



# Dernières nouvelles

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## Ψ COMMENT: The long road to ethical compliance\*

Although the UK has had a powerful code of corporate governance since the early 1990s, this has taken longer to establish in the rest of the world, especially the USA. However, in 2017, along came two competing US codes. The “Commonsense Principles of Corporate Governance (CPCG)” and “Corporate Governance Principles for US listed Companies (CGPLC)”. These differ significantly, especially over executive pay - which is barely covered by the CGPLC. Yet the main thing they have in common is the absence of any external mechanism for enforcement.

This contrasts with the UK where, back in 1992, the Cadbury Committee introduced the principle that companies should “comply or explain” – a principle that was backed by the UK Stock Exchange and latterly the Financial Reporting Council (FRC).

Where a code of corporate ethics exists it normally covers a range of purely governance issues, such as the rights of shareholders, the operation of the Board, the role of the CEO, and audit procedures. However, increasingly they include issues that are of direct concern to the HR function. Take, for instance, the Brazilian Institute of Corporate Governance Code. This includes references to CEO and Board remuneration,

the management of employees and their representatives, and a range of ethical principles about such matters as bribery, receiving and giving gifts, discrimination, sexual harassment, workplace safety, employee privacy, substance abuse, and child labour.

As they emerge, ethical codes are increasingly embracing employment-related fields and applying to those below Board level. But how many HR professionals take into account corporate codes when they review their company HR policies?

FedEE’s Employment Standards Institute (ESI) lists several codes in operation for major corporations around the world. In Airbus, for instance, the code applies to “all employees, officers and directors of Airbus and entities over which Airbus has full or joint control”. It spells out that “Individuals are selected for career advancement on the basis of their potential, their performance, their behaviour, and their willingness to work in and across different functions and countries”.

The Airbus code also contains some of the best worded expressions for standards of conduct, such as its statement about bribery: “We may never offer, attempt to offer, authorise or promise any sort of bribe, facilitation payment or kickback to a public official or private party for the purpose of obtaining or retaining business or an

improper advantage. Likewise, we must never solicit or accept a bribe or kickback from a public official or private party.” And moreover, “We must never hire someone else to do anything that we cannot ethically or legally do ourselves.”

Microsoft’s approach is to offer greater explanation for its principles and, in the case of bribery, it states that “in some parts of the world, paying a bribe to get business may be something that others are doing. We won’t. We would rather lose the business than secure it through a bribe, kickback, or other improper benefit.”

Companies differ somewhat about the protected categories that they recognise – Airbus cites, for instance, “social origins, political opinions and national origin” (not just nationality), Kobe includes “wealth”, whilst Bombardier includes “family situation” and “citizenship”. Most curious of all is Google’s statement that it is “a dog company”, although “before bringing your canine companion to the office, please make sure you review our Dog Policy”.

In July the FRC finally released its latest “shorter and sharper” version of the UK code. Back in December 2017 there was much talk about the next revised code incorporating the obligation to appoint employee Directors, plus an improvement in the representation of women (following the Hampton-Alexander Review) and “ethnic minorities” to company boards (following the Parker Review Committee report). But in the final version this is simply replaced by a recommendation for companies to seek the views of employees and to promote diversity.

The only significant foreseeable change will be through new UK regulations that are due to become effective on the 1<sup>st</sup> of January 2019, requiring companies to begin reporting pay ratios between senior executives and the workforce as a whole. These will not require such data to be available until 2020. Meanwhile, the Investors Association continues to maintain its “name and shame” list of CEO’s in FTSE 100 companies where Board pay policies have produced at least 20% shareholder dissent at annual meetings. Although this list has grown from 9 last year to 18 in 2018, it has done little to rein in remuneration committees that continue to approve salary policies that relate more to external comparators than ability to pay.

## **AFRICA AND THE MIDDLE EAST**

**Ω OMAN:** The recent arrest and imprisonment of a man for asking a woman to take his phone number is an illustration of the strict laws that apply to what we in the West would regard as ordinary social behaviour. The Omani Penal Law, Article 269, states that those “insulting the dignity of others in any way” may result in imprisonment for up to 2 years and a minimum fine of OMR1,000 (US\$2,600).

**Ψ SAUDI ARABIA:** A Royal Decree on the protection of whistleblowers has been issued. This is part of the anti-corruption campaign launched last year.

**Ψ SOUTH AFRICA:** The government has been given 6 months to study the Human Rights Commission’s Equality Report and act accordingly. The report concludes that affirmative action policies that are in place under the Employment Equity Act are not compatible with the Constitution and

suggests that the relevant Act is amended. Affirmative action measures, such as quotas, have been used for over a decade in the country as a means to tackle inequality in employment based on race, gender, and disability. The government is expected to respond to the Commission on steps taken, based on detailed recommendations included in the report.

