



# Dernières nouvelles

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## ▲ **COMMENT: Seeking the higher ground\***

Most of us start out believing that the law is always right, that integrity and wisdom pervade the justice system and that official and law firm data sources are always accurate. Even when we realise otherwise, we simply take exceptions to prove the rule. Yet data is like an incoming tsunami and if you don't take shelter you are sure to get either very wet or drown.

We at FedEE work hard to encourage legal compliance. It is our mission to keep employers out of court. However, it is also increasingly difficult to filter all the misinformation that is being published by governments, the media and law firms, together with the task of pointing out overlooked case law and bad legal decisions.

We recently sought interpretations from different law firms about the legality of “garden leave” in Italy. Some contended that there was simply no such concept in the country, whilst others declared it was illegal. The conclusion we reached was that because of the system of electronic registration to the authorities when termination took place, any leave taken during a notice period would simply extend the notice period. This means that as “garden leave” would be taken literally as a form of “leave” by “concrete thinking” officials, it would therefore indefinitely extend departure. That is a very different answer.

The Employment Appeal Tribunal (EAT) in the UK sometimes comes up with bizarre rulings, such as a recent case about holiday rights for term-time workers that gave them almost the same time off as full-time workers. As we illustrated in a previous issue, another of their rulings has just been overturned by the Court of Appeal because no one on the bench had bothered to read the minimum wage regulations before pronouncing judgement. Sometimes a law firm simply does not know the law (see Clifford Chance below) or the error involves a law firm badly interpreting a judgement, as in the recent case reported by Herrington Carmichael. According to the lawyers (writing in Lexology), the EAT made a decision about a disabled worker being given a warning for repeated absence. However, the case was really about their dismissal and the EAT contention that the employee should have been offered a part-time contract in order to adjust to their situation (*Dr J Ali v. Drs Torrosian* – see below).

We no longer take as a dependable source any literature written by, or for, the European Commission as it is frequently so packed with errors – like the blanket description on the Commission's website of posted workers as a group who could continue practicing in another country with their qualifications achieved in their home country (that would be good news for lawyers and accountants, if it were only true). There is also the latest national report on non-discrimination written

by two prominent UK law professors for the European Commission who notify the reader that “race” is not a protected category in the UK, except Northern Ireland. Clearly they have not read the Equality Act 2010, its Code of Practice – or mountains of case law – let alone the EU Directive specifically about race equality protection (2000/43/EC).

We regularly also delay reporting a European Court of Justice case because the opinion given to the court by the Advocate General is so often clearly at variance with established precedents or legal principles. Also, in the UK the government’s employment advisory service ACAS currently advises that employers have no legal obligation to provide a reference; whilst, in fact, two accepted court precedents spell out that they do.

It is not only legal data that is so often wrong, but government statistics are often so badly massaged for political purposes that the statisticians leave the evidence of their distortion intact in associated figures (see Turkish story below). Some while ago we reported that the first true case of sectoral equal pay in the world had been achieved in the Irish wood-products sector. When questioned, however, the Irish Statistical Agency admitted they had got it all wrong. They were very annoyed – not with themselves, but with us for pointing out their failures.

There is also a great deal of free data about pay currently on the Internet. The pity is that little of it is accurate. Organisations like Total Jobs put together data from jobs that are advertised and derive pay data from this distorted sample of what people are being offered to fill a vacancy, rather than what people are actually paid in jobs, whilst most

others, such as Glass Door and PayScale, invite anyone on the Internet to submit their own pay data and derive their statistics from that. In one occupation we saw an average based on a sample of just two. Even seemingly respectable surveys from management consultants draw together data largely from companies that do not know what to pay. Hence their data reveals pay levels from companies that share one thing – ignorance of the true pay market.

In recent years the Internet has become crammed with legal data from numerous sources, especially law firms and law firm networks. So much so that we at FedEE have found it increasingly difficult to show the quality we work so hard to achieve. Most legal sources, however dressed up in glossy formats, are significantly out of date. Updating is usually done periodically – often every 1 or 2 years. By contrast we go online daily to make changes (even at weekends) and still find it is difficult to keep pace. Thus, we know that most employers are misled to think that either they can get good enough data free off the internet, or can trust certain data or advice because it comes from a law firm charging them big bucks for the privilege. Such misplaced trust is like running for cover to flimsy shelters or buildings that look robust, but just make drowning all the more dignified.

