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Australia: Directors held personally liable for underpayment of wages

In a number of cases brought recently by the Fair Work Ombudsman in Australia, directors have been found personally liable — alongside the company — for underpayment of wages.

In one case a company was fined 85,000 Australian dollars (approximately 64,500 US dollars) and the director was fined 15,000 Australian dollars (approximately 11,400 US dollars). The judge believed the director had been 'reckless' in failing to seek advice in relation to the company's obligations as an employer. [Fair Work Ombudsman v Ohmedia Melbourne Pty Ltd & Anor [2015] FCCA 50]

In another case it was heard that up to 22 employees had been underpaid by a total amount of over 80,000 Australian dollars (approximately 61,400 US dollars) over a period of nearly two years. The Fair Work Act had also been breached in terms of record-keeping requirements. The judge fined the company 80,000 Australian dollars (approximately 61,200 US dollars) and the two directors were personally fined a combined

amount of 30,000 Australian dollars (approximately 23,000 US dollars). [Fair Work Ombudsman v Primeage Pty Ltd & Ors [2015] FCCA 139]

Canada: Changes to the funding of multi-employer pension plans

A Bill to amend the Supplemental Pension Plans Act with respect to the funding and restructuring of certain multi-employer pension plans (Bill 34) is currently passing through the legislative process in Quebec, Canada. The Bill introduces rules similar to those that apply in other parts of Canada.

Bill 34 applies to multi-employer defined benefit pension plans that were in effect on February 18th 2015 and which may not be amended unilaterally by any of the employers that are party to the plans. These are known as 'negotiated contribution plans'.

The new rules require employers participating in negotiated contribution plans to contribute only the employer contribution stipulated in the plan. Upon termination of membership of a plan, the value of the benefits accrued to a member is payable in proportion

to the solvency ratio established in the last actuarial valuation. An employer may pay an additional amount into the pension fund if the solvency ratio does not allow full payment of the member's benefit, however this is not required. Equally, if an employer withdraws from a plan or a plan is wound up, the employer may make up any deficit in funds. However, again this is not a requirement, except in certain circumstances.

The Bill will come into force on the day it is adopted but will apply retrospectively from December 31st 2014. Certain transitional measures will apply.

Chile: New Sunday working time rules

The President of Chile, Michelle Bachelet, has enacted reforms to the Labour Code regarding the working time and pay of workers employed in shopping centres and supermarkets.

The reforms entitle these workers to an additional seven Sundays off each year in addition to the two Sundays off per month that they are already entitled to. Three of these Sundays may be replaced by Saturdays if attached to a Sunday rest day, but this must be agreed in a collective agreement.

The new legislation also provides that employees who work on Sundays are entitled to extra remuneration in the amount of 30% of their basic hourly wage. These rules apply to both full-time and part-time employees.

France: Senate approves plans to extend bereavement leave

The French Senate has approved proposals to extend the duration of leave granted to employees upon the death of a loved one.

The Labour Code currently provides two days of leave for the death of an employee's child, spouse or civil

partner and one day for the death of an employee's parent, step-parent or sibling. The Senate proposes extending the leave to 10 days for the death of a child (five days when the child is no longer a dependant); five days for the death of a spouse, civil partner, parent or sibling under the age of 18; and three days for the death of a step-parent.

A Bill was initially approved by the National Assembly in November 2011. As the Senate has made modifications to the text, it must be resubmitted to the National Assembly for their review.

Greece: Labour market reforms unveiled

In an attempt to secure further bailout money, Greece has submitted extensive plans for reform of its labour market to its international creditors.

The government has stated that it wishes to achieve EU best practice across a range of labour market legislation by consulting with employers and trade unions and taking guidance from the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD).

In its latest list of reforms the government has proposed reorganising the country's labour inspectorate body in an attempt to reduce undeclared work. It has also suggested effectively undoing previous reforms by strengthening collective bargaining and gradually increasing the minimum wage.

It is yet to be seen if these measures will be accepted by the country's creditors, who continue to negotiate a revised bailout plan with the Greek government. One of the main criticisms to date is that the proposals lack detail and substance. It seems the reforms do not yet go far enough — in liberalising the labour market or in

overhauling the Greek pension system — to satisfy the creditors' demands.

Irish Republic: Importance of procedures in redundancy situations

A recent ruling by the Employment Appeals Tribunal in Ireland has highlighted the importance of following fair procedures in redundancy cases.

