



FedEE
Federation of European Employers
Fédération des Employeurs Européens

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Latest News from the Federation of European Employers (FedEE)

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Europe: Accumulated leave arrangements when switching to PT work

In its latest ruling on working time, the European Court of Justice (ECJ) has made clear that an employer may not reduce an employee's entitlement to accumulated — but untaken — annual leave purely because the worker, who had been on maternity and parental leave, later switched from full- to part-time work.

The court had made a similar ruling before [Zentralbetriebsrat der Landeskrankenhäuser Tirols], but in this most recent case the employer argued that where an employment agreement expresses leave entitlement in weeks, rather than days or hours, the pro-rata reduction in leave entitlement would not affect the number of weeks outstanding leave the employee was entitled to. The court disagreed and pointed to previous ECJ case law which established that "the right to paid leave may not be interpreted restrictively". Even though a part-time worker is not paid for certain days each week, this does not mean that they

should be denied payment for a full week when taking leave that was accumulated when they were in full-time employment.

This decision makes invalid previous case law in Germany (Federal Labour Court April 28th 1998) that allowed an employer to retrospectively adjust accumulated leave in order to match current working time arrangements. [C-415/12]

Germany: Demographic deficit in Europe's largest economy

The most recent population projections indicate that the population of the European Union, within the context of its present structure, will rise by only 2.6% over the period from 2012 to 2060. One of the principal reasons for this is the expected contraction of the German population by 19% over the same period.

This demographic deficit will largely arise because the fertility rate in Germany (1.36) is well below the EU average (1.57). Germany's tight grip on residency rights will also keep the immigration



rate low and the predominance of male migrants with low integration levels will help to sustain Germany's current status as the country with the highest proportion of households without children.

Greece: Minimum wage procedure

A new procedure for establishing the statutory national minimum wage is expected to be introduced in Greece by 2017. The process will involve consultation between employers, trade unions and the government with the support of specialised services in employment, social policy and industrial relations.

A new law in 2012 stipulated that the national minimum wage was no longer to be determined through collective bargaining, but rather by the government — following only minor consultation with employers and trade unions. This is how the national minimum wage for 2013 onwards was set. National collective agreements only apply to employers who are party to the agreement if they provide more favourable provisions. The current minimum wage rate will remain in force until the end of 2016.

Hungary: Major political drive to save and secure jobs

The Hungarian government, which seeks re-election next year, has been acting on a number of fronts to reduce the impact of plant closures and encourage greater investment in jobs.

Last week the Economics Ministry announced that substantial funding was being put aside to assist workers following the closure of Sanyo's plant in Dorog near Budapest. Ministers are also seeking to take back into state ownership the troubled steelmaker, ISD Dunafer Zrt, in order to save around 7,000 jobs.

The Ministry for National Economy is developing a programme to secure 'Strategic Partnership

Agreements' with foreign companies that "help improve Hungary's competitiveness, create new jobs and boost exports". 40% of economic growth in the country over the last 15 years has been due to investments by foreign companies. For this reason, in the last six months the Government has concluded Strategic Partnership Agreements with more than 20 international corporations with Hungarian subsidiaries.

Malta: Obesity is the answer to executive health

Employee health is an often neglected aspect of the increasing focus by HRM on talent management. Culture undoubtedly has a big influence on what people eat and how much they exercise. To the extent that this is reflected in national statistics, it is possible to detect some significant differences.

According to the latest Eurostat data, Europe's least physically active men and women are the Maltese. This is supported by obesity figures which give Malta the highest incidence of overweight men in the EU. Women in Malta appear to escape a top position on the obesity league table by being Europe's highest consumers of fruit. Yet lack of exercise and obesity does not appear to affect the Maltese population's state of general health. Their reporting of having long standing illnesses and health problems is below the EU average and the Maltese are the least likely EU national group to report that they have "limitations in daily activities". They have the longest "healthy life" expectancy in Europe and are also one of the least likely to declare a work-related health problem.

Perhaps company wellness programmes should focus less on regular health checks and subscriptions to fitness centres and simply switch to relocating key executives to a certain small Mediterranean island...?



Poland: Legal changes to improve workplace flexibility

An amendment to the Polish Labour Code has now come into force, extending the settlement period for working time and introducing flexible working.

The 'settlement period' over which working time is averaged may now extend beyond four months up to a maximum of 12 months, provided the extension is "justified by objective or technical reasons" and the change does not endanger the general safety and health of workers. This amendment will be of particular benefit to employers operating seasonally.

As regards flexible working, employers are now permitted to define variable start times for their employees or designate a time window within which the employee may start work. In order that an employer does not incur increased overtime costs, an employee who recommences work within a given 24 hour period will not be considered to be working overtime if subject to a flexible working arrangement. Employees who are working for substituted working days will also not be considered to be working overtime.

In addition, the law clarifies an employer's obligation to provide their employees with their working schedule, covering a minimum period of one month, at least one week in advance.

