



# Dernières nouvelles

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## Canada: Proposed incentives to encourage whistleblowing in Ontario

The Ontario Securities Commission (OSC) in Canada has published a consultation paper and is inviting comment on a proposed incentive-based whistleblowing programme.

The proposed programme would award eligible whistleblowers up to 15% of the monetary sanctions or settlements (up to a maximum of 1.5 million Canadian dollars) for reporting information that is of high quality concerning any misconduct or possible infringements of Ontario securities law.

In addition, it would make it illegal for employers to retaliate against whistleblowers and give whistleblowers a civil right of action against employers who do retaliate. The law would also render any contractual provisions intended to silence a whistleblower unenforceable.

The period for accepting comments will end on May 4th 2015. If implemented, the programme would be the first of its kind among securities regulators in Canada.

## European Union: Litigation exposure increased for non-EU employers

On January 10th 2015, new European Union rules entered into force, increasing non-EU employers' exposure to employment litigation.

Under the new rules, an EU-based employee may bring an employment claim against their non-EU employer in any EU member state, even if the employer has no presence in the European Union. All that is necessary is that the employee regularly conducts work in the European Union. Previously, an employee could only bring proceedings against a non-EU employer if the employer had a registered office or a branch office in an EU Member State.

The new regulation also provides that disputes against multiple employers in different member states may be brought in just one member state. This will be the state with which the employment contract is most closely connected (normally the state where the employee habitually carries out their work).

## European Union: Opinion on meaning of 'establishment' in collective redundancy cases

An Advocate General of the European Court of Justice (ECJ), Nils Wahl, has issued a non-binding opinion stating that the European Collective Redundancies Directive neither requires nor prevents all redundancies that are being made across a company's business from being counted when establishing whether or not the threshold for a collective redundancy has been met.

The opinion was given in the context of the UK's so-called 'Woolworths' case as well as another UK case and a case from Spain. In the Woolworths case the UK Employment Appeal Tribunal (EAT) had ruled that the inclusion of the requirement in UK law for 20 or more redundancies to be made 'in one establishment' within the relevant period before the obligation to consult on collective redundancies was triggered was not compliant with the European Collective Redundancies Directive. The EAT ruled that the obligation to consult should arise whenever 20 or more redundancies were made in the employer's business within a period of 90 days, no matter in which branch the redundant employees worked. The question on the interpretation of the Directive was referred to the ECJ by the UK Court of Appeal.

In his opinion, the Advocate General stated that the word 'establishment', as referred to in the Directive, should be considered to mean 'the unit to which the workers made redundant are assigned to carry out their duties, which it is for the national courts to determine'.

As yet, no date has been set for the ruling of this case but generally, ECJ judgments follow three to six months after the non-binding opinion by the Advocate General is given.

## Morocco: New law on compensation for workplace accidents

A new law on compensation for accidents at work has finally come into force in Morocco after years of consultations and negotiations. The law clarifies who may benefit from compensation for workplace accidents, how much they will be entitled to and within what time frames they will receive compensation. The law also reviews the administrative procedures regarding the response to a workplace accident and the claiming of compensation.

Under the former rules a workplace accident had to be declared to the authorities who would then submit a file before the tribunal. Under the new law, however, it is the employer who must be informed. The victim of the accident — or their relative in the case of death — must inform the victim's employer of the accident within 48 hours of it taking place. The employer then has five days to inform the insurance company. Only if the victim is not insured will the case go to a tribunal.

The new legislation also introduces a much more favourable procedure for claiming compensation. Employees (or their relatives) will only have to wait a maximum of 90 days to receive the compensation they are due.

## Netherlands: No work permit required for Japanese nationals

The Dutch Administrative Jurisdiction Division of the Council of State has issued a significant ruling stating that Japanese workers do not require a work permit to work in the Netherlands.

The court based its decision on a 1913 treaty, which contained a clause stating that Japanese workers should be given the same status as non-Dutch

nationals of the most-favoured nation. Switzerland is the most-favoured nation and, under a Dutch-Swiss treaty, Swiss nationals are exempt from work permit requirements. Therefore the court decided that Japanese workers should also be exempt.

Japanese workers will still need to possess a residence permit to live in the Netherlands.

## **Singapore: Unions to be able to represent executives collectively**

The scope of trade union representation in Singapore is shortly to be expanded under amendments to the Industrial Relations Act. The amendments, which were approved by parliament in late January 2015, are expected to come into force on April 1<sup>st</sup> 2015.

Under the amendments, rank and file trade unions (those with a majority of members who are blue-collared workers) will be permitted to represent executive employees on a collective basis. At present, rank-and-file trade unions may represent executive members individually in certain cases, however they are not allowed to collectively represent executives as a class.

