



Dernières nouvelles

Latest news | Neueste Nachrichten | Utlime notizie | Últimas noticias | 最新消息

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Inside this Issue:

USA: Requirement to disclose pay ratio between executives and median workers

Europe: Combatting low female labour force participation

Australia: Reforming the labour relations system

Cambodia: Retrospective law hits expatriate employment

Germany: Small employers may not dismiss employees on discriminatory grounds

India: Surrogacy still entitles women to take leave

Italy: New parental leave rules for 2015

Europe: Consumer price inflation and its impact on future wage demands

Australia: Reforming the labour relations system

Following its review of the workplace relations system, the Australian Productivity Commission has produced a draft report for public consultation. The report put forward a number of recommendations and concludes that the workplace relations system requires some important reforms.

The Commission has proposed a new type of statutory agreement called the 'enterprise contract'. This type of contract would allow employers to alter pay, terms or conditions for whole classes of employees or for a group of specific employees, without having to negotiate with each individual party or to establish an enterprise agreement. There would be no need for an employee ballot. It would simply need to be prepared in a written form and made available to the workforce.

Changes to rules on unfair dismissal have also been put forward. One of the recommendations is that an employee should only receive compensation when they have been dismissed without reasonable proof of continued under-performance or serious misconduct.

Any procedural errors committed by an employer should not cause the former employee to be reinstated or compensated.

In relation to premium wage rates, although the Commission recognises that these do have a legitimate role in compensating employees for working long or unsociable hours, it considers that Sunday rates for workers in cafes, hospitality, entertainment, restaurants and retailing should be aligned with the rates for Saturday working.

Other ideas that have been put forward for consultation concern variations in uniform minimum wages, enterprise bargaining, industrial disputes, alternative forms of employment and the handling of migrant workers. The Commission's final report will be submitted to government by the end of November after the public consultation period has been concluded.

Cambodia: Retrospective law hits expatriate employment

The Cambodian Labour Ministry has begun a crackdown on work permit infringements in foreign

companies. This follows a successful programme of inspections involving domestic companies. As a consequence, the number of work permit applications increased by 600% during the first half of 2015, as compared with the same period in 2014.

Any expatriate worker who currently has an E Visa must apply now for a work permit. All immigration officers at airports will check that these are valid on departure and individuals (or their companies) fined if no permit exists.

Responsibility for applying for permits lies with the employer — who must register with the Labour Ministry for allocations within a quota system. No company may employ more than 10% of their workforce from abroad, of which 60% must be classified as skilled/professional employees.

Although fines for non-compliance itself are modest, the new regulations are retrospective — so individuals, or their employers, could also become responsible for payments of 100 US dollars for annual licences in respect to each past year of service. They could also be imprisoned for up to one month.

Egypt: New deal for civil service

In a country where over six million people work for the public service and white-collar workers aspire to public employment, large private sector employers are obliged to compete with the terms, conditions and rewards on offer to civil servants.

A new Egyptian Law (Law 18 of 2015) has recently been introduced that significantly alters employment terms for civil servants. The probationary period for newly-hired civil servants has been extended to six months. During this period termination is possible with no procedure beyond the issuing of notice. After the

probationary period, if an individual obtains two weak performance scores within a period of two years they may be moved to another position, given a 50% pay cut, or their employment may be terminated. In addition, promotion will now be based on qualifications rather than seniority.

Although civil servants may still retire at age 50 their pension will now be based on 75% rather than 25% of their former salary.

Europe: Combatting low female labour force participation

Following an announcement that a proposal to revise the Maternity Leave Directive had been abandoned, the European Commission has published a paper for public consultation on possible ways to increase female labour force participation. These measures offer no new ideas, but do herald the prospect of significant extra employment costs for employers.

The Commission has set a 75% employment rate as a target to be achieved by 2020 – considerably higher than the 63.5% rate in 2014. The biggest obstacle to participation, claims the Commission, is the lack of ‘family-friendly’ employment policies offered by many employers. However, there is also a further problem in several countries where cultural norms and the legislative framework tend to deter male workers from taking family leave.

The Commission suggests a number of legislative and non-legislative actions, such as promoting different types of flexible working (including teleworking and job-sharing); introducing carer’s leave; providing incentives for new fathers to take up parental leave, as well as improving leave provisions through its Maternity Leave Directive.

