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Brazil: Controversial draft law on outsourcing approved

After 11 years of heated debate, Brazil's House of Representatives has approved a controversial draft law regarding outsourcing.

At present there is no specific legislation on outsourcing in Brazil, therefore this area has been regulated through the case law of the Supreme Labour Court. The current position is that companies can only outsource activities which fall outside of the core business of the company. In a car manufacturing company, for example, this might include cleaning, security or transport services.

The main aim of the draft law is to expand the cases in which outsourcing can be used, to allow companies to outsource any activity of the business. The law requires approval by the Senate and by the President, Dilma Rouseff.

Denmark: Proposed changes to rules on employment clauses

A draft Act on employment clauses is currently passing through the legislative process in Denmark. The Act, if adopted, would significantly restrict the use of non-competition clauses, non-solicitation clauses and customer clauses in employment contracts.

Currently, post-termination non-competition agreements may only be concluded with white-collar workers in a position of special trust. The new law, however, would restrict this further by establishing that employers may only enter into such agreements with employees who have an extremely special position of trust. The clause would also have to state which aspects of the employee's role necessitates the non-competition clause.

Further limitations would also be placed on the use of customer clauses. These are clauses which prevent an employee from taking employment with, or having direct or indirect commercial contact with, their former

employer's customers. Under the draft law, such a restriction could only apply to customers that the employee had business relations with in their last 12 months of employment with their previous employer. The employer would also have to provide the employee with a list of the customers to which the clause applies.

Non-solicitation clauses would generally be banned under the new law. They would be allowed, however, in certain special situations such as cases concerning temporary employees.

A number of changes to compensation rules in relation to employment clauses are also proposed by the draft law. If a non-competition or non-solicitation restraint is to last for up to six months, the employee would have to receive monthly compensation at a rate of at least 40% their former salary. If the restraint is to last for between six and 12 months, the employee would have to receive monthly compensation at the rate of at least 60% their former salary.

It is expected that the Bill will be introduced into parliament in the second half of April and that the main provisions will come into force on July 1st 2015.

France: Termination by mutual agreement possible during maternity leave

The Supreme Court of France has confirmed that an employer and employee may agree to terminate their employment agreement by mutual consent (*rupture conventionnelle*) during a period of maternity protection. This includes the period during which the employee is on maternity leave and the four weeks following their return.

In this case, the employer and employee had terminated the contract by mutual consent three days

after the employee had returned from maternity leave. The employee subsequently wished to revoke the termination and claimed that the termination was invalid having occurred during a protected period.

Whilst the Labour Code strictly prohibits employers from dismissing employees during the maternity protection period, the Court confirmed that this prohibition does not extend to agreements for mutual termination. As such, the termination was valid.

The Court went on to state that there were only two circumstances in which mutual termination agreements entered into during the maternity protection period would be found not to be valid: when there is evidence of deceit on the part of the employer or a lack of free-will on the part of the employee. [Supreme Court, March 25th 2015, No. 14-10149]

Irish Republic: Delay amounts to failure to provide reasonable accommodation

The Irish Equality Tribunal has held that an employer's delay in making enquires as to an employee's capacity to work can constitute a failure to provide reasonable accommodation for an employee's disability.

The case in question concerned an employer who, despite receiving independent advice about their employee's work capacity in May 2010, did not consider the advice properly until February 2011. Eventually the employer did offer the employee alternative job roles, but by this point the employee had been away from the workplace for nine months (six months without pay), despite repeated efforts to return to work.

The Tribunal ruled that the delay in establishing the facts about the employee's work capacity had been unacceptable and the employer was ordered to pay

14,000 euros to the employee. [Alistair Clews v DSG Retail (DEC-E2014-081)]

Saudi Arabia: Proposals to overhaul employment law approved

Substantial amendments to employment laws in Saudi Arabia have been approved by the country's Council of Ministers. The amendments particularly affect employment contracts and leave entitlements.

In relation to employment contracts, the amendments introduce an obligatory 180-day probationary period for new employees. If an employee leaves the company and then returns after six months, they would have to undergo another probationary period of the same duration. The maximum duration of fixed-term contracts is also extended under the amendments — from three years to four years. If a fixed-term contract is renewed three times consecutively it will become a contract for an indefinite duration.

As regards leave, female workers will be provided with four weeks of paid maternity leave and given the option of a further month of unpaid leave. Male workers will have their paternity leave extended from one day to three days and marriage leave will be increased from three days to five days. Workers observing the Iddah — the period a Muslim woman must observe upon the death of her spouse — will be entitled to four months and 10 days of paid leave. The amendments also state that if a worker suffers from an occupational accident, they will be entitled to 60 days of paid leave, rather than the current 30 days.