In addition, the amendments extend the type of cases in which rank and file unions may represent executives individually. Currently, executives may be individually represented in cases concerning retrenchment benefits, dismissal, breach of individual contracts, misconduct and victimisation and re-employment disputes. The amendments add to this list re-employment disputes that arise from the Retirement and Re-employment Act — including cases when an employee is denied employment for not fulfilling the re-employment criteria.

However, employers will have the power to object to an executive receiving limited representation in certain

circumstances, including if the employee has a senior management role; if they control or supervise key business operations; if they are responsible for operational performance; or if they plan business policies and lead others. An employer may also object if the employee has decision-making powers regarding employment, termination, promotion, transfers, rewards or disciplinary procedures, or has access to confidential information.

It is worth noting that in November 2014, a set of guidelines on extending and expanding the scope of union representation for executives was published. This can be accessed on the [Ministry of Manpower's website](#).

## **Switzerland: Legitimacy of employers' responses to currency appreciation questioned**

The recent decision of the Swiss National Bank to abandon its currency ceiling of 1.20 francs to the euro has caused many employers in Switzerland to review how they pay employees.

For the first time since the currency ceiling was introduced in 2012, employers are once again considering paying their employees in euros or cutting salaries in an attempt to reduce the negative impact of the appreciation of the franc on their businesses. However there are questions as to the legality of some such measures.

Although it is not illegal to pay employees in a foreign currency, any differential treatment between the payment of cross-border workers and Swiss residents could be considered a breach of the EU-Swiss Treaty on free movement. Trade unions have warned that some of the measures taken by companies to date could soon face legal challenge.

## **UK: Putting older employees at a disadvantage found to be objectively justified**

An employer's demand that its employees agree to new terms and conditions of employment or be dismissed was held not to be unjustified indirect discrimination in a recent case heard by the UK's Employment Appeals Tribunal (EAT).

A number of employees from different companies had their employment transferred to the employer in question. As a result, the employer decided to standardise all the employees' terms and conditions of employment. The employer was suffering from financial difficulties and informed employees that if they did not agree to these new terms and start working under them by a certain deadline, they would be dismissed. The standardisation of terms meant that some employees would not receive certain benefits they were accustomed to, such as a contractual entitlement to health insurance and enhanced redundancy pay. Changes were also made to working time and annual leave entitlements.

The EAT conceded that the employer's demand did put a certain age group of employees (those between the ages of 38 and 64 years) at a disadvantage because these employees had accumulated greater benefits and entitlements through their length of service. However, it also meant that all employees were treated equally; the difference in treatment was only found when comparing old benefits with new ones.

As the employer had no other option, this disadvantage was considered by the EAT to be objectively justified. The measure taken by the employer was deemed to be a proportionate way to achieve the aim of reducing employee costs and ensuring the future of the business. [UKEAT/0152/14/DM; UKEAT/0153/14/DM]

## **USA: Massachusetts amends parental leave law**

A law amending the Massachusetts Maternity Leave Act will come into force on April 7th 2015.

The Act, which applies to all employers with six or more employees, currently grants eight weeks of leave to female employees upon the birth or adoption of a child. It also gives them the right to return to the same or similar position in the company once their leave period has finished.

Under the amendment, leave will be extended to male employees as well as all employees who have a child placed with them following a court order. If both parents work for the same employer, however, they will only be able to take a total of eight weeks of leave between them for the birth or adoption of each child.

The amended law also gives employees the right to return to the same or similar job, even if the employer grants more than eight weeks of leave. This right may be denied only if an employer writes to their employee, prior to the employee taking their leave, clearly stating that taking an extended period of leave will result in the loss of the right to reinstatement to their previous position.

## **Pay, Tax and Benefit Trends**

**AUSTRALIA:** In May 2014, 25% of all employees in Australia earned total cash earnings of 1,532 Australian dollars (1,184 US dollars) or more per week, according to the Australian Bureau of Statistics. Average total cash earnings for all employees were 1,182.40 Australian dollars (913 US dollars) per week. Male workers earned an average of 1,429.80 Australian dollars (1,105 US dollars) per week and female workers earned an average of 940.20 Australian dollars (711 US dollars) per week.

**AUSTRALIA:** The Prime Minister of Australia, Tony Abbott, has announced that plans to implement paid parental leave are now 'off the table'. A new 'family package', to be developed in the next few months, will instead focus on increasing support for childcare. The original plan was to have six months of parental leave paid at the worker's normal salary, funded by a 1.5% levy on big businesses. Abbott declined to confirm whether this 1.5% levy would be scrapped under new plans.

**EUROPE:** January 1st 2015 saw the national minimum wage rate increase in many countries in Europe. The latest rates can be seen in our [monthly minimum wage table for Europe](#). Between January 1st 2014 and January 1st 2015 some of the biggest percentage increases in minimum wage rates were seen in Romania (14.7%), Latvia (12.5%) and Estonia (9.9%). No increases in the minimum wage rate were made during 2014 in the EU states of Belgium, Greece, Ireland and Slovenia.

