



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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Belgium: Worker-employee equality nearing reality

The Belgian Council of Ministers has approved the Bill on “the introduction of a single status for workers and employees” which aims at abolishing the difference in treatment between white-collar employees and blue-collar workers.

The legislation is a response to the Constitutional Court decision of July 7th 2011 which declared the difference in treatment between workers and employees to be contrary to the principles of equality and non-discrimination, and therefore unconstitutional.

From January 1st 2014, employees and workers will be subject to the same rules. In case of dismissal, the notice period will be the same for workers and employees, and workers will no longer be subject to the so-called 'waiting day' which previously prevented them from receiving pay from the first day of sick leave.

After a second reading before the Council of Ministers, the Bill will be presented to the parliament for a vote.

Denmark: Steps towards digitalisation of communications

The Danish government has proposed a Bill amending the Working Environment Act and the Law on the design of certain products.

The amendments would introduce powers to require all written communications between the Labour Inspectorate and businesses who have duties under the Working Environment Act to be sent digitally. This would be a step towards the government achieving its aim for all communication between citizens, businesses and the public authorities to be effected digitally by the end of 2015. The law is expected to come into force on April 1st 2014.

Furthermore, under section 3, paragraph 2 of the Act on Digital Post 2012, brought into force by Executive Order No. 981 of August 7th 2013, all companies registered with the tax authorities are required to create a digital mailbox on www.virk.dk by November 1st 2013, in order to communicate with the public authorities — including the Labour Inspectorate. If a company does not create its



own mailbox by this date, a mailbox will be automatically created for them.

Europe: How to establish which laws apply to an employment contract

The European Court of Justice, in its decision of September 12th, has clarified the meaning of “the country with which the contract is closely connected” as regards the applicable law to an employment contract.

The Rome Convention provides that the parties to a contract may choose the law by which the contract will be governed (Article 3(1)). Article 6 provides that the choice of law under Article 3 will not deprive the employee of protection under the mandatory rules of the law which state that “a contract of employment shall, in the absence of choice in accordance with Article 3, be governed: (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.”

Article 8(4) of the Rome I Regulation (Regulation 593/2008) replaced the Rome Convention (article 6.2) for contracts concluded as from December 17th 2009.

The case in question involved a German employee who had worked for 14 years in Germany before being hired under another contract for the Netherlands branch, where she worked for 11 years. The litigation occurred when she was offered her previous position in Germany and informed of the abolition of her current contract. The question which arose was which

country’s law the contract was governed by under article 8 of the Rome I Regulation, in the absence of a governing law being chosen by the parties.

The Court ruled that in this case German laws applied. In its decision, the Court confirmed that the factors to be taken into account to determine “the country with which the contract is closely connected” are the following:

1. the country by which the employer is governed,
2. the country in which pensions scheme and social security are paid, and
3. the currency used to pay the salary.

[Case C-64/12]

Europe: Support for gender quotas for boards

Last week two Committees of the European Parliament approved the European Commission’s November 2012 proposal regarding the representation of women on company boards.

The proposal requires publicly listed EU companies to ensure that, by 2020, at least 40% of their non-executive board members are female. Small- and medium-sized businesses will not have to achieve this target and exemptions will also apply for companies where 90% of all employees are of the same sex.

Rather than simply punishing companies for failing to meet the target, sanctions will be imposed on companies who cannot show a commitment to achieving the quota through concrete measures. The proposal will face a vote in Plenary Session in November.

Meanwhile, the European Commission has published a related survey which shows an increase in the representation of women on boards from 15.8% in October last year, to 16.6% in April 2013.



Germany: Social security base values published

The German Federal Cabinet has just published its base values for social security insurances for 2014 — subject to ratification by the Upper House.

The 2014 rates are based on 2012 income trends, which showed increases of 2.81% for the former West German Länder and 2.42% for the former East German Länder. These rates form the basis of the calculations for contributions to, and payments under, pension insurance, unemployment insurance, and medical and care insurance — all of which are compulsory for all regularly employed persons as well as for many freelance workers and casual workers.

The key rates for 2014 are as follows:

Upper earnings limit – general pension insurance:
EUR 5,950/month (west) or EUR 5,000/month (east), annualised EUR 71,400 or 60,000 respectively

Upper earnings limit – miners pension insurance:
EUR 7,300/month (west) or EUR 6,150/month (east), annualised EUR 87,600 or 73,800 respectively

Upper earnings limit – unemployment insurance:
EUR 5,950/month (west) or EUR 5,000/month (east), annualised EUR 71,400 or 60,000 respectively

Upper earnings limit – compulsory medical and care insurance:
EUR 4,462.50/month (both east and west), annualised EUR 53,550

Upper earnings limit – medical and care insurance:
EUR 4,050/month (both east and west), annualised EUR 48,600

Earnings reference value:

EUR 2,765/month (west) or EUR 2,345/month (east), annualised EUR 33,180 or 28,140 respectively

Expected average pension value per year:
EUR 34,857.