**Ψ TUNISIA:** Although a Bill to criminalise racial discrimination was submitted to the national parliament back in June 2016, it took until January this year to reach the parliamentary committee on rights, freedoms, and foreign relations and still awaits parliamentary debate. Meanwhile, there are regular reports of racially motivated attacks, mainly on those from the Ivory Coast and Congo - many of whom are students in the country. Racial minorities make up just 15% of the population, but lack any effective equality rights, even though Article 21 prohibits all forms of discrimination.

**Ψ TURKEY:** What happens if, as is so common at the present time, an employee is unable to attend work because they have been arrested by the police? The answer is that under Article 25-IV of Labour Law 4857, any employee whose detention exceeds their notice period may be dismissed with 'just cause'. They will not be entitled to payment for notice, but may be to severance - as long as their arrest was not due to workplace misconduct. At the end of their prison term, or if found not guilty, then they will not be entitled to their old job back.

## THE AMERICAS

**Ψ CANADA:** Following legislation by three provincial governments, the federal

government has also now drafted its own Accessibility Act. This seeks to ensure that all companies that are federally regulated develop accessibility plans and modify their facilities to allow those with any type of disability to work at all locations. It defines barriers to accessibility as "anything architectural, physical, technological or attitudinal ... that hinders the full and equal participation in society of persons with a physical, mental, intellectual, learning, communication or sensory impairment or a functional limitation". About 6% of Canadian workers are federally regulated and most of them work in such sectors as banking, air, road and rail transport, communications, and TV broadcasting. All other workers are regulated by the laws of provinces or territories.

φ **CANADA:** Latest figures from Statistics Canada show that over the year to June 2018, average weekly earnings of non-farm payroll employees increased by 2.8% to \$1,000 (US\$773). In retail trade, construction, and "accommodation and food services", the average weekly earnings increased markedly by 8.6% to \$604 (US\$467), 6.0% to \$1,271 (US\$983), and 4.2% to \$404 (US\$312), respectively. Furthermore, average non-farm payroll employees continue to work for modest workweeks – at just 32.8 hours.

**Ψ ECUADOR:** According to Ministerial Decree dated the 7<sup>th</sup> of September 2018, companies with a minimum of 25 employees must now meet a 4% disability quota and should undertake appropriate tasks based on their skills and abilities. It is also stated that the number of workers with disabilities should be equally distributed across the various geographical areas where the company has business activities.

**ζ NORTH AMERICA:** The US government has been picking up some pieces from the now defunct NAFTA agreement through bilateral talks with Mexico. These have centred on the all-important motor industry, where the US government is concerned that its own manufacturing will be undermined by Mexico's cheap labour costs. Mexico has so far responded by offering to set a minimum hourly rate of US\$16 (EUR13.67) per hour, which is well above the minimum wage rates even in New York or Boston. Meanwhile, Canada, which has its own substantial motor industry, is left looking on. Fortunately, the Trans-Pacific Partnership Agreement (CPTPP) deal goes marching on without the USA. So far, Japan, Mexico, and Singapore have ratified and Canada, Australia, Chile, and New Zealand are on the verge of doing so. Which is the bigger deal? Mexico and Canada will get what they can from the US, but their primary trade focus will be across the Pacific. Canada is also looking to its potentially lucrative CETA trade deal with the EU, although 1 year on, European companies look to have been faster to capitalise on CETA than Canadian companies.

**Ω USA:** A case has been commenced before a federal court in Virginia in which a newspaper seeks to recover from their former reporter – poached by a rival – a Twitter account they claim is company property. The account contains a large number of the newspaper's customers. This case is of importance to employers in general because it illustrates the potential danger of giving social media accountability to employees. The employee is refusing to reassign the account, even though their former employer also secured signatures

from the employee on several occasions concerning the company handbook, in which it stated that all company social media accounts were company property and must be returned upon termination of employment.

**ψ USA:** The National Labor Relations Board has opened up for consultation a notice regarding a proposed rule concerning the definition of a joint employment relationship under Section 2(2) of the National Labor Relations Act. Comments about the proposed rule must be [sent to the Board](#) on or before the 13<sup>th</sup> of November 2018. The rule reads: “an employer may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. A putative joint employer must possess and actually exercise substantial direct and immediate control over the employees' essential terms and conditions of employment in a manner that is not limited and routine.” For a complete briefing and background see the [US Federal Register](#).

**Ω USA:** Many employers have relied for some time on the Faragher-Ellerth (1998) defence for sexual harassment complaints. This can be used to escape liability if they have a sexual harassment policy in place, have communicated it to employees, and if an employee has “unreasonably failed” to report any case of such harassment. That was until the recently reported *Minarsky v Susquehanna County* (17-2646) Third Circuit Court of Appeals Case. Here, the court did not accept the usual defence because the actions of the abuser were already well known to the management and only mild reprimands had been given. The harassment



also extended over several years. The company claimed that its actions in eventually terminating the abuser once a formal complaint was registered relieved it of further liability. The Appeal Court disagreed. It found grounds for the organisation's policy not to be effective and the appellant to have rightly feared retribution and the risk to her own employment. The case now goes back to the District Court for a ruling in line with the Appeal opinion.