In this case the Tribunal found that a genuine redundancy situation did exist. Despite this, however, the employer was ordered to pay compensation to the employee in the amount of 10,000 euros (in addition to the statutory redundancy payment of 6,500 euros) for failing to execute the redundancy in a fair and reasonable manner.

In explaining its decision the Tribunal stated that the company followed no procedures whatsoever — fair or otherwise. There was no advance discussion with the employee about the fact that he was to be made redundant and no discussions as to any alternatives to redundancy. The Tribunal emphasised that the company had other redeployment options in other entities that it owned and although these may not have been appropriate roles for the employee at the time of the redundancy, the situation may have changed in the future. The final reason given was that the claimant was not offered the right to appeal the decision to make him redundant. [Desmond McGuire v Sleadagh Farms Limited [2014] EAT UD1320/2012]

Norway: Proposed amendments to laws on restrictive covenants

The government of Norway is currently considering a number of changes to the law on restrictive covenants. The new regulations, it is proposed, would be placed together in a new section in the Working Environment Act.

Under the government's proposals, non-competition clauses in employment contracts would only be valid to the extent the employer has a particular need for protection against competition. In order for a non-competition clause to be valid it would have to be in writing; last for no longer than 12 months after termination of employment; and include provision for the employee to receive compensation. The employer would also have to give the employee a statement of whether — and to what extent — the clause could be invoked. Chief executives would be exempted from these rules on non-competition clauses.

The government also proposes a ban on recruitment clauses between businesses, i.e. agreements that prevent companies employing or attempting to employ each other's workers. Recruitment clauses between employer and employee (e.g. non-poaching agreements) will not be regulated by these proposed amendments.

South Africa: Female-only maternity policy found to be discriminatory

A maternity policy implemented by an employer in South Africa was recently found by the Labour Court to be discriminatory. The policy applied only to female employees and was silent on the issue of surrogate parents. As a result a male employee in a same-sex partnership who was having a child through a surrogacy arrangement was denied the right to take maternity leave.

In its defence the company stated that the policy was aimed at providing leave to those workers who had given birth — it was based on the understanding that pregnancy and childbirth has a physiological impact on biological mothers that necessitates absence from work for periods before and after the birth. The Labour Court, however, stated that the right to maternity leave is a right connected not only to the well-being and health of the child's mother but also to the best interests of the child.

According to the Court, any maternity policy implemented by an employer should recognise the status of parties to a civil union and not discriminate against the rights of parents who have entered into a surrogacy agreement in order to have a child. Not only are such parents entitled to take maternity leave, they are entitled to the same amount of maternity leave as natural mothers. [M I A v State Information Technology Agency (Pty) Ltd (D 312/2012) [2015] ZALCD 20 (March 26th 2015)]

Pay, Tax and Benefit Trends

AUSTRALIA: Proposed amendments to the taxation of employee share schemes (ESS) have been put before parliament in Australia. The new legislation alters one of the taxing points for ESS rights so that it applies at the point the right is exercised rather than at the point it can be exercised. The draft legislation also increases the maximum deferral period from seven years to 15 years for ESS interests and makes additional concessions for smaller start-up companies. The reforms are likely to come into force on July 1st 2015.

BELGIUM: The European Commission has referred Belgium to the European Court of Justice for not accepting mobile workers' A1 forms. A1 forms are granted to workers who are temporarily posted to another European Union country. They confirm that the worker pays social security contributions in the EU country in which the form was issued, thus exempting them from paying contributions in any other EU country. The law in Belgium allows authorities to unilaterally decide not to recognise documents from other states. The European Commission considers that this rule violates EU law.

CANADA: On October 1st 2015 the statutory minimum wage in Ontario will increase from 11 Canadian dollars (approximately 8.79 US dollars) per hour to 11.25 Canadian dollars (approximately 8.99 US dollars) per

hour. The increase will make the minimum wage in Ontario the second highest in Canada.

EUROPE: A report released by the European Union's statistical office, Eurostat, demonstrates how widely labour costs vary between the different countries of the EU. According to the estimated figures, in 2014 average hourly labour costs were lowest in Bulgaria (3.8 euros), Romania (4.6 euros), Lithuania (6.5 euros) and Latvia (6.6 euros) and highest in Denmark (40.3 euros), Belgium (39.1 euros), Sweden (37.4 euros) and Luxembourg (35.9 euros). Overall, the average cost of labour in the EU in 2014 was 24.6 euros per hour.

