

## Ius Laboris Webinar

### **Sky's the Limit**

***COVID-19 and the airline industry***

**Thursday 4 June 2020**

**09:00 – 09:45 (EDT) / 10:00 – 10:45 (BRT) /**

**15:00 – 15:45 (CEST) / 16:00 – 16:45 (MSK)**



# SPEAKERS

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# TOPICS

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## REOPENING AND INCREASING FLYING:

- **Country restrictions on travel abroad** – present and future
- **Safety measures for employees and passengers** – from entering airports to flying on aircraft, both temporary and permanent

## KEY ISSUES GOING FORWARD:

- **Privacy concerns** – testing, contact tracing, taking temperatures, employee health questionnaires and certifications
- **Social distancing** – in the airline/airline manufacturing workplace and on board aircraft
- **Employee leave and return issues** – voluntary and involuntary leaves/reductions, paid or unpaid, measures to assure employees the workplace is safe, and the return to the workplace of “high-risk” employees
- **Employment claims** – what the four countries are seeing now

# WHERE ARE WE NOW?

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## GREATEST CHALLENGE FOR 75 YEARS

- COVID-19 is the greatest challenge our countries and the world have faced in at least 75 years
- Country overviews on airline operations and aircraft manufacturing 3 months into the pandemic: Brazil, France, Russia and the United States

### OPERATIONS:

- Passenger airlines around the world have either ceased operations or are operating at around 10% of where they were a year ago; cargo carriers are either doing better or have suffered little disruption
- Aircraft manufacturing has been hit hard

### GOVERNMENTS HAVE TAKEN STEPS TO:

- Protect human life by slowing the spread through a wide variety of measures, including restricting international air travel and implementing new cleaning protocols and quarantine rules
- Minimize economic disruption to business by means of new laws and economic assistance
- Start re-opening our economies and instituting measures to mitigate the risk of spread amongst employees and customers



# REOPENING AND INCREASING FLYING

## COUNTRY RESTRICTIONS ON TRAVEL ABROAD



# USA

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## COUNTRY RESTRICTIONS ON TRAVEL ABROAD

- **INTERNATIONAL:** US has cut off travel to and from other countries; there is select screening in airports for travelers returning to the US and quarantine requirements
- **MILITARY:** Restriction on the movement of military personnel
- **INTER-STATE TRAVELERS:** At least 28 states in the US have implemented self-quarantine laws for all visitors to their state or visitors from certain states (e.g. NY, NJ, Conn)

# BRAZIL

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## COUNTRY RESTRICTIONS ON TRAVEL ABROAD

- 530,000+ cases and 32,000+ fatalities (as of 2 June)
- 23 March: moderate ban (foreign nationals from some countries)
- 30 March: strict ban (foreign nationals from **all** countries), with a few exceptions, such as:
  - foreign professionals on a mission for an international organisation
  - spouses, partners, children, parents or guardians of a Brazilian citizen
  - foreign employees accredited to the Brazilian government
  - foreign nationals whose entry is specifically authorised by the Brazilian government in the public interest
  - those with a definite residence permit to reside in Brazil for a fixed or an indefinite term
- Measures effective at least until 21 June, but may be extended
- Brazilian citizens are not prohibited from leaving or returning to Brazil

# RUSSIA

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## COUNTRY RESTRICTIONS ON TRAVEL ABROAD

- Due to COVID-19, Russia has imposed the following temporary travel restrictions:
  - From March 2020 until today, foreign citizens are not allowed to enter Russia, with the exception of citizens of CIS member nations, Abkhazia, South Ossetia, citizens the Eurasian Economic Union, aircraft crews, members of official delegations and those with residence permits
  - For foreign nationals staying in Russia based on visa or visa-free regime, the duration of temporary stay is suspended from 15 March until 15 June. This means that there are no sanctions for foreign nationals if their documentation becomes invalid during this period. However, it is not clear how foreign nationals can renew their permits after 15 June
  - International flights by Russian airlines are suspended (e.g. Aeroflot has suspended international flights until August)
  - The Russian Ministry of Transport restarted domestic flights on 1 June and restart of international flights is planned for July