**Ψ USA:** Maryland's new Disclosing Sexual Harassment in the Workplace Act 2018 is now set to come into force on the 1<sup>st</sup> of October 2018. The law requires two principal things: for all employers with 50+ employees to take part in a survey organised by the Maryland Commission on Civil Rights in 2020 and 2022 to reveal their harassment experience and practices; and not to require employees to sign waivers concerning actions in respect to sexual harassment or sign any mandatory arbitration clauses in respect to such actions.

**Ω USA:** The 11<sup>th</sup> Circuit Court of Appeals has found in favour of 44 nursing home workers who claimed that their employer deducted 30-minute breaks from their pay, whether an individual actually took a break or not. This is the latest in a number of cases concerning autoduction, and employers in the USA should ensure that they keep actual records of breaks taken and have sound policies in place under FLSA rules to justify their practices [Case No. 18-10657].

**Ω USA:** The American Civil Liberties Union (ACLU) has complained to the US Equal Employment Opportunity Commission (EEOC) that some employers are deliberately targeting job ads to men via

Facebook. Over 80% of US employers that recruit on social media use Facebook and point out that Facebook's advertising management tool gives advertisers the opportunity to target by age, gender, and other characteristics. ACLU have so far named ten employers that follow this practice, amongst them Uber, which is struggling to fend off its male-heavy culture. It is time to ensure that your company is not going to be in the EEOC's line of fire, as this could be a big one to avoid.

**φ USA:** New York State is now well advanced on its adjustment of the minimum wage to a common rate of \$15 an hour by 2021 in New York City (NYC), Long island, and Westchester, and \$12.50 an hour in the rest of New York State by 2020. The minimum hourly rate in NYC is already \$13.00 for companies with 11+ employees and will go up to \$15 by year end.

## ASIA AND PACIFIC

**Ω AUSTRALIA:** In a recent case, the Fair Work Commission has pointed out that employers are not always obliged to accept medical certificates, especially when these are vague and do not indicate a specific course of action. In the case triggering this statement, the employee was absent from work on unpaid leave due to mental health issues. After the employer notified him that his service was going to end due to his prolonged absence, the employee produced a medical certificate that indicated he was able to return to work. However, this stated that the employee was only able to perform "light duties". After discussions between the employee and employer on what constituted light duties, the employee was dismissed on the grounds that he failed to provide

sufficient documents supporting the limitations arising from his condition. [ [2018] FWC 4878].

**Ψ AUSTRALIA:** The government of Western Australia has decided to follow the lead of the Queensland government last year by expunging all criminal records relating to consensual homosexual activity. This was a criminal activity for many years under the Criminal Code Act 1913. Although relevant sections of the Act were repealed in 1990, it still affects the employability of some older workers in the state. The new law will take effect on the 1<sup>st</sup> of October 2018.

φ **AUSTRALIA:** The Queensland minimum wage has just increased by 3.5% to \$753 (US\$540) a week. This is in line with the Queensland Industrial Relations Commission (QIRC) recommendation for all low-paid workers and FWC decision under the fair work system.

φ **AUSTRALIA:** Two sets of pay figures have just been published by the Australian Bureau of Statistics (ABS). Firstly, over the year to Q2 2018 all sectors' the seasonally adjusted wages and salaries price index increased by 2.1%. In the private sector alone, it rose by 2.0%. Turning to average earnings for "ordinary time" worked by full-time adults, over the year to May 2018 earnings grew by 2.7% to \$1,585.30 (US\$1,154). The Australian Capital Territory had the highest average weekly ordinary time earnings for full-time adults at \$1,810.10 (US\$1,318). By sector, mining remained the leading industry at \$2,592.00 (US\$1,887).

**Ψ AUSTRALIA/CANADA:** A revised reciprocal agreement on the issue of working holiday visas has increased the maximum age of applicants from 31 to 35.

**Ψ CHINA:** Hunan's Department of Human Resources and Social Security has introduced a regulation regarding all collective bargaining in the province. Agreements relating to remuneration, benefits, working hours, rest and vacation, health and safety, workplace insurance, and special measures to protect female employees must, once signed by the parties, be submitted to the Department within a maximum period of 10 days. If the period is longer than this, a clear explanation must be given. This process is not for official approval, but to enable the construction of an effective official database of such information.

**Ψ INDIA:** Back in January 2018, we reported the drafting of the first data protection law in India. The Ministry of Electronics and Information Technology has since extended the deadline for public feedback on the Bill to the 30<sup>th</sup> of September 2018. The new law is expected to be submitted for parliamentary consent after the general elections in 2019.

