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Europe: Travel time considered working time

In response to a question posed by the Spanish courts, the Advocate General of the European Court of Justice (ECJ) has said that time spent travelling to and from work by an employee who has no fixed workplace should be considered working time under the Working Time Directive.

In this case the workers in question were provided with company vehicles to travel to different customers' premises within a certain geographical area. The employer considered that the employees' working time commenced when the employee arrived at their first customer's premises and continued through the day until the end of the job with the final customer. Whilst the time spent travelling between customers during the course of the day was considered working time, the employer considered the journey from the employee's home to the first customer and the journey from the last customer to the employee's home to be rest time. The employees claimed that this approach was not in line with the Working time Directive.

The Advocate General stated that this time should be considered working time because it fulfilled the main test set out previously by the ECJ for establishing working time: the worker was at work, at the employer's disposal and carrying out professional duties.

Although this opinion is not binding, the ECJ generally follows the principles laid down by the Advocate General. The ECJ will issue a judgment later this year. If it does follow this opinion, it will have a wide-ranging effect on all those employers with employees travelling extensively to visit customers. [Federación de Servicios Privados del sindicato Comisiones Obreras v Tyco Integrated Security SL and others, June 11th 2015].

Germany: Court departs from position on employee representation thresholds for supervisory boards

The Regional Court of Frankfurt am Main in Germany has made an important ruling on supervisory boards, which could have serious implications for multinational employers if confirmed by the higher courts.

Under Germany's two-tier board system, employees are entitled to participate in company policy by being represented on the supervisory board once certain thresholds are met: employee delegates must make up one third of the supervisory board in companies with 500 or more employees and half of the board in companies with over 2,000 employees.

In this case, a German group employed 1,624 employees in Germany and 1,747 employees in the rest of the EU. A supervisory board was established, composed of 12 employer representatives and six employee representatives. However, the Regional Court held that there should be an equal number of employer and employee representatives as the 2,000 employee threshold was reached when taking into account the number of employees employed in Germany together with the number of employees employed abroad.

This is a departure from the normal position where only employees in Germany count towards the threshold. [Az. 3-16 O 1/14]

Poland: Reforms to rules on fixed-term contracts approved

Amendments to the Polish Labour Code which alter the rules regarding fixed-term contracts have now been endorsed by parliament.

The amendments limit the length of time an employee may be engaged on a fixed-term contract to 33 months. This 33-month rule will not apply in all cases, however — for example it will not apply in the case of seasonal workers or when a fixed-term worker is required to replace another employee. The amendments also state that any trial period agreed in such contracts cannot exceed three months.

Under the amendments, fixed-term contracts can be renewed up to three times. If it is renewed a fourth time, it will become a contract for an indefinite duration. In addition, the notice periods that apply to fixed-term contracts will be brought in line with those that apply to permanent contracts; therefore, the statutory notice period both for permanent and fixed-term employees will be two weeks for up to six months' service, one month for between six months and three years' service, and three months for more than three years' service.

Mexico: Law on young workers amended

A number of amendments to the Federal Labour Law have now come into force in Mexico, enhancing the protection afforded to young workers.

Importantly, the labour law has been amended to change the minimum working age from 14 to 15 years. This harmonises the Federal Labour Law with the Constitution, under which the minimum working age was increased from 14 to 15 in June 2014.

In addition, a number of protections that previously applied only to workers under the age of 16 have now been extended to all employees under the age of 18. As a result, all workers under the age of 18 are prohibited from working on Sundays, performing overtime, and undertaking work that endangers their health or safety. The entitlement to a minimum of 18 days' paid annual leave has also been extended to all workers under the age of 18. Furthermore, it is now a legal requirement for all workers under the age of 18 to obtain a medical certificate showing that they are fit to work. Without this medical certificate, an employer will not be able to hire a young worker.

Finally, the special register which employers are required to maintain containing details their young workers must now cover all employees under the age

of 18. The information that must be maintained in this register includes: the worker's full name, date of birth or age, the type of work they perform, their working time, remuneration and other general working conditions. These registers must also now include information on any professional training being received by these workers.

Singapore: Increasing prevalence of performance-based wage systems

Singapore's Ministry of Manpower has just published its 'Report on Wage Practices, 2014'. The key findings show that, in 2014, 89% of employees in the private sector were under some form of flexible wage system. This is the highest proportion in a decade.

