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

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HR WORLD TODAY

It hardly seems possible to imagine it now, but for 30 years before World War I passports in Europe were not required. It was fine just to jump onto a train in Madrid and travel to Moscow without any significant formalities, or form of identification. This changed during the war, but it still took another 66 years for standardised passports to be introduced. Since then, and especially since 9/11 and COVID-19, international travel has transformed into a nightmare of passport checks, visas, virus test certificates, authorization to travel certificates, face mask checks, social distancing rules, Schengen/non Schengen queues, and security checks repeated at every international change of a plane.

Such concerns have also been compounded for employers by the spectre of immigration requirements, and regulations relating to cross-border and mobile workers. The European Union, that was supposed to make cross border formalities easier, has just introduced more layers of bureaucracy.

But, in spite of these difficulties, many countries in Europe and even beyond its bounds - such as Georgia - still yearn to be part of the EU or, like Egypt, seek to introduce rules that mimic the EU's GDPR. North America, however, is a very different World, which continues to be dominated by its own perennial concerns - such as the

FLSA, salary history reforms, 1-9 compliance and the latest multimillion dollar class action.

One thing that is common to all countries around the World is the ineptitude of governments concerning legal deadlines - as in Poland, and the appointment of unqualified government Ministers making decisions on doubtful advice, as in the UK. Courts too are continuing to issue bad or confusing decisions - whether it be over the Holiday Act in New Zealand, emergency leave in Italy or the ECJ's insistence that a TUPE transfer which splits a business in two means an employee must also transfer to separate part-time jobs.

A subject that we could always fill the newswire with is workplace malfeasance. Whether it be by errant employers, as in North Macedonia, or perfidious trade union leaders - as in the latest US teamsters case. We could equally fill our pages with government proposals that defy reality - as we show in the latest US EEOC reform proposals - or instances where state authorities single out a company arbitrarily to track and search for fault. Such "fishing trips" and harassment, as we illustrate in the example of Spartoo, is probably the only way that a data protection authority is going to find - in sufficient cases to justify its own existence - enough evidence of any kind on which to base a prosecution.

As with previous issues, pregnancy and maternity protection still fills the legislative horizon - whether it be in Ghana, Nigeria, Germany or Poland. Tax, pay and wage subsidies also still loom large, with signs that not only will the health crisis not disappear any time soon, but that falling output may be associated with rising reward levels. This can only (in turn) mean one thing - runaway price inflation starting later in the year. Economists will always seek to persuade us that high unemployment does not go hand in hand with price inflation, but of course it can (as happened with a vengeance in the 1970s). This is now an especial danger because supply chains are so badly damaged and many retailers are so evidently stretching margins in the face of reduced demand and growing uncertainty.

AFRICA AND MIDDLE EAST

ANGOLA: A radical overhaul is taking place to Angola's income tax system. On the positive side, this includes a rise in the monthly tax-free allowance from Kz35,001 (US\$60) to Kz70,001 (US\$121) - the manufacturing minimum wage being Kz26,817 (US\$46.47). However, the scope for income tax has been substantially widened to take in such items as severance payments and housing allowances. Tax rates too have been changed from a minimum rate of 7% to a new rate of 10%, and a maximum rate of 17% to a new rate of 25%. What's more, services acquired from non-residents are now subject to a withholding tax of 15%.

EGYPT: The government has finally issued its Personal Data Protection Law, number 151/2020. This is the country's first measure of its kind and it will apply to all those who collect and process personal data. Although

the effective date is set to be 14th October 2020, it will have no effect until executive regulations are published within the following 6 months. Moreover, once these are published, there will be a 12-month transition period until companies must fully comply. That means it could well be April 2022 before employers must fall in line with the new requirements.