Europe: Consumer price inflation and its impact on future wage demands

The annual rate of consumer price inflation in the eurozone remained stable last month at just 0.2%. This was in spite of 'services' costing 1.2% more and 'food, alcohol and tobacco' costing 0.9% more over the last year. Overall, price levels continue to be dominated by the sharp decline in energy costs — principally through the falling oil price. In July this averaged -5.6% — although in many countries the fall has been much more significant.

Two things, however, are certain. The oil price decline will only continue to curtail the overall price figures for a few more months. In August it will begin to fall out of the annual rate and thus lessen its impact and in December it will largely drop out of the figures altogether. Moreover, if there is a recovery in the oil price then it will have both a direct impact on overall prices via energy costs and a strong indirect impact via the price of goods due to increased transportation costs. We estimate that there is a 40% probability of a rapid rise in consumer prices early in 2016 amounting, over a three-to-six-month period, to more than a +5% annual rate — with obvious consequences for wage demands and expectations.

Germany: Small employers may not dismiss employees on discriminatory grounds

According to a recent judgment by the German Federal Labour Court (BAG), small companies are not permitted to dismiss an employee because they benefit from a pension, despite their exclusion under the Employment Protection Act.

According to the case in question, an employer had terminated the contract of an employee, who was over

the age of 60. Due to changes in the sector, it was expected that there would be a reduction of work, therefore the company had to be restructured with consequent dismissals. The employer terminated the employee, stating that they were not as qualified as their colleagues. The employer also declared that they were dismissed because they were entitled to a pension. None of the other younger employees were dismissed.

Companies with less than ten employees are not covered by the Employment Protection Act, which states that dismissal is only justifiable on three grounds: reasons relating to the individual, reasons relating to the employee's conduct and business reasons. However, the General Equal Treatment Act does apply to small companies. Therefore, an employee cannot be dismissed for an age-related factor like pensions entitlement. The employer concerned could not provide enough evidence to rebut the presumption that age had played a role in the employee's dismissal, therefore the BAG held that the dismissal was invalid. [July 23rd 2015, Az 6 AZR 457/14]

India: Surrogacy still entitles women to take leave

There is a growing trend in India for the courts to grant maternity leave entitlements to female workers who have babies through a surrogate.

In July, the Delhi High Court held that a female worker who had twins through surrogacy is entitled to maternity leave to care for the children. The Court held that 'maternity' should cover situations where a female employee engages the services of another woman to conceive a child on her behalf without any question of genetic parentage. The employee should not be denied maternity leave on the ground that she did not bear the

child. Denying such leave would be detrimental to both the mother and the child.

As we reported in January, the High Court of Kerala has also ruled that female employees who have a baby using a surrogate mother have the right to post-natal maternity leave. However the court did not accord them the right to that element of leave granted for the purpose of physically recovering from the birth.

Pay, Tax and Benefit Trends

BELARUS: In the context of a deep economic crisis and with exchange reserves too low to print more local currency in order to bail out ailing state firms, the government of Belarus began issuing bonds last month to rescue the Gomselmash company, which politicians see as too big to allow to fail. The company employs around 20,000 people and has operations in China and Argentina as well as major plants in Minsk. However, it has not been able to pay salaries to all its employees for several months and has reduced salary levels to less than a third their original level. The IMF has offered assistance to Belarus, but its government probably rightly sees this as a 'poison chalice'. However, without it the country could well begin to implode economically by next year.

CHINA: Amendments to the municipality of Shanghai's Rules on Collective Agreements were recently approved by the Standing Committee of the National People's Congress of Shanghai. The amendments add additional information to the current rules, particularly regarding collective wage agreements. According to the amended rules collective wage agreements may cover: the rules and methods of salary distribution; the average annual adjustment of employee wages; the distribution methods of bonuses, allowances and subsidies; and the level of wages for overtime, during probationary periods and during periods of leave. The amended regulations also set out the different factors

which may be referenced during collective negotiations on wages. These include: the employer's productivity and efficiency; the employer's labour costs; average wage levels in the city and industry sector; and the minimum wage. The amendments will come into force on October 1st 2015.

