



# Dernières nouvelles

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## Brazil: Measures to help companies avoid dismissals

On July 7<sup>th</sup> 2015 the government of Brazil provisionally created the Employment Protection Programme. The Programme has been devised in order to help companies experiencing temporary economic difficulties keep their workers in employment.

Employers who sign up to the Programme will be able to negotiate with their employees' union to reduce working hours by up to 30% — with a proportional reduction in pay — for a maximum period of twelve months. During this period of reduced working time the federal government will compensate the affected workers by up to 50% of their lost wages. This will be financed by the Workers Support Fund, however companies will be required to pay social security and severance pay fund contributions in relation to this supplementary compensation.

In return for this support the employer will not be permitted to dismiss any workers during the period of their participation in the programme and for an extra

period equivalent to one-third of the time spent in the programme.

The exact details of the criteria for joining the programme and the procedures for doing so will be issued shortly by the Employment Protection Programme Committee. The Programme still requires approval from the National Congress.

## Cayman Islands: Consultation on significant employment law reforms launched

The government of the Cayman Islands recently revealed a number of proposals that would significantly overhaul employment law in the territory.

Under the Labour Relations Bill, maternity leave would increase from 12 to 14 weeks and new fathers would be entitled to five days of paid paternity leave and five days of unpaid paternity leave. For the first time, employees would be protected from any discrimination as a result of whistleblowing and the concept of constructive dismissal would be recognised. Sexual

harassment would also become a legitimate labour complaint under the changes. Additionally, the retirement age would rise to 65 and employers would not be permitted to refuse to employ a local worker on the grounds that they are 'over-qualified'.

A public consultation on the proposals has been launched and all feedback must be submitted before August 31st 2015.

## Europe: Opting out of the Working Time Directive

The European Foundation for the Improvement of Living and Working Conditions (Eurofound) has recently published a report entitled 'Opting out of the Working Time Directive'. The report looks at how different member states of the European Union have made use of the option to opt out of the 48-hour maximum working week, the extent to which the opt-out is used and how it impacts on employers and workers.

Within the EU, five countries — Bulgaria, Cyprus, Estonia, Malta and the United Kingdom — allow employees to opt out of the 48-hour maximum working week, regardless of the sector or occupation concerned. In a number of other countries the use of the opt-out is possible in certain sectors or particular occupations. This is the case in Belgium, France, Germany, Hungary, Latvia, the Netherlands, Poland, Slovakia and Slovenia. In these countries the option to opt-out is applied most frequently in the healthcare and emergency sectors or to particular occupations in these sectors (e.g. doctors, nurses and fire fighters). In all other EU states the 48-hour week may not be opted out of under any circumstances.

The report remarks that, given the lack of data on the use of the opt-out in the EU, research on the impact of its use on workers and employers is extremely limited,

however the evidence there is suggests that long working hours are linked to poor working conditions. In particular, those working more than 48 hours per week are almost twice as likely to consider that their health and safety is at risk because of their work. Long hours have been found to have an even greater impact on workers' work-life balance. To view the report in full, see [here](#).

## France: Employers' duty to protect employees from passive smoking

A decision by the Supreme Court of France has confirmed that employers have a strict obligation to protect employees from passive smoking on company premises. This obligation falls under the duty to take necessary measures to ensure the physical and mental health and safety of workers.

In this case, an employee who had been dismissed due to incapacity to perform her role brought a number of claims against her former employer. One of these claims was for damages for passive smoking whilst at work. The Court of Appeal had rejected this claim for a number of reasons. Firstly, the employee had not raised any concerns regarding passive smoking in a periodic evaluation assessment — the employee had stated that she was satisfied with her working conditions, maintained good relations with her employer and was happy with the team atmosphere. Secondly, although the employer did permit employees to smoke on the premises, the employee's illness and the reason for her absence from work were completely unrelated to passive smoking. Finally, the employee regularly chose to accompany her colleagues during their smoking breaks.

Despite this, the Supreme Court overturned the decision of the Court of Appeal stating that the employer could not be exempted from their duty to protect employees from passive smoking. The case

was then referred to another Appeal Court to rule on the employer's potential failures in protecting its employees from passive smoking. [Cass. Soc. June 3rd 2015, n°14-11324;14-11339]

## **Global: Labour market trends since the global economic crisis**

The 2015 edition of the Organisation for Economic Cooperation and Development (OECD)'s Employment Outlook report has just been published. Of particular interest in the report is the examination of labour market developments and statutory minimum wage trends in OECD member countries since 2007.

