

Bird & Bird

# Risk & Compliance: Criminal liability arising from workplace obligations guide

International HR Services

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# Introduction

When working with international clients, we find that they are often very well attuned to the different employment law obligations that apply in their locations. While the specific rights available to employees do vary widely, there is a lot of common ground. In particular, in most locations protections are available to employees covering matters such as wages and benefits, working time and paid time off, family leave, reasons and processes for dismissal, discrimination and victimisation, whistle-blower protection and collective consultation.

On the other hand, international businesses sometimes give less consideration to the means of enforcement of such rights and (in particular) whether non-compliance could give rise to criminal sanctions.

In the UK, relatively few day-to-day workplace and employment obligations give rise to criminal liability. As a result, subject to certain exceptions and any adverse PR and employee relations risk, UK employers are broadly able to take a fairly “commercial” approach to their employment law obligations. For example, a UK employer may elect not to follow a particular termination process required by law, provided that they are content to compensate the employee accordingly, having regard for the particular civil remedy the employees would be entitled to in the Employment Tribunal (e.g. financial loss arising from the breach).

However, criminal liability for breaches of workplace obligations is widespread in certain jurisdictions, giving employers less scope to see employment obligations as a strategic matter and employee claims as simply figures on a spreadsheet. This can come as a surprise to international clients headquartered in the UK or other countries with a similar enforcement regime.

In this guide, we have surveyed our international offices to collate basic information in relation the workplace obligations that may give rise to criminal liability as well as an indication of the maximum sanctions and who these can be applied to.

In collating this guide, we have found that approaches to criminal liability vary greatly across jurisdictions and that even defining criminal liability, as opposed to civil liability, is not always straightforward in the employment sphere. For example, certain countries (including Poland and Hungary) have the concept of “misdemeanour liability”, which may be viewed as an intermediate category of liability giving rise to a lower level of sanctions than full criminal offences.

The jurisdictions covered by this guide are Australia, Belgium, China, the Czech Republic, Denmark, Finland, France, Germany, Hong Kong, Hungary, Italy, Poland, Singapore, Slovakia, Spain, Sweden, United Arab Emirate, and the United Kingdom.

Our local teams are available to provide additional information on the relevant workplace obligations and potential implications of breach.