The report also revealed the popularity of a number of wage recommendations made by the Tripartite Taskforce on Wage Restructuring in 2004. The most popular recommendation was the adoption of a narrow maximum-minimum salary ratio to reduce the differences in salary between the highest-paid and lowest-paid in the company — in 2014, 66% of private-sector employees worked for companies that had adopted this recommendation. The second most popular recommendation was the linking of a variable bonus to key performance indicators with 52% of employees in 2014 working for companies that had adopted this recommendation. The third most popular recommendation was the inclusion of a monthly variable component in the wage structure. In 2014, 33% of employees worked for companies that had adopted this recommendation.

Sweden: Restrictive approach to post-termination restrictive covenants

In a recent case, Sweden's Labour Court gave a restrictive view on the enforceability of post-termination restrictive covenants.

The case in question concerned an employee who had left his previous employment and commenced work with a competitor. The employee's contract of employment with his former employer did not prohibit the employee from competing, however it did require him to give his former employer 35% of all fees earned, by him or his new employer, from clients he had solicited from the former employer for a period of 24 months. The former employee took approximately 80 customers with him and lodged a claim before the courts that the post-termination restrictive covenant was unreasonable.

The Labour Court conceded that the reason for the post-termination restrictive covenant was legitimate as the employer wanted to protect existing client relationships. The Court took note of numerous factors, such as the fact that the employee was not paid any compensation during the non-compete period, the fees imposed were high, and the clients all came from the area in which the employee had worked for a lengthy period of time. In light of these facts, the Court held that the clause imposed a 'more than marginal restriction' on the employee's opportunities to work in his chosen profession and, as such, it was unreasonable. [Judgment No 8/15 Case No B 102/14]

UAE: Employment Regulations for the Abu Dhabi Global Market published

The final version of the Employment Regulations for the Abu Dhabi Global Market (ADGM) free zone in the United Arab Emirates has now been published. This free zone was established in 2013 and, since then, there has been substantial work to put the legislative framework in place. The ADGM has decided to adopt the English common law system and some of the main provisions in the Employment Regulations are outlined below.

Under the Regulations, employers must provide employees with a copy of the written employment

contract within two months of the employee's start date. The contract must include the name of the parties, the start date of employment, a description of the employee's work duties, the employee's remuneration and pay period, details of the employee's working time, annual and sick leave entitlements and corresponding pay, notice periods, and any disciplinary rules and grievance procedures applicable to the employee. Any probationary period must also be clearly detailed in the contract and may not exceed six months in duration.

In terms of working time and leave, the Regulations state that an employee's working time cannot exceed an average of 48 hours in a seven-day period and employees must have at least 11 consecutive hours of rest in each 24-hour period. Employers must provide at least 20 days of annual leave per year, 65 days of maternity leave and five days of paternity leave. Furthermore, an employee is entitled to a total of 60 days of sick leave in any 12-month period.

In addition, there are rules about workplace discrimination, notice periods, termination for cause and end of service gratuity. The regulations were enacted in early March and were published on June 14th 2015.

USA: Employee's offensive comments constituted protected activity

The US National Labor Relations Board (NLRB) recently ruled that an employer had acted unlawfully when it dismissed an employee who had written obscene comments about a supervisor on a social networking site. This was because, according to the NLRB, in the circumstances the employee's comments amounted to protected, concerted activity.

The employee had posted an obscene message about his supervisor and his supervisor's family on Facebook, which was visible to the employee's friends — including some co-workers — and anyone else who visited his

personal page. He ended the message saying 'vote yes for the union' in reference to the upcoming union election. The company later discovered the post and terminated the employment contract, based on the fact that he had violated company policy.

The NLRB stated that it did not condone the employee's language but that obscene language was prevalent in the workplace, both among employees and managers. This type of language had rarely resulted in the company taking disciplinary action and, therefore, the company seemed to tolerate expletives and vulgar language in the workplace. The comments were made while the employee was alone, on a rest break and outside the employer's facility. The employee's post had been an impulsive reaction to the supervisor's behaviour — in the employee's view, the supervisor had been rude and disrespectful.

Furthermore, the comments were made in a context of the workforce's discontent and dissatisfaction with management's unfair labour practices and many employees had expressed interest in union representation. As such, a union election had been scheduled for two days later. The employee's comments reflected his frustration and exasperation with the employer.