In addition, the amendments increase the requirements for training and allow inspectors to fine companies on the spot for breaches of employment law. The amended law will enter into force six months after it is published in the official gazette.

Singapore: Ministry cracks down on 'employment kickbacks'

Singapore's Ministry of Manpower is taking tough action on employers who demand cash payments from foreign workers in return for agreeing to hire them. These so-called 'employment kickbacks' are prohibited under the Employment of Foreign Manpower Act, unless the purposes for which these payments are made can be properly accounted for. Employers found guilty of accepting kickbacks can face fines, imprisonment or both.

Recently, the Managing Director of a construction company in Singapore was ordered to pay 169,000 Singaporean dollars (125,148 US dollars) for 13 charges of receiving employment kickbacks. In a period of four months the employer had forced 24 foreign workers to pay 7,200 Singaporean dollars (5,332 US dollars) each in order to be employed. In addition to the fine, the Ministry of Manpower banned the employer from hiring foreign workers. In another case, an employer was fined 15,000 Singaporean dollars (11,108 US dollars) for receiving three employment kickbacks.

In 2014 a total of 15 employers were found guilty of receiving employment kickbacks. In 2013 this figure was 17.

UK: Public interest test for whistleblowing examined

In a recent case, the UK Employment Appeals Tribunal (EAT) examined the meaning of 'in the public interest' in the context of the test for whistleblowing protection.

In this case, an employee disclosed the fact that their employer had been manipulating corporate figures in such a way that affected the commission payments of over 100 senior managers, including himself. Despite the fact that the employee was personally interested in

disclosing this illegal practice, the EAT found that the disclosure passed the public interest test.

The EAT found that the disclosure was made in the reasonable belief that it was in the interest of the group of senior managers and this group was sufficiently large enough for the disclosure to be considered in the public interest. [Chesterton Global Ltd and anor v Nurmohamed UKEAT/0335/14]

USA: New law restricting employers' access to employees' social media accounts

On July 1st 2015, a new law will come into force in Virginia, USA that imposes considerable restrictions on employers' right to access their employees' social media accounts.

The new law prohibits employers from requiring, requesting or making an existing or prospective employee provide them with the username and/or password of their personal social media accounts. Equally, employers will not be able to require their employees to add other workers or their supervisor to their list of contacts on their social media accounts.

Employers will, however, retain the right to acquire information in certain cases, such as if they need to carry out an investigation for the purpose of any formal proceedings. Additionally, employers are still able to access information on their employee's social media pages if the information is in the public domain.

It is important to note that if an employer disciplines or penalises — or threatens to discipline or penalise — any employee or prospective employee who refuses to provide usernames and passwords, they will be acting in breach of the law. With this new law, Virginia joins 18 states in the USA with similar legislation.

Pay, Tax and Benefit Trends

BULGARIA: According to forecasts prepared by the Ministry of Finance, the national minimum wage in Bulgaria should increase to 420 lev (215 euros) from January 1st 2016. As of January 2017, it should rise again to 460 levs (235 euros) and this wage should be maintained during 2018. These rates still need to be approved by the Council of Ministers.

CANADA/CHINA: Canada and China have signed a new social security agreement that aims to avoid situations in which employers and employees have to contribute to pension plans in both countries in relation to the same work. Under the agreement, employees from China and Canada who go to work temporarily in the other country will continue to contribute to the pension plan of their home country. The agreement will become effective as soon as both states have fulfilled the approval procedures laid down in their respective laws.

CHINA: The minimum wage in Shanghai, China, increased by 11% on April 1st 2015. As such, the city's minimum wage is now 2,020 yuan (325 US dollars) per month.

GLOBAL: The Spanish multinational company and world's largest fashion group, Inditex, has announced a remuneration plan that will benefit 70,000 employees in 54 countries across the world. Under the plan, employees who have worked for the company for at least two years will, between them, receive 10% of the increase in net profits made by the company during the previous year (up to a total maximum of 2% of the company's total profit). This plan will operate over the next two years.

INDIA: The Indian Ministry of Corporate Affairs has clarified a point on managerial pay under the

Companies Act 2014. Under the law — which came into force in April 2014 replacing the Companies Act of 1956 — companies that have poor or no profits need to gain central government's approval to pay their managers higher salaries than the prescribed limit. In a recent circular, the ministry stated that that companies that have been given permission to pay higher managerial remuneration can continue to do so until the expiry of the exemption period under the old company law.