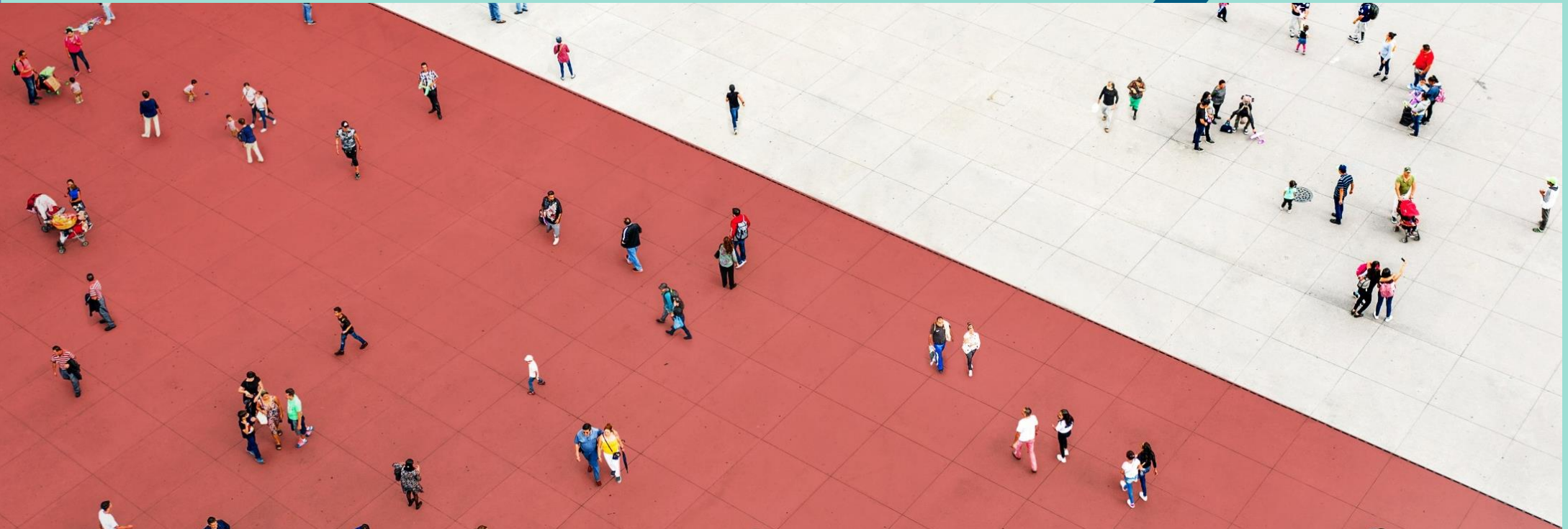
# Key

## MEDIUM RISK

- Criminal sanctions are limited to fines only
- Criminal sanctions apply only to the employer (i.e., no liability for responsible persons of the employer)





## HIGH RISK


- Criminal sanctions potentially extend to imprisonment
- Criminal sanctions potentially extend to responsible persons of the employer or its representatives (as well as the employer itself)



# Payment of wages

*Offences relating to failure to make full payment of wages due (including minimum wages and holiday pay)*

Jurisdiction	Range of sanctions	Who can be liable
 Australia	Fines and imprisonment	Employers and responsible personnel
 Belgium	Fines	Employers and responsible personnel
 China	Fines and imprisonment (up to 7 years)	Employers and responsible personnel
 Denmark	Fines	Employers and responsible personnel
 France	Fines	Employers and responsible personnel
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Hong Kong	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Italy	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Singapore	Fines and imprisonment (up to 6 months)	Employers and responsible personnel

	Slovakia	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	United Arab Emirates	Fines and imprisonment	Employers and responsible personnel
	United Kingdom	Fines	Employers and responsible personnel

# Working time

*Offences relating to breaches of working time, paid leave and rest break rules*

Jurisdiction	Range of sanctions	Who can be liable	
	Belgium	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	China	Fines and imprisonment (up to 10 years)	Employers and responsible personnel
	Denmark	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Finland	Fines or imprisonment (up to 6 months)	Employers or its representatives
	France	Fines	Employers and responsible personnel

	Germany	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Hong Kong	Fines	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Singapore	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel

# Whistleblowing

*Offences relating to breaches of whistleblower protections*

Jurisdiction	Range of sanctions	Who can be liable	
	Australia	Fines and imprisonment	Employers and responsible personnel
	Denmark	Fines	Employers and responsible personnel
	Hungary	Fines	Employers and responsible personnel

# Modern slavery

*Offences relating to forced and underage labour*

Jurisdiction	Range of sanctions	Who can be liable
 Australia	Imprisonment (up to 20 years)	Employers and responsible personnel
 China	Fines and imprisonment (up to 7 years)	Employers and responsible personnel
 Denmark	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Finland	Imprisonment (up to 10 years)	Employers or its representatives
 Hungary	Imprisonment (up to 3 years)	Employers and responsible personnel
 Slovakia	Imprisonment (up to 2 years)	Employers and responsible personnel
 Spain	Fines and imprisonment (up to 6 years)	Employers and responsible personnel
 United Arab Emirates	Fines and imprisonment	Employers and responsible personnel





United Kingdom

Fines and imprisonment (up to life)

Employers and responsible personnel

# Health & safety

*Offences relating to breaches of health and safety legislation (including reporting obligations)*

Jurisdiction	Range of sanctions	Who can be liable
 Australia	Fines and imprisonment	Employers and responsible personnel
 China	Imprisonment (up to 7 years)	Employers and responsible personnel
 Denmark	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Finland	Fine or imprisonment (up to 1 year)	Employers or its representatives
 France	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
 Germany	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
 Hong Kong	Fines and imprisonment (up to 1 year)	Employers and responsible personnel

	Hungary	Fines and imprisonment (up to 10 years)	Employers and responsible personnel
	Italy	Fines and imprisonment	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Singapore	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 10 years)	Employers and responsible personnel
	Spain	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	Sweden	Fines and imprisonment (up to 6 years)	Employers and responsible personnel
	United Arab Emirates	Fines and imprisonment	Employers and responsible personnel
	United Kingdom	Fines and imprisonment (up to 2 years)	Employers and responsible personnel

