December 2010,  
Czech Republic**

"How to handle unfair dismissal cases in practice"  
– Client Seminar.  
Please contact Ladislav Smejkal for details.  
E-mail: [lsmejkal@whitecase.com](mailto:lsmejkal@whitecase.com)

## "Criminal liability of managers - how to approach in practice"

**27 January 2011,  
Czech Republic**

"Criminal liability of managers - how to approach in practice"  
Please contact Ladislav Smejkal for details.  
E-mail: [lsmejkal@whitecase.com](mailto:lsmejkal@whitecase.com)

## JSB International Employment Law Seminar

**16 February 2011 (TBC), London**

Chairing the JSB International Employment Law Seminar for HR advisors on Employment Law in Turkey (London: Stephen Ravenscroft and White & Case colleagues from Istanbul). Please contact Fiona Laming for details.  
E-mail: [flaming@whitecase.com](mailto:flaming@whitecase.com)

## United States

*Ethisphere* magazine has named International Employment Counsel Don Dowling (New York) to its 2010 annual list of "Attorneys Who Matter." Don is *Ethisphere's* only honoree listed under "Labour and Employment" in its national ranking of "the best and brightest in the legal field...in all areas of practice, from federal agencies to leading in-house counsel to the top ethics and compliance officers of major companies."

Link: <http://ethisphere.com/2010-attorneys-that-matter/>

# In Profile



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# Ladislav Smejkal

“We are seeing a growing demand for employment and benefits related services from our key clients across the region. To stay ahead of the competition, we need to use the strength of our global organization, capabilities and experience as well as our CEE coverage to ensure that all our clients’ needs are effectively met.”

There’s no such thing as a typical employment lawyer. Employment law specialists come from different professional backgrounds that have enriched their knowledge and provided them with a wide range of experience. This diversity is reflected in our international client base and the challenges they face.

Ladislav, who speaks Czech, English and German, is a great example of a legal professional with an international profile, having studied and worked across Europe. His unique career path has led him to arrive at his true legal calling as an employment law specialist. In addition to his diverse professional background, Ladislav’s natural curiosity of other cultures and people is reflected in his interest in Asian culture and philosophy which he practices through Tai Chi and Buddhism. His belief in good health, mental and physical, has also led him to devote time to learning about the benefits of a macrobiotic diet.

Born in Moravia, the eastern part of the Czech Republic, Ladislav studied law in Prague at the Charles University where he graduated in 2000. He decided to make use of his language skills to enroll in an external graduate program in Hamburg, Germany. During his two-year stay in this north German city known for its significant media industry, Ladislav made his foray into the world of online media creating a German government subsidised start-up that helped companies to improve their listing with major search engines.

“My first job in the legal profession was with one of the top Czech law firms in the market, focusing on corporate law, intellectual property and IT. However, I became more interested in labour law because I realized that I wanted to work closely with people and their real life issues. After six years as an employment lawyer,

I interned with the EU Commission in Brussels. This experience only solidified my desire to fully dedicate my practice to employment law. White & Case gave me the opportunity to build up this practice not only in the Czech Republic but across Central and Eastern Europe.

## Global services and local knowledge

Using our network of specialised lawyers, we can leverage our European-wide and global presence to provide our clients with a full range of services. Our Employment and Benefits Group colleagues in each of our offices across Central and Eastern Europe from Bratislava to Istanbul and from Warsaw to Bucharest are an integral part of this global network, providing the local knowledge and customer proximity that is so critical in developing targeted and holistic solutions.

I have always been fascinated by meeting new people from different walks of life. That is one of the reasons why I enjoy my role heading the Employment and Benefits Group in CEE as I get to work with great professionals internally and externally in an international setting.

## Dealing with the downturn

Of course some of the major themes since the beginning of the crisis have been reducing the cost of labour and restructuring. We have seen an influx of clients requesting our help and support in dealing with these economic realities. Though we deal with a variety of issues which can be unpleasant such as redundancy, many of our clients who have successfully weathered the recession are now focusing again on recruitment and benefits in order to ensure their competitiveness in a tight labour market.”

## Career to date

Joined White & Case in 2008 to head the Employment Law practice in Prague and act as the regional liaison for the Employment and Benefits Group in CEE/Turkey. Ladislav was recently elected chairman of the Labour Code Committee of the American Chamber of Commerce in the Czech Republic.

Married to Marketa with one child, Alzbeta (Elisabeth) who is 2.



# “Don’t Ask Don’t Tell”

Los Angeles lawyer Dan Woods led a team of White & Case lawyers in a six year challenge to overturn the controversial “Don’t Ask Don’t Tell” policy which bans openly gay, lesbian and bisexual individuals from serving in the US military.

