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October 8th 2015

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Editorial: When is a person not a person?

A recent case before the UK's Employment Appeals Tribunal (EAT) illustrates once again just how even very senior judicial professionals can get trapped by sloppy interpretations of legal terminology — drawing literal conclusions from limited figurative concepts.

Mr Justice Underhill, President of the EAT, threw out an appeal last month from a firm of solicitors who were challenging whether a limited company with a single shareholder and Director could sue them for age discrimination. He agreed with a lower tribunal that they could do so, citing the Interpretation Act 1978, which states that the word 'person', when used in legislation, 'includes a body of persons corporate or incorporate' unless the contrary intention appears. He did not question the use of the phrase 'body of persons' in respect to a one-person company nor fully consider the logic of including corporate bodies in the category of legal 'persons' who may bring a claim of discrimination.

A limited figurative concept is one which only applies in certain contexts and where the object that is used by way of comparison only shares certain specific characteristics with it. Therefore, a corporation may be regarded as having some things in common with an individual living human being — as it can be party to contracts and be treated as independent and accountable. But that is where the likeness ends.

You cannot be tried for murder because you liquidate a company or accused of false imprisonment if a company is left trapped in a dormant state. In any case, if a company shared all characteristics in common with a natural person then it would, in itself and as an entity, have to be either formed for the same period as allowed under child labour laws or be very old to claim age discrimination. The whole thing requires a perverse logic to come to the same conclusion as the EAT and as the TUPE Service Provision Change case reported later in this newswire illustrates the EAT is also only too ready to write in legal provisions where the law remains silent.

Brazil: Corruption and soaring dismissal costs drive economy into recession

The number of companies seeking court protection from creditors or filing bankruptcy in Brazil soared to an all-time high over the period from January to September this year. But it was not only small companies that made filings for court protection – 170 of the country's largest firms did so too. The largest economy in South America is now in the midst of a deep recession that is likely to continue until at least the end of next year. Unemployment, which was just 4.3% last December, rose to 8.6% in July. Consumer prices are also climbing steeply with the annual rate reaching 9.6% in July.

One of the principal reasons for the economic collapse has been a major corruption scandal involving a number of major engineering companies, two of which — Grupo Schahin SA and Galvão Engenharia SA — are amongst those recently filing for bankruptcy. This has caused a huge drop in confidence just as companies were struggling with falling demand, narrowing profit margins, high interest rates and rising costs of dismissal.

Although a Federal Supreme Court ruling in April has given legal certainty to the practice of voluntary dismissal agreements (PDI/PDV) they have also strengthened the role of trade unions in such deals — thus making dismissals far more expensive. The voluntary option is frequently preferred by employers in Brazil because it is so easy for an employee to claim additional dismissal compensation if termination is unilateral, and employees are able to bring a claim before the courts for up to two years after such a termination.

European Union: US Safe Harbour decision declared invalid

The European Court of Justice (ECJ) has declared invalid the European Commission's decision from 2000 that found United States safe harbour privacy principles to afford adequate protection of personal data transferred from the European Union.

In its judgment the ECJ noted that national security, public interest and law enforcement requirements of the US take precedence over the safe harbour scheme and the European Commission failed to take this into consideration in its decision. Furthermore, the ECJ held that the Commission did not have competence to restrict the national supervisory authorities as it did. According to the ECJ, national supervisory authorities should be able to examine whether or not the transfer of personal data to a third country complies with EU legislation, even when the Commission has issued a decision on the matter.

The US-EU Safe Harbour scheme has underpinned data transfers for the last two decades. This judgment potentially opens companies, who have been relying on safe harbour rules for transatlantic data transfers, to privacy challenges, and may require companies to review their data transfer procedures. However, the judgment does not, in itself, challenge the use of model transfer terms for personal data (approved by the European Commission in 2001 (controller to controller), 2004 (improved version) and 2010 (controller to processor)) — in particular the International Chamber of Commerce (ICC) revised model clauses. Private contracts between a data exporter and importer remain possible too, and are potentially more robust — provided that they are approved by the relevant exporting country's data protection authority. [Case C-362/14]

France: Asking to be dismissed is not a real and serious cause for dismissal

The French Supreme Court recently handed down an interesting judgment concerning the dismissal of an employee who had asked their employer to be dismissed.