# Data privacy






## *Offences relating to breaches of data protection legislation*

Jurisdiction	Range of sanctions	Who can be liable
 China	Fines and imprisonment (up to 7 years)	Employers and responsible personnel
 Czech Republic	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Denmark	Fines and imprisonment (up to 6 months)	Employers and responsible personnel
 Finland	Fine or imprisonment (up to 1 year)	Employers or its representatives
 Germany	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Hong Kong	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Italy	Imprisonment (up to 3 years)	Employers and responsible personnel
 Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel

	Singapore	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	United Kingdom	Fines	Employers and responsible personnel

# Record keeping & background checks

*Offences in relation to breaches of employee record keeping and background checking requirements*

Jurisdiction		Range of sanctions	Who can be liable
	Belgium	Fines	Employers and responsible personnel
	Denmark	Fines and imprisonment (up to 6 months)	Employers and responsible personnel
	Finland	Fines	Employers or its representatives
	Hong Kong	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel

# Payroll requirements

*Offences relating to breaches of payroll requirements (e.g., withholding taxes and social security contributions, employee registrations)*

Jurisdiction	Range of sanctions	Who can be liable
 China	Fines and imprisonment (up to 7 years)	Employers and responsible personnel
 Czech Republic	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Denmark	Fines and imprisonment (up to 1 year and 6 months)	Employers and responsible personnel
 Finland	Fines or imprisonment (up to six months)	Employers or its representatives
 France	Fines and imprisonment (up to 2 years)	Employers or its representatives
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Hong Kong	Fines	Employers and responsible personnel
 Hungary	Fines and imprisonment (up to 10 years)	Employers and responsible personnel

	Poland	Fines and imprisonment	Employers and responsible personnel
	Singapore	Fines	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
	Spain	Fines and imprisonment (up to 6 years)	Employers and responsible personnel
	United Arab Emirates	Fines and imprisonment	Employers and responsible personnel
	United Kingdom	Fines and imprisonment	Employers and responsible personnel

 Bird & Bird LLP continues to service multi-national corporations operating in its specialist sectors of technology, life sciences, retail and aviation.

*Legal 500 UK, 2023*









# COVID-19

*Offences relating to breaches of COVID-19 and furlough pay measures*

Jurisdiction	Range of sanctions	Who can be liable
 China	Fines and imprisonment (up to 7 years)	Employers and responsible personnel
 Finland	Fines or imprisonment (up to one year)	Employers or its representatives
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Hungary	Fines	Employers and responsible personnel
 Poland	Fines and imprisonment (up to 12 years)	Employers and responsible personnel
 Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 United Kingdom	Fines	Employers and responsible personnel

# Employee leasing







*Offences in relation to breaches of employee leasing and supply of worker requirements*

Jurisdiction	Range of sanctions	Who can be liable
 Belgium	Fines	Employers and responsible personnel
 Denmark	Fines	Employers
 France	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Italy	Fines and imprisonment (up to 6 years)	Employers and responsible personnel
 Poland	Fines	Employers
 Spain	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 United Arab Emirates	Fines, imprisonment (up to 6 months), and deportation	Employers and responsible personnel



# Immigration compliance





*Offences in relation to breaches of immigration and right to work requirements*

Jurisdiction	Range of sanctions	Who can be liable
 Belgium	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 China	Fines	Employers
 Czech Republic	Fines and imprisonment (up to 6 months)	Employers and responsible personnel
 Denmark	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
 Finland	Fines or imprisonment (up to one year)	Employers or its representatives
 France	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Hong Kong	Fines and imprisonment (up to 1 years)	Employers and responsible personnel

	Hungary	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	Italy	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	Singapore	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 2 years)	Employer and responsible personnel
	Spain	Fines and imprisonment (up to 6 years)	Employers and responsible personnel
	Sweden	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	United Arab Emirates	Fines, imprisonment (up to 6 months), and deportation	Employers and responsible personnel
	United Kingdom	Fines and imprisonment (up to 5 years)	Employers and responsible personnel

# Worker status

*Offences in relation to worker misclassification (e.g., engaging personnel as independent contractors)*

Jurisdiction	Range of sanctions	Who can be liable
 Denmark	Fines	Employers and responsible personnel
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 Poland	Fines	Employers and responsible personnel
 Spain	Fines and imprisonment (up to 6 years)	Employers and responsible personnel

# Gender equality and equal pay





*Offences in relation breaches of requirements in relation to gender equality and equal pay*

