



**FedEE**  
Federation of European Employers  
Fédération des Employeurs Européens

# Mettre à jour

## Latest News from the Federation of European Employers (FedEE)

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### Denmark: Termination of a collective agreement

The Danish Labour Court has held that a lockout which involved just 16% of the unionised employees was sufficient to release an employer from a collective agreement.

A Danish IT company and a Danish trade union for IT professionals had let a collective agreement lapse with a view to entering into a new one, but had subsequently been unable to reach a consensus. The IT company decided to pull out of the agreement by invoking a provision that permitted its termination through industrial action (ie a lockout). Due to the nature of the industrial action clause, no more than 20% of industrial employees could be locked out and up to 50% could go on strike. The decision of the Court confirmed that industrial action initiated for the purpose of being released from a collective agreement was sufficiently extensive and intensive in scope, even if it did not involve the majority of unionised employees - particularly as it was not possible (for client contractual reasons) to involve more.

### Netherlands: Loans to attend mandatory courses

New immigrants to the Netherlands from outside the European Economic Area must now meet the costs of attending mandatory integration courses.

Until now the cost has been wholly, or partly, met by local councils. However, in future, these costs will be met by the immigrants themselves. The Home Affairs Ministry will, however, provide loans to immigrants in order for them to undertake the courses. Loans of up to 10,000 will be available for asylum seekers and up to 5,000 euros for those moving to the Netherlands to join a partner or family member. Immigrants who fail to pass the written tests within three years will automatically lose their residency permit.

### Romania: Low European labour costs not low enough

Nokia has signed an agreement with several Romanian trade unions concerning arrangements for the closure of their Jacu plant. The closure has arisen because of a switch in production to a new plant in Vietnam.



The package includes three months' salary for each employee, plus one month's salary for every year of service. The company will also provide a three-month grace period during which employees may take time-off to seek new jobs.

Approximately 2,000 workers are currently employed at the Jacu plant, with gross average salaries equivalent to 230 euros per month.

## **Spain: New legal mediation framework**

The Spanish parliament is currently working on a draft Mediation Act to implement EU Directive 2008/52/EC.

The Act is restricted to civil and commercial matters and will only normally apply where at least one party is domiciled in Spain and the mediation is to be conducted on Spanish territory. The procedure is to be flexible and the parties will be able to decide on the basic procedure. However, in the case of small claims not exceeding 6,000 euros, the parties will be required to have attempted mediation before commencement of court proceedings.

For the agreement to be enforced in another state it must be notarised. Similarly, any agreement reached outside the country must be executed before a notary in Spain to have any effect there.

## **UK: Leave during sickness absence**

The UK Employment Appeals Tribunal (EAT) has held that an employee on long-term sick leave must request annual leave in order to be entitled to payment for it.

The case arose following an employee's claim (upon dismissal) for four weeks' leave accrued during an extended period of sick leave. The tribunal did not dispute that the employee had accrued the leave, but found that to be entitled to payment for it she had to make a request for it in

accordance with the Working Time Regulations (1998) - which she had not done (Fraser v Southwest London St Georges Mental Health Trust).

## **UK: Reduction in workplace injuries**

Figures published by the UK Health and Safety Executive reveal a trend reduction in workplace injuries.

The new data confirms that the UK continues to have the lowest rate of fatal occupational injuries in Europe - as well as one of the lowest levels of work-related ill-health. Between April 2010 and March 2011 the average rate of major injuries for was 99 per 100,000 workers. The highest level of major injuries were in the construction (173.3 per 100,000) and agricultural (221.9 per 100,000) sectors. Overall, injury and ill-health resulted in 26.4 million working days lost, an average of 15 days per absent worker.

## **Pay, Tax and Benefit Trends**

**BULGARIA:** Bulgaria's Labour Minister, Tote Mladenov, has announced that the monthly national minimum wage will rise from 270 BGN (138.05 euros) to 290 BGN (148.29 euros) on April 1st 2012.

