



# Dernières nouvelles

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## Argentina: Male employee in same-sex relationship entitled to maternity leave

A court in Argentina recently ruled that one of the male partners in a same-sex relationship was entitled to 90 days of parental leave when the couple adopted children. It is the first time that a court in Argentina has granted this right to a male employee.

Under the present law, female workers who are expecting a child are entitled to 90 days' maternity leave — 45 days before the birth and 45 days after the birth. Male employees are entitled to just two days of paternity leave.

In this case, two men in a same-sex marriage adopted two children aged 8 and 10. Both partners applied to their respective employers for leave that was longer than the two days of paternity leave permitted by law. When their applications were rejected the couple claimed that this was discriminatory. The court agreed and held that one of the partners should be given 90 days of leave to care for the children in the first few months following adoption. The other partner would be entitled to just two days of paternity leave.

## Bulgaria: Amendments to the Labour Code now in force

On July 17th 2015 a number of amendments to Bulgaria's Labour Code came into force. The amendments concern annual leave, young workers' working time, flexible working and termination.

The amendments have repealed the obligation of employers to prepare annual paid leave schedules. Previously, at the start of each year, employers had to draw up a holiday schedule and ensure that all leave was taken during the year. The new amendments allow part of an employee's leave entitlement to be carried over to the next year, but halfway through the year employers must ensure that the leave will be taken. After two years any untaken annual leave will be lost.

Changes have also been made to working time provisions for young workers. Previously, these workers were not permitted to work past 8pm but now they may work until 10pm. Pre-existing provisions that prohibit young workers from working more than seven hours or undertaking overtime work remain in place.

Furthermore, rules have been introduced to govern the introduction of flexible working. According to these rules employers may continue to set hours during which employees must be present at work, but outside of these times working hours may be flexible. The way in which working hours will be monitored is to be set out in the company's internal rules.

Finally, employers are now able to dismiss an employee who has reached retirement age provided they give the employee one month's notice. Employees may also terminate their employment when they reach retirement age but may do so without giving notice.

## **France: Macron law finally adopted by parliament**

The draft law on economic growth and activity, known as the Macron law, was adopted by the French Parliament on July 10th. The law, which aims to increase competitiveness and generally modernise the French economy, is far-ranging. Below we outline some of the main aspects of the law affecting employers.

As mentioned in previous editions of our newswire, the Macron law has been attempting to relax the rules on Sunday working. After numerous amendments the final version of the law defines three zones in which employers may require employees to work on Sundays — but only when a collective agreement has been concluded outlining the terms of Sunday work, and only with the consent of individual employees. Outside of these zones, Sunday working will also be permitted in stations and on specific days designated by the local mayor. The law also relaxes the rules on night work.

Under the Macron law, imprisonment will cease to be a possible sanction for employers who prevent employee representatives from exercising their duties. Instead the fine will be almost doubled from 3,750 euros (4,777

US dollars) to 7,500 euros (8,274 US dollars).

Imprisonment will continue to be a possible sanction, however, if an employer does not allow employee representatives to be appointed.

The law will also extend the duration of job retention agreements (*accord de maintien de l'emploi*) from the current two years to five years. These agreements mean that if a company is experiencing temporary economic difficulties, the employer may negotiate with their employees to make changes to working time and salaries, but they must guarantee continued employment.

Furthermore, a cap will be imposed on the amount of tribunal damages awarded to employees in the case of unlawful dismissals. Under the draft law, the cap would be calculated on the basis of the employee's length of service and the size of the company. However, tribunals may still grant higher damages in certain serious cases, such as if the employee has suffered moral or sexual harassment or there has been a breach of a fundamental freedom. Changes will also be made to the tribunal system to simplify and speed up the judicial process.

The Constitutional Council is currently reviewing the law which is expected to be given final approval in mid-August.

## **Germany: Piracy may be lawful reason for termination with immediate effect**

Germany's Federal Labour Court (BAG) has held that an employee's use of a work computer to download files and make pirated copies of DVDs during working time may be a lawful reason to immediately dismiss the employee.