GEORGIA: This Caucasian (former USSR) state has long aspired to join the European Union. In order to do this, however, it will need to bring its labour laws in line with EU Directives. It lacks, however, the apprehension to do this and therefore has often become confused about what measures it needs to take. In its latest reforms, trade-offs have been made in the face of strong pressures from the Georgian Business Association. This primarily concerns the standard 40-hour week and the treatment of overtime, which rules are, in any case, not generally observed. As things stand, a new law is about to be adopted that will, at least formally, change the structure of employment law, and especially working time, with a ban on "back-to-back shifts" and the introduction of rights to a 24-hour break each week and a 48-hour break each fortnight. This law will further strengthen the role of the industrial inspectorate and allowing it to have an independent Directorate. Inspectors will have powers to enter any workplace without notice and issue modest on-the-spot fines or suspend dangerous operations. On the labour relations front, there will also be reforms, with, for instance, the minimum number of workers required to form a trades union reduced from 50 to 25.

GHANA: One of the two leading parties contending the forthcoming general election

in December 2020 is the National Democratic Congress (NDC). A key element of the NDC manifesto is an increase of the minimum maternity leave from 12 weeks to 4 months, plus any period of annual leave a woman is entitled to after her period of confinement.

ISRAEL: The High Court of Justice has given the Health Ministry until the end of September to come up with an alternative to using the sick pay scheme to support workers required to go into quarantine. According to the court, quarantine is not sickness and the decision to place someone on it is not the employers. Therefore, an employer should not be responsible for paying for the necessary 10-day enforced isolation period. If the Health Ministry does not come up with a solution, employees will only have their own annual leave days to fall back on to cover their quarantine period.

KUWAIT: With effect from 1st January 2021, work permits will no longer be issued for those aged 60 years and older, unless they possess a University degree. This new rule is part of the government's plan to force some 360,000 expats to leave the country in the short term, out of which, 150,000 will be expats aged 60+.

NIGERIA: State employees in Oyo state will shortly have their maternity leave extended from 4 to 6 months. It is also planned to introduce paternity leave into the terms and conditions of the state Civil Service.

SOUTH AFRICA: The Ministry of Employment and Labour has published for comment a [Draft](#) Code of Good Practice on the prevention and elimination of Violence and Harassment in the World of Work. This is principally intended to create a new basis

for interpreting the Employment Equality Act 1998. It sets out to define the main types of violence in the workplace from traditional forms (i.e. intimidation and bullying) to newer forms arising from the internet. It guides employers on how to establish a safer workplace, address workplace culture, guard against third-party threats and introduce proactive strategies. Written responses should be submitted to the Ministry by 20th October 2020.

TURKEY: Articles 6 and 7 of the Occupational Health and Safety Law were due to come into force on 1st July 2020. This established the obligation for workplaces employing less than 50 employees to hire the services of an external occupational physician and occupational safety specialist. However, after the legal deadline had passed, the government suspended the law one again until 31st December 2023.

TURKEY-IRAN-EAST MEDITERRANEAN: Companies operating in the Middle East may wish to keep their thumb over the withdraw button. This is because a rapid transformation is taking place, partly based on economic instability arising from the pandemic and the depressed oil price, but also through new alliances that could herald an unpredictable rebalancing of power in the region. China has long supported the Syrian Assad dictatorship and is now about to sign an oil for armaments agreement with Iran that would give China territory in the Gulf and Iran a back door to escape US sanctions. The US has stopped arms supplies to Turkey, which also increasingly feels threatened from every direction in the region and has started to give leaders of the terrorist organisation Hamas Turkish passports so that they may travel internationally. Meanwhile, Israel has

achieved the previously unthinkable and established diplomatic relations with UAE – the first Gulf state to do so. Of perhaps even greater moment, is the fact that the US is arming non-NATO Cyprus, and France has sent warships to Cyprus waters to protect its untapped offshore oil and gas reserves. At the heart of this latent turmoil is Lebanon, with no government, a failed currency, and a population still reeling from the recent huge explosion in Beirut.