# FRANCE

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## COUNTRY RESTRICTIONS ON TRAVEL ABROAD

- 17 March: strict ban (on entry of foreign nationals from all countries, with very few exceptions (e.g. cross-border workers, foreign nationals residing in France) - the ban is still effective.
- The Schengen area has closed its borders and the EU prohibits non-essential trips until 15 June at the earliest.
- This means intra-EU trips may be authorised from 15 June, but international ones may be prohibited for longer.
- Until 11 May, French citizens were not allowed to travel. Until 2 June, French citizens could not travel more than 100km. The government continues to advise French citizens not to travel abroad (although that is difficult in any case, given other countries' own restrictions).



# REOPENING AND INCREASING FLYING

## SAFETY MEASURES FOR EMPLOYEES AND PASSENGERS



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## SAFETY MEASURES FOR EMPLOYEES AND PASSENGERS

### EMPLOYEE SAFETY (including pilots and flight attendants)

- health monitoring
- social distancing
- wearing of PPE (masks, gloves, etc.)
- plexiglass barriers (to separate employees and passengers at ticketing and gates)
- limiting of large gatherings (e.g. recurrent training, seminars and employee events)

### PASSENGER SAFETY

- requiring wearing of masks (at check-in, gates, jet ways and on aircraft)
- providing PPE (masks and wipes) before or upon boarding
- blocking off seating
- reverse-order boarding
- limiting food & beverage service
- no more blankets or hot towels
- increased aircraft cleaning
- top-of-the-line filtration on board aircraft
- touchless check-in or check-in via cell phone

# BRAZIL

## SAFETY MEASURES FOR EMPLOYEES AND PASSENGERS

- 3 major airlines are operating internally—at a very reduced rate—and adopting safety measures
- **Passengers:** face masks, social distancing and hand sanitisers
- **Employees:** employers must ensure safe and healthy workplace, the main duties being:
  - to set up clear and comprehensive rules on precautionary measures, including social distancing within the workplace and intensive cleaning of the workplace (including the interior of aircraft)
  - to inform employees of all rules by means of internal policies and training sessions
  - to provide free-of-charge protective equipment to employees (e.g. face masks, wipes, gloves and hand-sanitiser)
  - to make sure all protective equipment is appropriate to the risks and in a good state
  - to monitor employees' compliance with the rules and their use of protective equipment



# RUSSIA

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## SAFETY MEASURES FOR EMPLOYEES AND PASSANGERS

- The Russian Federal Air Transport Agency and Rospotrebnadzor has provided interim guidance on the return of the aviation industry to work following the lockdown. This guidance contains a detailed plan for airports, airlines, crews and passengers.
  - the main goal of the guidance is to recover the mobility of the Russian population using air transport and remove restrictions on the aviation industry
  - in total, there are 3 stages of step-by-step removal of restrictions
  - there is a separation of requirements for passengers and crew in the guidance
- The guidance is based on a number of regulatory documents, including the recommendations of Rospotrebnadzor on prevention of the spread of COVID-19, recommendations approved by the Chief sanitary doctor of the Russian Federation, as well as the interim management of World Health Organization dated 19 March 2020 “Management of ill travellers at points of entry (international airports, seaports, and ground crossings) in the context of COVID-19”.

# RUSSIA

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## SAFETY MEASURES FOR EMPLOYEES AND PASSANGERS

### EMPLOYEE SAFETY (including employees of airports, airlines, crews)

- health monitoring
- social distancing
- restricting the number employees at work to the minimum necessary
- wearing of PPE (masks, gloves, etc.)
- hand treatment with disinfectants
- preventive disinfection of aircraft & aircraft controls in the flight deck before each flight
- prohibition against placing cabin crew with other citizens
- body temperature checks

### PASSENGER SAFETY

- requiring wearing of masks (at the airport and on the aircraft)
- providing PPE (masks and gloves) before or upon boarding (taking into account the duration of flight)
- social distancing measures
- body temperature checks