**Ψ INDIA:** Employers that provide family-related benefits should note that the Islamic practice of gaining instant divorce by repeating the word "talaq" three times is now outlawed. Prime Minister Modi has agreed to an executive order making this practice punishable by up to 3 years' imprisonment. India has a resident Muslim population of 180 million.

**Ψ NEW ZEALAND:** The coalition government has finally brought together its long-term plans. Although they do not contain a lot of new elements, they do underline some key employment-related priorities such as focusing immigration on regions that lack necessary skills, increasing the minimum wage, closing the gender pay

gap, extending paid parental leave, developing innovative training schemes, and increasing access to medicinal cannabis, all of which suggest the emphasis will be on wellbeing and welfare rather than economic growth.

**Ψ PHILIPPINES:** The Expanded Maternity Leave Bill (No. 4113) has now been approved by the national house of representatives. This increases paid maternity leave from 60 to 100 days. Female employees will also be able to request up to 30 extra days of unpaid leave. Employers will be responsible in the private sector for paying the difference between the social security allowance and two-thirds of the female workers' regular pay. However, this decision must now pass through the bicameral conference committee, where it could well be rejected. This is because the Senate wished, at an earlier reading, for the mandatory leave to be 120 days and for fathers to have extended paternity leave rights. If the parties cannot agree it will have to be left to President Rodrigo Duterte whether to push the decision back to the Senate, or adopt as final the third reading decision of the House.

**Ω SINGAPORE:** A legal challenge has been filed against Section 377A of the Penal Code, often termed the "anti-gay law". The individual bringing the case claims that the law's stipulation against "any act of gross indecency with another male person" is inconsistent with several articles in the state constitution concerning liberty of person and equal protection. A previous challenge in 2014 failed, but supporters are encouraged by the recent landmark ruling in India. A pre-trial hearing of this case will take place in the next few weeks.

**Ω SOUTH KOREA:** Justice Minister Park Sang-ki is seeking to expand the scope of class action lawsuits. At the moment they are restricted to security trading issues. However, they will probably be extended to any area with a significant risk of large-scale damage, which could well apply, for instance, to those who are victims of a data protection breach.

**Ψ THAILAND:** An amended draft of the Personal Data Protection Bill has been published by the Ministry of Digital Economy and Society and issued for public consultation. The new Bill follows the EU GDPR model as it adopts similar definitions, requirements, sanctions, and data subjects' rights. In the latest draft the proposed transition period for implementation has been shortened to 180 days.

## EUROPE

**Ψ BELGIUM:** The GDPR is now fully implemented in Belgium through separate laws. The first came into effect in May, whilst the second – supplemented by a third law – entered into force on the 5<sup>th</sup> of September 2018. Cases for alleged violations will be heard by the Court of First Instance, which may order the ceasing of the infringing practices and impose fines if the violation continues. The administrative sanctions provided by the GDPR are also adopted and criminal sanctions are provided in certain cases.

**φ BELGIUM:** The low-cost airline Ryanair has offered Belgian unions a deal that would involve the company employing local cabin crew on a contract compliant with Belgian law from 2020, and a new remuneration package based on a low base salary and a high performance-related element. The

unions have rejected the offer because of the proposed pay system and also because any deal would not cover half the workforce who are employed through a labour contracting firm Crewlink. A European-wide 24-hour strike is set for the 28<sup>th</sup> of September and further strikes are planned once a month until the company concedes to union demands.

φ **EUROPE:** The latest updated wage figures from European countries may be viewed [here](#). [Please enter your member password]

Ω **EUROPEAN COURT OF JUSTICE:** The European Court of Justice (EJC) has confirmed that the dismissal of a Catholic doctor from a managerial position by a Catholic hospital due to his remarriage after a divorce may constitute unlawful discrimination on the grounds of religion [IR v JQ, Case C-68/17].

φ **GERMANY:** Lying to the south of the country, Bavaria is Germany's largest state, accounting for 20% of the country's land area. The coverage of collective bargaining in the state ranges from 44% in Lower Franconia to 61% in Upper Palatinate. In Germany, collective bargaining is on the decline, but in Bavaria the decline is even more pronounced - with only a quarter of companies now bound by collective agreements. This is surprising in the light of its company size and sectoral composition. There is currently a 24% premium for those subject to collective agreement, although, after controlling for various factors, this is reduced to 9%, but with a premium of 11% for the lower paid. Employees in companies subject to collective agreement also work, on average, 1 hour less per week than tariff-free employees. One factor that might theoretically be reinforcing this premium could be the

existence of a works council at the establishment. This, however, is not evident as only 22% of establishments covered by collective agreements also have works councils. What this bodes for the future it is difficult to tell, but the decline in collective bargaining coverage will undoubtedly depress pay increases for the economy as a whole. There is also no necessary indication that where collective agreements disappear, works councils tend to fill the void.