Jurisdiction	Range of sanctions	Who can be liable
 Denmark	Fines	Employers and responsible personnel

	Finland	Fines or imprisonment (up to 6 months)	Employers or its representatives
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel.
	Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel

# Discrimination




*Offences in relation to different treatment on the grounds of protected characteristics, including sexual harassment*

Jurisdiction		Range of sanctions	Who can be liable
	Denmark	Fines	Employers and responsible personnel
	Finland	Fines or imprisonment (up to 2 years)	Employers or its representatives
	France	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	Hong Kong	Fines and imprisonment (up to 2 years)	Employers and responsible personnel

	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
	Spain	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	United Arab Emirates	Fines and imprisonment (up to 5 years)	Employers and responsible personnel





# Parental leave and pay

*Offences in relation to failure to comply with requirements in relation to parental leave and pay*

Jurisdiction		Range of sanctions	Who can be liable
	Germany	Fines	Employers and responsible personnel
	Hong Kong	Fines	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	Singapore	Fines and imprisonment (up to 6 months)	Employers and responsible personnel


# Sick leave and pay

*Offences in relation to failure to comply with requirements in relation to sick leave and pay*

Jurisdiction	Range of sanctions	Who can be liable
 Hong Kong	Fines	Employers and responsible personnel
 Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Singapore	Fines and imprisonment (up to 12 months)	Employers and responsible personnel
 Slovakia	Fines and imprisonment (up to 3 years)	Employers and responsible personnel

# Termination of employment





*Offences in relation to unlawful termination and failure to make termination payments*

Jurisdiction	Range of sanctions	Who can be liable
 Hong Kong	Fines and imprisonment (up to 3 years)	Employers and responsible personnel

	Poland	Fines	Employers and responsible personnel
	Slovakia	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
	United Arab Emirates	Fines and imprisonment	Employers and responsible personnel





# Collective redundancies

*Offences in relation to large scale redundancies, including consultation and notification obligations*

Jurisdiction		Range of sanctions	Who can be liable
	Denmark	Fines	Employers and responsible personnel
	France	Fines	Employers and responsible personnel
	Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
	United Kingdom	Fines	Employers and responsible personnel

# Trade unions / works councils

*Offences in relation to breaches of trade union / works council obligations, including right to strike*

Jurisdiction		Range of sanctions	Who can be liable
	Finland	Fines	Employers or its representatives
	France	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Germany	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
	Poland	Fines and imprisonment (up to two years)	Employers and responsible personnel
	Spain	Fines and imprisonment (up to 3 years)	Employers and responsible personnel






Bird & Bird 'have an in-depth understanding of our business and the law but with a very practical and pragmatic viewpoint. They get our business.'

*Chambers UK, 2023*




# Employee transfers

*Offences in relation to breaches of employee transfer legislation*

Jurisdiction	Range of sanctions	Who can be liable
 Denmark	Fines	Employers and responsible personnel
 Finland	Fines	Employers or its representatives
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel


# Continuity of employment

*Offences in relation to breaches of obligations in relation to continuity of employment for statutory or benefits purposes*

Jurisdiction	Range of sanctions	Who can be liable
 Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel

# Employment contract & information compliance

*Offences in relation to failure to provide prescribed information and making variations to contract terms*

Jurisdiction	Range of sanctions	Who can be liable
 Denmark	Fines	Employers
 Finland	Fines	Employers or its representatives
 Germany	Fines	Employers and responsible personnel
 Poland	Fines	Employers and responsible personnel
 Spain	Fines and imprisonment (up to 6 years)	Employers and responsible personnel





# References

## *Failure to provide a reference*

Jurisdiction	Range of sanctions	Who can be liable
 Finland	Fines	Employers or its representatives

# Pensions & benefits



## *Offences relating to failure to comply with mandatory pension and benefits requirements*

Jurisdiction	Range of sanctions	Who can be liable
 China	Fines	Employers
 Finland	Fines or imprisonment (up to 4 years)	Employers or its representatives
 France	Fines and imprisonment (up to 4 months)	Employers or its representatives
 Germany	Fines and imprisonment (up to 5 years)	Employers and responsible personnel