# FRANCE

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## SAFETY MEASURES FOR EMPLOYEES AND PASSANGERS

- For passengers, face masks are compulsory on all public transport, including aircraft.
- Companies may require passengers to have their temperature taken before entering aircraft (e.g. Air France says that if a passenger's temperature is above 38°C, s/he may not board the plane and the trip will be cancelled or changed).
- Employers must ensure safe and healthy workplace. Their main duties are to:
  - set up clear and comprehensive rules concerning precautions, including social distancing in the workplace and intensive cleaning (including the interior of the aircraft)
  - inform employees of their rules
  - provide protective equipment to employees free of charge (e.g. face masks, gloves and hand-sanitiser)
  - make sure all protective equipment is appropriate to the risks and in good condition
  - monitor employees' compliance with the rules, including the use of protective equipment.

# KEY ISSUES GOING FORWARD

## PRIVACY CONCERNS



# USA

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## **PRIVACY CONCERNS**

- Temperature Checks
- Self-reporting
- Medical questionnaires and certifications
- Disclosure to employees
- Testing for COVID-19
- COVID-19 flight attendant and pilot agreements
- EEOC Guidance For Employers

# BRAZIL

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## PRIVACY CONCERNS

- Employers' duty to ensure a safe and healthy workplace versus employees' privacy rights
- COVID-19 testing and temperature scans: precautionary measures
  - Can an employee refuse to be tested?
  - What about employees:
    - working from home?
    - on leave?
    - whose contract is suspended?
- Employees can only be tested by the occupational doctor, who must guarantee the confidentiality of the results
- What if an employee refuses to be tested?
  - dismissal for the day, without pay + warning
  - if refusal is definitive: termination
- Compliance with Brazil's General Data Protection Law. Personal data concerning a natural person's health is sensitive personal data and subject to stricter rules

# RUSSIA

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## PRIVACY CONCERNS

Employees must immediately inform the employer of:

- certain chronic diseases
- pregnancy
- symptoms or a doctor-confirmed diagnosis of acute respiratory viral infection, COVID-19, pneumonia (both for employees and those living with them)

Participation in medical examinations organised by the employer is **mandatory** for employees, but:

- there must be a legal ground for the data processing
- individuals must be notified of it
- the data must be deleted in a timely manner
- the data must be kept secure and confidential

- Companies must review existing data privacy and cybersecurity policies and implement new ones, setting out the rules for use of corporate assets and carrying out technical monitoring of such use
- The current health crisis does not provide an exception to the need for compliance with Russian data protection requirements – all company policies, including those mentioned above, must be legally compliant
- All policies must be properly implemented and there must appropriate legal grounds for data processing, etc.
- Employees must have acknowledged the policies by signing a 'list of familiarisation'



# FRANCE

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## PRIVACY CONCERNS

- Employers' duty to ensure a safe and healthy workplace versus employee privacy rights
- Compliance with the EU GDPR (Regulation of April 2016) and the Public Health Code. Personal health data is subject to strict processing rules
- The CNIL, the French data protection agency, says employers may not take measures that would breach privacy rights. Therefore, employers may not collect information on potential COVID-19 symptoms by general or automated means (e.g. testing, temperature recording or employee medical questionnaires)
- Temperature checking and medical questionnaires can only be offered to employees, but not forced
- The government has been working on a contact tracing app named *StopCovid*. The use of it was authorised by the Parliament on 28 May and previously by the CNIL on 26 May. It has been available for use since 2 June. Use is not mandatory, but the Prime Minister encourages it.



# KEY ISSUES GOING FORWARD

## SOCIAL DISTANCING



# USA

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## SOCIAL DISTANCING

- **Essential Services:** Airlines provide an “essential service” and many airline employees critical to the operation cannot work remotely – which requires focus on safety & health precautions in the workplace
- **Occupational Health & Safety (OSHA):** Risk of exposure to COVID-19 during an outbreak will vary depending on the industry. Individualized risk assessments focusing on COVID-19 issues are necessary.
- **Centers For Disease Control & Prevention (CDC):** Provide general workplace precautions
- **Federal Aviation Administration:** SAFO 20009: Interim occupational health and safety guidance by the CDC & FAA for air carriers and crewmembers regarding COVID-19
- **Suggestions For Returning:** Establish buffers; evaluate floor plan; create traffic flow paths; evaluate ventilation; create elevator usage plan; stagger employee shifts; close off shared break areas that do not allow for social distancing; and provide PPE and a variety of sanitizing materials