Back in the early 1990s our first US and Japanese members said largely the same thing. They needed us to check out the advice they were receiving from Europe. Today that need has only intensified. Our filtering system is more important than ever. So too is our constant concern about the bigger picture and developments that would have a major impact if they became established as a trend.

At the very least we can point out the still-distant tsunami and the nearest high ground – avoiding it altogether is quite a different matter.

## AFRICA AND MIDDLE EAST

**Ψ ARMENIA:** Pickpocketing accounts for over 65% of thefts in the country. But there is no criminal law specifically to punish it. This is at last being rectified and a new law should be presented to parliament before the end of the year.

**Ψ KENYA:** Although the Private Security Regulation Act was passed back in 2016, it required a regulatory authority to put it into effect and this could not be fully undertaken until the recent appointment of a CEO. There are over 500,000 private security personnel across the country employed by over 1,000 organisations and this is the first time that they have been subject to laws designed for their operation. The regulations cover registration and licencing, cooperation with the police, a code of practice, and rules on the use of security equipment.

**Ψ NIGERIA:** With almost half of Nigerians being Muslim, it is a politically sensitive issue whether the government should recognise Islamic feast days – especially in the north – and the Hijrah (Islamic) calendar. Of particular contention is the Islamic New Year Muharram, which this year falls on the 11th of September. In fact, employers should note that the whole Muslim month of Muharram is considered sacred.

φ **TURKEY:** The Turkish statistics agency TURKSTAT does not produce up-to-date pay data: perhaps just as well. Their latest data for 2014 indicates that gross monthly pay for

women is significantly below that for men at every educational level, but on an aggregate basis – surprise, surprise – it is virtually the same at 2,215 Lira (US\$339.4) a month for men and 2,188 Lira (US\$335.2) a month for women. This would, if it were true, make Turkey the most egalitarian country in the world. But all it actually reveals is a very crude massaging of the figures without covering the tracks to hide how much a farce the claimed facts really are.

φ **ZAMBIA:** The statutory minimum wage for shop and general workers rises by 50% this month from K1,132 (US\$94.85) to K1,698.60 (US\$142.33) a month. The last time it was changed was in 2012.

## THE AMERICAS

**Ψ CANADA:** Back on the 30<sup>th</sup> of March 2018, we reported a set of upcoming amendments to the Québec Act regarding Labour Standards. Bill 176 has come into effect and it provides – inter alia – employees entitlement to a 3-week paid vacation after 3 years, instead of five years, service. Furthermore, with effect from the 1<sup>st</sup> of January 2019, employees who suffer domestic or sexual violence are entitled to a 26-week leave, and employers are required to adopt internal policies that prevent sexual and psychological harassment.

Ω **CANADA:** The Court of Appeal in British Columbia has confirmed the award of 5 months' paid notice to a terminated 'Bid Estimator' in the construction sector, even though the individual had only been employed for 12 months. They did not accept, however, the award of a further 3 months' pay ordered by another court due to the appellant's "physical and mental condition".

Nevertheless, this illustrates what possible financial penalties might be applied, even for those terminated with fairly short periods of service.

**Ω CANADA:** An attempted class action on sex-based discrimination and sexual harassment at the workplace brought by two female police officers has been rejected by the Brampton Superior Court. The Court held that it had no authority to decide on the claim since, under the *Police Services Act*, it could only be brought to arbitration. Harking back to a long point of legal contention in Canada, the Court added that discrimination at the workplace was not a valid cause of action under common law. This is not strictly true – although most cases are heard under the Ontario Human Rights Code in the province, it was decided way back in *Bhadoria v. Seneca College* that someone could sue for discrimination as a common tort and the presiding Justice stated that she did "not regard the Code as in any way impeding the appropriate development of the common law in this important area". The present case now goes to the Ontario Court of Appeal.

**Ψ ECUADOR/PERU:** Over 600,000 Venezuelans have crossed into Ecuador so far this year, causing the government to declare a state of emergency in three provinces. Most of the migrants are on their way to Peru and Chile. All countries in the region are attempting to stem the flow now by requiring passports to cross their borders rather than identity cards.