In this case, the employer discovered 6,400 e-books, images, audio and video files on an employee's work

computer. In addition, a programme that bypassed the copy protection of DVDs had been installed on the employee's computer. It was found that 1,100 DVDs has been copied using the work computer and that that the same number of blank DVDs had been ordered and delivered to the workplace. The employee's contract was terminated with immediate effect.

The BAG held that, although the employee was allowed to use his work computer for private purposes, he was not allowed to use it for acts of piracy.

Furthermore, the BAG overruled the decisions of the lower courts by holding that it is up to employers to decide whether or not to involve law enforcement authorities in these types of circumstances. An employer may, in principle, undertake the relevant investigation themselves, however, they must comply with the Civil Code, which states that termination with immediate effect must be based on facts that have been uncovered in the last two weeks.

Whether the termination in this specific case is actually lawful or not is up to the lower courts to decide. It is important to note that in Germany, it is not easy to establish the precise requirements for a termination with immediate effect — the court will take into account all the circumstances of the case and will balance the interests of both parties. [Az.: 2 AZR 85/15]

## **India: Proposals to enhance employee rights under consideration**

Employee rights in respect of maternity leave, bonuses and gratuity payments may soon be enhanced in India if current government proposals are approved.

According to reports, plans to increase the earnings threshold for receiving bonuses under the Payment of Bonus Act are at an advanced stage, with a draft cabinet note expected to be ready for comments by the

end of July 2015. As the law stands, employees who earn up to 10,000 rupees (157 US dollars) per month in establishments employing 20 or more persons are entitled to a minimum annual bonus of 8.33%. Under the proposed changes the earnings threshold for eligibility for this bonus would be increased to 19,000 rupees (298 US dollars) per month.

Plans to amend the law on gratuities are also being considered. To be eligible for gratuity, employees must have worked for at least five years for their employer. The government is currently considering reducing this service requirement or alternatively allowing the gratuity to be transferred between jobs.

In addition, the government is considering extending minimum maternity leave rights from three months to six months. One option that will be discussed with employers and trade unions is the possibility of limiting this extended maternity leave right to an employee's first two children, with the maternity leave right for subsequent children remaining at the current level.

## **New Zealand: Measures to prevent unfair employment practices**

The government of New Zealand has proposed a number of reforms to employment law in an attempt to tackle unfair employment practices, mainly in the context of zero-hour arrangements. These proposed changes will form part of the Employment Standards Bill which will be introduced into parliament later on in the year.

Under the draft law, casual employment agreements would continue to be permitted, however additional rules would apply to protect employees.

Firstly, if an employee was required to be available to work without a minimum number of hours being guaranteed, the employee would have to be

reasonably compensated for this period of being available.

Employers would also not be permitted to cancel a shift or send an employee home early without giving the employee reasonable notice or compensation. The draft law does not specify how much notice or compensation would be reasonable in these cases, but states that the amount should be agreed upon as part of the employee's terms and conditions in the employment contract.

Additionally, employers would not be able to prevent an employee from taking on secondary employment without there being a reasonable justification to do this. The law will not specify what would be considered a reasonable justification, but it would include any risk of loss of an employer's intellectual property or knowledge.

Finally the law would impose restrictions on deducting wages; employers would not be allowed to deduct money from their employees' pay for losses that were beyond the employee's control or that did not result from the employee's negligence.

## South Africa: Slow progress in achieving employment equality

South Africa's Department of Labour has just published the Commission for Employment Equity's annual report for 2014-2015. All the information contained in the report comes from Employment Equity Reports submitted by employers. As of August 2014, all designated employers under the Employment Equality Act are obliged to report to the Department of Labour every year.

The published report shows that white and male employees are still significantly overrepresented in top management. According to the statistics, 70% of top

management positions are held by white individuals even though this population group forms only 10.3% of the economically active population. Despite making up 76.2% of the economically active population, Africans occupy just 13.6% of top management positions. In terms of gender, males occupy 79.1% of top management positions despite only forming 55% of the economically active population.