Netherlands: Stricter controls on illegal agencies

Fines totalling 90 million euros have been imposed on illegal temporary work bureaus in the Netherlands over the last 18 months.

In a letter to parliament, Social Affairs Minister, Lodewijk Asscher, has warned that he intends to go beyond the reforms introduced last year. Although penalties are now imposed on the owners of bureaus to prevent them from simply winding up offending organisations to escape censure, there is a further need to tackle 'male fide' firms who set up phoenix companies and continue trading. As a consequence the penalties for repeated infringements will rise and offenders will be banned from holding company directorships. Furthermore, the offending firms will be publically named and shamed.

Portugal: Ruling on constitutionality of labour reforms

The Portuguese Constitutional Court has ruled on the constitutionality of the 2012 Labour Reform, a year after its entry into force.

The Court decided that the elements of the 2012 Labour Reform regarding working time, working on public holidays and statutory annual leave were not unconstitutional. However, it declared that the rules granting employers the ability to define the criteria for dismissal (as long as they are non-discriminatory and pertinent), to be unconstitutional. The main reason for this decision was that the statute was too vague as regards the criteria and therefore the rule violated the



prohibition of unfair dismissal. [TC Case n. ° 602/2013]

Spain: Monitoring emails and calls not against fundamental rights

The first chamber of the Spanish Constitutional Court has ruled that the fundamental right of privacy and secrecy of communications, provided for by article 18 of the Spanish Constitution, does not prevent a company from monitoring its employee's emails and calls using mobile phones and laptops supplied by the company.

In this case, the Constitutional Court denied the employee protection from dismissal on the basis that 1) the collective agreement applicable to the sector considered the use of professional devices for reasons other than work as misconduct, 2) the company was suspicious of the employee's behavior, and 3) the Workers' Statute provides the right for the employer to monitor the communications of employees in order to make sure they are working.

In similar cases, the European Court of Human Rights has considered the monitoring of communications as a violation of privacy where the employee is not aware of the possibility of such monitoring. However, according to the Constitutional Court, monitoring was foreseeable in this case. [Madrid Constitutional Tribunal, October 7th 2013]

UK: Employer may be expected to meet private medical expenses

The UK Employment Appeals Tribunal has held that the provision of private medical treatment can come within the scope of "reasonable adjustments" that should be made by an employer to ensure a disabled employee is not at a disadvantage in the workplace.

According to the facts, the employee's work-related stress and depression prevented her from being able to attend work, thus amounting to a

substantial impairment on her ability to carry out her normal duties. The employer was obliged, as per the Disability Discrimination Act 1995 and Equality Act 2010, to make reasonable adjustments to prevent her from being at a disadvantage.

After her own GP's diagnosis, the employer referred the employee to a private clinical psychologist, who recommended a course of psychiatric appointments (at a capped price) in addition to medication she had already been prescribed. The employer did not follow this recommendation. Although the psychologist only predicted a 50% chance that the appointments would aid her recovery, the Tribunal held that providing the appointments amounted to a reasonable adjustment which the employer had failed to undertake. Furthermore, the Tribunal stated that the appointments should not be considered as general private medical treatment but rather as treatment that was specifically recommended to assist her return to work. [Croft Vets v Butcher, UKEAT/0430/12/LA]

UK: Non-solicitation clause judged permissible

The UK Court of Appeal has released its judgment in the case of *Coppage v Safety Net Services*, stating that a clause preventing the former employee from soliciting any of the former employer's business customers for six months after termination of the employment relationship was permissible.

In deciding whether or not the clause amounted to an unreasonable restraint of trade, Sir Bernard Rix noted the employee's former 'front of house' role and the short term of the restriction. Although the Court stressed the fact-specific nature of such cases, it emphasised the general distinction between a non-solicitation clause, which could be permitted, and a non-competition clause which could not. [[2013] EWCA Civ 1176]



Pay, Tax and Benefit Trends

CYPRUS/ESTONIA: Following its recent approval by the Estonian government, the first ever double taxation agreement between Cyprus and Estonia is nearing ratification. The agreement, which was signed in October 2012, was ratified by the Cyprus government in February 2013. If the final steps are completed soon, the provisions of the agreement — which follow the latest Organisation for Economic Cooperation and Development (OECD) Model Treaty to prevent double taxation — could take effect from January 1st 2014.