UAE: Visitors who came to UAE legally with entry permits that expired before 1st March 2020 now have until 17th November 2020 to leave the country without having to pay any penalty.

AMERICAS

BARBADOS: All visitors to Barbados must complete an online Immigration and Customs [Form](#) 72 hours prior to the arrival in the Island. Receipts confirming successful submission must be saved, either in digital or paper form, and presented to Immigration and Customs upon arrival.

BELIZE The draft Labour Amendment Act currently before the Senate would allow employers to reduce employee's salaries as a consequence of emergencies (such as the current pandemic) and also introduce unpaid leave of absence. Perhaps most controversial of all, it would allow employers to exempt workers from night rest and thus require them to work extended shifts if circumstances necessitate it. This amendment has raised strong protests, particularly from dockworkers - who, last month, protested violently against them. What opponents, however, have overlooked is the fact that, in all cases, a change may only take place on the basis of an agreement

with the workers concerned. Thus, it remains controversial solely in the context of non-unionised workers where employers could put pressure on individuals to give their consent.

BERMUDA: All travelers must complete the Travel Authorisation registration process [online](#) within 48 hours before their travel.

CANADA: The United States-Mexico-Canada Agreement (USMCA) that has just come into force places an obligation on each party to prohibit the importation of goods that are manufactured by the use of forced, compulsory or child labour. This is akin to the "Modern Slavery" legislation that is in place within countries such as Australia and the UK. The US will not need to take action because, since 2016, it has had its own enforcement regime - although only 13 withhold-release orders have been applied on goods entering the country in the last five years. Now, it will be largely up to HR Directors to bring this issue to company boards and ensure that effective investigations are made down supply chains.

CANADA: Alberta's [Workplace Bill, No 32](#) has now received royal assent. This amends Alberta's Labour Relations Code. The principal changes relate to:

- 1) temporary layoffs, which may be up to 90 days (180 days in the case of COVID-19);
- 2) a new way to calculate average daily wages by excluding vacation and general holiday pay;
- 3) an easier way to correct payroll errors; and
- 4) a much shorter period of notice required to make collective redundancies of 50+ workers.

The Employment Standards Code is also being modified, *inter alia*, to allow employers and unions to vary working time arrangements - such as hours of work and rest days. Collective agreements may be renewed before their expiration date and unions will need clearance from the Labour Relations Board before they can secondary picket another organisation's premises.

CANADA: Companies with employees on a deemed Infectious Disease Emergency Leave (IDEL) because they were involuntarily laid off work in **Ontario** now have until 4th September 2020 to bring them back. If they do not, then the company will be vulnerable to potential Employment Standards Act claims. Of course, if individual contracts allow, a company may send an employee on a conventional temporary lay-off, which can last up to 13 weeks (35 weeks with benefits). But for many companies the absence of the necessary contractual clause may leave them no option but to terminate. Of course, those on voluntary IDEL leave because they, for instance, needed to look after young children until schools or nurseries resumed may continue for the time being (O.Reg 228/20). It is also always possible that the Province may renew its state of emergency.

CANADA: Royal assent was given on 14th August 2020 to changes regarding the **British Columbia** Workers Compensation Act. This measure covers 34 provisions - including the fast-tracking of claims for workers contracting serious viruses; an extended period to allow slow onset mental disorders; enhancing WorkSafeBC's ability to investigate workplace incidents; giving the WC Appeal Tribunal the right to hear cases relating to the Charter of Rights and Freedoms or the Human Rights Code; and

increasing insurable earnings from \$87,100 to \$100,000.

CANADA: When an employer seeks to investigate accusations of potential employee misconduct, they can easily get it wrong. In a recent [case](#), the Court of Queen's Bench for **Saskatchewan** listed a number of the most common errors. These included:

- 1) racing to a conclusion before gathering sufficient facts from all parties;
- 2) not being open or honest with the accused employee and failing to give them details of allegations;
- 3) not giving the accused an opportunity to explain or respond - and not taking what they have to say seriously;
- 4) failing to put key questions and facts to witnesses; and
- 5) failing to call on other sources of evidence, such as CCTV or written records.