Despite the inequity, the report does show some slight improvements in the situation. The proportion of top management roles held by white individuals has decreased slightly over the years — from 73.1% in 2010 and 72.6% in 2012 and the proportion of top management roles held by Africans has increased — from 12.7% in 2010 and 12.3% in 2012. The number of males in top management has also decreased gradually from 81% in 2010 and 80.2% in 2012.

The representation of persons with disabilities in top management positions has also been improving, although again only slightly. In 2012, 1.7% of top management positions were occupied by persons with disabilities whilst in 2014 persons with disabilities held 2% of top management jobs. The full report may be viewed [here](#).

## UK: Women forced out of jobs due to maternity discrimination

New research by the Equality and Human Rights Commission estimates that 54,000 new mothers in the UK could be forced out of their jobs every year as a result of maternity discrimination. This estimate is based on the results of a survey of more than 6,000 employers and employees.

Of the 3,200 female employees who were interviewed, 11% reported that they had been dismissed, made compulsorily redundant when their colleagues had not been, or felt obliged to leave their jobs due to poor

treatment. Furthermore, 7% stated that they were put under pressure to hand in their notice and 20% said that they had been discriminated against or faced negative comments from their employer or colleagues when they were pregnant or returning to work after maternity leave. When new mothers were allowed to work flexibly, around 50% felt that they suffered adverse repercussions — such as receiving fewer opportunities at work — as a result of the arrangements.

Although 84% of the employers interviewed recognised that supporting pregnant employees and those taking maternity leave was in the company's interest, only 66% of mothers felt that their employer supported them willingly during pregnancy and on their return to work after maternity leave.

## Pay, Tax and Benefit Trends

**ARGENTINA:** Employers and trade unions in Argentina have agreed to increase the national minimum wage by 28.5%. On August 1<sup>st</sup> 2015 the minimum wage will rise by 18.5% taking the rate to 5,588 pesos (610 US dollars) per month. On January 1<sup>st</sup> 2016 the rate will increase by a further 10% to 6,060 pesos (662 US dollars) per month.

**BRAZIL:** According to the latest report from the Brazilian Institute of Geography and Statistics, in 2013 men earned an average of 2,334.46 real (725 US dollars) per month and women earned an average of 1,855.37 real (576 US dollars) per month. This means women were earning the equivalent of 79.5% of the wages of their male counterparts. Although the gender wage gap did decrease between 2011 and 2012 (from 25.7% to 25.3%), it increased again between 2012 and 2013 (from 25.3% to 25.8%).

**CANADA:** In 2013, the proportion of all employees in Canada covered by a registered pension plan was

37.9%. In 2012 the proportion was slightly higher at 38.5%. According to the data released by Statistics Canada, total contributions to registered pension plans reached 66.7 billion Canadian dollars (51.3 billion US dollars) in 2013. Excluding employer contributions for unfunded liabilities — which amounted to 15.1 billion Canadian dollars (11.6 billion US dollars) — 61.4% of the total contributions were paid by employers, with employees paying the remaining 38.6%.

**IRISH REPUBLIC:** The Republic of Ireland's newly-established Low Pay Commission has recommended that the national minimum wage be increased from the current 8.65 euros (9.38 US dollars) per hour to 9.15 euros (9.92 US dollars) per hour. If the government accepts this recommendation, the annual salary of workers on the minimum wage would increase by over 1,000 euros (1,084 US dollars). It is expected that the new rate would begin to apply in 2016 in the run-up to the General Election.

**IRISH REPUBLIC:** The government of the Republic of Ireland has launched a public consultation on the tax treatment of travel and subsistence expenses for employees and office holders. All responses to the consultation must be submitted by August 21<sup>st</sup> 2015.