UK: Why the downturn has lasted so long

In our last newswire FedEE reported problems in the eurozone where employers have continued to increase salaries during the downturn in spite of falling levels of corporate value added. However, the situation in the UK has been even more dramatic.

Over the so-called "economic bubble" years from

Q1 1998 to Q3 2007, output per worker in the UK as a whole rose by 23%, output per job by 23.8% and output per hour by 27.7%. This balanced out well against a rise of just 25% in labour costs per unit of output over the same period. In other words, as output improved employers were sharing the benefits in an equitable way with their employees.

The third quarter of 2007 is when the economic bubble finally burst and this is clearly visible in productivity figures. Having peaked at an index figure of 104.7 in Q3 2007, output per worker fell to 98.3 in Q1 2009, before lifting slightly and then falling again from Q3 2011. This means that over the period from Q1 1998 to Q1 2013 (the latest available data point) output per worker grew by just 16.8%. Even on the more generous measure of output per hour the productivity improvement over the 15-year period was just 21.8%. This reduction in productivity in the post-bubble years would not have happened if employers had shed labour in line with falling demand. Yet companies took an even more surprising step — they protected pay levels for the underemployed workers they retained. As a consequence, over the 15-year period since 1998 — and wholly due to companies' protectionist policies since Q3 2007 — labour costs per unit of output moved wildly out of step from labour productivity trends. Thus, whilst productivity levels since 1998 have risen by just 16.8–21.8%, labour costs per unit of output have jumped by a staggering 43.3%, and all this dangerous divergence has taken place since Q3 2007.

The economy has clearly undergone a double dip largely because companies have been protecting employee pay levels at the cost of shareholder returns and investments in their business. Although sustained incomes should have led to a consumer spending spree — which would have eventually stimulated economic growth — employees simply increased their savings ratio (<http://tinyurl.com/kwtwggd>) by putting the money



they could spare into building societies and government bonds rather than equities.

Pay, Tax and Benefit Trends

AUSTRIA: An amendment to the Austrian Civil Code, which guarantees a worker's right to pay when they are prevented from working due to a natural disaster "affecting their own life or the lives of close relatives", came into force on August 1st 2013.

AUSTRIA: The proposed introduction of a new care leave system in Austria has now passed the legislative process. As from January 1st 2014, employees who have the agreement of their employer will be able to take full- or part-time leave for between one and three months to care for a close relative. Employers will not have to pay the employee's salary during care leave and employees will receive a small 'care benefit' from the state to make up for their loss of earnings.

CZECH REPUBLIC: The Czech Supreme Administrative Court has ruled that if a worker is injured through "negligence in the commission of a driving offence" they may lose up to 50% of their entitlement to sick pay compensation from the social security administration (CSSA). This is a new interpretation of S31 of the law on health insurance which overtly states that up to 50% of sickness benefit may be withheld from a claimant if their injury arose from "culpable participation in a fight", drunkenness or the use of narcotics.

EUROPE: In its latest report, "Taxation Trends in the European Union", the European Commission points out that taxation as a proportion of national wealth (GDP) in the European Union is 40% higher than in the USA and Japan. EU countries vary widely in the amount they levy through income tax and social security and in recent years the biggest changes have been made to the higher marginal tax rate. Every year since 2010 between five and six states have increased their

top income tax rate to bring the average rate to 38.7% this year. The lowest rates are now in Bulgaria (10%) and Lithuania (15%) and the highest rates in Sweden (56.6%) and Denmark (55.6%).

IRELAND: Employees at the Irish Bank AIB have accepted a joint recommendation from the Labour Court and an independent mediator relating to pensions, working time, pay, redeployment, outsourcing, transfers and recruitment. The changes were made necessary by a dictum from the Irish government that holds shares in the bank. This required overheads to be cut by 350m euros and payroll costs to be reduced by 6-10%.

ITALY: The Italian Chamber of Deputies has voted to give businesses a new tax allowance if they employ, for at least 12 months, a full-time worker under the age of 30 who has been unemployed for six months or more. The allowance will be worth up to 650 euros per month, per employee. The government has also delayed a planned 1% increase in value added tax until October.

TURKEY: A settlement has been reached in Turkey between the Textile Industry Employers' Association and the Teksif Union following recent strike activity. A new three-year collective agreement increases basic rates by 5% for the next six months, with 3% or 4% increases every six months up to the end of the agreement. Bonuses are restored to their previous level — calculated on the basis of 120-days salary — and wage rates will be increased with seniority. 200% premium rates will also be paid for overtime performed on weekdays, general, national and regional holidays.

Other European HR news in brief

AUSTRIA: The Works Council at Telekon Austria AG (TKA) has called on the Austrian government to increase its 28.42% stake in the company in



order to ward off a takeover by the Mexican telecommunications company America Movil — which also holds a large minority shareholding in TKA. Movil, which is controlled by Mexican billionaire Carlos Slim, recently announced its intention to take over the Dutch telecommunications company Royal KPN NV. The council fears that a similar move towards TKA could threaten the company's culture and employee rights.