**β USA:** The proposed merger of T Mobile and Sprint is estimated to result in a reduction of 28,000 employees in the new entity. Pressure is being put on by the CWA Union on the Federal Communications

Commission not to approve the deal, unless the combined company reshores of all call centre jobs promises to comply with labour laws and promotes a free choice of union representation amongst its employees. The companies currently contract out customer service jobs to Canada, Costa Rica, the Dominican Republic, Guatemala, Honduras, India, Mexico, and the Philippines.

**Ψ USA:** With effect from the end of October, private sector employers in Alaska may give hiring preferences to members of the national guard or veterans, provided that the individuals have an "honourable" service record.

**Ω USA:** Employers in Connecticut should think twice before refusing to hire anyone who fails a drugs test because they take marijuana under a medical prescription – even though such a practice is still banned under federal law. In a recent case concerning the hiring of an employee by a federal contractor, the Federal Court in Connecticut dismissed the defence of the contractor that the Federal Drug-Free Workplace Act (DFWA) banned them from hiring an employee that failed a pre-employment drug test because that law prohibits federal contractors from allowing employees to take illegal drugs. Instead, the court took as its applicable law the Connecticut Palliative Use of Marijuana Act (PUMA). However, while finding the employer guilty of discrimination, the court did not award legal fees or accept a claim for distress and punitive damages.

**ζ USA:** Companies concerned about the impact of marijuana use in their workplace and its health and safety implications are often prohibited from conducting medical

tests to discover its presence in an employee's blood system. It is, however, generally lawful for an employer to test the reaction times of employees to determine if an employee is fit to undertake many jobs. A free online way to do this is to visit the online reaction time test provided by the car park technology platform [JustPark](#).

**β USA:** The law firm Clifford Chance has been found by the US Department of Justice (DOJ) to have violated the US Immigration and Naturalisation Act. The company had been asked to evaluate documents and give advice concerning the recruitment and deployment of personnel to undertake work governed by the government's International Traffic in Arms Regulations. This was partly because limitations existed on who could be involved in such projects. In reality, people with dual nationality, lawful permanent residents, asylees, and refugees could qualify. However, Clifford Chance took the view that only US citizens should be hired, thus endorsing discrimination against work-authorized non-US citizens. The company has refused to admit guilt and thus responsibility for its actions. However, DOJ is now closely monitoring the firm for the next 2 years and requiring them to issue regular reports on their conduct. Clifford Chance is also required to undertake anti-discrimination training for its US staff and inform clients accurately about citizenship-based hiring restrictions.

**ψ USA:** The IRS has issued guidance concerning the application of Section 162 (m) of the Internal Revenue Code to publicly quoted companies. This relates to the revenue of top executives ("covered employees") in a business and how far it can be subject to deduction under corporate

taxation rules. Generally, packages are limited to \$1M unless the remuneration is paid under a "written binding contract" that was in effect on the 2<sup>nd</sup> of November 2017, provided that the contract has not been "materially modified" since that date (the grandfathering rule). How this applies to stock options and other payments is highly complex and reference should be made to the detailed sections of [Notice 218-68](#).

**ψ USA:** The Dignity in the Driver's Seat Bill SB1402 currently before the Californian state legislature will make retailers jointly responsible for the failure of any port trucking company to pay the correct wages to their staff, pay unlawful expenses, or hire anyone as a bogus independent contractor under state legislation. The law would establish a name and shame list of retailers that failed to meet their obligations and if they hired a port trucking company with a record of final judgements against them, retailers would become wholly liable for future labour infractions by the trucking company. California handles 40% of US container traffic and the bill potentially applies to over 25,000 port truck drivers. This measure is particularly likely to affect major outlets such as Costco, Home Depot, and Target.

**ψ USA:** Delaware's Discrimination in Employment Act was recently amended so as to tackle sexual harassment in the workplace. From the 1<sup>st</sup> of January 2019, companies with more than 50 employees must then provide interactive training to their staff (including supervisors) on the prevention of sexual harassment. In addition, if a company employs four or more workers they must circulate to all new employees a sexual harassment awareness information sheet drawn up by the Delaware Department

of Labour. From the 1<sup>st</sup> of July 2019 this must also be circulated to existing employees.