Ω **GERMANY:** Last July the Federal Constitutional Court made a ruling that it recommended should materialise into a Federal labour law by the end of 2018. However, no such law has yet been forthcoming. The ruling established the "majority decision single law". This states that if two labour unions represent the same group of employees in a workplace, only the collective agreement of that union – or those unions – with the largest number of members shall take effect in the workplace. A notary would be required to determine which union holds a majority. A smaller union does retain the right to adopt a wage agreement for its own members, but this is heavily constrained.

Δ **GERMANY:** According to the latest figures from the Federal Statistical Office (Destatis), over the year to 2017, the number of students obtaining a degree at German institutions of higher education increased by 2% between 2016 and 2017 to a total of 501,734. One in four degrees was in engineering-related disciplines and the number of individuals who completed Master's degrees rose sharply by 10% to 136,500.

β **GERMANY/UK:** The best way to get poor is to convince others that you are a lost



cause. The European Central Bank, that so long tolerated Sterling, has now abandoned its silent truce. It is now putting pressure on EU banks to remove funds from London - the latest, and most important, being Deutsche Bank. The bank has responded and may eventually repatriate 75% of the €600bn euros deposited – amounting to half of all foreign capital held in London. This is equal to the annual turnover of Walmart, the world's biggest company. Imagine the USA without Walmart, let alone the much smaller UK economy? This move will seriously undermine the liquidity of the UK banking system and have a huge impact on investment, confidence and consequently on UK economic growth.

**Ψ IRELAND:** The government has announced in its latest budget that it intends to introduce the right of both parents to each take shared paid parental leave for a period of 2 weeks after the baby is born. This will be subject to a special allowance paid by the state that shall not be transferable between the mother and father. At the moment, parents may take up to 18 weeks' unpaid parental leave until their child is 8 years old, or 16 years old if the child has a long-term illness. The measure will require parliamentary approval and is unlikely to be in place until the end of 2019. It will be in addition to the current rights to unpaid parental leave – 26 weeks of maternity leave and 2 weeks of paternity leave.

**Ψ ITALY:** National Decree no. 101 on the implementation of the GDPR came into effect on the 19<sup>th</sup> of September 2018. The law amends the Italian Privacy Code by repealing various sections of the pre-existing legislation. Italian-based employers should be aware that strict limitations on the

processing of sensitive data relating to criminal convictions are retained; therefore, companies are not allowed to conduct criminal report checks, unless they are authorised to do so by law or by the relevant collective agreement(s).

**φ LITHUANIA:** Once across eastern Europe it was 'flat-tax' that was the trend, in a vain attempt to discourage under-the-desk brown paper envelopes as a device to avoid tax. The problem was that countries did little to reduce their social security contribution rates, so brown envelopes remained as popular as ever. A trend now seems to be developing across eastern Europe – starting with Romania – for country tax and social security systems to follow the Danish practice of leaving the responsibility for social security contributions largely to the employee and to engineer an increase in gross pay to meet these obligations. This is unfortunate because there are so many other factors underpinning the success of the Danish system. Thus, as of the 1<sup>st</sup> of January 2019, personal taxation and social insurance contributions in Lithuania will be reformed. Income tax will be increased to 20% to be applied on income up to EUR107,000 (US\$125,080), with no tax-free personal allowance. Income in excess of this amount will be taxed at 27%. On the other hand, employer social insurance contributions will decrease from 31.18% to 1.79% and employee contributions increased from 9% to 19.5%. It will be mandatory, after these changes take place, that employee net pay will not be lower than before the changes came into effect.

**ζ MALTA:** Apart from money laundering and online gaming, Malta's biggest other sleazy economic sector is the citizenship sales

programme. An official Maltese passport will cost just €650,000, plus a contribution to government bonds and the purchase of a moderately priced dwelling. But there is the added benefit of a discount for additional family members. This magnet for undesirables has minted €600 million to date and resulted in the country recording a €182M surplus last year, even after politicians had dipped in for their share. Of course, many of the newly availed Maltese citizens have no desire to live in the country – just the greater accessibility that an EU passport provides for them. However, this still further compounds the uncomfortable conclusion that this small island state is just a place so aptly described by a European Parliament report as having a “systematised and serious deficiency in the rule of law”. The bigger question is how far will this sleaze be allowed by the EU to spread and how much is it contributing to the level of corruption across the eurozone? Maybe Brexit was a good idea after all.

**Ψ POLAND:** Under an amendment to the Act on Vocational and Social Rehabilitation and Employment of Disabled People, employees with disabled children may now request up to 30 days of care leave, combining flexible work arrangements as well as telework. Eligibility for this paid leave is extended until the child’s 18<sup>th</sup> birthday. Parents also qualify if a spouse is unable to care for a disabled child because of childbirth or hospitalisation. Employers may deny a telework request from such a parent on the grounds that the tasks performed cannot be undertaken from home.