The employee in question had asked on two occasions to be dismissed, hoping to be eligible for a 'golden parachute' payment that would not apply in the case of resignation, nor in the case of termination for gross misconduct ('faute grave') or wilful misconduct ('faute lourde'). On both occasions the employer had refused the employee's request as they wished the employee to remain with the company. It was claimed by the employer that, in a final attempt to get what he wanted, the employee had attempted to blackmail the company by threatening to make false accusations if he was not dismissed. It was in response to this conduct that the employer dismissed the employee for gross misconduct, however the employee contested the grounds for dismissal before the courts.

The Court of Appeal found that, given a lack of evidence, the claim of blackmail was not founded and therefore dismissal for gross misconduct could not be justified. The Court did consider, however, that dismissal for simple misconduct was justified as a result of the employee requesting dismissal. On appeal, however, the Supreme Court held that simply requesting dismissal does not constitute a real and serious reason for dismissal and therefore the dismissal was not justified. The employer was ordered to pay damages to the employee for unfair dismissal.
[Cour de cassation, Chambre sociale, 14-13419]

Japan: New obligations for employers to encourage the employment and promotion of women

Japan's legislature recently passed a law that will require private-sector companies with more than 300 employees to set targets for the promotion and employment of women.

The law will require employers to investigate, in relation to their company: the proportion of women being recruited; the difference in average length of tenure between men and women; the difference in working hours between men and women; and the proportion of women in management positions. They will then be required to set numerical targets in at least one of these areas as part of an action plan for the empowerment of women.

Although minimum goals are not being prescribed and penalties will not be applied in the case of failure to meet the targets set, companies will be required to disclose their action plans to the public. Smaller companies will also be required to make efforts to comply with the law.

The law will come into force on April 1st 2016 and will remain in force until March 31st 2026.

Russian Federation: Agency work restrictions aggravate staff depletion problems

From January 1st 2016, the employment of temporary agency staff in Russia will be subject to new restrictions introduced through Law 116-FZ passed back in May 2014 (see newswire dated May 22nd 2014). This limits temporary agency work in a number of ways and narrows its use to the provision of periods

of staff absence. It also requires employers to offer the same conditions to agency staff as those employed by the company and not deploy them to undertake hazardous work.

In preparation for the new law, companies have been reorganising their operations to overcome the need for temporary workers and examining ways to outsource much of their non-core activities. Although work agencies have never been a common feature of the Russian economy, the emigration of many professionals has meant that staff shortages are now affecting many key positions in private and state-owned enterprises. The exodus of Russian citizens rose by 11% last year and Russian citizens remain the most frequent applicants for Schengen visas — with an estimated 8 million applications having been made this year.

Saudi Arabia: Significant amendments to labour law come into force

Significant and wide-ranging amendments to Saudi Arabia's labour law, which were approved in April 2015, come into force today, October 8th 2015. Details of some of the key changes are given below.

Under the amendments, employees may be required to work for a maximum of 12 hours per day instead of 11. The rules on rest breaks and the weekly working limit of 48 hours, however, remain the same.

A number of paid leave entitlements are also extended under the amendments: marriage leave is extended from three days to five days, paternity leave is extended from one day to three days, compassionate leave is extended from three days to five days, and bereavement leave for Muslim women is extended from 15 days to four months and 10 days. Women will also now have the right to extend their maternity leave

by one month, although this additional leave will be unpaid.

Furthermore, changes to the rules concerning employment contracts mean that probationary periods may now last for up to 180 days instead of 90 days and the maximum term of a fixed-term contract is now four years instead of three.

In terms of the payment of wages, employers will be required to pay employees via bank transfer into an approved bank in Saudi Arabia so that the government can monitor compliance with its Wage Protection System.

Finally, employers with 50 or more employees will be required to provide annual training to a greater number of its Saudi employees. The number of Saudi employees receiving training each year must now equate to 12% of the total workforce instead of 6%.

Norway: Further review of upper age limits on employment protection

A committee has just been set up by Norway's Ministry of Labour and Social affairs to consider further increasing — or entirely removing — the upper age limit for employment protection in the country. A report on the committee's findings will be published on December 1st 2016.

The general upper age limit for employment protection in Norway was last increased on July 1st 2015, from 70 to 72 years of age. At the same time, the minimum upper age limit that may be set through collective agreement or by individual companies in internal rules was increased from 67 to 70 years. Transitional measures do provide, however, that internal company age limits below 70 years of age that had been established before the new law came into force may be retained until July 1st 2016. In addition age limits below

70 years of age that had been set by collective agreement may continue to apply until expiry of the collective agreement, up to a maximum of three years following entry into force of the new law.