**Ψ USA:** At the request of Congress, the Government Accountability Office has been investigating the way that government departments and agencies handle misconduct. They found that although there were 10,249 suspensions, 7,411 “removals” (presumably redeployment, rather than dismissal), and 114 demotions in 2016, the Office of Personnel (OPM) Management has no clear definition for misconduct. Responding to the report the OPM said that defining “sleeping on the job” as misconduct would do nothing to “advance the efficiency of the service.” No comment.

## ASIA PACIFIC

**Ψ AUSTRALIA:** From the 1<sup>st</sup> of October 2018 those operating heavy goods vehicles must adopt new Chain of Responsibility laws. These put the onus on everyone in the supply chain to ensure that transport safety is maintained. To avoid heavy penalties under the new NHVR rules, companies must ensure that drivers are not fatigued, they do not exceed maximum driving hours and speed limits, they keep container weight records, and loads are properly secured.

**β CHINA:** A new phenomenon of delayed employment for college and university graduates is becoming far more common. In a recent survey carried out by China Youth Daily and Wenjuan.com it was found that in over 60% of cases this was simply due to lack of career planning, although this may, itself, be motivated by the fact that the traditional “safe” public sector jobs are no longer so attractive to the present generation

and the fact that parents are more tolerant of delayed employment.

**β CHINA:** A recent interview with Ning Jizhe, the head of China’s National Bureau of Statistics, reported in Bloomberg, claimed that the era of falsification of statistics is now over. However, he admitted that “individuals and companies tend to under-report”, adding that “they can pay less taxes and hide their wealth by doing so”. He admitted that in the past local officials were apt to do the reverse and over-report. It remains uncertain, however, if official statistics can now truly be relied upon – especially when official investment levels remain low, borrowing restrictions tighten, and as the Sino-US trade war hits economic growth.

**Ψ FIJI:** It has always been unclear what rights new recruits have under labour law. Now the Employment Minister, Jone Usamate, has revealed that no employment protection exists for the first 3 months of employment. Neither, according to the Minister, does employment law apply to casual or part-time work. For established full-time workers there will be a new right from the 1<sup>st</sup> of January 2019 to 5 days’ paternity and family care leave.

**Ω INDIA:** The Supreme Court has legalised consensual sexual relationships between adults of the same gender, effectively forcing the repeal of Section 377 of the Indian Penal Code 1860 (IPC). This will have a profound effect on the rights of many LGBT employees who may now claim freedom from discrimination and harassment without their claim being undermined by the penal code.

**β JAPAN:** With regular reports on the incidence of deaths from overwork, can we assume that the majority of Japanese workers have very long working hours. Back in January 2011 the most frequent range of working hours was 40–48 hours per week and this embraced 42% of all employees. Move ahead to June 2018 and the number working 40–48 hours a week has risen to 45% of all employees. The biggest change involves those working over 60 hours per week, which fell from 10.2% in 2011 to 7% this June. Part of this change was due to the higher participation rate of female workers, only 2.8% of whom work 60+ hours. At the other extreme are self-employed workers, 14.1% of whom still work 60+ hours a week.

φ **JAPAN:** Over the year to June 2018, real (inflation adjusted) wages increased by 2.8% compared to a 1.3% real annual increase recorded in May. Although regular pay – which accounts for the bulk of monthly wages – rose by 1.5%, special one-off payments helped lift the annual rate in June. These included a jump of 7.0% in summer bonuses and a 3.5% rise in overtime.

ζ **JAPAN/ISRAEL:** The government of Japan has been accused of padding its disability employment figures. Although the Japanese Labour Ministry is investigating all ministries, it is amongst those most likely to have falsified their data – going back to 1976. In Israel 40% of government institutions are failing to meet the 5% disability quota, including the Office of the President.

ζ **PAKISTAN:** The new government has set up a task force to place greater controls on the National Accountability Bureau (NAB). Although it is claimed that this move is to stop the misuse of powers to harass

business executives, the real cause is undoubtedly because of the insistence of the Bureau to file a corruption charge against Yousaf Raza Gillani, former Prime Minister of Pakistan. Gillani was forced out of office by a Supreme Court order in 2012, largely because he refused to agree to the prosecution of a former president for corruption. He had therefore been a long-standing target for the NAB. However, he was also a strong ally of the USA and this may have prompted the new government to rein in the Bureau, which is bad news for companies seeking to do business in the country without recourse to bribery.