# BRAZIL

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## SOCIAL DISTANCING

- **AT AIRPORTS AND OFFICES:**
  - physical reorganisation
  - alternative work shifts and lunch breaks
  - physical barriers
  - traffic flow paths
  - elevator usage plan
- **ON AIRCRAFT:**
  - limiting the number of passengers and distributing them effectively inside the airplane
  - regulatory limitations on the composition of flight crew

# RUSSIA

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## SOCIAL DISTANCING

- The movement of passengers through the cabin is limited, with the exception of visiting the sanitary-hygienic block. “Fasten your seatbelt” mode is on during the whole flight
- Passengers will not be allowed to call cabin crew if this is unnecessarily
- Passengers’ outwear must be packed in a plastic bag and put on a shelf. Getting things from the shelf during the flight will be prohibited

# FRANCE

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## SOCIAL DISTANCING

- **IN AIRPORTS AND OFFICES:** rearrangement of spaces to comply with distancing requirements, staggered work schedules and lunch breaks, physical barriers and social distancing
- **ON AIRCRAFT:** measures modifying the work of cabin crew (e.g. Easyjet has agreed with trade unions that cabin crew will not circulate inside the aircraft during boarding/landing, leaving passengers to take care of their own cabin luggage; no in-flight catering, etc.).

# KEY ISSUES GOING FORWARD

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## EMPLOYEE LEAVE AND RETURN ISSUES





# USA

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## EMPLOYEE LEAVE AND RETURN ISSUES

- Employer-provided leave (paid and unpaid)
- Voluntary and involuntary furloughs
- Families First Coronavirus Response Act (FFCRA)
- Emergency Family and Medical Leave Expansion Act (E-FMLA) versus Family and Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)

# BRAZIL

## EMPLOYEE LEAVE AND RETURN ISSUES

- Provisional Measure no. 936:
  - temporary suspension (up to 60 days)
  - reduction of salary and working hours (up to 90 days): hourly rate must be preserved; reductions of 25%, 50% or 70%
  - CBA, but individual agreements permitted in some cases
  - protection against involuntary dismissal
- The Labour Code also provides other remedies, such as:
  - part-time work: 30 hours (no overtime) or 26 hours (+ up to 6 overtime), weekly. CBA & individual enrolment
  - suspension: 2-5 months to follow professional training. CBA & individual enrolment
  - reduction of salary and working hours of up to 25%, for *force majeure*. CBA.
- Can an employee refuse to return to work?
- Can the employer furlough high-risk employees?
- If an employee is presenting symptoms, s/he must be referred to the company's medical service, in order to be examined by an occupational doctor



# RUSSIA

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## EMPLOYEE LEAVE AND RETURN ISSUES

### BEFORE RETURNING TO WORK:

- Formalise a transfer of employees from remote working or “non-working” regime to work in the office
- Develop internal policies to comply with new sanitary and medical requirements and ask employees to acknowledge these by signing a ‘familiarisation list’
- Appoint personnel to be responsible for compliance with the new requirements and organisation of work (amend their employment contracts and job descriptions)
- Ensure legal grounds for processing of personal data of employees
- Suspend from work ‘high-risk’ employees (e.g. employees over 65, with chronic illnesses, etc.)

### IN SOME REGIONS (e.g. MOSCOW):

- Testing employees for COVID-19 at the employer’s own expense from 1 June 2020, every 15 days. This must be done in respect of at least 10% of employees at the employer’s premises
- Testing employees for immunity to COVID-19, at the employer’s expense

# FRANCE

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## EMPLOYEE LEAVE AND RETURN ISSUES

- Can an employee refuse to return to work?
  - No, unless s/he has a medical certificate to the contrary (sick leave).
  - If the employer has taken all the preventive measures needed to protect employees from COVID-19 (after consultation with employee representatives), employees may not leave the workstation based on imminent danger.
- Can the employer furlough high-risk employees?
  - No, it can only encourage them to contact their general practitioner or occupational health doctor to obtain instructions upon return to work.
- If an employee is presenting symptoms (government instructions):
  - s/he must self-isolate
  - the employer must ask the employee to contact a GP, and must arrange for them to go home, if the medical advice is to do so, or (in the case of danger) contact the emergency services
  - the employer must then ask the employee to contact the company's occupational health service and to undergo a medical examination
  - the employer must also get in touch with the occupational health doctor.