According to the report the number of people who are long-term unemployed has increased by 77.2% since the end of 2007. Approximately 42 million people are currently unemployed across the OECD. This is three million less than in 2014 but still 10 million more than immediately before the global economic crisis of 2008-9 hit.

The report also reveals that the economic crisis has not resulted in a uniform increase in the number of people employed on fixed-term contracts. In the European Union, the overall incidence of temporary work declined slightly between Q4 2007 and Q4 2014, from 14.6% to 14%. In Spain, the number of people employed on fixed-term contracts declined by 6.6%. The incidence of fixed-term contracts also decreased (by between 1% and 2%) in Germany, Norway, Portugal and Slovenia. However, the incidence of fixed-term contracts increased by 5.3% in the Slovak Republic, 3.5% in the Netherlands and Hungary and 2.2% in the Czech Republic.

Across the OECD, the number of people working part time has increased by over 2% on average since Q4 2007. The incidence of part-time work is highest in the Netherlands (51.7%) and Switzerland (36.8%) and

lowest in Estonia, Greece, Portugal and Turkey (less than 10%).

The report also looks at statutory minimum wage rates in OECD countries and how these have changed during the recovery from the economic crisis. Statutory minimum wage levels have increased relative to median average wages in many of the 34 countries that are members of the OECD. However, the value of the minimum wage has decreased relative to the median wage in some countries, including Ireland, Spain and Turkey. In some cases, for example that of Greece, the nominal value of the minimum wage was cut.

## **Netherlands: Flexible working and maternity leave laws to come into force in 2016**

According to the Netherlands' Minister of Social Affairs and Employment, the Flexible Working Act will come into force on January 1<sup>st</sup> 2016. The law was approved by the Senate in April, however a date was not previously set for when the law will take effect.

Under the Flexible Working Act, all employees who have worked for their employer for over 26 weeks will be able to request a change in their working pattern, an increase or decrease in working hours or to work from home. Such a request will have to be made by the employee at least two months before they wish the change to take effect and the employer will be required to respond to the request at least one month before the requested start date (failure to do so would be considered agreement to the change). Employers will only be permitted to refuse a request for flexible working if it is not possible due to substantial business reasons.

In addition, a date has now been set for the entering into force of the law which will extend maternity leave

by four weeks in the case of women expecting multiple births. This law will come into force on April 1<sup>st</sup> 2016.

## **Singapore: More support for local professionals, managers and executives**

The Ministry of Manpower in Singapore has announced an array of measures to enhance employment and career opportunities for Singaporean professionals, managers and executives.

On October 1<sup>st</sup> 2015 the Singapore Workforce Development Agency will launch the Career Support Programme. This will provide a wage subsidy to employers that hire — in a mid-level job that pays at least 4,000 Singaporean dollars (2,962 US dollars) — workers over the age of 40 who have been looking for work for at least six months. For the first six months of employment, employers will receive a grant of 40% of the gross monthly salary in relation to those employees over the age of 50 and 20% of the gross monthly salary for those employees aged between 40 and 49. Companies will then obtain half of the value of these grants for the following six months. These grants will be subject to certain caps and the Programme will be piloted for a period of two years.

It will also be an obligation, as of October 1<sup>st</sup> 2015, for companies to publish the salary range of job vacancies placed in the Job Bank. If the job advertisement does not include the salary range, an employer will have their Employment Passes (work permits for foreign professionals who have a managerial, executive or specialised job) refused.

Furthermore, the Ministry of Manpower will be stepping up its inspection of Employment Pass applications for companies with a higher number of foreign professionals, managers and executives than other companies in the applicable industry. These companies will need to

provide certain information, such as whether Singaporeans were interviewed for job vacancies, how many job applications were submitted by Singaporeans and the total number of Singaporean professionals, managers and executives in the company.

## **UK: EAT ruling on jurisdiction of internationally mobile employee**

An interesting case was recently examined by the UK Employment Appeal Tribunal (EAT). The question was whether an internationally mobile employee could lodge a claim for unfair dismissal under UK law on the basis that they spent more time working in the UK than any other country.