φ **TAIWAN:** Over the year to June 2018, the average monthly regular wage increased by 2.5% to NT\$40,846 (US\$1,325). The overall average monthly wage (including bonuses and compensation) jumped 7.2% to NT\$47,969 (US\$1,556). Over the year to the first half of 2018 the average number of working hours decreased by 0.3 hours to 165 hours per month.

ψ **THAILAND:** A further crackdown is being made on workplaces to prevent the employment of illegal workers. In the past month 50,000 foreign workers were investigated and 1,162 arrested – together with 204 employers – who have all already been successfully prosecuted. Harboring an illegal foreign worker can result in imprisonment for up to 5 years.

φ **VIETNAM:** A minimum wage increase of 5.3% or VNĐ160,000–200,000 (US\$6.8–8.6) per month across all 4 levels in 2019 has been proposed by the National Wage Council. Workers in Region I (Hanoi) will see their wages rise to VNĐ4.18 million (US\$180) a month, whilst those in other regions will be

entitled to between US\$126 and US\$160 a month. The increase will be submitted to the central government for final approval.

## EUROPE:

ϕ **CYPRUS:** As of the 1<sup>st</sup> of January 2019, social insurance contributions will be increased for both the employer and employee by 0.5% – from 7.8% to 8.3%. As of the 1<sup>st</sup> of March 2019, both parties will also be obliged to contribute to the new National Health Insurance System. Contributions are set at 1.85% for employers and 1.7% for employees of the employee's total pay.

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

β **EUROPEAN UNION:** The average weekly working time of managers in the European Union has declined steadily and consistently over the last 10 years by a total of 4% from 45.3 hours in 2008 to 43.5 in 2017. This compares with a 1.3% change in the working hours of professionals over the same period – from 37.9 hours to 37.4 hours. Those managers working in countries with the longest average hours in 2008 were able to reduce them, but the greatest reduction was by 6.6% in Cyprus (48.2 hours to 45 hours). Outside the EU, Turkish managers worked particularly long hours, but since 2008 have reduced them by 14.5% from 58.8 hours to 50.3 hours. [source: Eurostat]

ψ **FRANCE:** The new Asylum and Immigration Law has made it far more difficult for refugees to settle in France. But if a foreign national qualifies for “subsidiary status” (because they would face a real risk of suffering serious harm if they return to the

country of origin), they could now qualify for a 4-year residence permit instead of the former 1-year maximum permit. France has additionally removed from its list of safe countries of origin those whose governments persecute LGBT people.

Δ **FRANCE:** Companies with employees travelling to work by bicycle should advise such staff that the police are now strictly enforcing cycling regulations. On the spot fines can be made if a bicycle is not in good working condition, does not have affixed appropriate lights and reflective stickers, and does not have a loud working bell or horn. Riders must also wear a reflective tabard at night or during poor visibility.

ψ **GERMANY:** Although over a million refugees have entered Germany since 2015, few still have good German language skills or can prove their qualifications. Thus, over 1.2 million job vacancies still exist across the country. Whilst a blue card system exists to make it easier for professionals and executives to work in Germany, current requirements for employers to seek a German worker before they hire one from outside the EEA is discouraging the necessary import of skills. For this reason, the Interior, Labour and Economy ministries have drawn up a joint proposal to eliminate foreign hiring restrictions altogether and to speed up qualification approval procedures. Foreign graduates would be able to come to Germany to look for work and even work in a position for which they are overqualified for a certain period.

Ω **IRISH REPUBLIC:** In virtually all private sector companies it is normal and essential for managers to contact colleagues outside normal hours to deal with urgent issues and

it would be totally impractical to keep a central record of such interactions. In France it became law in 2016 for larger companies to negotiate with employees about the “right to disconnect”. However, it is questionable whether anyone who holds true accountability could logically suspend that accountability simply because it was 5pm. So, in steps the Irish Labour Court. They have just confirmed the Workplace Relations Commission’s finding in favour of an employee who frequently replied to work-related emails late at night. The Court held that failure of the company to stop this practice and to keep appropriate records of their employee’s working hours amounted to breach of the law. Such decisions do little to stop employee burn-out and much to knock points of national GDP. (Kepak Convenience Foods Unlimited Company v. Grainne O’Hara)