**Ψ POLAND:** Recent legislation requiring doctors to issue medical certificates solely in

electronic format has been postponed until the 30<sup>th</sup> of November 2018. Employers are reminded that following that date, all medical certificate submissions will be made through the ZUS Electronic Services Platform (ESP).

φ **POLAND:** The national minimum monthly wage is set to increase on the 1<sup>st</sup> of January 2019 from 2100 PLN (US\$572) to 2250 PLN (US\$614). The hourly minimum wage will be 14.70 PLN (US\$4).

Ψ **RUSSIA:** The State Duma (Parliament) has adopted at third reading a Bill that will make it an offence for an employer to unjustifiably deny an individual employment if they are nearing retirement age, or for dismissing them ahead of their normal retirement age. The relevant pre-retirement period is within 5 years of receiving the state old age pension. An amendment to the Bill was submitted even before the Bill completed its passage. This puts a limit to the retirement age for women at age 60, rather than 63, as previously proposed. Once in force, employers would face fines of up to 200,000 rubles (\$3,000) and 360 hours community service per offence for infringing the new rights.

φ **SPAIN:** After months of negotiations, a deal between the Spanish Chemical Industry Federation (Feique) and trade unions has concluded with an across-the-board 2.5% wage increase, improved staff training, and the promotion of equality in the workplace. The new agreement applies to the chemical, pharmaceutical, rubber, and plastic industries and it extends the obligation of negotiating “equality plans” to companies with 150+ employees. An attached protocol on the prevention of harassment and discrimination broadly defines the terms so

as to include not only sexual harassment and discrimination based on sex, but also mobbing and any other discriminatory behaviour based on race, religion or belief, disability, age, or sexual orientation.

**Ω UNITED KINGDOM:** Several major food retailers (Tesco, Sainsbury's, Asda, and Morrisons) all face class actions on behalf of female shop workers claiming they have been underpaid for years relative to male staff in distribution centres, for which they claim job parity. An application to the Court of Appeal in respect to the Asda case is due to be heard in October and its result will have wide repercussions across the retailing sector

**ζ UNITED KINGDOM:** The accounting company Grant Thornton, and several of its auditors, have been fined and seriously reprimanded by the Financial Reporting Council (FRC) for misconduct in relation to audits of a PLC and the University of Salford over a period of 4 years. It has also banned one former senior partner from practicing as a chartered accountant for 5 years. The FRC has also fined and reprimanded KPMG for misconduct in relation to Ted Baker PLC. This follows close scrutiny of KPMG after this year's audit inspection service reported an unacceptable deterioration in the quality of its work. In fact, the inspectorate found a significant decline in the quality of all of the big four audit firms this year.

**ψ UNITED KINGDOM:** The GDPR supervisory authority (ICO) has reportedly received a total of 6,281 complaints between May and July 2018. Only months after the GDPR was introduced, ICO seems to be overloaded with individual data protection complaints and requests. These correspond

to more than double the number of relevant complaints received during the same period last year.

**ψ UNITED KINGDOM:** The Home Office is currently undertaking a review of the Modern Slavery Act 2015. This is because the Act is expensive to administer and enforce and its effectiveness has been very limited. One area that is attracting their attention is the Section 54 statement that all companies with a turnover of £36M or more that operate in the UK must display on their website. This is barely being policed and any revisions of the law can be expected to involve a requirement to provide evidence of company investigations into supply chain practices, spot checks and penalties for infringements of the reporting obligation, and, more seriously, the discovery of practices such as child labour in companies supplying a company operating in the UK. This will have the most potential impact on retailers, particularly clothing retailers.

**ζ UNITED KINGDOM:** The UK government is in such a frozen state over the failure of the 'Chequers Plan' to even reach the negotiating table that no other proposals have been drafted and virtually no negotiation is taking place with the EU. This leaves it virtually impossible to move ahead with any constructive outcome. If some last-minute movement did take place, the only real possibility of avoiding a "no deal Brexit" would be to either to follow the model of Norway through an EEA-like arrangement, try to emulate Switzerland by having a treaty that is EEA-like in all but name, try to botch together a CETA-style trade deal or extend negotiations (once they can get going) past March 30<sup>th</sup>. The inability to act even extends to the Foreign and Commonwealth Office

that has said the new blue British passports cannot be issued until “late 2019” – even though they have already had 18 months to prepare for issuing them.

**ζ UNITED KINGDOM:** The UK government has continued to issue advisories about the consequences to business of a “no deal Brexit”. This now includes a warning that after the 29<sup>th</sup> of March goods carriers will have to start making exit and entry summary safety and security declarations for items sent to the EU. It has also confirmed that if a company wishes to transfer personal data from the EU to the UK it will require the EU to make an “adequacy decision” about the UK. However, the EU is refusing to even begin negotiations about this until after the UK becomes a “third country”. This could leave many companies with operations in the EU and UK in a difficult position, having to effectively infringe EU rules to remain in operation. The UK has made it clear that it will not put barriers in the way of such transfers, but it is unknown territory for EU states, especially those with draconian data protection supervisory authorities like the Netherlands and France. It is also a mixed picture for European Works Councils (EWC). The UK government is intent on allowing the retention of existing EWCs, but blocking new applications. To quote: “no new requests to set up a European Works Council or Information and Consultation procedure can be made”.