As a result, the majority of the NLRB stated that the employee's Facebook post constituted protected concerted and union activity. They ordered the employer to reinstate the employee and pay him for all lost wages. [NLRB Case Nos. 02-CA-068612 and 02-CA-070797]

Pay, Tax and Benefit Trends

AUSTRALIA: Costs incurred by an employer transporting 'fly-in-fly-out' employees from their point of hire to the location of a project and back are not subject to fringe benefits tax, according to Australia's Full Federal Court. The Court held that, as the

employees were paid for their time and subject to the control and direction of their employer from their arrival at the airport and during their flights to and from the project location, the travel costs were to be considered incurred in the course of employment and as such no fringe benefits tax was payable. [John Holland Group Pty Ltd v Commissioner of Taxation [2015] FCAFC 82]

BULGARIA: On July 1st 2015 the national monthly minimum wage in Bulgaria increased to 380 levs (217 US dollars). In May 2015 the Supreme Administrative Court overturned the Council of Ministers' decree of December 2014, which introduced this increase, on the basis that there had been no consultation with the National Council for Tripartite Cooperation. However a second decree has since been issued and approved.

CROATIA: Workers in Croatia received average monthly net earnings of 5,676 kuna (838 US dollars) in April 2015, according to the Croatian Bureau of Statistics. The average monthly gross earnings were 8,011 kuna (1182 US dollars).

EUROPE: The statistical office of the European Union, Eurostat, has released its latest statistical findings on labour costs. In Q1 2015, hourly labour costs increased by 2.2% in the eurozone and by 2.5% in the EU when compared to Q1 2014. In the EU, hourly wages rose by 2.4% and non-wage labour costs rose by 2.6% in Q1 of 2015.

GHANA: The National Tripartite Committee in Ghana has commenced negotiations to determine the national daily minimum wage for 2016. The Ministry of Labour, Ghana Employers Association and the Trades Union Congress are aiming to conclude the negotiations by September 30th 2015 so that the estimated rates can be included in the government's budget for 2016.

ITALY: As of July 1st 2015, employers in Italy are able to obtain a '*Documento Unico di Regolarità Contributiva*' (DURC) — a document affirming that they

have made all necessary contributions to the three social security funds INPS, Inail and Casse Edili — online. This document will be generated in the form of a PDF upon successful real-time verification of the employer's contributions and will be valid for a total of 120 days from the date of verification. The new service 'Durc On Line' is available at www.inps.it and www.inail.it.

PERU: A new law has been published in Peru which provides a tax exemption for bonuses paid in July and in December on the occasions of Independence Day and Christmas. These two bonuses will now be paid to workers in the form of a special bonus and will not be subject to the national health insurance and pension contributions.

ROMANIA: Plans to increase the limit on the tax deductibility of contributions for health insurance have been approved by the Budget and Finance Committee of the lower house of Romania's Parliament. Under the plans, employers would be able to deduct contributions of up to 400 leu (100 US dollars) per employee per year for health insurance instead of 250 leu (63 US dollars) as is currently the case. This would bring the limit of tax deductibility for health insurance in line with that of private pensions.

UK: The latest [advisory fuel rates](#) for the UK were published by HM Revenue and Customs on June 1st 2015. Companies may use these rates for reimbursing employees for the cost of fuel used for business travel or for charging employees for the use company cars for non-business travel. The rates are updated every quarter.

USA: From October 1st 2015, employers in Connecticut, USA will be required to pay double damages if they are found not to have paid their employees in line with the legal minimum wage and overtime rates. In such cases employers would also be ordered to pay the court costs and lawyer fees of the

employees in question. Employers may have a defence against such claims if they believed in good faith that the wages they paid were in observance of the law.

Other Global HR News in Brief

BRAZIL: From the end of August 2015, all work permit applications for the hiring of foreign workers in Brazil must be submitted electronically via MigranteWeb Digital. This requirement will apply to all categories of work permits that are submitted to the Ministry of Labour. At present, the Ministry accepts both electronic and paper applications.

BULGARIA: A draft law amending the Labour Code of Bulgaria has been adopted at first reading by the Bulgarian National Assembly. One of the significant changes proposed is the restoration of an employer's right to terminate the employment of an employee who has reached the retirement age and is eligible for retirement. This right was withdrawn in 2012. In addition, there are plans to extend paid maternity leave for an employee's fourth child from six months to two years. This will bring the duration of maternity leave for a fourth and subsequent child in line with the entitlement for a first, second and third child.

CHILE: Chile's Chamber of Deputies has finally approved a labour reform which aims to modernise the system of industrial relations. The Chamber endorsed the proposal to prohibit employers from replacing workers who are on strike; however, they did not approve the proposal that would have prevented employees from exercising the right to strike if they worked for a company that provides public utilities or if a strike would seriously endanger the health, economy or national security. The reform still requires the review of the Senate before it can become law.