EUROPE: The European Commission has approved Croatia's planned use of EU cohesion policy funds, which amount to over 400m euros. The investment plan seeks to create jobs, boost economic growth and improve the country's competitiveness.

FRANCE: A company has been ordered by the French Supreme Court to pay over 48,000 euros in compensation to an employee who was found to have been wrongly dismissed for gross misconduct. It emerged that the employee in question had been subjected to marginalisation and deterioration in working conditions following her return to work after a period of long-term sickness absence. It was found that the reasons for her dismissal were exaggerated, unfair and unfounded. [Cass. Soc. July 10th 2013, No. 12-19168]

MALTA: On September 15th 2013 Malta's Whistleblower Act comes into force. The Act requires all large companies to establish a specialist unit to deal with information about fraud, corruption and other criminal acts. If the information is found to have any substance it must be then passed to a new external body operated by the police. Genuine whistleblowers will, if necessary, be given legal immunity (at the discretion of the Attorney-General) and placed on the Witness Protection Programme.

NETHERLANDS: The National Anti-terrorism and Security organisation (NCTV) in the Netherlands

is warning companies that the danger of digital espionage and cyber crime is currently at its second highest level of alert. The organisation's Coordinator, Dick Schoof, has pointed out that "security and economy are inextricably linked with one another, more than in the past" and has called for such issues to be discussed in the boardroom.

NETHERLANDS: Two Dutch political parties have jointly submitted a new parliamentary Bill which aims to increase the rights of parents to work on a flexible basis. Currently employees have the right to request flexible hours or reduce their hours. Under the proposal, from 2014 employers would not be able to refuse an application to adapt the working day to fit in with school hours, or to work occasionally from home — unless strong operational reasons would make such arrangements impractical.

NETHERLANDS: Job vacancies in the Netherlands have fallen to a ten-year low. At the end of June the number of vacancies was just 91,000 (seasonally adjusted), whilst unemployment has continued to grow every month since July 2011. The decline in job vacancies between the first two quarters of this year were entirely in the private sector, whilst the number of vacancies in the public sector has, in fact, grown.

NETHERLANDS: A study carried out by the Dutch Central Planning Bureau (CPB) has found that offshoring is generally an ineffective strategy for companies. Productivity falls on average by 10% and, in the CPB's view, companies often underestimate the differences in culture and in rules and regulations; they operate more inefficiently than on home soil and end up with a more complex corporate structure to manage. Of the Dutch companies that were offshoring prior to the economic downturn, 17% had brought their operations back into the country by 2010. Among the factors cited for this was the growth of wage



rates in Asia and the sharp rise in transportation costs.

NORWAY: In a surprise decision, the Norwegian Appeals Court (Borgarting lagmannsrett) has decided that a case for wrongful dismissal brought against the Irish airline, Ryanair, by a former cabin crew member must be heard in a Norwegian court. Ryanair has repeatedly argued in courts around Europe that its aircrews are only subject to Irish law. Ryanair is now going to appeal again to Norway's Supreme Court. If they lose there the decision could have profound implications for other airlines operating within Europe.

ROMANIA: A recent amendment to the Romanian Code of Civil Procedures has introduced a requirement for parties to a collective or individual

labour dispute to receive information and guidance on the use of mediation before submitting a case to the courts. Information can be provided by a judge, prosecutor, legal adviser, lawyer or notary public and the service is entirely free of charge.

UK: The English Employment Appeals Tribunal has decided that, when assessing the compensation due for unfair dismissal, tribunals may take into account the outcome of a claimant's later poor conduct — for example a criminal conviction unrelated to the original dismissal— even if this occurs after their employment had come to an end. This is because such conduct may affect the claimant's continued ability to work, and is due to the fault of the claimant themselves rather than their previous employer.
[UKEAT/0398/11/JOJ]

FedEE news:

FELLOWSHIP MEETING: The date for the inaugural Fellowship meeting has just been confirmed. This all-day event will take place on Friday, 11th October 2013 at the Novotel London West, Hammersmith, and will provide Fellows of the Federation with an unparalleled opportunity for networking and an exchange of information not possible in a conference setting. It is not too late to become a Fellow — please contact our Membership Secretary on membershipservices@fedee.com for further information.

LAUNCH OF NEW LAW PROGRAMMES: FedEE has extended its Law Programme to cover five new countries: Belgium, the Czech Republic, Hungary, Switzerland and Turkey. The five new presentations, which offer an introduction to employment law in each of these jurisdictions, are now available to view on the FedEE Members' website.

INTERNATIONAL FELLOWSHIP: FedEE has awarded its first "Rachel Crowdy International Research Fellowship" to Bristol University law graduate, Hannah Larsen. The Fellowship — named after the first woman to hold a top job in The League of Nations (UN), Dame Rachel Crowdy — is designed to give new law graduates an opportunity to combine international travel with professional development. Hannah will be living in Sydney, Australia for six months, during which time she will be carrying out research into comparative aspects of employment law.



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