**ITALY/ISRAEL:** Italy has ratified the social security agreement it entered into with Israel in 2010. For employees the agreement only applies in relation to the general mandatory insurance for old age, disability and survivors — it does not extend to insurance for accidents or occupational diseases. The agreement provides that employees working in either country will be subject to the social security legislation of that country, irrespective of the employee's place of residence and the location of the employer. If an employee works in both countries they will be subject to the social security legislation of the country of residence. However, for assignments of up to 24 months social security contributions should continue to be paid under the laws of the country of registration

while the employee works in the other country. This can be extended for up to an additional two years if necessary. For more information please contact [uberto.percivalle@bakermckenzie.com](mailto:uberto.percivalle@bakermckenzie.com).

**MALTA:** The government of Malta has launched a new maternity leave fund. Employers now have to contribute 0.3% of the basic pay of every worker they employ — irrespective of the worker's gender — to this fund. The fund will then be used to pay for maternity leave. The fund will be supervised by a board that is made of three employer representatives, one trade union representative and permanent secretaries of the Ministries of Finance and Employment Relations.

**UK:** The Swedish multinational company IKEA will become the first national retailer in the UK to pay its workers the 'living wage' as recommended by the Living Wage Foundation. From April 2016 the company will pay all workers in London at least 9.15 pounds (14.24 US dollars) per hour and all workers outside of London at least 7.85 pounds (12.21 US dollars) per hour. These wage rates will apply also to workers under the age of 25. In early July 2015, the UK Chancellor of the Exchequer, George Osborne, announced plans to introduce a compulsory national living wage for workers over the age of 25. This would begin to operate in April 2016 and the initial rate would be 7.20 pounds (11.04 US dollars) per hour.

**USA:** The state of Nevada in the USA has passed a law which introduces a 25% tax credit for employers who match the contributions made by employees participating in a qualified Nevada 529 college savings plan. The aim of the legislation is to encourage employers to offer 529 plans as an employee benefit. Employers will be able to take advantage of this tax credit as of January 1<sup>st</sup> 2016.

## Other Global HR News in Brief

**BOSNIA HERZEGOVINA:** The government of Bosnia and Herzegovina has approved a draft employment law that would bring the country's current legislation largely in line with EU employment and labour laws. The most significant changes concern occupational health and safety provisions for pregnant women, new mothers and nursing mothers, and the organisation of working time. The draft law would also impose a maximum three-year term on collective agreements — currently such agreements may have an unlimited term.

**EUROPE:** According to a report published by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), average job tenure at EU aggregate level increased between 2002 and 2012 from 116.5 months to 123 months. During the economic crisis (2008 to 2012), the mean job tenure declined in seven countries, increased in 12 countries and stayed largely the same in seven countries. The countries that were particularly affected by the crisis — including Ireland, Italy and Spain — all experienced significant increases in mean job tenure. The report concludes that differences in job tenure levels across the EU can be explained by employment protection legislation.

**FRANCE:** In a recent case, France's Supreme Court found that an employee had not abused their freedom of expression and therefore had been unfairly dismissed. The employee had posted articles on a website stating that a colleague had been sanctioned for asking for the proper application of French labour laws and that he had been blackmailed and threatened by a manager at work. The employer dismissed the employee on the grounds of serious misconduct. The Court, however, held that commenting on a situation of conflict at work was not an abuse of the employee's freedom of expression particularly as the articles in

question were not offensive or vexatious and were published on a website that was only accessible to subscribing members. [Cour de Cassation, chambre sociale: RG n°14-10781])

**INDONESIA:** Under new regulations employers in Indonesia are required to employ at least 10 Indonesian workers for every foreign worker employed. Employers applying for work visas for foreign employees will have to prove that they meet this 10:1 ratio of local-to-foreign workers. The ratio does not apply, however, in relation to certain foreign employees — such those who are members of the board of directors or the board of commissioners and those working in temporary or 'urgent' jobs.

**JAMAICA:** A recent announcement by Jamaica's Ministry of Labour and Social Security has confirmed that, this year, Emancipation Day will be observed on Saturday, August 1st. The law states that if Emancipation Day falls on a Sunday, it will be moved to the following Monday. However there is no such provision in the case that the holiday falls on a Saturday. As such, the Ministry has confirmed that workers will not receive Monday as a day off in lieu to compensate for Emancipation Day falling on a Saturday.