The employee was a Danish national employed by a Bermudan company under an employment contract governed by Bermudan law. Both parties to the contract had agreed to be subject to the jurisdiction of Bermuda. The employee was based in Switzerland but his job involved international responsibilities and he spent more time working in the UK office than in any other office. He did not, however, work in the UK for more than 90 days and therefore he was not subject to UK taxation on his earnings. Before entering into the Bermudan agreement he had been offered a contract governed by UK law which would have allowed him to be based in the UK. However he refused the contract for family and taxation reasons.

When the employee was dismissed he sought to commence unfair dismissal proceedings under UK law. The EAT found that the employee's employment was not sufficiently closely connected with the UK for him to be able to bring a claim in the jurisdiction. The EAT considered that although the employee spent time working in the UK, he did not have a base there. Furthermore his role was clearly to be internationally mobile; he could carry out his work anywhere and it was up to the employee to decide where he did so.

Finally, the EAT took into account the fact that the employee had ensured that he did not spend long enough in the UK to be subject to the UK tax system. [Olsen v Gearbulk Services Ltd UKEAT/0345/14/RN]

## Pay, Tax and Benefit Trends

**AUSTRALIA:** Australian airline Qantas Airways has agreed to pay a bonus payment to all employees who agreed to an 18-month pay freeze. The bonus will be equivalent to 5% of employees' base annual salary and will cost the company an estimated 90 million Australian dollars (66,575,700 US dollars) in total. The payments will be made after the company publishes its annual results on August 20<sup>th</sup>.

**AUSTRALIA:** The government of Australia has put forward the Fairer Paid Parental Leave Bill, which aims to make changes to the processing of paid parental leave payments to reduce the bureaucratic burden on businesses. Under the proposals, employers would no longer be required to process government-funded parental leave payments made to their employees. Instead, these payments would be paid directly by the Department of Human Services. The employer may still choose to administer the payment to employees, but they must have the employee's consent to do this. The Bill is currently before the House of Representatives.

**BRAZIL/USA:** On June 30th 2015 the USA and Brazil signed a Social Security Totalisation agreement. The agreement means employees will not pay dual social security contributions when they come from one country to work in the other. It also aims to lessen the gaps in benefit protections for those who work in both the US and Brazil. The USA believes that the agreement will save both US and Brazilian companies more than 900 million US dollars in the first six years.

**FINLAND:** Employers' groups and trade unions in Finland have concluded negotiations and settled on a

new wage agreement for 2016. Under the agreement, monthly wages will rise by at least 16 euros (18 US dollars) or at least 0.43% where monthly earnings are higher than 3,755 euros (4,159 US dollars). It was also agreed that employers and employees will have to pay 0.5% more for unemployment insurance contributions. The agreement still needs to be accepted by Finnish labour organisations.

**INDIA:** On July 1<sup>st</sup> 2015, the central government of India increased the national floor level minimum wage from 137 rupees (2.16 US dollars) per day to 160 rupees (2.53 US dollars) per day. The national floor level minimum wage is not mandatory, but Indian states are advised to set minimum wages that are not lower than the national floor level. A complex minimum wage system operates in India — it differs from state to state and according to sector and occupational or skill level.

**ITALY:** A tax reform decree that aims to create a more favourable environment for both foreign investors and national business wishing to grow internationally was recently approved by the Italian government. The decree introduces a new set of rules for determining the profits earned by permanent establishments located in Italy. It also introduces a new rule that states that companies that have transferred their income tax residence to Italy should be assessed for income tax purposes according to the 'arm's length principle'. The decree is currently before the lower house of parliament for approval and is expected to come into effect on the first day of the tax year following its final approval.

**NORWAY:** A new regulation has just come into force in Norway allowing derogation from the rules of equal treatment in relation to agency workers. Although EU law states that workers hired through an employment agency should receive the same wages and working conditions as equivalent workers directly employed by the user company, it also allows for derogation of these

rules by collective agreement. Under Norway's new regulation, employment agencies may waive the rules on equal treatment if they are covered by a collective agreement with a trade union that has at least 10,000 members. The new rules will only affect collective agreements entered into or revised after the law's entry into force.

**SLOVAK REPUBLIC:** In April 2015, average nominal monthly wages increased in a number of sectors in Slovakia when compared to April 2014. According to the Statistical Office of the Slovak Republic, average nominal monthly wages rose by 7.2% in the transportation and storage sector, 2.9% in the sale and repair of motor vehicles sector, 2.3% in the accommodation sector, 1.8% in the industry sector, 0.7% in construction and 0.5% in the retail trade sector.