CZECH REPUBLIC: The Czech Republic's Ministry of Labour and Social Affairs has proposed increasing the monthly national minimum wage by 700 koruna (28.30 US dollars) from January 1st 2016. This would take the monthly minimum wage to 9,900 koruna (approximately 400 US dollars). The proposal has been put before the government and will be discussed with employers and trade unions before a final decision is made.

JAPAN: The Central Minimum Wages Council in Japan has recommended that the average national minimum wage be increased by 18 yen (0.14 US dollars) per hour for the 2015 tax year, which began in April. This would be the largest minimum wage increase since 2002. Panels set up by each of the country's 47 prefectures will now decide on their individual minimum wage rates, using the recommendations as a reference point.

NAMIBIA: The Namibian Construction Industries Federation has just reached a two-year pay deal with the Metal and Allied Namibian Workers Union. The deal provides for a mandatory 10% rise in minimum rates each year. The minimum monthly hours guarantee (service allowance) has also been increased to 150 hours from 144 hours.

SPAIN: According to the Annual Labour Cost Survey published by the Spanish Institute of Statistics, the total average gross labour cost in Spain was 30,653.05 euros (33,400 US dollars) per worker last year. This broke down into several elements with the average gross annual salary at 22,605.79 euros (24,640 US dollars). This accounted for 73.75% of total labour

costs. Mandatory social security contributions were another significant cost with employers paying, on average, 7,005 euros per worker. Other labour costs included contributions towards social benefits (380,73 euros per worker), expenses (234,62 euros per worker), severance pay (326,67 euros per worker) and professional training (99,88 euros per worker).

UNITED KINGDOM: The UK government has launched a consultation on potential reforms to the taxation of termination payments. The intention is to simplify the tax treatment of these payments to make them easier for employers to administer and employees to understand. The government proposes removing the distinction between the treatment of contractual and non-contractual termination payments so that all termination payments would be subject to income tax and social security contributions. To make up for this, however, alternative options for tax and social security exemptions are being considered, including a blanket exemption and an exemption linked to statutory redundancy. The consultation period will run until October 16th 2015.

USA: In order to address the issue of wage inequality, the US Securities and Exchange Commission has approved a rule that requires publicly listed companies to reveal the pay gap between chief executives and median employees. The Commission was given the task of enforcing provisions included in the Dodd-Frank Wall Street Reform Act, which was approved in 2010. This Act contains a requirement for companies to disclose pay ratio information, but the requirement was never previously enforced due to intense opposition from business groups.

Other Global HR News in Brief

AUSTRALIA: With effect from September 2015, the Australian Taxation Office will start collecting information about visa holders and sponsors from the

Department of Immigration and Border Protection. The Taxation Office will then compare the information companies submit for tax purposes with the information they submit for visa purposes. Companies sponsoring 457 visa holders should ensure that all the information provided on application forms is entirely accurate and that they are paying the guaranteed earnings and applicable superannuation payments.

EUROPE: Drivers of vehicles registered in Denmark, Ireland and the UK currently escape many traffic speeding offences committed in the rest of the European Union. However, these countries have only until 2017 to implement the EU's Cross-Border Enforcement Directive. This will allow the authorities in all EU countries to track down and enforce fines on the owners of offending vehicles registered in a different EU state. These owners, in the case of company cars, will probably mean car fleet managers. Next year the EU will also begin debating a Directive which seeks to harmonise penalty points systems.

IRISH REPUBLIC: Employees in the Republic of Ireland are now entitled to accrue annual leave when they are on long-term sick leave. This accrued leave may be carried over for up to 15 months after the year in which it accrued, but only provided they have not been able to take the leave during the applicable leave year or during the normal carry-over period of six months. This brings Irish law in line with recent jurisprudence from the European Court of Justice.

GHANA: A new initiative has been launched in Ghana to improve employment opportunities for young and disabled workers. A Youth Employment Agency has been formed, given statutory status and assured funding for the first four years of its existence. The immediate task has been to generate jobs for 100,000 young workers. Over the last 50 years the number of people aged 15-24 in Ghana has increased from 1 million to 5 million people and this group now accounts

for 22% of the economically active population. But youth unemployment remains above 15% — in spite of a healthy rate of 4.2% economic growth in 2014.