Norway's upper age limits for employment protection do not amount to compulsory retirement ages — an employee may continue working beyond the upper age limit with the agreement of their employer. Furthermore, although employers do not have to objectively justify the termination of an employee who has reached the upper age limit, they must give the employee in question at least six months' notice.

UAE: Labour law reform to protect foreign workers announced

The United Arab Emirates (UAE) is to reform its labour laws to give greater protection to foreign workers, the Ministry of Labour has announced. Changes will be made by three decrees that will come into force on January 1st 2016.

The new laws will mean prospective foreign workers will be asked by their future employer to sign a standard employment offer, written in their language, before they come to the UAE. This offer letter will then be filed with the Ministry of Labour before a work permit is issued and will form the basis of the legal employment contract once the employee arrives in the country. Employers will not be able to change the terms of employment set out in the contract, except to extend employee benefits if the employee agrees.

The decrees will also clarify the ways in which employment contracts may be terminated by either the employer or employee and will provide that foreign employees may change employers if authorised by the Ministry of Labour.

Pay, Tax and Benefit Trends

BELGIUM: A law has been approved in Belgium that will allow eco-cheques to be issued in electronic form. A royal decree must be adopted to implement this measure, but it is likely that the law will take effect from January 1st 2016. For more information about this popular Belgian benefit, see our guidance note on [eco-cheques](#) which can be found in FedEE's HR Knowledgebase.

CHINA: The latest increases in local minimum wage rates in China concern four provinces. In Jiangxi province the top rate (payable in large urban centres) has risen to 1,530 renminbi (241 US dollars) a month. The equivalent new rate in Yunnan is 1,570 renminbi (247 US dollars) and in Guizhou it is 1,600 renminbi (252 US dollars). In Zhejiang the top rate will rise on November 1st 2015 to 1,860 renminbi (293 US dollars).

EGYPT: Annual work permit processing fees have increased in Egypt. The fees for the first three years have increased from 3,036 Egyptian pounds (approximately 387 US dollars) to 3,210 Egyptian pounds (approximately 410 US dollars), however the increase is more significant from the fourth year. Whilst the old annual fee from the fourth year onwards was 1,000 Egyptian pounds (127 US dollars), foreign nationals must now pay 5,210 Egyptian pounds (665 US dollars) in each of the fourth, fifth and sixth years and 6,210 Egyptian pounds (793 US dollars) in the seventh year. Thereafter the fee increases by 1,000 Egyptian pounds each year up to an annual cap of 12,210 Egyptian pounds (1,560 US dollars).

GERMANY: The European Court of Justice has ruled that Germany did not contravene the principle of equal treatment by denying a Swedish citizen unemployment benefits. The reason for this decision was that, although the individual concerned resided in

Germany and both Germany and Sweden are EU member states, the individual had no intention of finding employment in Germany.

ROMANIA: Greater clarity has been introduced into the Romanian tax system concerning the status of self-employed contractors. A tax code amendment sets out seven criteria that determine whether a contractor is truly independent, four of which must be met for the individual to qualify. For further information, see our [HR Knowledgebase](#).

SLOVENIA: The latest data published by Slovenia's National Statistical Office reveal that, in July 2015, average gross monthly wages were 1,541.83 euros (approximately 1,730 US dollars) and average net monthly wages were 1,005.06 euros (approximately 1,130 US dollars). The highest average monthly net sectoral wages were in electricity, gas, steam and air conditioning supply (1,519.25 euros/1,706 US dollars), financial and insurance activities (1,389.28 euros/1,560 US dollars) and information and communications (1,310.39 euros/1,471 US dollars). The lowest average monthly net wages were in administrative and support service activities (703.91 euros/790 US dollars).

UK: On October 1st 2015 the UK's national hourly minimum wage rates increased. The new minimum wage rate for workers aged 21 and over is 6.70 pounds (10.17 US dollars) per hour, the rate for 18 to 20 year olds is 5.30 pounds (8.04 US dollars) per hour, the rate for under 18s is 3.87 pounds (5.87 US dollars) per hour and the rate for apprentices is 3.30 pounds (5.01 US dollars) per hour. A mandatory national 'living wage' is due to be introduced in the UK in April 2016. This rate, initially to be set at 7.20 per hour, will apply to all workers aged 25 and over. Recently, a number of UK retailers have been introducing wage rates that are equal to or higher than the voluntary living wage level set by the Living Wage Foundation, which currently stands at 9.15 for London and 7.85 pounds for the rest of the UK.