**SOUTH KOREA:** South Korea's Minimum Wage Council has finally reached an agreement to increase the country's national minimum wage by 8.1% for 2016. This is higher than the increase of 7.1% that was agreed for 2015 — in fact, the 2016 increase is the highest since 2008 when the minimum wage increased by 8.3%. The new minimum wage will be 6,030 won (5.35 US dollars) per hour. If there is no objection to the agreed rate by employers and trade unions, the Ministry of Employment and Labour will formally announce the new 2016 rate on August 5<sup>th</sup> 2015.

**UK:** Plans to introduce a compulsory national living wage have been announced by the UK Chancellor of the Exchequer, George Osborne. Under the plans, a national living wage would be established for workers over the age of 25. It would begin to operate in April 2016 — initially the rate would be 7.20 pounds (11.04 US dollars) per hour and the rate would increase gradually to 9.00 pounds (13.80 US dollars) per hour by 2020. At present, the national minimum wage of 6.50 pounds (9.97 US dollars) per hour applies to all workers over the age of 21.

**UK:** The UK government has published a consultation paper seeking views on the new gender pay regulations. Under the proposed regulations, companies with more than 250 employees will be legally required to publicly reveal the difference in the average pay of its male and female employees. The consultation paper seeks views on the level of detail that companies should be required to provide under this legislation, how frequently this data should be published and how the difference in earnings should be presented. The consultation will end on September 6<sup>th</sup> 2015.

## Other Global HR News in Brief

**AUSTRALIA:** The Fair Work Ombudsman has published a revised and updated version of the Fair Work Information Statement, which applies as of July 1<sup>st</sup> 2015. It is a legal requirement for employers to provide the Fair Work Information Statement to all new employees as soon as possible after the employee commences work. The statement provides new employees with information about their employment conditions. If a company does not provide the statement, civil penalties may be imposed.

**BRAZIL:** A proposal to make November 20<sup>th</sup> (*O Dia Nacional da Consciência Negra*) a national non-working public holiday has been approved by Brazil's parliamentary culture commission. At present, each state and municipality can decide whether or not to make November 20<sup>th</sup> a non-working public holiday. Many cities — including both São Paulo and Rio de Janeiro — already celebrate this day as a non-working public holiday. The proposal will now be reviewed by the parliamentary constitution, justice and citizenship commission.

**CANADA:** Canada's Minister of Employment, Pierre Poilievre, has announced that employers who violate the rules of the Temporary Foreign Worker Program

and the International Mobility Program will soon face higher financial penalties and more stringent bans. Effective as of December 1<sup>st</sup> 2015, employers may be fined between 500 and 100,000 Canadian dollars (386 and 77,300 US dollars) per breach up to a maximum of 1 million Canadian dollars (772,980 US dollars) in a 12-month period. Alternatively, they may be banned from the programmes for one, two, five or ten years. In the most serious cases, the employer may be banned permanently from using these programmes.

**CZECH REPUBLIC:** According to data published by the State Labour Inspectorate, there were 45,058 workplace accidents in the Czech Republic in 2014. This is 950 more than in 2013. The number of fatal accidents that occurred in 2014 was 117, which is four more than in 2013. In 2014, employees aged between 36 and 40 years suffered the most injuries at work (5,773), closely followed by employees aged between 21 and 25 years (5,120).

**EUROPE:** The first phase of transitional arrangements regarding the free movement of Croatian workers ended on June 30<sup>th</sup> 2015. Belgium, Cyprus, France, Germany, Greece, Italy, Luxembourg and Spain have all decided to grant Croatian citizens full access to their labour markets from July 1<sup>st</sup> 2015, whilst Austria, Malta, the Netherlands, Slovenia and the United Kingdom have decided to maintain restrictions in relation to Croatian workers' access to their labour market for a further three years.

**EUROPE:** The European Commission has announced that proposals to revise EU law to increase the minimum maternity leave entitlement from 14 weeks to 20 weeks have been withdrawn. The proposal to extend maternity leave was adopted by the European Parliament at first reading in 2010, but it has not advanced in the legislative process since then. Threats to withdraw the proposal first emerged last Summer, but in December 2014 six more months were given in

order to try to progress negotiations and reach a consensus. As there is no prospect of progress, the proposal has now been dropped. This decision will be formalised in the EU's Official Journal.