The case was tried in July 2010 in federal court in Southern California, and, in September 2010, the court ruled in favor, finding “Don’t Ask, Don’t Tell” unconstitutional on both due process and First Amendment grounds. Here Dan reflects on just what was achieved.

“This victory was an unprecedented, historic outcome in what is one of the major civil rights issues of our day. Our client, our witnesses, including six former service members, and our team were thrilled with this result. We were proud to have played a role in making military service in our country available to all Americans who wish to conform to military standards and values, regardless of their sexual orientation.

“Our victory at the trial was exciting for many reasons. We researched, analyzed, and argued successfully on complicated legal issues, we gathered and presented a mountain of evidence in support of our case, and we put it all together at trial in a persuasive manner. Delivering the closing argument at the conclusion of the trial will always be one of the highlights of my career as a lawyer.

“All of our witnesses had incredible stories to tell, but one in particular, a major in the US Air Force, with 20 years of service, will always stay with me. After the Major completed his third deployment to Saudi Arabia, someone began using the same computer he had used while deployed; that person searched his private e-mail files without his knowledge or permission. The search included a folder with over 500 e-mails of correspondence with his friends and family members, including at least one message to a man discussing homosexual conduct. The Major only learned his private e-mail had been searched when he returned to Germany and his commanding officer confronted him with the messages, read him the Don’t Ask, Don’t Tell Act, and pressured him to admit he was homosexual. He declined. At the end of the meeting, he was relieved of his duties. The military then commenced discharge proceedings against him under “Don’t Ask, Don’t Tell.” Members of his unit supported his retention and his commanding officer recommended that he be promoted but he was forced to resign. Our Air Force lost a patriotic, heroic officer as a result.

“Besides the result in this case, and the correction of injustice that it should provide, our pro bono work in the case provided a number of other benefits. Our associates had the opportunity to play important roles in the case, including depositions and, for three mid-level associates, the opportunity to examine several witnesses at trial for the

first time. Two associates have been asked to speak publicly about the case at law school and bar association events. The win may also help demonstrate our trial capabilities to clients; after all, if we can take on and defeat the government of the United States, we can win a case for any client. We also, of course, have received an overwhelming amount of positive feedback from members of the Bar and the public.

“Perhaps most importantly, though, the case has in many ways energized and enthused the community of our lawyers and staff all over the world. In Los Angeles, I saw this when I began to see spouses and other family members of our lawyers attending the trial. Other offices also are enthused. From all corners of the Firm, I have been gratified by how closely people have followed the case and have been struck by how the case has united and bonded people from different offices, different practice groups, and different backgrounds. Over and over, they have told me how proud they are that “their” Firm took on and won this important case.

“I have thought all along that challenging “Don’t Ask, Don’t Tell” was not a liberal/conservative or Democrat/Republican issue. Presidents from both parties have enforced it. I have kept in mind the old quote attributed to Barry Goldwater: “It doesn’t matter if you’re gay or straight as long as you can shoot straight.”

# Key Contacts



**Nicholas Greenacre**  
Global Head of Executive Compensation,  
Benefits, Employment and Labour Law  
Partner, London

Direct dial: +44 20 7532 2141  
Fax: +44 20 7532 1001  
E-mail: [ngreenacre@whitecase.com](mailto:ngreenacre@whitecase.com)

## EU Employment Issues



**James Killick**  
Partner, Brussels

Direct dial: +32 2 209 8214  
Fax: +32 2 219 1626  
E-mail: [jkillick@whitecase.com](mailto:jkillick@whitecase.com)

## Belgium



**Stefan Odeurs**  
Partner, Brussels

Direct dial: +32 2 219 16 20  
Fax: +32 2 219 16 26  
E-mail: [sodeurs@whitecase.com](mailto:sodeurs@whitecase.com)

## China



**John Leary**  
Partner, Shanghai

Direct dial: +86 21 6132 5910  
Fax: +86 21 6323 9252  
E-mail: [jleary@whitecase.com](mailto:jleary@whitecase.com)

## Czech Republic



**Ladislav Smejkal**  
Associate, Prague

Direct dial: +420 255 771 341  
Fax: +420 255 771 122  
E-mail: [lsmejkal@whitecase.com](mailto:lsmejkal@whitecase.com)

## Finland



**Timo Airisto**  
Partner, Helsinki

Direct dial: +358 9 228 64 322  
Fax: +358 9 228 64 228  
E-mail: [tairisto@whitecase.com](mailto:tairisto@whitecase.com)

## France



**Alexandre Jaurett**  
Counsel, Paris

Direct dial: +33 1 55 04 58 28  
Fax: +33 1 55 04 15 16  
E-mail: [ajaurett@whitecase.com](mailto:ajaurett@whitecase.com)