FINLAND: According to Statistics Finland, full-time employees in Finland earned an average of 3,284 euros per month in 2013. This figure includes basic pay as well as all salary supplements and benefits in kind, but not one-off pay items such as performance bonuses. The highest average earnings were received in information and communication activities (4,124 euros per month) and the lowest average earnings were received in accommodation and food service activities (2,399 euros per month).

GERMANY: The Federal Statistics Office of Germany has reported that the index of real earnings in the country grew by 1.7% in 2014 compared to the year before. This is the largest increase reported since 2008 when these statistics were first compiled. Full-time employees earned an annual average of 46,575 euros, including bonuses, in 2014. The highest average annual earnings were received in the banking and insurance sector (68,104 euros), in information and communication (63,591 euros) and in the energy supply sector (62,700 euros). The lowest average annual earnings were received in the hospitality sector (26,455 euros).

JERSEY: On April 1st 2015 the national minimum wage increased in the UK Crown Dependency of

Jersey. The hourly minimum wage rate is now 6.78 pounds (9.24 euros) for adults. For first year trainees the minimum wage is now 5.09 pounds (6.94 euros) per hour and for second year trainees the minimum wage is now 5.93 pounds (8.08 euros) per hour.

MOZAMBIQUE: New statutory minimum wage rates took effect in Mozambique on April 1st 2015. The rates now range from 3,000 meticaïs (approximately 84 US dollars) per month in part of the fishing industry to 7,800 meticaïs (approximately 218 US dollars) per month in the finance and insurance industry. In total there are 14 different monthly minimum wage rates in Mozambique, each of which applies to a different area of economic activity.

NETHERLANDS: The lower house of parliament in the Netherlands has agreed to accelerate the increase in the state pension age. If the Senate approves the proposal, the state pension age will increase by three months each year from 2016 and by four months per year from 2018. This means the pensionable age will reach 66 in 2018 and 67 in 2021. To soften the impact of these changes on those affected, the plan is to extend the current transitional arrangements until 2023 (originally they were due to end in 2019).

PHILIPPINES: In a recent decision, the Supreme Court of the Philippines held that employers suffering serious business losses will not be exempt from paying separation benefits to its employees where these are required under a collective bargaining agreement. Generally, companies in the Philippines who are suffering serious business losses are exempt from paying separation benefits. However, the Court clarified in this case that the exemption applies only to the employer's obligations under the Labour Code and not to their obligations arising from other sources. [Benson Industries Employees Union-ALU-TUCP and/or Vilma Genon, et al. v. Benson Industries, Inc., G.R. No. 200746]

SINGAPORE: The Ministry of Manpower in Singapore is seeking views on changes to the Work Injury Compensation Act. Most notably, the Ministry wishes to increase employer compensation limits under the Act to take into account the rise in nominal wages. It will, however, also take into consideration the impact any increase in these limits will have on employers' costs. The consultation period will run until April 20th 2015.

UK: The UK Government has decided to defer a number of measures that were announced in the Finance Bill 2015. In particular, plans to introduce a statutory tax exemption for trivial benefits in kind (e.g. small gifts with a value that does not exceed 50 pounds (69 euros)) have been postponed. It was proposed that employers would no longer have to report such benefits nor pay national insurance contributions on them.

Other Global HR News in Brief

BRAZIL: Brazil's Chamber of Deputies has approved draft legislation on the inclusion of people with disabilities. Under the proposed law, companies with 50 to 99 employees would be required to abide by quotas for employing disabled workers. Currently only companies with 100 or more employees are obliged to ensure that a certain proportion (between 2% and 5%) of all job positions are held by disabled persons. Those companies affected by the law would have three years to adapt to their new obligations. The next step is for the draft legislation to be put before the Senate for analysis and approval.

NEW ZEALAND: Employers in New Zealand may soon face tougher penalties for breaches of employment law, if measures proposed by the government are adopted. Companies could face maximum penalties of 100,000 New Zealand dollars (approximately 75,300 US dollars) and individuals could be fined up to 50,000 New Zealand dollars

(approximately 37,600 US dollars) for the most serious breaches of employment law, such as exploitation. Employers could also be publicly named for breaching minimum standards and individuals could be banned as employers if they commit serious or persistent breaches. The measures will be incorporated into an Employment Standards Bill and introduced to parliament later this year.

POLAND: On March 31st 2015 the government of Poland approved amendments to the law on fixed-term contracts. The proposed amendments would limit the length of time an employee may be engaged on a fixed-term contract to 36 months (33 months plus a three-month trial period). Currently there is no time limit on fixed-term contracts — although after two fixed-term contracts the third will be deemed a contract for an indefinite period. The proposed amendments would also bring the notice periods due under fixed-term contracts in line with those due under indefinite contracts of employment. If the parliament adopts the legislation before the end of the current term of parliament then the changes are likely to come into force during the first half of 2016.