GERMANY: The wages of temporary workers in Germany are due to increase from January 1st 2014 following the conclusion of an agreement between the DGB Wage Committee and the employers' associations IGZ and BAP. The pay of temporary workers will increase — in three steps — by a total of 9.6% in the western Länder and 12.8% in the eastern Länder. The agreement will remain valid until the end of 2016.

GLOBAL: The President of the European Commission, Jose Manuel Barroso, and the Canadian Prime Minister, Stephen Harper, have reached agreement on a free-trade deal between the EU and Canada. The agreement will require approval from parliaments and EU member states but once approved bilateral trade is expected to increase by one fifth. The agreement will also make it easier for companies to move staff temporarily between the EU and Canada.

REPUBLIC OF IRELAND: The government of the Republic of Ireland has announced a number of improvements to be made to the Research and Development Tax Credit as part of the 2014 Budget. The amount of expenditure allowed without reference to the base year is being increased from 200,000 euros to 300,000 euros and the outsourcing limit is increasing from 10% to 15%. Amendments will also be made to the key employee tax credit provision.

ITALY: The draft Stability Law 2014 — approved 10 days ago by the Italian government — is now before the Senate. The Bill allocates 5 billion euros to the reduction of labour costs in 2014; however, small- and medium-sized businesses are likely to be affected by a small reduction in tax credits from January 2014.

SLOVAKIA: The Slovakian Employment Ministry has announced its intention to increase the national minimum wage next year by 4.2%. In January 2014 the monthly minimum wage will increase to 352.00 euros from the current rate of 337.70 euros. The decision comes despite employers and trade unions not reaching agreement with the government over the final figures.

SPAIN: Spain has announced its plan to freeze the national minimum wage for 2014 at the current rate of 645.30 euros per month. In addition, the government Budget Bill has proposed a five-point rise in social security contributions for the maximum contribution bases as well as a 5.4% increase in corporate tax.

Other European HR News in Brief

CROATIA: The Croatian Prime Minister, Zoran Milanovic, has announced his intention to apply to join the Schengen area following the mandatory evaluation period of two years. As a result the country could be a part of the passport-control-free zone by 2015/16.

EUROPE: The latest unemployment data reveals that in Q2 2013, 35.3% of the unemployed in OECD countries had been out of work for more than 12 months. This is the highest level of long-term unemployment since the current economic crisis began in Q4 2007 — when long-term unemployment stood at 27.0%. High levels of long-term unemployment exist in Belgium (46.3%), Estonia (48.5%), Greece (65.5%), Hungary (47.1%), Ireland (59.0%), Italy (56.4%),



Poland (42.1%), Portugal (56.1%), Slovak Republic (70.7%), Slovenia (49.6%) and Spain (49.3%).

EUROPE: A number of European employers have joined together to try to tackle the problem of depression in the workplace. According to research, approximately 10% of workers in Europe take time off work due to depression. The “Target Depression in the Workplace” initiative aims to help employers support employees suffering with depression and promote good mental health in the workplace.

EUROPEAN UNION: The European Parliament has adopted a European Commission Bill regulating pilots’ working hours. A limit of 11 hours now applies to flight duty time at night, and the maximum duty time, including standby, has been set at 16 hours. The maximum number of flying hours per year has been reduced from 1,300 to 1,000 and the weekly rest has been increased to two days. These laws will apply to pilots in all EU Member States.

FRANCE: A commercial tribunal has ordered a number of DIY stores in Paris to close their stores on Sundays. The case was brought on the basis of unfair competition by a competitor who had suffered the same decision by the labour courts in

2012 after the trade unions complained about breaches of working time laws.

ITALY: A recent decision from the Italian Supreme Court has confirmed that (illegitimate) professional demotion of an employee on the transfer of a business should be compensated jointly by the transferor and the transferee. A demotion is deemed to have occurred if the new job is not professionally related to the previous job and is not in keeping with the employee's existing skills. [Decision 20716/13]

LUXEMBOURG: The Social Identification Badge is due to enter a test phase in Luxembourg before coming into general use in 2014. The aim of the scheme is to facilitate the process of transferring workers and to prevent illegal work and social dumping. Every employee will receive a badge which will display the worker’s identity and a bar code holding further information. Employers will be able to apply for the badges via a new online tool.

ROMANIA: The Labour Inspectorate of Romania has reported that it imposed fines amounting to more than 2.8 million lei (630,000 euros) on employers between October 7th and 11th. During these inspections 227 people were found to be working illegally and over 1000 employers were sanctioned for health and safety deficiencies.

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