**GERMANY:** German airline Lufthansa has reached an agreement with Eurowings that will affect the wages of approximately 300 pilots. The agreement, which is effectively immediately, will run for five years. Pilots will receive a 2.5% pay rise this year and at least a 2% increase per year in subsequent years of the agreement, depending on inflation. The German group has confirmed that it has now agreed to similar pay deals with Swiss International Air Lines, Austrian Airlines and Lufthansa CityLine.

**GUATEMALA:** The Constitutional Court of Guatemala has decided to suspend provisionally the application of 'differentiated minimum wages' which was approved by the government in December 2014. A differentiated minimum wage was introduced in four municipalities: Estanzuela in Zacapa, San Agustín Acasaguastlán and Guastatoya in El Progreso and Masagua in Escuintla. In these four municipalities, the differentiated minimum

wage was just 1,500 quetzal (196 US dollars) per month — much lower than the minimum wage elsewhere in Guatemala.

**IRISH REPUBLIC:** If an employee in Ireland has been granted or exercised share options in 2014, their employer will need to use a new electronic filing system to comply with their obligation to provide information to the Revenue. Under the Finance Act 2014, the relevant information must now be provided in an electronic format approved by the Revenue Commissioners by March 31st in the year of assessment following the year in which the share options were granted or exercised. A new electronic version of the previous RSS1 form may now be accessed at the [Revenue website](#).

**ITALY:** A new collective bargaining agreement was entered into at the end of last year for executives in the manufacturing industry in Italy. The agreement, which will remain effective until December 31st 2018, has set the minimum annual remuneration level for manufacturing executives hired or promoted after January 1st 2015 at 66,000 euros. The agreement also raises the age up to which all manufacturing executives are protected from unjustified dismissal to 67 years. However, compensation for unjustified dismissals has been reduced.

**ROMANIA:** The Prime Minister of Romania, Victor Ponta, has announced that the gross national minimum wage in Romania will be increased to 1,200 leu (273 euros) in 2016. The national minimum wage was increased to 975 leu (222 euros) on January 1st 2015 and is due to be increased to 1,050 leu (239 euros) in July 2015.

**UK:** A recent report by the UK Advisory, Conciliation and Arbitration Service (ACAS) has revealed the average amount of monetary compensation agreed to in ACAS-mediated settlements for different types of

claim. According to the report, which concerns settlements reached between the beginning of January and end of March 2014, the highest mean settlements were reached for sex discrimination and equal pay claims (9,690 pounds/13,038 euros), disability claims (7,630 pounds/10,266 euros) and unfair dismissal claims (7,320 pounds/9,848 euros). The mean settlement for wages claims was 3,110 pounds (4,184 euros) and the mean settlement for breach of contract claims was 3,650 pounds (4,912 euros).

**URUGUAY:** A new law regarding night work has been approved by the Senate in Uruguay. The law states that employees who work for more than five hours between 10pm and 6am should receive either a 20% wage increase or a 20% reduction in hours. Under the law employers are also required to transfer pregnant workers to day work and keep them in day work until at least one year after they have given birth.

## Other Global HR News in Brief

**CANADA:** During May to August 2014, Ontario's Ministry of Labour in Canada focused on inspecting workplaces where many new and young workers were employed. They issued nearly 8,000 orders to employers for not complying with the Occupational Health and Safety Act, including 156 stop work orders. The most frequently issued order was for employers' failure to evaluate the workplace for risks of violence or have an appropriate violence or harassment policy in place (12.6%).

**EUROPEAN UNION:** The European Commission is currently reviewing the Working Time Directive — the law which establishes basic rights for all workers in the European Union in relation to rest periods, annual leave and working time. The Commission has opened a consultation process that is due to run until March 15th 2015. Views are sought on a number of issues, including the right of employees in some EU Member

States to opt-out of maximum working time restrictions, rules for specific sectors and the treatment of 'on call' and standby times.

**FRANCE:** In a recent case, the Supreme Court of France held that an employee's repeated refusal to wear individual protective equipment and obey safety rules when working at height was not a justified grounds for dismissal. This was because the employer had infringed their duty of care towards the employee by making him work at height after he had been certified unfit to do so. The Court held that, as the employer had violated their own duty of care regarding the employee's safety, the employee could not be reproached for their misconduct. [No.13-23795]

**HUNGARY:** Employers in Hungary should be aware that they must now accommodate requests from employees who ask to move to part-time work if they are raising at least three children under the age of five. Additionally, senior female employees who are undergoing fertility treatment are now protected against dismissal for a period of six months from the start of treatment.