GREECE: Greece's Minister of Labour, Katrougalos George, has announced that the validity of the National General Collective Labour Agreement will be extended by three months until the end of the year.

ITALY: On June 25th 2015 new rules regarding parental leave came into force in Italy. Parents are now able to take paid parental leave until the child is six years old (or during the first six years following adoption) instead of three years. Unpaid parental leave may be taken until the child is 12 years old (or within 12 years of adoption) instead of eight years. The new rules form part of the Jobs Act and apply until December 31st 2015.

NEW ZEALAND: The Health and Safety Reform Bill in New Zealand, which will replace the Health and Safety in Employment Act 1992, has now been considered by select committees and is being returned to parliament for its remaining debates. The Bill clarifies the definition and scope of a 'workplace', makes changes to worker engagement and participation, looks at the duties of officers and considers the position of volunteer workers. Most controversially, the Bill proposes that small businesses (those employing fewer than 20 workers) in low risk industries will not be obliged to have a health and safety representative or a health and safety committee.

SPAIN: Spain's Minister of Employment and Social Security, Fátima Báñez, has announced that 200,000 employment contracts were concluded with workers who have disabilities in 2014. This is the highest number ever recorded. In the past four years, more than 640,000 employment contracts were concluded with such workers.

UAE: The federal government of the United Arab Emirates has announced that a law on the prevention of discrimination has now been adopted. Although this legislation is not employment-specific it does provide for the first time a legal definition of discrimination. Thus, it states that discrimination is the 'distinction, limitation, exception or preference of an individual or a community on the grounds of religion, belief, sect, faith, creed, race, skin colour or ethnic origin'. There are no specific anti-discrimination provisions incorporated into the UAE Labour Code, except for a requirement to comply with 'equal pay for equal work'.

UNITED KINGDOM: The UK Employment Appeal Tribunal (EAT) has held that EU law does not give agency workers a right to apply for the position they have been temporarily filling. The EAT also held that such workers do not have the right to be given preference over direct employees of the company when deciding who will fill the position. According to the tribunal, the EU Temporary Agency Worker Directive gives agency workers the right to be informed of vacant permanent positions in the establishment in which they are working, but no additional rights. [UKEAT/0403/14/RN]

Dates for your diary:

August 21st 2015: Responses to the **Irish Republic's** consultation on the tax treatment of travel and subsistence expenses must be submitted by this date.

September 1st 2015: A new Data Protection Law will enter into force in **Russia**.

September 1st 2015: The use of the eVisa system will become compulsory in **Kenya** and the manual application system will be abolished.

September 6th 2015: A consultation seeking views on the new gender pay regulations in the **UK** ends.

Latest news for business travellers:

On August 10th 2015, two assailants opened fire outside the consulate of the United States in Istanbul, **Turkey**. On the same day, there was an explosion at a police station in the Istanbul neighbourhood, causing fatalities and injuries. Business travellers are advised to exercise a high degree of caution.

Semaf, a trade union representing train drivers, has announced that there will be four days of strikes on September 4th, 11th, 14th and 15th in **Spain**. Each strike will last 24 hours. Travellers should expect delays and cancellations to train services.

On August 13th 2015, an explosion occurred in the port area of Tianjin in **China**.

Between August 3rd and 9th, **Saudi Arabia** has informed the World Health Organisation of 17 additional cases of Middle East respiratory syndrome coronavirus (MERS-CoV) infection. This has resulted in three deaths.

In July and August 2015, flights between **Australia** and **Bali** have been cancelled or experienced delays following recent eruptions of the Mount Raung volcano. Travellers are advised to contact their airlines to stay up to date with developments.

FedEE news:

FEDEE'S NEW GLOBAL CONSULTANCY SERVICE: The fedee consultancy has now been launched. This new service offers support for companies becoming a multinational for the first time or expanding geographically into new territories. We also provide 'company doctor interventions for ailing enterprises and those not reaching their full operational potential. It has a particular focus on Europe and the Far East. For further information please visit <http://www.fedeeconsultancy.com> or call Cassandra on (+44) (0)117 975 8611.

FELLOWSHIP MEETING: The next Fellowship meeting will take place in London this Autumn. 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: 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.

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, USA and Taiwan 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 the Knowledgebase, please let us know by writing to us at admin@fedee.com.

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