**DENMARK:** The Danish Eastern High Court has ruled that an employee was not entitled to pay during her notice period because she was on parental leave at the time notice was given. In the court's view, under the Danish Salaried Employees Act if an employee is given notice (normally on grounds of redundancy) whilst they are on parental leave they are not entitled to be paid whilst serving their notice. Likewise the EU Parental Leave Directive provides no such entitlement where notice is given 14 weeks after the birth of the child. In such cases, employees will be forced to cut their parental leave short if they wish to be paid during their notice period.



**FINLAND:** A two-year collective agreement has been reached in the Finnish metal and engineering sector. Workplace-specific talks will now begin on the exact size and timing of the wage increases. If these details are not settled by mid-December, employees will receive an interim 2.4% increase, backdated to October 1st 2011. Workers will additionally receive a one-off payment of 150 euros in January 2012.

**FRANCE:** The French Supreme Court has concluded that the withdrawal of a benefit-in-kind may constitute an "illicit financial sanction". In the case in question the employer withdrew the benefit of off-street parking. The Court held that such a parking facility was a benefit-in-kind that had been permanently and exclusively allocated to the employee. The decision to withdraw the benefit occurred against the backdrop of a dispute between the employee and their employer and should consequently be treated as an illicit financial sanction causing damage to the employee.

**GERMANY:** In Germany there are currently 73,900 registered collective agreements, of which 478 have been declared as generally binding in the sector where they operate. The number of generally binding agreements has fallen progressively over the years from a peak of 632 in 1994. The federal government has also declared statutory minimum wage rates in a number of sectors. These are the electrical trades, construction, painting and decorating, roofing, cleaning, laundries, caring occupations and the security sector.

**GIBRALTAR:** The Gibraltar government has dismissed the possibility that an agreement could be entered into with the UK government to allow Gibraltar residents in receipt of UK pensions to receive tax exemptions equivalent to those available on Gibraltar pensions. Following the abolition of tax on pension income by the Gibraltar government, recipients of an old age or

occupational pension from a Gibraltar employer now receive their pension tax-free.

**NETHERLANDS:** The leading electronics company Philips has proposed to its unions and works council that the performance-related pay element in the salaries of Dutch employees should be increased from an average of 7% to 14%.

**NETHERLANDS:** A recent survey of 264 Dutch medium-sized companies carried out by the Human Capital Group found the national average gross salary to be 2,670 euros per month. Average salaries in central Netherlands were 4.9% higher than the national average, whilst the lowest salaries were found in the north of the country - where they averaged 6.5% lower than the national average.

**SWEDEN:** Swedish unions have rejected the mediators' first draft of a two-year industrial sector wage agreement. The proposal would provide wage increases of 2% in the first year and 1.9% in the second. The current agreement is due to expire at the end of this month.

**SWEDEN:** The Swedish government has put forward the suggestion that increased labour market competitiveness could be achieved by introducing a pay cut for young workers aged 18-24. However, strong opposition exists to this approach, even from those who believe there should be greater wage flexibility.

**SWITZERLAND:** The Swiss Federation of Trade Unions (SGB) claims that it has secured sufficient signatures under the Swiss Constitution to require the holding of a referendum on the establishment of a national minimum wage. The proposal for a monthly wage of 4,000 francs (3250.43 euros) is based on a 42-hour work week. This will be equivalent to an hourly rate of 21.98 francs (17.86 euros) - a rate that would destabilise and possibly destroy the Swiss economy.



## Other European HR news in brief

**CZECH REPUBLIC:** The Czech President has now approved the latest revisions to the Labour code. These will introduce, with effect from January 2012, tighter controls over fixed-term contracts, more relaxed dismissal provisions and changes to the way that severance packages are calculated.

**EU:** The European Commission has cut its economic growth prospects for 2012 in the eurozone from 1.8% to 0.5%. This forecast appears, however, to be over pessimistic and strongly biased by political concerns. The true evidence from economic fundamentals such as gross value added, gross fixed capital formation and employee compensation changes point to a growth rate of 1.0 - 1.2% next year.