**ISRAEL:** The Short Employment Authorization programme has been re-established in Israel after it was temporarily suspended in December 2014. Short Employment Authorization permits allow foreign nationals to work in Israel for up to 30 days in a 12-month period. The processing of these permits is much quicker than for Short Term Expedited Process work permits, which allow foreigners to work in Israel for up to 90 days. The programme is initially being re-established on a trial basis until June 30th 2015 and will not be available to nationals from countries that are not visa-waived, such as China, India and Turkey.

**NETHERLANDS:** On January 1st 2015 a number of provisions of the Modernisation of Leave and Working Hours Regulations came into force in the Netherlands.

These regulations amend the Dutch Work and Care Act and Working Hours Act to extend maternity leave entitlements in certain circumstances — such as when an employee's child is hospitalised after birth for more than seven days — and make the taking of maternity leave more flexible. They also give fathers the right to three days' unpaid parental leave in addition to paternity leave. For more information on how the regulations have affected employees' leave rights please see our [HR Knowledgebase](#).

**TAIWAN:** Taiwan's Ministry of Labour has proposed a number of amendments to the Labour standards Act. The amendments would introduce a five-day working week for all sectors and reduce the statutory working hours from 84 hours per two-week period to 40 hours per week.

**UK:** The UK Employment Appeal Tribunal has found that an employer's duty to make reasonable adjustments for a long-term sick employee is only triggered when there is some sign that the employee is likely to return to work. No such duty exists while the employee remains unfit for work. It is important to note, however, that this case was decided under the Disability Discrimination Act 1995 and not the Equality Act 2010 under which employees could now bring a claim for discrimination arising from disability. [UKEAT 0017\_14\_1411]

**USA:** According to the U.S Bureau of Labor Statistics, 7.4 million workers in the US private sector belonged to a trade union in 2014. This equates to an overall unionisation rate of 6.6%. The industries with the highest unionisation rates in 2014 were utilities (22.3%), transportation and warehousing (19.6%), telecommunications (14.8%) and construction (13.9%).

## Dates for your diary:

**March 15th 2015:** A law prohibiting Sunday working in the retail sector will come into force in [Hungary](#).

**April 1st 2015:** Changes to rules on preliminary medical examinations become effective in [Poland](#).

**April 1st 2015:** Rank and file trade unions in [Singapore](#) will be able to represent executive employees on a collective basis.

**April 1st 2015:** In [Russia](#) the monthly minimum wage for Moscow will increase to 15,000 rubles (198 euros).

## Latest news for business travellers:

In the [UK](#), drivers of the London Underground have voted to go on strike. A date has yet to be fixed for this strike, but the trade union must give a week's notice before taking any industrial action. London bus drivers have postponed their planned strikes for February 13th and 16th.

There have been reports of robberies when travelling to private accommodation from Norman Manley International Airport in [Jamaica](#). Business travellers are advised to be extremely vigilant.

[Israel](#)'s Meteorological Service has forecast that the current storm will continue this weekend. Heavy rain, strong winds, thunder and snow could cause travel disruption.

It is possible that there will be unrest in **Bahrain** on or around February 14<sup>th</sup> — the anniversary of the 2011 uprising. In previous years, groups have organised demonstrations and protests, thus travellers should reconsider their plans to travel to **Bahrain** at this time.

The government of **Gambia** has decided to lift the travel ban imposed on countries affected by Ebola — notably Liberia, Sierra Leone and Guinea Bissau — with immediate effect.

The US Department of State is advising its citizens to defer travel to **Yemen**. It is also encouraging US citizens currently residing in **Yemen** to leave as a result of threats of terrorism and civil unrest. Travellers are being warned that they may experience unexpected airport closures with little or no warning.

## FedEE news:

**NEW HONG KONG OFFICE:** We are pleased to announce the incorporation of FedEE Global in Hong Kong. Details of the new address and telephone number are now available on our website.

**NEW MEMBERSHIP SECRETARY:** We would like to take this opportunity to welcome our new Membership Secretary, Cassandra Lu, who has taken over from Angelika Rivero. All enquiries concerning membership should now be directed to Cassandra at [cassandra.lu@fedee.com](mailto:cassandra.lu@fedee.com) or on +44 (0)117 975 8611.

**ADVICELINE ENQUIRY FORM:** Please note that all enquiries on matters of employment law, pay data or other HR-related issues must now be submitted via our new [Adviceline Enquiry Form](#) which can be found on the top toolbar in the Members' Area.

**NEW ECONOMIC DATA:** Our data on consumer price indices and business per diem rates (foreign assignments) has just been updated. This data can be found in the '[comparative data](#)' section of our HR Knowledgebase under '[economic indicators](#)'.

**NEW COUNTRY COVERAGE:** A full knowledgebase entry for [India](#) is now available in the non-European section of our HR Knowledgebase. A full entry for Singapore is currently under construction and is expected to be completed in the next couple of weeks.

**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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