ITALY: Employers and trade unions in Italy have agreed to renew the national collective agreement for workers in the distribution and service industries. The agreement will operate from April 1st 2015 to December 31st 2017 and over this period workers will receive an overall monthly pay increase of 85 euros (for category IV workers). This pay increase will be implemented in five stages.

NEW ZEALAND: The government of New Zealand is seeking views on the way in which tax is collected from employees who take part in employee share schemes. The government is seeking the opinion of employers who offer these schemes to their employees in order to assess how proposed changes to current rules would affect them. All views should be submitted by May 5th 2015. The full paper can be accessed [here](#).

RUSSIAN FEDERATION: The Russian State Duma is currently preparing a new law which would require employers to pay their employees when they take a day off work to undergo a medical examination. At present, the Russian Labour Code does not establish obligations on employers in regards to medical examinations; therefore days taken off for this purpose are often unpaid. This amendment is currently being discussed by the Ministry of Health and Labour and a draft law will be presented to parliament at the end of May.

SPAIN: In Spain, wages agreed through collective bargaining agreements increased by 0.69% in the first three months of 2015, according to provisional figures from the Spanish Ministry of Employment. This has been calculated from the 542 collective agreements of which pay details are known and registered. These affect, in total, 242,861 companies and 2,027,305 workers.

UK: According to the UK Office of National Statistics, between November 2014 and January 2015 the average total earnings of employees in Great Britain increased by 1.8%. In January 2015 employees earned, on average, a total of 483 pounds (671 euros) gross per week. Excluding bonuses, average earnings were 457 pounds (635 euros) gross per week.

UK: The UK government has announced that it plans to introduce a new digital apprenticeship voucher scheme in 2017. Under this scheme, employers wishing to use government funding to cover the cost of apprenticeship training would have to register their details on a system currently being developed by the Skills Funding Agency (SFA). The system would calculate the amount of government funding that the employer is entitled to — which could be up to 100% of the costs of apprenticeship training — and then issue a digital voucher for use with a training provider of the employer's choice. The training provider would then reclaim the value of the voucher from the SFA. The system is intended to give employers more control over how government funding is spent on apprenticeship training.

Other Global HR News in Brief

COLOMBIA: The Supreme Court of Colombia has ruled that employers must not allow an employee's fixed-term employment contract to expire whilst the employee is pregnant or on maternity leave. If a fixed-term contract is due to expire during either of these

periods it must be extended until the end of the employee's maternity leave. At the end of the protection period the contract may be terminated without the need for any other formalities.

EUROPE: On April 1st 2015, the Council of Europe published a recommendation regarding the processing of personal data in the context of employment. It states that employers should avoid unjustifiably and unreasonably interfering with employees' privacy rights. Most notably, the recommendation states that employers should not ask an employee or job candidate for access to any data that they share on their social media pages. In addition, they must only ask employees or job applicants questions about their health in certain circumstances, for example to ascertain their suitability for the job. Furthermore, any equipment that reveals an employee's location should only be used to pursue a legitimate aim and should not result in permanent employee monitoring. The recommendation in full can be accessed [here](#).

FRANCE: The Supreme Court of France has made an interesting decision regarding the right of employers to access employees' text messages. According to the Court, if a telephone was made available to an employee by their employer for work purposes the employer has the right to access SMS messages sent or received on that device without the employee being present. This is because such messages are presumed to be professional in nature. If, however, a message has been identified as personal by the employee, the employer will not have the right to access it. [Case No. 13-14779]

FRANCE: France's Labour Ministry has finalised its draft law to reform social dialogue. The proposed law would allow companies with less than 300 employees to have a single employee representation group (DUP) comprising the functions of the employee delegates, the works council and the health and safety committee.

Companies with 300 employees or more would also be able to organise employee representative bodies as they wish provided the trade unions representing at least half of its employees agree. All annual consultation and negotiation processes would also be simplified for employers. The draft law is currently being reviewed by the Council of Ministers.

GERMANY: A law has been passed in Germany that will require companies to give 30% of seats on a supervisory board to women from January 1st 2016. This will increase to 50% from 2018. In the event that a vacancy arises and a company has not reached the required threshold, a woman will have to be appointed to the board or the seat will be left unoccupied. These new rules will apply to listed companies whose supervisory board is made up of shareholders and employee representatives.

NEW ZEALAND: On April 1st 2015, the period of paid parental leave in New Zealand increased from 14 weeks to 16 weeks. This will be further increased to 18 weeks on April 1st 2016.