 Hong Kong	Fines and imprisonment (up to 3 years)	Employers and responsible personnel
 Poland	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Singapore	Fines and imprisonment (up to 6 months)	Employers and responsible personnel
 Slovakia	Fines and imprisonment (up to 5 years)	Employers and responsible personnel
 United Arab Emirates	Fines and imprisonment	Employers and responsible personnel
 United Kingdom	Fines and imprisonment	Employers and responsible personnel

# Mandatory insurances

*Offences in relation to failure to put in place legally required insurance (e.g., employers' liability insurance)*

Jurisdiction	Range of sanctions	Who can be liable
 Hong Kong	Fines and imprisonment (up to 2 years)	Employers and responsible personnel
 Poland	Fines and imprisonment (up to two years)	Employers and responsible personnel

 Singapore	Fines and imprisonment (up to 1 year)	Employers and responsible personnel
 United Arab Emirates	Fines	Employers
 United Kingdom	Fines	Employers and responsible personnel


## Atypical workers

*Offences in relation to engagement of temporary and fixed term staff*

Jurisdiction	Range of sanctions	Who can be liable
 France	Fines	Employers and responsible personnel


## Training contributions

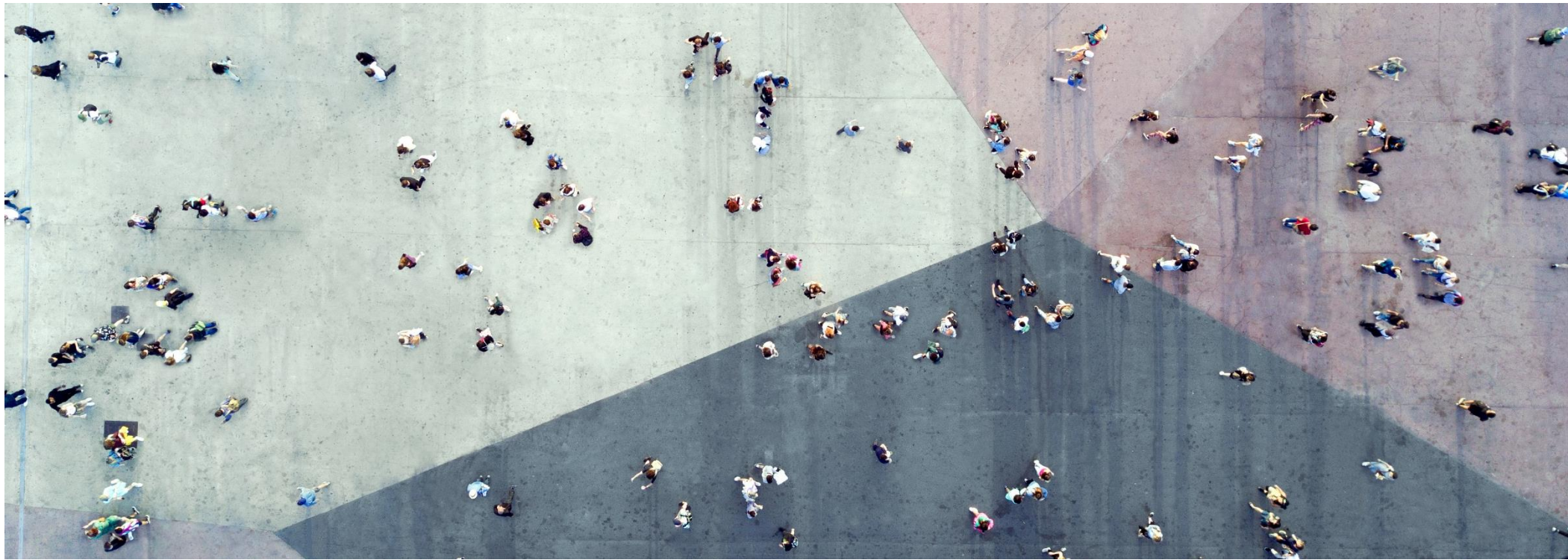
*Offences in relation to breaches of obligations in relation to protection of vulnerable employees*

Jurisdiction	Range of sanctions	Who can be liable
 France	Fines and imprisonment (up to 5 years)	Employers and responsible personnel

# Vulnerable employees

*Offences in relation to breaches of obligations in relation to protection of vulnerable employees*

Jurisdiction	Range of sanctions	Who can be liable
 France	Fines and imprisonment (up to 5 years)	Employers and responsible personnel





# Thank you

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