**Ψ ITALY:** One of the worst cultural facets of employment policy-making on the European continent is the prevailing belief that the road to full employment is paved with rigid job protection laws. The latest example of this is the new Italian “Dignity Decree”, which seeks to undermine Renzi’s “Jobs Act” that for the last few years has given employers more freedom to dismiss workers during the first 3 years of employment and greater scope to offer short-term contracts. In return for accepting limitations on short-term contracts, employers will now be given an incentive to hire those under the age of 35 up to 2020 through relief on social security contributions (to an annual maximum of €3,000 per employee). The law will also heavily penalise companies that seek to relocate abroad after they receive any government funds.

**φ ITALY:** An IMF Working Paper (WP/18/61) on the Italian wage bargaining system has found that it has the highest level of pay determination rigidity in Europe and a number of inherent blocks on improvements to productivity. It was found that sectorally led wage developments explain about 45% of the manufacturing unit labour cost gap with Germany. A move towards decentralised wage bargaining, the author contends – with masses of sophisticated statistical support – would result in “a fall in the equilibrium unemployment rate from 10% to 6.5%, with a corresponding 3.5 percentage point increase in the steady-state employment.

**Ψ LUXEMBOURG:** As part of its implementation of the GDPR, the government has decided to reform employee monitoring rules. It is no longer just a matter of gaining prior permission from the National Commission for Data Protection (NCDP) in order to install CCTV cameras and other employee monitoring devices. A company must now first inform their employees and works council (employee delegation), who have a right to object to the NCDP. This necessitates a 45-day waiting period before installation.

**Ψ POLAND:** The Personal Data Protection Act (PDPA), which implements the GDPR, came into effect in May 2018 and came along with some associated changes to the Labour Code. Employers are now able to collect personal data about their employees and prospective employees based on consent, as opposed to being allowed to process only data specified by the Labour Code in its exhaustive list. The Labour Code was further amended with respect to video, email monitoring, and other types of

workplace surveillance, and now specifies that only non-video surveillance may be used to monitor employee performance and working hours. The ASA Act, which amends Polish sectoral laws (such as finance) in line with GDPR, is expected to be implemented before the end of 2018.

**Ψ ROMANIA:** A new Law on the Promotion of Employment and Unemployment Insurance sets a 6-month deadline for streamlining the National Employment Agency (ANOFM). This will involve delayering its organisation, centralising many operations, and making it more pro-active.

**ζ RUSSIAN FEDERATION:** The new round of US-led sanctions comes into effect this month. Previous sanctions have done much to depress its economy. The new ones will deprive the country's all-important energy sector of much needed finance and technology. It also places on a group of named oligarchs restrictions that will seriously limit their opportunities to undertake legitimate business transactions outside Russia, or send their often ill-gotten gains to banks in the West. The Russian government's retaliation by cutting food imports has only worsened the situation at home by allowing Russian companies to raise food prices. What's more, per capita GDP is falling and there are still officially 13% (probably far more) people below the poverty line. Russia's claim to 3–4% inflation should not be believed, as broad money stock is rising at an annual rate of 8.7%.

**ζ SERBIA:** Serbia is seeking to join the European Union. But is its resurgent economy since accession talks began all that it appears? One of the biggest problems facing the country is rural stagnation.

According to the Serbian Academy of Science, the population has significantly declined in 86% of the country's 4,600 villages as people move to the cities and abroad in search of work. Smaller family sizes are also contributing to this trend. The average age of the population is rising fast and the population is now projected to decline by a further 33% by 2050. However, on the plus side, its high-tech service sector is developing fast and business confidence is growing. Inward foreign investment has not climbed back yet to pre-2007 levels, but foreign direct investment nevertheless amounted last year to the suspiciously high level of 99.8% of GDP. That compares to a global average of 40.4%. This begs the question what has the investment been directed towards – to productive projects or simply to gain the lucrative investment incentives that the government offers?

**Ψ SPAIN:** Several “urgent” data protection measures were introduced in Spain ahead of full implementation of the GDPR. The Royal Decree serves as an intermediate stage, seeking to resolve certain inconsistencies between the current legislation on data protection and the GDPR, until the latter is fully applied - at which point the majority of these measures will be retained. For instance, the penalties provided for in the GDPR have been adopted, whilst the Spanish Supervisory Authority (AEPD) is appointed as the competent supervisory authority. On its part, the AEPD has published a set of guidelines on the GDPR-compliant use of video surveillance.