# KEY ISSUES GOING FORWARD

## EMPLOYMENT CLAIMS – WHAT ARE OUR FOUR COUNTRIES SEEING NOW?



# USA

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## EMPLOYMENT CLAIMS

- Families First Coronavirus Response Act (FFCRA) - first case filed in the US (Eastern Airlines)
- Wage & Hour
- Americans With Disabilities Act (ADA)
- Family Medical Leave Act (FMLA)
- Discrimination & Retaliation Claims (Title VII, OSHA)
- Fraud Claims Filed Against Employees Falsely Claiming To Test Positive For COVID-19

# BRAZIL

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## EMPLOYMENT CLAIMS

- From 21 April to 20 May: 20% of all labour lawsuits refer to COVID-19. Most of them involve severance pay
- Claims questioning the validity of dismissals amidst the pandemic
- Increasing numbers of labour lawsuits in the near future. Two hot topics:
  - temporary suspension and reduction of salary and working hours based on Provisional Measure No. 936
  - occupational illnesses

# RUSSIA

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## EMPLOYMENT CLAIMS

### POTENTIAL LITIGATION:

- Employees of the Kurchatov Balandino International Airport in Chelyabinsk have complained to the regional governor about salary problems and inappropriate working conditions. Representatives of the Chelyabinsk Transport Prosecutor's Office have already arrived at the airport to conduct an audit
- The employees have claimed about a decrease in salary, absence of hot water in the airport and failure to provide employees with protective clothing
- Currently, the claim is being considered by the prosecutor

# FRANCE

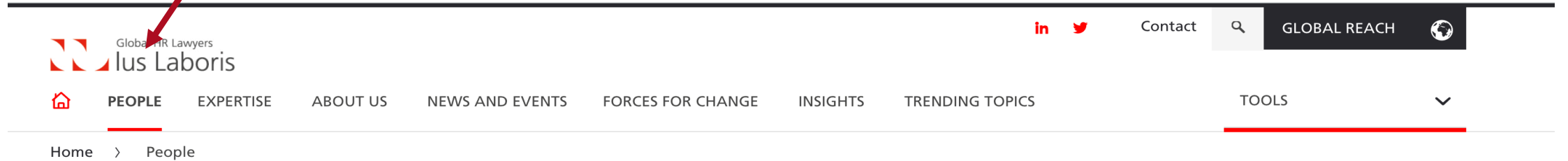
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## EMPLOYMENT CLAIMS

- Many court decisions related to COVID-19 concern the inadequacy of preventive measures implemented by the employer, in addition to a lack of prior consultation with employee representatives. This is a reminder to employers of the need to update the company's mandatory risk assessment document (e.g. Amazon).
- Future litigation: on breaches of the employer's obligation to protect the health and safety of its employees, on the recognition of an occupational disease, on the psychosocial risks (e.g. stress and burn out) linked to telework.
- Increased labour inspection audits of companies' compliance with the conditions that led to the receipt of state aid (e.g. loans and unemployment benefits) with the risk of the need to reimburse the state.