The court underlined that such investigations must constitute a fair process and pointed out that if present from the outset, failures can easily compound to produce an unjustified outcome.

FEDEE NOTE: The incidence of such accusations appears to be growing and employers should not automatically suspend someone on *prima facie* evidence (even where legally allowed) unless serious fraud is suspected. Often, those making the biggest waves about a particular wrongdoing and wishing to pinpoint an easy scapegoat are themselves the most culpable.

CHILE: Order Number 2086 of 6th July 2020 has led to much confusion amongst employers concerning what scope it leaves for flexitime. The Labour Directorate has made clear, however, that the obligation to pay a fixed 50% premium for any overtime is very rigid. There is no scope to compensate through time off in lieu on a week-by-week basis and each time an employee works over their daily basic hours they are entitled to payment at the premium rate.

COSTA RICA: It is a curious fact that Costa Rica is the only country in the world where pay may not be automatically suspended when an employee goes on strike. Only if the strike is declared unlawful may pay be suspended.

COSTA RICA: All visitors must complete the Health Pass [form](#) and obtain a QR code to show to airport authorities upon arrival in Costa Rica. If a visa is required to enter the country, then it should be noted that these will not be issued until after 18th September 2020.

ECUADOR: Although it has recently been reported by at least one prominent law firm that dismissal of a pregnant worker in Ecuador is possible under certain conditions and the supervision of a labour judge, this is formally not the case - at least for those whose pregnancy has been confirmed. The reason for this is that since 2015, the law has been extended through the "irremovability principle" making all dismissals ineffective if they involve union officials, pregnant women who have notified their employer of their pregnancy, those during a period of fifteen months following childbirth and those who are breastfeeding.

MEXICO: The National Council for the Evaluation of Social Development Policy (Coneval) has estimated that in June 2020, the proportion of the working population in Mexico who are paid below the minimum level of a food basket sufficient to feed them and their families was 48.1%. This may appear shocking, but it was actually an improvement on May when it was 54.9%. Even so, the number of people in Mexico who have no access to public or private health services worsened in June by 3 million.

PANAMA: A 50 Balboa (US\$50) bonus is being paid to workers with suspended contracts in the Provinces where quarantine has been imposed – Panama, Panama Oeste, and Chiriquí. The payment will be issued to eCards distributed to the adult population by the Ministry of Labor and Labor Development (Mitradel). To determine those qualifying for the bonus, it is necessary for employers to go [online](#) and use their RUC numbers.

USA: The **Colorado** Overtime and Minimum Pay Standards Order ([COMPS](#)) #36 is now fully effective and covers almost all private sector employers. The most important change is the setting of a new salary threshold for exemption from an overtime pay obligation. This is set independently of the threshold established federally under the Fair Labour Standards Act. However, although at \$35,568.00 pa this is currently in line with the federal rate, the important points to note are that this threshold stands alone as the determining criterion and the employee does not have to be paid on a salary basis, or have executive, administrative, or professional job duties. In future years, the state's rate could also easily diverge from the federal rate.

Moreover, the Order has a broad definition about what it classifies as work and includes a range of unique stipulations, including the duration of meal and rest periods, ways to calculate overtime, and the provision of uniforms/workwear.

USA: Back in June, we reported the case of the former UAW President, Gary Jones, who was found guilty by the US District Court in Michigan of conspiracy to embezzle union funds and tax fraud over a period of 9 years. Now, the US District Court for the [Southern District of New York](#) has sentenced John Ulrich, a former Teamsters Local Vice President and Health Plan Trustee, to 18 months' imprisonment, 2 years' "supervised release", fines, and restitution for soliciting bribes in order to influence the operation of an employee benefit plan. The investigating team from the [OIG](#) looks at numerous cases of corrupt practices across the USA and many of these involve trade unions.