USA: According to data released by the US Department of Labor's Bureau of Labor Statistics, in June 2015 US employers in private industry spent an average of 31.39 US dollars per hour per employee in wages and benefits. Wages accounted for 69.5% (21.82 US dollars) of these costs, whilst benefits accounted for the remaining 30.5% (9.56 US dollars). The breakdown of benefits as a percentage of total compensation amounted, on average, to: retirement and savings 4.0%, paid leave 6.9%, insurance 8.2% and other benefits 11.4%.

Other Global HR News in Brief

CANADA: Monday, October 19th 2015 is the day of the federal election in Canada and employers have certain legal obligations to ensure employees have sufficient time to vote. Employees who are qualified to vote are entitled to be free from work for three consecutive hours during polling hours in order to vote. If their working schedule means they do not have three such hours free, their employer must give them additional time off work so that they meet this requirement. Employers have the right to decide when the required time off is granted and employees must not lose any pay or be penalised in any other way for taking this time off. It is important to note that this obligation is not to give employees three hours off work, but to ensure they have at least three hours free during the relevant period. If an employee already has three consecutive hours outside working hours during polling hours they will not be entitled to any additional time off.

CHINA: A new Labour Protection Law to protect female employees came into force on October 1st 2015 in China's Shanxi province. This extends maternity leave from 90 to 98 days, gives time off for antenatal care and lactation, introduces leave for perinatal treatment and up to two days 'physiological paid leave' during menstruation. Women who are diagnosed with extended menopausal problems that

remain after treatment may also apply to their employer for transfer to another position that better suits their condition.

CHINA: The State Council of the People's Republic of China has proposed that employers extend weekends during Summer months by releasing employees 'a few hours early' on Friday afternoons. This would, the council believes, reduce congestion on roads and boost domestic tourism. They also want to encourage employees to take their individual holiday periods outside the peak travel season. However, a recent survey by China's Ministry of Human Resources has found that only half of all employees actually use their paid vacations each year.

GLOBAL: A gathering of major global employers on the eve of the UN Global Leader's Meeting on Gender Equality and Women's Empowerment has made major commitments to ridding the world of gender discrimination by 2030. Leading the initiative are the Bill & Melinda Gates Foundation, Alibaba Group and Unilever. Other companies involved are Coca-Cola, Cisco, Infosys, Itaipu, MasterCard, H&M, Citibank, the State Bank of India, the Ford Foundation, General Electric and Nigeria's Dangote Group.

INDIA: Fault lines are appearing in the international trades union movement with recent public criticism of the Brussels-based International Trade Union Confederation (ITUC) from a powerful member — the Indian National Trade Union Congress (INTUC). The president of the INTUC, G Sanjeeva Reddy (who is also a vice-president of the ITUC), recently revealed that he has 'grievances with the ITUC' because of the large contributions made by trade unions from poorer countries and the ITUC's perceived priority given to 'the problems of the developed nations' and 'highly paid workers'. According to audited accounts, in 2013 the ITUC spent 1.2m euros on office rental and 5.7m euros on staff salaries for its Brussels head office operation.

JAPAN: The controversial Workers Dispatch Law, which regulates the employment of temporary agency workers, came into force in Japan on October 1st 2015. Before the new law came into force, temporary agency workers could be used in all but a limited number of job types for a maximum of three years. Unless the job was exempt under the former regulations, a company would be obliged to hire a temporary agency worker after they had been assigned to them for three years. Under the new law, all jobs may be permanently filled by temporary agency workers — provided each agency worker works for no more than three years in the same job, or an employee representative body approves of their continued use as an agency worker for a further three-year period.

LITHUANIA: A Tripartite Council made up of employers, trade unions and government representatives has now completed its review of Lithuania's draft new Labour Code. In its latest session the Council agreed that overtime should be limited to 180 hours per year, unless parties collectively agree to a higher limit. It was also agreed that work on weekends and holidays should only be possible with the consent of the employee, under a cumulative working time account or if agreed through a collective agreement. It is anticipated that parliamentary approval of the draft Code will take place later this month.

NIGERIA: A new government scheme requires individuals visiting Nigeria on a business visa to pay an additional fee if they intend to stay in Nigeria for more than a total of 56 days in a calendar year. To extend a stay to up to 90 days a fee of 200 US dollars must now be paid and to extend a stay to up to 180 days a fee of 1,000 US dollars must be paid. The fee to extend a stay to up to 365 days is 2,000 US dollars. Those who stay beyond 56 days without paying an extension fee will be fined an amount equal to twice the applicable extension fee. These fees do not apply to nationals of the Economic Community of West African States (ECOWAS).