**Δ GLOBAL:** A new OECD report examines the regional differences that exist due to the impact of automation on jobs. The good news is that “60% of regions in the 21 countries studied have created more jobs at a low risk of automation since 2011 than the number of jobs they have lost in high

automation-risk sectors”. However, the highest concentrations of job creation have been in capital regions, and some countries such as Japan, Finland, Denmark, Ireland, and South Korea have clearly lead the way. Most vulnerable to automation are Eastern and Western Slovenia, Attica and Central Greece, two regions in Poland and two in Germany, including Berlin. [[Job Creation and Local Economic Development 2018: Preparing for the Future of Work](#)].

**ζ GLOBAL:** One of the most worrying trends in the world’s major economies is the onward creep of consumer price inflation. This is cutting real take-home pay for workers and is now well beyond the level in many countries where it could have a beneficial influence on consumer demand. Although EU inflation dropped one decimal point in August, it is still 0.6% higher than a year ago. Significantly, during August both the UK and USA clocked up annual rates of +2.7%. This is a shade higher than eurozone economies, although the general underlying trend is unmistakably upwards. Countries such as Argentina (+3.9%) are beginning to see the old enemy of hyperinflation returning, and South Africa (+4.9%) has already lost its grip. Things are much worse in India which, in spite of its rapid growth, is experiencing a sharp fall in the Rupee and runaway fuel prices. Leading the way to Armageddon, however, remains Turkey where the official annual inflation rate jumped to +17.9% in August, up from +15.8% in July. Most serious of all for residents is the lag in home prices and virtual collapse in property demand across the country.

**ζ GLOBAL:** Speculating if and when the next recession will come is becoming quite a sport for economic journalists around the world, but there are three inescapable facts that we



must all contend with. Firstly, economic cycles follow a fairly fixed pattern and economic growth has seldom been sustained for more than seven years. Secondly, US stock markets are experiencing the longest positive run in their entire history, which must come to an end very soon. Finally, and most important of all, the fact that the current sustained upswing since 2010 has largely been generated by central banks keeping interest rates low; however, the period of low interest rates are about to end. The all-important Bank of International Settlements (the clearing bank for clearing banks) has just warned that “there is little left in the medicine chest to nurse the patient back to health or care for him in case of a relapse”. Moreover, a slowdown in the Chinese

economy is hitting developing economies hard and risky lending is on the rise again, especially in the US where a “red-hot” leveraged loan market is causing banks to “off-load their loans onto an eager investor base”. Everywhere, the debt mountain is now far too high and someday soon it will be sure to topple.

## News subject key

ζ Political context / background

β Business / Economics

Δ HR-related / practices

Ψ Laws / Codes / Immigration

Ω Court cases / structures

φ Remuneration / Tax / Labour relations

## Dates for your diary:

**October 1st 2018:** **Australia's** HGV chain of responsibility laws implemented.

**November 1st 2018:** Class-actions lawful in **Germany**.

**November 11th 2018:** **EU** temporary border controls removed.

**November 12th-14th 2018:** FedEE HR Counsel Meetings in London, **UK**.

**January 1st 2019:** **Netherlands** – expat 30% tax ruling – 8 years to 5 years.

**January 1st 2019:** **Malaysia's** new redundancy fund due to come into force.

**January 31st 2019:** **UK** Changed actual Brexit deadline to agree a deal.

**January 1st 2020:** **Washington State (USA)** Paid family leave law will take effect.

## ⚠ Travel Warnings

**BRAZIL:** Exercise great caution anywhere in the country as the deaths related to military intervention or other forms of violence (particularly in Rio de Janeiro) has increased significantly.

**CAMEROON:** Presidential election voting will take place on the 7<sup>th</sup> of October. You should exercise a high degree of caution due to a possible rise in violence at this time.

**ECUADOR:** Avoid non-essential travel to Montañita due to violent attacks and sexual assaults against foreign women travellers. Avoid all travel to the province of Carchi (except the city of Tulcán), the province of Sucumbíos, the town of San Lorenzo, located in the north of the province of Esmeraldas due to the presence of drug traffickers and criminal organizations.

**EUROPE:** Ryanair (RYA.I) plans to cancel 150 flights on the 28<sup>th</sup> of September rather than the 190 previously announced due to a cabin crew strike.

**HONDURAS:** Do not travel to Gracias a Dios Department due to crime. A mumps epidemic has prompted a state of emergency in the country. There have been over 5,000 cases reported since January 2018.

