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## Guidance: Avoiding HR Pitfalls

Europe and North America have a thriving tradition of employment litigation, contributing to total earnings of over \$60bn for the top 100 law firms. For example, a typical large company operating in countries such as Belgium, the Netherlands or Poland can expect to face up to 28 employment cases in any one year.”

Many of these cases could be avoided if HR professionals were better prepared. By taking time to familiarise themselves with the legal frameworks of the relevant countries, they could be in a position to identify problems and deal with them before any legal issues arise.

The [FedEE Law Programme](#) is an ideal starting point for getting an overview of employment law in the different European jurisdictions. More detailed information is also available in our members’ resource centre and HR knowledgebase.

There are a number of common pitfalls that are faced time and time again by HR professionals. Anyone who feels they could get by with knowledge of their local labour laws and an application of common sense would be well-advised to consider the following points:

### Every country is different

Europe is made up of over 50 different countries and territories, each with its own legal framework and employment laws. Those that are part of the European Union are also subject to EU legislation, which imposes a set of common core requirements on national laws. Operating a single HR policy across several countries without taking national differences into account could expose a company to serious compliance problems. The practice of ‘gold plating’ HR policies for this purpose can be an expensive way of getting things wrong.

- Don’t assume you can hire and fire. Management methods from North America can rarely be applied without modification in Europe. This is especially the case with employee dismissal because employment protection laws are generally much tougher in Europe than in the USA and Canada.
- Whose tax laws are you breaking? Under double-taxation treaties, employees working for six months or more in another country are subject to the taxation laws of the country where they are located rather than their home country. A common mistake made by companies is to employ someone located and working in one country whilst administering them on the payroll (for tax and social security) in another country.



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- Are you missing out on local knowledge? Companies often keep expatriate staff in key positions when it would be more efficient and cost-effective to hire local staff.
  - Have you got that in writing? Although there is no requirement for a written employment contract in some EU countries, this does not mean that hiring can be on an oral basis. There is a requirement in all EU countries to provide a 'statement of written particulars' to new recruits about their job, usually within a month of their starting work.

### Country-specific examples

#### **France**

- An employment contract must always be written in French (the only valid language).
- It is not lawful to hire out spare labour to other employers (except as part of a government-approved scheme or formal employers' pool).
- The election of employee delegates and the establishment of a works council does not have to await a request from staff once the relevant employee thresholds have been reached.
- Individual redundancy is a complex matter, which may only be carried out if strict procedures are followed.

#### **Germany**

- An employee who was formerly employed by a company on a permanent contract may not subsequently be rehired on a fixed-term contract.
- If a company's German operation has five or more employees then the employees have a right to establish a works council. Works council members are entitled to take time off from their normal work duties and agreement must be achieved with the works council before many key management decisions are made.
- If a company is registered in Germany with 500 or more employees, it must have a two-tier board. One-third of directors of the upper 'supervisory' tier must be elected by the German workforce.



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## Italy

- Annual holiday entitlement must be carefully monitored in Italy, because the right to a paid vacation is written into the constitution. Employees have the right to carry forward any unused holiday perpetually from year to year.
- The minimum period of notice for executives in industrial companies is seven months and in retailing, distribution and services it is six months. If an executive falls ill whilst serving their notice in the latter sector, they may delay their dismissal for up to a year.

## Netherlands

- It is not possible to avoid Dutch job protection laws by employing staff on a succession of short-term employment contracts. If such a practice is undertaken, the fourth contract will be automatically for an indefinite duration.
- A company's works council must be invited to make recommendations on the appointment or dismissal of a managing director based in the Netherlands.
- An employee may be entitled to up to 104 weeks' sick pay. If the necessary steps are not taken to reintegrate those returning from extended sick leave, a further period of sick pay entitlement may come into effect.
- Companies employing 100+ people are required to produce an annual working conditions report and plan.

## United Kingdom

- Companies often make the mistake of assuming that employment rights do not apply until an individual has been in post for twelve months.
- There are statutory procedures that must be followed in situations involving dismissal or grievance.
- The first twelve weeks of official strike activity is a protected period for striking employees and it is unlawful to dismiss them for carrying out industrial action or lock them out from their place of work during this period.
- Deductions may not be made from an employee's salary without a clear contractual right to do so, or without obtaining the employee's prior consent.