USA: The 1st of September is the start of a salary history ban in the city of **Philadelphia**. From that day on, employers may not ask job candidates about their current or past pay, or, if their salary history is known, rely on it to determine future pay levels.

USA: **Maryland's** salary history ban will take effect on 1st October 2020. However, in addition to the revision of the Equal Pay for Equal Value [law](#), there will also be a requirement for employers to provide job candidates with an indicative salary range for the position they have applied for. Furthermore, there is an important exception to the ban, inasmuch that once a job and salary offer has been made, an employer will be able to call on information voluntarily provided by the selected candidate to increase the salary level compared to the

original offer. Although employers should certainly comply with these requirements, they may wish to note that penalties for an infringement will amount to just \$300 for each applicant, and up to US\$600 for each subsequent violation.

USA: Many employers are opting to drop pre-employment screening for drug use - just at the time when usage is growing. In **Arizona**, for instance, loose prescribing by doctors has led to 30% increase in marijuana dispensary sales, whilst in **Colorado**, where recreational use of this dangerous drug is allowed, sales grew by 29% between April and May 2020 alone.

USA: The Equal Employment Opportunity Commission (EEOC) has an obligation to seek an informal and voluntary resolution of discriminatory allegations before resorting to court action. However, the framework for such mediation and conciliation has always been flimsy and uncertain. The EEOC is therefore proposing to change and strengthen procedures, and the starting point for this will be giving employers more information about the accusations made about them.

FEDEE NOTE: Whatever steps the EEOC takes, all parties to a dispute know that it only has the funds to take a small proportion of cases to court each year and that, without their financial support, many cases will be withdrawn for lack of funds. There is therefore little the EEOC can do to deal with an employer that simply walks away and takes the chance that they can ignore a threatened prosecution, or settle before a hearing, if it should ever be in prospect.

USA: A \$11.6M class-action age discrimination claim against

PricewaterhouseCoopers LLP has been approved by a federal court in **California**, even though the court believed the plaintiffs stood to lose on appeal. Under the approved agreement, the accounting and auditing firm has agreed to reform its hiring and policies, and even advertise directly for older accountancy candidates. It should be noted that out of the total settlement attorney fees constituted \$4.95M. [[Rabin v. PricewaterhouseCoopers LLP](#), N.D. Cal., No. 4:16-cv-02276, 8/19/20].

USA: With effect from 1st September 2020, the minimum hourly wage in **Connecticut** will be increased to \$12.00. It will then further increase incrementally by \$1.00 per hour every 11 months, until it reaches \$15 per hour by June 2023.

USA: The temporary flexibility policy that is associated with the Employment Eligibility Verification (Form I-9) [compliance](#) has now been further extended until 19th September 2020.

ASIA-PACIFIC

BANGLADESH: A major industrial sector across the country is rice milling. However, minimum wages in the industry have not been increased since 2012. The Labour Ministry eventually intervened and has now set a new structure of minimum rates, with four grades for workers and three grades for staff. The lowest gross monthly rate of Tk5,000 (US\$58.93) is reserved for apprentices, with the lowest adult unskilled rate now set at Tk7,810 (US\$92.05). The new rate represents a 41% increase from the previous rate and is ordered to rise each year, in future, by 5%. The minimum sectoral wage is actually made up of Tk4,650 in basic pay, Tk1,860 as house rent (40% of basic

pay), Tk700 as a medical allowance, Tk400 as a "conveyance allowance", and Tk200 as a ration allowance.

HONG KONG (CHINA): All eligible service-sector enterprises that wish to develop business with new, distant markets during the pandemic have until 31st October 2020 to apply for funding under the Distance Business [Programme](#). The funding ceiling is HK\$100,000 (US\$12,903) for each IT solution and relevant training expenses for its employees, although a total of up to \$300,000 (US\$38,709) may be applied for by a single company to cover projects completed within a period of 6 months.