**EU:** New figures from the EU statistical office (Eurostat) show that in 2010 there were 41.3 million people in part-time employment across the EU, three quarters of which were women. 21% of those employed part-time were underemployed (because they wish to work more hours and were available to do so). The largest proportion of those wanting to work longer hours was in Latvia (65%), Greece (49%), Spain (46%) and Bulgaria (39%).

**FRANCE:** France has enacted the necessary legislation to complete the Blue Card Immigration Scheme. Further provisions relating to scientists and interns are due to come into force in January 2012. The scheme requires that applicants must be graduates (or equivalent) with either a three-year advanced degree or five years' experience in a relevant professional field. They must also be in possession of a French employment contract of at least one year's duration. A minimum salary of at least 1.5 times the French median salary is also required.

**FRANCE:** French airline crews have no right to tell women to remove burqas whilst aboard Air

France flights, according to the airline's interpretation of the French law banning full face veils in public places. Passengers can be ordered to remove the garment while waiting in French airports, but once on board they are free to replace it. The internal memo added that the law may only be enforced by police and other public officials when the passenger is on the ground.

**FRANCE:** In the first agreement of its kind in the French construction sector, Bouygues Enterprise France-Europe and three leading temporary employment agencies, have signed an accord to improve the safety of personnel. The partnership enables the three agencies to become closely involved with a number of the company's safety initiatives - including workplace first aid training and other training modules.

**FRANCE:** The French Supreme Court has declared null and void the dismissal of an employee for her conduct following her harassment at work. The employee had sued her employer for moral harassment and was dismissed for serious misconduct a few months later - based on a complaint from work colleagues for what they perceived as her insulting and aggressive behaviour towards them. However the Court ruled that her behaviour was a defensive reaction to the harassment and could not therefore amount to misconduct. The Court did not clarify whether such defensive reactions are required to be proportionate or justified.

**GERMANY:** The obligation not to discriminate during the recruitment process has been further complicated by the German Higher Regional Court of Karlsruhe following the award of damages to a female job applicant. The Court found that damages for gender discrimination during recruitment were due because the job advert had not stated either that the position was open equally to men and women or give lawful reasons why applicants should be of a particular gender.



**GREECE:** In an attempt to save payroll costs next year in excess of 300m euros, the Greek Ministry of finance has called on 151 state and semi-state organisations to submit estimates of the surplus personnel that could be placed onto a new "labour reserve". However, many of the affected organisations have stated that they have no excess personnel and are, in fact, suffering from staff shortages.

**NETHERLANDS:** The Dutch Cabinet has decided that the domestic labour market will not be opened up to Bulgarian or Romanian workers until January 2014. This is largely because there are currently between 286,000 and 325,000 people employed in the Netherlands who are nationals of an eastern European country - even though there are over 500,000 unemployed Dutch workers on benefits who are fit to work.

**SPAIN:** The Spanish Supreme Court has ruled on a case in which, under a collective bargaining agreement, women nurses in a part of a hospital were obliged to follow a specific dress code which was different to the rest of the hospital's staff. The female employees claimed that they should be able to wear a similar style of hygienic workware to that worn by male employees. The Court held that the hospital's policy was not objectively justified and declared the gender-based dress code null and void.

**UKRAINE:** The scheduled second reading of the Ukraine's new Labour Code has been postponed because of strong political and union opposition. The protests were in response to provisions contained in the draft law which made it easier to dismiss employees, extend working hours and permit wider-scale workplace surveillance.

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## FedEE news:

### 'WITHOUT PREJUDICE'

FedEE Media's first training film '**Without Prejudice**' is now available for sale or hire. The training pack consists of the 26-minute film about workplace racial discrimination, a 14-minute filmed discussion about the film involving leading experts from ACAS, the TUC and Baker & McKenzie and a full set of trainer's notes.

A trailer for '**Without Prejudice**' may be viewed at <http://www.fedee.com/trailer.php>

FedEE member companies may view both films on approval. Just complete the online order form provided below the trailer window and insert into the order number or comments section the words "Seven-day approval please." If you return the film within seven working days there will be no charge. If you retain it beyond that period we shall invoice you at the reduced member sale price.

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