**KENYA:** A new online visa system was launched in Kenya on July 1st 2015. The system, known as eVisa, allows foreign nationals to apply and pay for visas online. Use of the eVisa system will become compulsory from September 1<sup>st</sup> when the manual application system will be abolished. It is expected that the new system will streamline the visa application process for business travellers.

**NETHERLANDS:** An amendment to the Dutch Civil Code came into force on July 1<sup>st</sup> 2015, bringing national law in line with EU law as regards the participation rights of employees in the case of cross-border mergers. The Dutch Civil Code now provides

that where a company, which has been formed as a result of a cross-border merger, has its registered office in the Netherlands, the employees of that company located in establishments in member states other than the Netherlands will have the same participation rights as those employees located in the Netherlands.

**NORWAY:** A number of small changes to Norway's occupational safety regulations were recently adopted by the Ministry of Labour and Social Affairs. Those changes that concern the design and organisation of workplaces, the use of work equipment and chemical factors in the work environment came into force at the end of June. The changes regarding working at height will apply as of January 1<sup>st</sup> 2016.

**UK:** An employee's right to carry over annual leave where it remains untaken as a result of long-term sickness absence is not an unlimited right, according to the UK Employment Appeal Tribunal (EAT). The EAT held that, in such circumstances, workers should only be entitled to carry forward annual leave for up to 18 months after the end of the leave year in which it accrued. The EAT also confirmed that the worker does not need to demonstrate that they were physically unable to take their annual leave entitlement as a result of their illness in order to benefit from the right to carry it over. The right to carry over annual leave only applies to the four weeks of paid statutory annual leave that is required by EU law. [Plumb v Duncan Print Group Ltd, (2015) UKEAT 0071\_15\_0807]

**USA:** In a landmark decision, the US Equal Employment Opportunity Commission (EEOC) has ruled that the sex discrimination provisions of the 1964 Civil Rights Act do protect employees who suffer employment discrimination due to their sexual orientation. Interpretations made by the EEOC are not binding on federal courts, but are considered to be highly persuasive. [Appeal No. 0120133080]

## 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 1<sup>st</sup> 2015:** The minimum wage in **Argentina** will rise to 5,588 pesos per month.

**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.

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

## Latest news for business travellers:

Travel disruption and delays are expected for all cross-channel services between the **UK** and **France** as a result of industrial action and migrant activity in and around the area of Calais in France. Travellers are advised to contact their chosen travel operator before commencing their journey.

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

A general election is due to take place in **Sri Lanka** on August 17th 2015. Demonstrations, rallies or large gatherings may turn violent and travellers are advised to follow the instructions of local authorities.

The UK's Foreign and Commonwealth Office's advice against travel to **Iran** has been lifted for most areas of the country; however it does still advise against travel to some areas near the borders with Iraq, Pakistan and Afghanistan and the south-east.

The US Department of State has alerted its citizens of the risks of travelling to **Nigeria**. As a result of the unpredictable security situation in the northeast of the country, the Department of State is advising its citizens to avoid all travel to Adamawa, Borno, and Yobe states.

## 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://fedeeconsultancy.com> or call Cassandra on (+44) (0)117 975 8611.

**NEW GUIDANCE NOTES:** A new HR guidance note on [on-call and standby time](#) and a comparative guide on [dismissal of employees on long-term sick leave](#) are now available in our Knowledgebase. A model

company policy for the UK on [modern slavery and human trafficking](#) is also now available in the model policies section of our Knowledgebase.

**NEW COUNTRY COVERAGE:** As some of you may have noticed we are currently in the process of adding Knowledgebase entries for Hong Kong and Kenya. Entries for Canada and USA will also soon be available. If there are any countries which we do not currently cover and you would particularly like to see covered in our Knowledgebase, please let us know by writing to us on [admin@fedee.com](mailto:admin@fedee.com).

**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 of our website.

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