PACIFIC: Further to our report in the last edition of our newswire, a free trade agreement between Australia, Brunei, Canada Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the USA and Vietnam has now been concluded. In addition to removing trade barriers, this trans-Pacific agreement will allow greater free movements of workers and establish EU-like common labour standards. Details of the deal are not yet publicly known, but are expected to be released in a few weeks' time.

RUSSIA: Referring to 'a propensity for alcohol abuse', Russia's Deputy Prime Minister, Olga Golodets, recently spoke out in favour of the introduction of an employee ethics code to combat all forms of substance abuse in the workplaces of major state-owned companies. According to recent data, 30% of deaths in Russia are now alcohol related, and drug abuse is becoming an increasing problem among workers — not only in state-owned industries.

UK: The UK's Employment Appeals Tribunal (EAT) has reversed an Employment tribunal decision in an

important ruling concerning a service provision change (SPC) under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). Although regulation 3 of TUPE is silent about whether the necessary 'organised grouping of employees' must be active at the time of the SPC, the EAT decided that, as the purpose of TUPE is to protect employment, a temporary layoff of workers in a contracting organisation immediately prior to the transfer would not, in itself, invalidate a TUPE claim.

UK: The UK Automaker Jaguar Land Rover has established a new Academy to further strengthen its 100 million pound (152 million US dollar) skills development programme. The Academy will provide accredited initial and lifelong training to staff at all levels of the organisation. The company has recruited 1,600 people onto its graduate programme in the last five years and offered over 900 apprenticeships. It currently employs over 8,000 engineers and technologists at its advanced engineering facility and plans to double this number over the next few years.

Dates for your diary:

October 16th 2015: Closing date for comments on potential reform to the taxation of termination payments in the [UK](#).

October 19th 2015: Federal elections take place in [Canada](#). Certain employer obligations apply — see news story above.

November 2nd 2015: Implementation of new wage protection system in [Qatar](#).

November 27th 2015: FedEE Global's Fellowship meeting takes place in London, [UK](#).

November 30th 2015: First of a new annual non-working public holiday in [UAE](#) for Martyrs Day.

Latest news for business travellers:

There remains significant disruption to rail and road transport around the borders of a number of countries in [Europe](#) as a result of an influx of asylum seekers seeking transit to other European countries. Travellers should monitor local media and check with transport service providers for updates.

In the **UK**, overnight closures of the M25 motorway access road into Heathrow Airport's Terminal 5 will continue until October to 9th October 2015, affecting junctions 14 and 14a. The closures are taking place between 10pm and 5am and diversion routes are signposted during these times.

On October 25th 2015, parliamentary and presidential elections will be taking place in **Tanzania**. As a result of political tension and civil unrest, all travellers are urged to exercise caution and remain vigilant in the run-up to the elections.

A general election has been scheduled to take place on November 8th 2015 in **Myanmar**. Travellers may experience disruptions due to demonstrations or political events and are urged to exercise caution during the electoral period.

The US Department of State is urging its citizens to carefully consider the risks of traveling to **Saudi Arabia** given the continued threat of attacks on US citizens and Western expatriates.

FedEE news:

LATEST ECONOMIC PROJECTIONS PUBLISHED: Our [2016 projections for prices, salaries and employment prospects](#) have now been published. This data can be found in our HR Knowledgebase under the category of '[Pay, tax and economic data](#)'.

FELLOWSHIP MEETING: The next Fellowship meeting will take place in London on November 27th 2015. If you are a Fellow and have not yet booked your place, contact us now on +44 (0)117 975 8611. For more information about Fellowship and our Fellowship meetings, please contact Cassandra Lu on Cassandra.lu@fedee.com.

UPDATED LAW PROGRAMME PRESENTATIONS: Earlier this year we updated 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.

NEW COUNTRY COVERAGE: As some of you may have noticed we are currently in the process of adding Knowledgebase entries for Hong Kong, Kenya, Canada, USA and Taiwan. An entry will also soon be available for each of New Zealand, Northern Ireland and Sri Lanka. If there are any countries which we do not currently cover and you would particularly like to see covered in the Knowledgebase, please let us know by writing to us at admin@fedee.com.

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