INDONESIA: Foreigners whose residence permits expired during the pandemic now have to either switch/extend their visas, or leave the country - all by 20th September 2020. Non-compliance will be subject to daily fines, detention, or even forced deportation.

MALDIVES: Eligible Maldivian citizens who are residents and whose incomes have been seriously reduced since December 2019, may now apply for an [Income Support Allowance](#).

MALDIVES: The ban on bringing in new Bangladeshi Labourers to work in the Maldives has been extended for a further period of one year. However, this restriction is not applicable to professional or executive level employees.

NEW ZEALAND: Employers throughout the country have until 3rd September 2020 to apply for funding under the extended support scheme called the [Resurgence Wage Subsidy](#).

NEW ZEALAND: Recognised Seasonal Employer (RSE) scheme visas that are set to expire between 18th August and 31st December 2020 have been extended by six months. It should be noted that this extension only applies to RSE workers currently in the country who are in an employment relationship with a RSE employer. It is estimated that 8,000 RSE workers will be affected by this extension. Further details can be found [here](#).

NEW ZEALAND: The Protected Disclosures (Protection of Whistleblowers) [Bill](#) now before parliament would, if adopted, probably come into force on 1st July next year. This Bill, would replace the Protected Disclosures Act 2000 and include a number of reforms. These include a facility to allow direct disclosure to an "appropriate authority" at any time, greater protection for disclosers and the extension of coverage to "serious wrongdoing" (as defined in the Bill).

NEW ZEALAND: The new Privacy Act 2020 is expected to take effect on 1st December 2020. This repeals and replaces the Privacy Act 1993 and will make data breach reporting mandatory, add new restrictions on offshore transfers of personal data and further clarify extraterritorial scope of the restrictions. The penalty for non-compliance, will be a fine of up to \$10,000 (US\$5,561).

NEW ZEALAND: Under the Holidays Act 2003, any payment that is clearly part of "gross earnings" must be counted as remuneration when calculating holiday pay. However, it has so far been understood that as a "discretionary payment" does not form part of "gross earnings" it may therefore be ignored for this purpose. In a recent case, a company operated an "incentive and bonus payment" (STI) scheme for some years. Its

policy document clearly stated that it was "discretionary", need not be paid even if targets were achieved, and could be withdrawn at any time. However, an employment court perceived its purpose to "incentivise employees to meet deliverable targets" and deemed it contractual in practice. They therefore ruled that its apparent discretionary nature should be ignored. This patently bad ruling is being appealed [Metropolitan Glass & Glazing Ltd v Labour Inspector, Ministry of Business and Innovation and Employment (2020) [NZEmpC 39](#)].

PHILIPPINES: The Confederation of Wearable Exporters of the Philippines has forecast that export demand is expected to remain at 40% below normal capacity levels during Q3 2020. They also predict that 30% of those in the industry will be on furlough until at least the end of this year.

SINGAPORE: Wage subsidies under the Jobs Support Scheme ([JSS](#)) have been further extended for up to 7 months to cover wages paid until March 2021. It should be noted that the JSS base tiers of support have also been adjusted, from the current 25–75% down to 10–50%.

SINGAPORE: All employers and employment agencies must now submit new Employment Pass and S Pass applications via the new portal called [myMOM](#). This new portal (designed to completely replace the old Employment Pass Online system ([EP Online](#))) is expected to go completely live for all applications next year.

SOUTH KOREA: The government is planning to introduce a universal employment insurance system, which will be rolled out in phases over the period until

2025. It is estimated that some 21 million people will be covered by that time, compared with the 14 million covered under the current system.

SRI LANKA: The Sri Lankan Government has now resumed a programme to provide employment opportunities for 150,000 people, with 50,000 to be recruited from new graduates and 100,000 from low-income earners. Previously, this programme was suspended due to this year's general election.