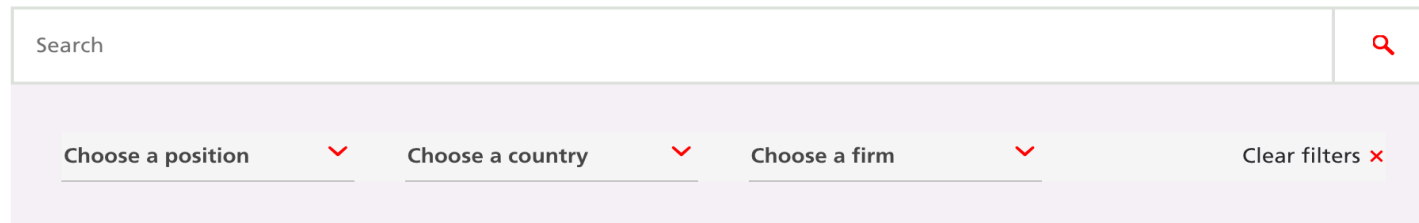
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The screenshot shows the top section of the Ius Laboris website. On the left is the logo, which consists of three red squares followed by the text "Global HR Lawyers" and "Ius Laboris". To the right of the logo is a navigation bar with links: "PEOPLE" (underlined), "EXPERTISE", "ABOUT US", "NEWS AND EVENTS", "FORCES FOR CHANGE", "INSIGHTS", "TRENDING TOPICS", "TOOLS" (with a dropdown arrow), and "GLOBAL REACH" (with a globe icon). Above the navigation bar are social media icons for LinkedIn and Twitter, and a "Contact" link. A red arrow points from the URL above to the "PEOPLE" link in the navigation bar. Below the navigation bar is a breadcrumb trail: "Home > People".

## 100% focus: labour, employment and pensions law



The screenshot shows a search and filter section. At the top is a search bar with the placeholder text "Search" and a red magnifying glass icon. Below the search bar is a filter section with three dropdown menus: "Choose a position", "Choose a country", and "Choose a firm", each with a red downward arrow. To the right of these dropdowns is a "Clear filters" link with a red 'x' icon.

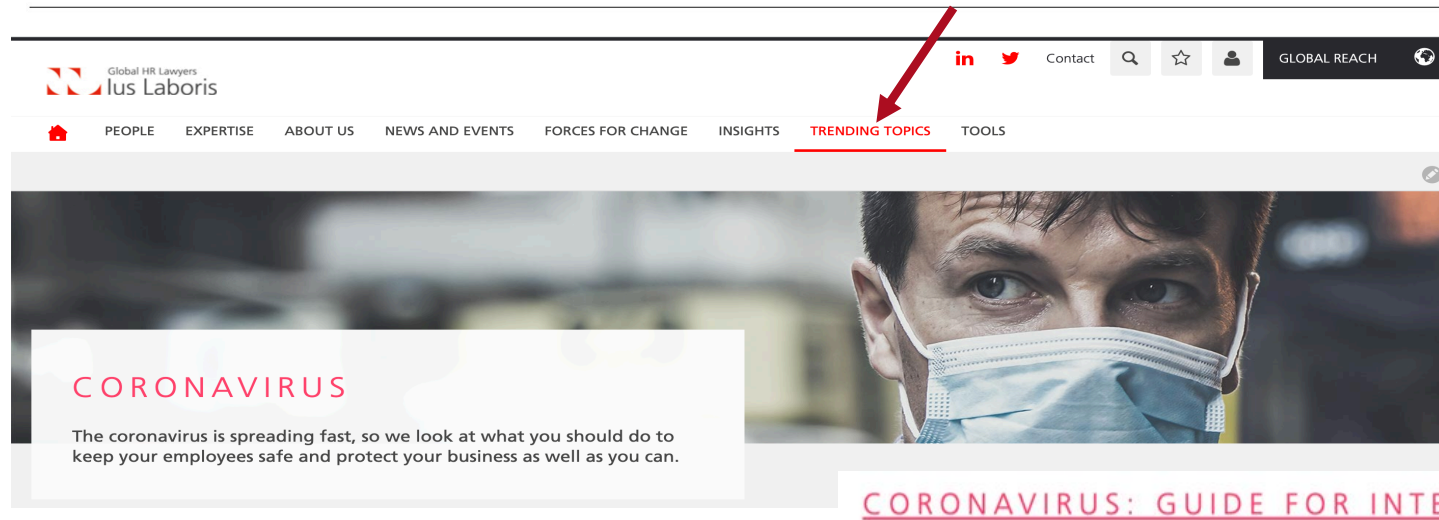
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