## Germany



**Karl-Dietmar Cohnen**  
Head of German Employment Law Practice  
Partner, Hamburg

Direct dial: +49 40 350 05 396  
Fax: +49 40 350 05 248  
E-mail: [kdcohnen@whitecase.com](mailto:kdcohnen@whitecase.com)



**Klaus Sturm**  
Counsel, Berlin

Direct dial: +49 30 880 9110  
Fax: +49 30 880 911 297  
E-mail: [ksturm@whitecase.com](mailto:ksturm@whitecase.com)



**Frank-Karl Heuchemer**  
Partner, Frankfurt

Direct dial: +49 69 299 940  
Fax: +49 69 299 94 1444  
E-mail: [fheuchemer@whitecase.com](mailto:fheuchemer@whitecase.com)



**Björn Theis**  
Local partner, Munich

Direct dial: +49 89 206043 740  
Fax: +49 89 206043 510  
E-mail: [btheis@whitecase.com](mailto:btheis@whitecase.com)

## Hong Kong



**Betty Chan**  
Associate, Hong Kong

Direct dial: +852 2822 8750  
Fax: +852 2845 9070  
E-mail: [bchan@whitecase.com](mailto:bchan@whitecase.com)

## Hungary



**Ildikó Csák**  
Local partner, Budapest

Direct dial: +36 1 488 5200  
Fax: +36 1 488 5299  
E-mail: [icsak@whitecase.com](mailto:icsak@whitecase.com)

## Poland



**Dr Janusz Fiszer**  
Partner, Warsaw

Direct dial: +48 22 50 50 106  
Fax: +48 22 50 50 400  
E-mail: [jfiszer@whitecase.com](mailto:jfiszer@whitecase.com)

## Russia



**Igor Ostapets**  
Partner, Moscow

Direct dial: +7 495 787 3019  
Fax: +7 495 787 3001  
E-mail: [iostapets@whitecase.com](mailto:iostapets@whitecase.com)

## Singapore



**William Kirschner**  
**Partner, Singapore**

Direct dial: +65 6347 1301  
Fax: +65 6225 6009  
E-mail: wkirschner@whitecase.com

## Slovakia



**Juraj Fuska**  
**Associate, Bratislava**

Direct dial: +421 2 5441 5100  
Fax: +421 2 5441 6100  
E-mail: jfuska@whitecase.com

## South Africa



**Steven Raney**  
**Partner, Johannesburg**

Direct dial: +27 11 341 4012  
Fax: +27 11 327 1900  
E-mail: sraney@whitecase.com

## Sweden



**Fredrik Schultz**  
**Counsel, Stockholm**

Direct dial: +46 8 506 32 344  
Fax: +46 8 611 21 22  
E-mail: fredrik.schultz@whitecase.com

## Tokyo



**Yuji Ogiwara**  
**Partner, Tokyo**

Direct dial: +81 3 3259 0156  
Fax: +81 3 3259 0150  
E-mail: yogiwara@whitecase.com

## Turkey



**Asli Basgoz**  
**Partner, Istanbul**

Direct dial: +90 212 355 1313  
Fax: +90 212 275 7543  
E-mail: abasgoz@whitecase.com

## United Arab Emirates



**Deema Ghosheh**  
**Counsel, Abu Dhabi**

Direct dial: +971 2 49 50 131  
Fax: +971 2 49 50 150  
E-mail: dghosheh@whitecase.com

## UK



**Oliver Brettle**  
**Partner, London**

Direct dial: +44 20 7532 2103  
Fax: +44 20 7532 1001  
E-mail: obrettle@whitecase.com



**Stephen Ravenscroft**  
**Partner, London**

Direct dial: +44 20 7532 2118  
Fax: +44 20 7532 1001  
E-mail: sravenscroft@whitecase.com

## US



**Mark Hamilton**  
**Partner, New York**

Direct dial: +1 212 819 8262  
Fax: +1 212 354 8113  
E-mail: mhamilton@whitecase.com



**Tal Marnin**  
**Counsel, New York**

Direct dial: +1 212 819 8916  
Fax: +1 212 354 8113  
E-mail: tmarnin@whitecase.com



**Daniel J. Woods**  
**Partner, Los Angeles**

Direct dial: +1 213 620 7772  
Fax: +1 213 452 2329  
E-mail: dwoods@whitecase.com



**Don Dowling**  
**(International Employment Counsel)**  
**Counsel, New York**

Direct dial: +1 212 819 8665  
Fax: +1 212 354 8113  
E-mail: ddowling@whitecase.com



**Marko Maglich**  
**(Immigration Global Coordinator)**  
**Associate, New York**

Direct dial: +1 212 819 8635  
Fax: +1 212 354 8113  
E-mail: mmaglich@whitecase.com



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