**β UNITED KINGDOM:** In spite of a weak pound, UK manufacturing exports have fallen to a 25-month low. Faced with protectionism in the USA and the possibility of tariffs with a

“No Deal Brexit”, manufacturers are also diverting investments to elsewhere in Europe. This will have serious longer-term consequences for the UK economy as UK-based companies struggle to find markets outside the EU. Currently the UK is the world’s 5<sup>th</sup> biggest economy measured in GDP, but 9<sup>th</sup> if qualified by GDP “according to purchasing power parity”, and 22<sup>nd</sup> place on a GDP per capita basis. Over the next 5 years we forecast it will fall to 12<sup>th</sup> in crude GDP terms and 27<sup>th</sup> on a GDP per capita basis, as unemployment levels soar. It will be overtaken by India, France, Brazil, Italy, Canada, South Korea, and Australia. Only Russia will fall back, like the UK, from its present position (unless its new found pact with China truly takes off).

**Ψ UNITED KINGDOM:** The Parental Bereavement Leave and Pay Act received Royal Assent on September the 13<sup>th</sup> 2018. The Act entitles employees who have lost a child under the age of 18 to two weeks leave. Female employees who deliver stillborn children will also have the right to leave. Subject to eligibility criteria and upper limits, both leave periods will be covered by an allowance paid by the state. The Act will come into force in 2020.

**β UNITED KINGDOM:** Reports of a surge in the value of Sterling because of an upbeat comment by the EU’s chief Brexit Michel Barnier are entirely unfounded on two counts. Firstly, the improvement in Sterling on Monday, September 10<sup>th</sup> was fairly small and almost entirely due to a better than expected GDP figure for July. Economic growth continues to be shaky – especially in manufacturing, where it actually fell in July because of a sharp cut in pharmaceutical production. Secondly a little optimism on the

EU side will always tend to lead to an over-reaction in markets and the press because there has been such little good news in recent weeks. The EU’s negotiating team has not secured a mandate to produce any new solution by mid-November (as reported) and, so far, there is no realistic deal on the table. The EU is keen to offer Theresa May a lifeline, but when nothing exists to base a deal upon (other than the defunct Chequer’s proposal) that wish still runs hard up against a UK ruling conservative party in internal disarray. It will take a lot more than a stray remark from the EU to fix the mess that the UK is currently in.

**φ GLOBAL:** So far, the OECD has collected gender pay gap updates for 2017 in respect to only six countries. These show a very mixed picture. The country with the biggest average gap is South Korea (34.6%), a slight improvement on 2016 (36.7%) and the year 2000 (41.7%). Generally, the gap is largely unchanged, with the USA (18.2%) fractionally down since 2016 (18.1%). New Zealand (7.2%) is stuck at levels from 2000 and the Slovak Republic (15.0%) actually widened the gap since 2016 (13.9%).

**β GLOBAL:** Are we heading for another recession? The answer is verging on the probable. Although business confidence remains high and has remained fairly stable since the tail end of the recession in 2010, consumer confidence peaked this March and then fell for 4 straight months in a row. The OECD’s longer leading indicator is the normal measure that economists turn to in order to predict the next 18–24 months, and this too has been on its way down since last November (especially in the Eurozone). This could be just another small cyclical dip that will come to nothing, but there are several

things that could trigger a shock to the system as it did 10 years ago, when we saw the world's largest ever recession start in September due to the Lehman Brothers demise. US protectionism, Brexit, sanctions against Russia and Turkey, and overstretched public borrowing by governments could be an explosive mix that could spark into a panic by any stray bank failure. But so could serious military conflict. While the world has progressively cut average military spending from 6% of GDP in 1960 to 2.2% in 2017, military spending in the Arab world has risen dramatically – so too has armament spending in Russia which, according to the CIA, rose 44% from 2012 to 2016 alone.