SLOVENIA: Slovenia is one step closer to introducing a single work and residence permit for non-EU nationals after the government approved the wording of a draft law to amend the Aliens Act. The proposed legislation brings national legislation in line with European Union law and simplifies the process of applying for permission to live and work in Slovenia by requiring just one application for a combined work and residence permit. The law further simplifies the administration of work permits by providing that, once issued, the new combined permit will only need to be changed when it expires; if a foreign worker wishes to change their employment only written approval will be needed.

SWITZERLAND: According to the Swiss Federal Statistical Office, the proportion of foreign cross-border commuters working in Switzerland rose by 3.1% in 2014. This is a slightly smaller increase than that experienced in 2013 (3.8%). In 2014, 52.4% of cross-border commuters came from France, 23.7% came from Italy and 20.4% came from Germany.

TANZANIA: The parliament of Tanzania has approved legislation to restrict the employment of foreign workers. The Non-Citizens Employment Regulation Bill requires employers to demonstrate to the authorities that no local person is able to perform a particular role before they hire a foreign worker to do the job. The draft law also requires employers to draw up a 'succession plan' so that a local worker may eventually take over the role. The law is likely to come into effect on July 1st 2015.

UK: A law that exempts turban wearers from the requirement to wear safety helmets in almost all workplaces has now come into force in the UK. For some time turban wearers have been exempted from the obligation to wear safety helmets on construction sites in the UK, but this exemption did not extend to less hazardous workplaces such as factories and warehouses. As a result, Sikhs often faced disciplinary action and even dismissal for refusing to wear a helmet in place of their turban. Under the new law the requirement for turban wearers to wear safety helmets only applies in a few very limited cases.

UK: New guidance for employers on whistleblowing has been published by the UK's Department for Business Innovation and Skills. The guidance outlines employers' responsibilities regarding whistleblowing and gives advice on whistleblowing policies and procedures. It also incorporates a code of practice. To access the guidance, please see [here](#).

Dates for your diary:

April 13th 2015: All views on the national minimum wage in the **Irish Republic** should be submitted to the Low Pay Commission by 5pm.

April 20th 2015: End of the consultation period on changes to the Work Injury Compensation Act in **Singapore**.

June 30th 2015: The Short Employment Authorization programme in **Israel**, allowing foreign nationals to stay for up to 30 days in a 12-month period, will end on this date.

June 30th 2015: End of six-month grace period during which employers in **UAE** who have not issued or renewed labour cards will receive reduced fines.

Latest news for business travellers:

Governments around the world are advising their citizens not to travel to **Yemen** and to leave the country immediately if already there. A number of armed clashes between Houthi and government forces have taken place across the country in recent weeks.

New border checks have been introduced in the **UK**. Transport staff are now registering data about all travellers leaving the UK by commercial air, sea and rail transport. These checks will have the biggest impact on all those using cross-channel ferries and the Channel Tunnel. The government has stated that these checks should cause little disruption or delays to travel.

The nationwide martial law, first imposed in May 2014, has now been lifted in the majority of **Thailand**. However, military authorities still possess extensive powers. Travellers are advised to exercise a high degree of caution when travelling in the country.

The UK government is warning its citizens against all but essential travel to within 15km of the coast from the Tana River down to and including Tiwi in **Kenya**. This includes Mombasa Island, Moi International Airport (including transit through the airport), Malindi, Kilifi and Watamu.

Presidential elections in **Togo** are due to take place on April 25th 2015. Demonstrations may occur, therefore travellers should exercise caution.

Business travellers should be aware that a strike by air traffic controllers in **France** continues to cause disruption to flights today, Thursday April 9th.

FedEE news:

UPCOMING FEDEE EVENTS: In May and June this year we will be conducting live video interviews with both insiders and legal experts on the topic of whistleblowing. For information on these events please see the [events page](#) on our public website.

FEDEE FELLOWSHIP: The next Fellowship meeting will take place in London on May 21st 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 on cassandra.lu@fedee.com.

NEW LAW PROGRAMME PRESENTATIONS: New audio-visual [Law Programme](#) presentations covering employment law in [Mexico](#), [Venezuela](#) and [New Zealand](#) are now available in the FedEE Members' Area. Updated presentations on employment law in [Germany](#), [Poland](#) and [England and Wales](#) are also now live.

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

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>.

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