IRISH REPUBLIC: The Irish Data Protection Commissioner has contacted approximately 40 large

organisations to assess their compliance with data protection rules on 'enforced subject access requests'. Since last Summer, it is offence for an employer or prospective employer to require an employee to make an access request or to present the information received following such a request to them. The number of access requests is high, which has led to concerns of abuse. Companies will be given three weeks to provide a response to the Commissioner and then there will be follow-up inspections to ensure they are acting in full compliance of the law.

HONG KONG: Due to the hot weather currently being experienced in Hong Kong, the Labour Department has issued a number of reminders to employers about the need to take action to prevent workers suffering from heat stroke. Employers should assess the risk of heat stroke in the workplace and take appropriate preventive measures. These may include making arrangements for employees to rotate to other work sites to diminish their exposure to the heat or to arrange rest breaks for employees during very hot periods. Employers should also provide cool drinking water for employees during working time, increase air-conditioning, isolate heat-generating facilities at work and diminish physical demands by using mechanical aids or tools.

MOLDOVA: The government of Moldova has approved a number of amendments and additions to the Labour Code. The amendments would make it possible to terminate an employment contract on the basis of a written agreement between the parties. In addition, the amendments would introduce a simplified procedure for the dismissal of a director and make changes to the dismissal procedure in the event of liquidation. The amendments must now be approved by parliament.

NETHERLANDS: According to Statistics Netherlands, there were 225,000 temporary agency workers in the Netherlands in Q1 2015. It was noted that employers are increasingly hiring employees on long-term

temporary contracts instead of permanent contracts because temporary contracts facilitate the recruitment and dismissal process. This is reflected in the fact that the number of hours worked in long-term temporary contracts, such as secondments, has been increasing for over three years.

SPAIN: During the first four months of 2015, 162,365 workplace accidents resulted in sick leave being taken in Spain. The latest statistics by the Ministry of Labour show that 139,982 accidents occurred during the working day and 22,383 accidents occurred while on the way to or from work. There were also 220,454 accidents that did not result in any leave being taken and 197 fatal accidents during this period.

UK: A review of the impact and effectiveness of employment tribunal fees is now under way in the UK.

Since July 2013, workers have had to pay a fee to bring a claim to an employment tribunal, pay another fee for a hearing and another fee if they want to appeal a tribunal's decision. However, these fees have been subject to legal challenge from the trade union Unison and criticised for being a barrier to employees' access to justice. The review is expected to end later in 2015.

USA: Due to a recent amendment to the law, employers in Louisiana, USA may now use laboratories certified for forensic hair drug testing to process the results of drug tests performed on employees' hair. Previously, the law allowed employers to drug test their employee's hair, blood, saliva and urine, but it did not allow laboratories to process the results of the hair drug test — thus effectively preventing this form of drug testing. Traces of drugs can be detected in hair for up to 90 days as compared to one to three days in urine.

Dates for your diary:

July 31st 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.

July 15th 2015: **Ireland's** Low Pay Commission will provide its first report on the national minimum wage rate by this date.

August 5th 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 31st 2015: Foreign employers who wish to recruit up to 20 Indian workers must register on the e-Migrate portal before the end of August.

Latest news for business travellers:

Air traffic controllers across **Spain** are planning to stage a number of strikes this month. These will take place on July 11th and 25th (between 10am and 1pm) and on July 12th and 26th (between 5pm and 8pm).

In the coming months, **Canada** will be introducing Electronic Travel Authorization (eTA) for certain international travellers. As of March 15th 2016, visa-exempt foreign nationals travelling to Canada by air will be required to obtain an eTA before they board a flight to Canada. eTAs may be applied for online from August 1st 2015.

As a result of technical problems, **US** embassies and consulates were unable to issue visas for approximately two weeks. The US State Department has stated that the backlog of visa applications should be cleared soon.

At the end of June 2015, Gustavo Petro — the Mayor of Bogotá in **Colombia** — announced that security measures have been tightened as a result of the threat of terrorism.

The **Solomon Islands'** Meteorological Service has issued a Tropical Cyclone warning. All travellers to this area should monitor the latest weather reports.

The authorities in **Guatemala** have issued a warning due to increased activity in the Fuego Volcano. The country's civil aviation authority has been advised to take safety and preventative measures. In February 2015 the volcano's eruption caused the international airport to close as a result of falling ash.

Between June 27th and 30th 2015, the **Republic of Korea** informed the World Health Organisation of two deaths and one additional confirmed case of Middle East Respiratory Syndrome Coronavirus (MERS-CoV).

FedEE news:

BREAKFAST BRIEFING: We look forward to seeing a number of our members at our free breakfast briefing tomorrow morning (July 3rd). We will be talking about the latest developments in international employment law and HR over the past six months and also giving an update on the latest FedEE news.

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.

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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