**GERMANY:** The Law on Multi-Union Bargaining (*Tarifeinheitgesetz*) is now in force in Germany having been signed by the country's President, Joachim Gauck, on Monday July 6<sup>th</sup>. The new law provides that when more than one union represents the same type of employees in a workplace, both unions should agree on their demands and negotiate jointly. If no agreement can be reached between the unions then the collective agreement of the union with the most number of members in the organisation will apply. This new law does not, however, apply to collective agreements which are already in force. Certain trade unions, such as Marburger Bund (a trade union for doctors in Germany) have announced that they will be raising a constitutional challenge to the law.

**RUSSIA:** On September 1<sup>st</sup> 2015 a new data protection law will enter into force in Russia. This law will impose a new duty on data operators to record, classify, accumulate and store personal data of Russian nationals on servers and IT systems located in the Russian Federation. The law raises a number of uncertainties for foreign companies who handle and process the personal data of Russian citizens from outside Russia. It is expected that official guidance will be provided in due course.

**RUSSIA:** Following the entry into force on July 11<sup>th</sup> 2015 of an amendment to Russia's Labour Code, employers in Russia are now required to explain, in writing, the reasons a job candidate was not hired within seven days of a request for this information being made. Previously, Article 64 of the Labour Code did not specify a time limit within which this information had to be provided.

## Dates for your diary:

**July 31<sup>st</sup> 2015:** Under the **Dubai** Health Insurance Law, health insurance cover for employees will become mandatory in companies with between 100-999 employees by the end of July.

**August 5<sup>th</sup> 2015:** Employment intermediaries in the **UK** must now submit reports to HMRC detailing all payments made to workers which have not used the PAYE system. The first report is due on this date.

**August 31<sup>st</sup> 2015:** Foreign employers who wish to recruit up to 20 Indian workers must register on the e-Migrate portal before the end of August.

**September 1<sup>st</sup> 2015:** New data protection law enters into force in **Russia**.

**September 6<sup>th</sup> 2015:** **UK** consultation on gender pay regulation ends.

## Latest news for business travellers:

Strikes by air traffic controllers across **Spain** will take place on July 25th between 10am and 1pm and on July 26th between 5pm and 8pm.

In the **UK**, trade unions have announced that there will be another 24-hour London Underground strike on August 5th starting at 9.30pm.

Ahead of a visit by US President Barack Obama, the US State Department has issued a travel warning, informing its citizens to be aware of the risks of terrorism at the Global Entrepreneurship Summit in Nairobi, **Kenya**. The Summit is scheduled to take place between July 24th and July 26th. The warning expires on July 30th.

**US** Customs and Border Protection has begun testing a device for collecting fingerprints and other biometric data from foreign travellers leaving the USA. The device is being tested initially at Hartsfield-Jackson Atlanta International Airport but testing will be extended to airports in Chicago, Dallas, Houston, Los Angeles, Miami, Newark, New York, San Francisco, and Washington-Dulles in the Autumn.

Flight delays and cancellations are probable for all flights between **Australia** and **Bali** due to the recent eruptions of Mount Raung volcano. It is expected that volcanic ash may cause problems for some time. Travellers are advised to contact their airlines to stay up to date with developments.

It is expected that Typhoon Nangka will affect **Japan** from July 16th and cause strong winds, high waves and flooding. It is likely that the extreme weather conditions will disrupt travel.

## FedEE news:

**FEDEE'S NEW GLOBAL CONSULTANCY SERVICE:** FedEE Global is pleased to announce the launch of fedee consultancy. fedee consultancy offers tailored research and consultancy services in the field of human resources management, personnel policy, remuneration, benefits, employment law, company

turnaround, expansion into new jurisdictions, and job and organizational design. It has a particular focus on Europe, India and China. For further information please visit <http://www.fedeeconsultancy.com> or call Cassandra on (+44) (0)117 975 8611.

**WHISTLEBLOWING EVENT:** Thank you to all those who attended our live video interview on Whistleblowing and the Law on June 2nd. A [recording](#) of this discussion is now available in our Knowledgebase for those who were unable to attend the live event.

**UPDATED LAW PROGRAMME PRESENTATIONS:** We have now completed the updating of our audio-visual law programme presentations for 2015. Updated presentations are now available for England and Wales, France, Germany, the Netherlands, Poland, Russia, Spain and Sweden. New presentations are also now available for Argentina, Brazil, Mexico, New Zealand, Peru and Venezuela. Our [Law Programmes](#) can be found in the Members' Area.

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