POLAND: According to a report by the Organisation for Economic Co-operation and Development (OECD), employers in Poland must do more to improve working conditions for older employees. In 2013, the rate of employment for workers within the age range of 55–64 was only 41% — much lower than the OECD average of 55%. The OECD believes further reforms are needed in Poland to encourage workers to stay in the labour market for longer.

RUSSIAN FEDERATION: An amendment to the law regarding written statements for unsuccessful job candidates is currently being considered by the Russian State Duma. Although, at present, unsuccessful job applicants have the right to a written statement setting out the reason they were not hired, the law does not state how quickly this statement must

be provided. Under the draft amendment employers would be obliged to issue the reasons for refusal, in writing, within seven days of a request for such information being made.

SINGAPORE: Singapore's Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) has revealed that it received just 259 complaints about unfair employment practices in 2014. This is almost half of the number of complaints received in 2013. According to TAFEP, almost half of the complaints made concerned hiring practices that disadvantaged Singaporean workers. Other common complaints regarded discrimination based on age, language and race.

USA: The US Citizenship and Immigration Services' Administrative Appeals Office recently clarified the definition of 'doing business' for the purpose of immigrant visa petitions for multinational executives. Under law, the petitioning US employer must establish that they have been doing business for at least one year. The Appeals Office clarified that it is not necessary for the employer to demonstrate that they have been doing business with an unaffiliated third party during this period; they may prove that they have been doing business by providing goods and/or services in a continuous and systematic way to related companies within its multinational organisation. [Matter of Leacheng International, Inc., 26 I & N Dec. 532 (AAO 2015)]

Dates for your diary:

May 1st 2015: New hourly minimum wage rate of 32.5 Hong Kong dollars comes into effect in [Hong Kong](#).

May 5th 2015: Deadline for views to be submitted about the taxation of employee share schemes in [New Zealand](#) (see news item above).

June 30th 2015: The Short Employment Authorization programme in [Israel](#) will end on this date.

June 30th 2015: End of six-month grace period during which employers in [UAE](#) who have not issued or renewed labour cards will receive reduced fines.

Latest news for business travellers:

As a result of violence and looting in Johannesburg and Pretoria, many countries have issued warnings about travel in [South Africa](#). Travellers in the country should exercise caution, avoid large gatherings and monitor local news for updates.

Those travelling to [Saudi Arabia](#) should be aware that the country is currently on alert for possible terrorist attacks. It is currently increasing its security in shopping centres and oil sites.

New border checks have been introduced in the [UK](#). Transport staff are now registering data about all travellers leaving the UK by commercial air, sea and rail transport. These checks will have the biggest impact on all those using cross-channel ferries and the Channel Tunnel.

There is a high risk of storms in parts of Texas and Oklahoma, **USA** on Friday, April 24th, therefore those travelling to these states are advised to keep up-to-date with the latest weather forecasts.

Travellers to **Brazil** should be aware that the number of dengue fever cases in the country has increased considerably in 2015, particularly in the south-east and central-west.

Chile's Calbuco volcano has erupted, sending ash and smoke high into the sky. Authorities have evacuated the area and have declared a state of emergency. LATAM Airlines has stated that it has cancelled flights to and from Puerto Montt, due to the volcanic ash.

From April 23rd to April 25th Gallipoli commemorations may cause disruption and delays on the roads in Istanbul and the Gallipoli area in **Turkey**.

Presidential elections in **Togo** are due to take place on April 25th 2015. Demonstrations may occur, therefore travellers should exercise caution.

FedEE news:

UPCOMING FEDEE EVENTS: In May and June this year we will be conducting live video interviews with both insiders and legal experts on the topic of whistleblowing. For information on these events please see the [events page](#) on our public website.

FEDEE FELLOWSHIP: The next Fellowship meeting will take place in London on May 21st 2015. If you are a Fellow and have not yet booked your place, contact us now on +44 (0)117 975 8611. For more information about Fellowship and our Fellowship meetings, please contact Cassandra on cassandra.lu@fedee.com.

NEW LAW PROGRAMME PRESENTATIONS: New audio-visual [Law Programme](#) presentations covering employment law in [Mexico](#), [Venezuela](#) and [New Zealand](#) are now available in the FedEE Members' Area. Updated presentations on employment law in [Germany](#), [Poland](#) and [England and Wales](#) are also now live.

NETWORK WITH OTHER FEDEE PROFESSIONALS — AND MORE: Don't forget that FedEE's face-to-face networking community (called butN) is now 'live' and available for free to both members and non-members. This is a good opportunity to meet other professionals — particularly during business trips. Join up today at <http://www.but-n.com>.

FOLLOW US: Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#) for news on upcoming events and discussions on global employment law and HR issues.

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