φ **GLOBAL:** The incidence of poverty in the world need not trouble international companies, but it may trouble the consciences of individual HR professionals. If we just take the global club of most advanced economies – the OECD – the incidence of poverty (being in a household with less than half of median household income) varies widely. The five countries with the highest incidence of poverty last year were South Africa, Costa Rica, Brazil, the United States, and Israel. The most advanced countries were Denmark, Finland, the Czech Republic, Iceland, and France. South Korea is the most curious country, having one of the very lowest levels of child poverty, but the highest incidence of poverty for those aged 66+.

φ **GLOBAL:** A recent report from the major Consultancy Korn Ferry has highlighted a

huge potential surge in labour costs over the next 12 years because of the global shortage of high-level specialist skills. There are strong reasons to doubt this scenario on a number of grounds. A recent study we have undertaken, for instance, indicates that the overall relative earnings levels between different industry sectors have remained very stable over the last 10 years. IT has widened the gap with other sectors, but not by a substantial amount. It can also be seen most clearly from India that a generation gap has already emerged between those with first-wave digital skills and those now with new-wave skills. Moreover, as IT develops, AI-based automated techniques will rapidly replace the need for IT personnel. Add to this the considerable evidence to suggest that pay is not usually the reason people leave their jobs or take up another. Most fundamentally, however, is the little-known trend that has persisted since the 1980s whereby overall productivity levels have grown consistently at a much faster rate than pay levels throughout the world. Although HR has its sights on hiring the best talent, they are increasingly able to pay more for it because of the productivity premium that allows the production of more goods and services at a declining per unit labour cost.

### 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



# Dernières nouvelles

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

## 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.

## δ Travel Warnings

**CARIBBEAN REGION:** Hurricane Isaac is forecast to reach the Caribbean region on or around Thursday the 13<sup>th</sup> of September. Expect flight disruptions.

**GERMANY:** Expect flights cancellation in and out of Germany due to a strike by Ryanair pilots and cabin crew over a pay and working conditions dispute.

**JAPAN:** A magnitude 6.7 earthquake occurred in Hokkaido, northern Japan on the 6<sup>th</sup> of September 2018 has left at least 16 people feared dead.

**KUWAIT:** Aviation authorities has suspended the license of Wataniya Airways for 3 months, effective as of September the 6<sup>th</sup>.

**LIBYA:** The British Embassy in the capital city Tripoli remains temporarily closed and there is no consular presence in Libya.

**MEXICO:** Aeromexico pilots will launch industrial action on the 1<sup>st</sup> of October over the airline's decision to suspend some employee benefits after a crash in northern Mexico in late July.

**NICARAGUA:** Visitors are advised to reconsider travel to the country due to crime, civil unrest, limited healthcare availability, and arbitrary enforcement of laws.

**PHILIPPINES:** A “super typhoon” is expected to hit northern Philippines on Friday (September 14th) before veering towards China on Saturday or Sunday. Expect strong winds and heavy rains.

**SOUTH AFRICA:** Stay vigilant as there have been several serious bomb threats made against shopping malls and other public places in recent months. Please also exercise increased caution in the country due to crime, civil unrest, and drought.

**THAILAND:** Avoid all travel to and through Narathiwat, Pattani, Songkhla (including the city of Hat Yai), Yala due to criminally and politically motivated violent incidents.

**UK:** Northern Rail services will be affected between 12.01am and 11.59pm on Saturday the 15<sup>th</sup> of September, Saturday the 22<sup>th</sup> of September and Saturday the 29<sup>th</sup> of September, due to industrial action by Northern Rail staff.

**USA:** Hurricane Florence has been downgraded to Category 2, but still considered as dangerous. It is expected to bring severe weather conditions to the Carolinas, with potential effects in coastal Georgia and Virginia.

**ZIMBABWE:** A cholera outbreak has been declared in Zimbabwe's capital Harare after 20 people died from the disease. Cholera is an acute diarrhoeal disease that can kill within hours if left untreated.

## FedEE News

**FEDEE WEBSITE:** Our new look public pages and modified pages in our members' area have now gone live at <https://www.fedee.com>. The new entry portal for our members' area is: <https://members.fedee.com/wp-login.php>.

**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).

**THE INSTITUTE FOR EMPLOYMENT STANDARDS (I-ESta):** The institute has been launched and may eventually be spun off by FedEE as a professional body in its own right. For further details please visit our [announcement page](#).

**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 should be online by the end of the month, 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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