**ICELAND:** There are adverse weather conditions across the north of Iceland and driving conditions are very difficult. There is also a strong alert on Mount Katla, a huge volcano that is likely to erupt shortly.

**JAMAICA:** A State of Emergency has been declared in sections of Jamaica's capital city, Kingston. Please stay vigilant and expect travel delays.

**JAPAN:** Super Typhoon Trami could move over Japan over the weekend. Expect travel disruptions.

**MACEDONIA:** A referendum will be held in the country on the 30<sup>th</sup> of September 2018. Stay vigilant, expect political rallies and demonstrations and avoid any large crowds and gatherings.

**MALAWI:** Stay vigilant in the country due to crime.

**MALDIVES:** Stay vigilant due to petty crime and the possibility of civil unrest in the country following the Presidential election.

**MALI:** Please avoid all travel to Mali (including the capital, Bamako), due to the threat of terrorism and banditry.

**MAURITANIA:** Due to the threat of terrorism, visitors are advised to avoid all non-essential travel to this country.

**NEW CALEDONIA:** An independence referendum will be held on November the 4<sup>th</sup>. Please avoid crowds and all public places during this time.

**NICARAGUA:** Reconsider travel to the country due to crime and civil unrest.

**NIGERIA:** The Independence Day celebration will be held on October the 1<sup>st</sup>. Be careful about all gatherings on this day outside Lagos. Transport services are expected to be affected on the 27<sup>th</sup> of September by a general strike launched by the members and affiliate unions of the Nigeria Labour Congress.

**PAKISTAN:** Monsoon rains have so far claimed 88 lives and injured 158 across the country.

**PHILIPPINES:** Dangers of terrorist insurgency are a constant threat anywhere in the country – especially ISIS lead groups and communist rebels operating in the most undeveloped areas.

**SOUTH AFRICA:** The Passenger Rail Agency of South Africa (Prasa) has indefinitely suspended train services in KwaZulu-Natal province, due to safety concerns.

**VIETNAM:** The holders of UK issued International Driver's Permits or UK domestic driving licences will be allowed to drive cars or ride motorbikes in Vietnam between September 2018 and March 2019.

**ZIMBABWE:** Exercise a high degree of caution in the country due to a high level of crime.

## FedEE News

**HR COUNSEL COURSE:** We are now open to enrolments to the new, more flexible, Advanced Diploma Course in Multijurisdictional Employment Law – leading to the designation “HR Counsel ®”. There is no fixed start date and completion can be achieved over any period from 6 to 18 months, according to busy work schedules. The coverage of the course has been expanded to ten core jurisdictions by the addition of China, Italy and UAE and conversion of the course into a purely distance learning format (but still with a personal tutor) has significantly cut costs. For further details, please consult our [latest prospectus](#) or contact us at [Academy@fedee.com](mailto:Academy@fedee.com).

**NO DEAL BREXIT (NDB):** Our survey of 25,400 HR professionals across the UK has now been completed and we have published our summary report. This reveals what proportion of HR professionals believe that a NDB is more likely than one based on a deal, the state of preparedness by UK companies for an NDB, the issues most of concern to HR teams, what effect a NDB is expected to have on employment levels and company profitability, which countries companies are choosing to relocate to and perceived employee attitudes to Brexit. If you took part in the survey you should already have received your copy of the report. Free copies of the Report are also available to FedEE Fellows, on request. If you are not already a registered Fellow please follow the joining procedure set out below.

**FELLOWS' ROUND TABLE:** The next Fellows' round table meeting will take place in London on the afternoon of Monday, November 12th. Once again, it will be held at [Friends' House](#) near Euston and there will be no charge for attendance. These meetings cover a wide range of chosen HR topics – but on the understanding that no notes are taken. Anything said does not go

out of the room. This is your last chance to gain FedEE Fellowship (F.FedEE) at no charge. From October 1<sup>st</sup> 2018 it will only be available at an annual charge – although existing Fellows will be able to retain their free Fellowship. Fellowship is open to all senior HR professionals in FedEE Member organisations for as long as the organisation remains a member. To apply, simply send an email to [membershipservices@fedee.com](mailto:membershipservices@fedee.com) requesting the addition of your name onto our Fellowship register. We shall then confirm your new status – and in Mid-October all Fellows will receive a Fellowship scroll.

**JEAPS:** The next update of FedEE's proprietary Job Evaluation and Pay System (JEAPS) is well advanced. Changes will be online by next week, although a few days beta testing might be necessary. The delay is because we are removing some of the smaller European countries and territories and replacing them with several countries outside Europe – in the first instance Australia, Brazil, China, Japan, India, Israel, UAE and USA – although others may be added in 2019.

**NEWSWIRE LINKS:** If you wish to explore newswire links please first log-in to the members' area of our website at <https://members.fedee.com/wp-login.php>. The main tables are all available in our knowledgebase.

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