TAIWAN: If approved by the Cabinet, with effect from 1st January 2021, the minimum gross monthly wage in Taiwan will be increased to NT\$24,000 (US\$816) and minimum hourly wage to NT\$160 (US\$5.4).

TAJKISTAN: With effect from 1st September 2020, old-age and employment pensions will be increased by 15%, whilst disability pensions will be raised by 50%.

VIETNAM: The Ministry of Labour has further suspended contributions to the pension and death benefit funds until the end of the year, but only where companies have demonstrated they are in severe economic difficulty.

EUROPE

AUSTRIA: The Management Board of the Lufthansa subsidiary Austrian Airlines has agreed to order the repayment of recent bonuses paid to 200 senior managers. This follows comments from the Austrian Finance Minister about them being unacceptable because of the recent government bail-out and the necessity for many staff to be on short-time working. The total that had been paid out was €2.9M (US\$3.4).

BELGIUM: All persons travelling to, or transiting through, Belgium with a stay of more than 48 hours must complete and submit a [Passenger Locator Form](#) within the 48 hours before their arrival in the country.

BULGARIA: The terms of validity for [most types of residence permits](#) that expire(ed) between 13th March 2020 and 31st October 2020 have been extended by 6 months.

CROATIA: Foreign nationals with confirmed permission to enter the country are advised to complete the [online form](#) in order to save waiting time at border crossing points. For the latest regulations regarding entry restrictions, please click [here](#) to visit the Croatian government website .

CZECH REPUBLIC: The Supreme Court has conceded that an employee's right to give notice and receive severance during a transfer of undertaking may be based on circumstances not clearly established as changes in working conditions under the Labour Code. Thus, an increase in overtime required, or a change of operating language may be valid factors in making such a claim, but only where they can be objectively measured and not just where they are classified as negative because of an individual's subjective perceptions [Supreme Court No. 21 Cdo 1148/2019].

DENMARK: A new 5-year minimum data retention period will be introduced on 1st January 2021 for a number of corporate documents. These include changes to memoranda of association, registers of shareholders, board minutes, and rules of procedure. The documents must be in a form that allows Danish authorities to quickly access them. Failure to comply will result in fines on the company and potentially

responsible company officers, plus the ultimate possibility of company dissolution.

EUROPEAN COURT OF JUSTICE (ECJ): [The court has rejected](#) alternative logical solutions for transferring an employee in the case where a business transfer splits a business into separate entities. Under EU Directive 2001/23 (which the ECJ had clearly not read), a split would either result in no transfer, because the outcome does not retain an organisation's "identity, (meaning an organised grouping of resources which has the objective of pursuing an economic activity)", or those employees being transferred would **go to the remaining entity where their previous tasks were most concentrated before the transfer**. But the court's solution was to require employees after the transfer to start splitting their time between all the new entities. Only where this is impossible or "would adversely affect the rights of that worker" could it be considered appropriate for the worker to be terminated, or choose to resign.

EUROPEAN UNION: A number of European Union countries such as France, Lithuania, and Slovakia continue to operate language laws that outlaw the use of foreign languages, even if they are the common language of the parties concerned. This is most clearly the case in France, which still insists that employment contracts and all HR documents are produced in French. This is in spite of the finding by the European Court of Justice in [LAS vs PSA Antwerp](#) (2013) that, albeit in respect to cross-border contracts, a document should be drawn up in "a language known to all the parties concerned". This ruling on appropriate language use was further [reinforced](#) in 2016 by the European Court of Justice in respect to the language that must be used on

invoices between organisations in two separate countries.

EUROPEAN UNION: The European Commission has sprung new driving regulations on road transport operators, which took effect on 20th August 2020. The change brings EU rules in line with those set out under the AETR applicable in non-EEA countries within Europe.

Consequently, from now on, drivers will have to take all periods of rest, outside their 90 hours per fortnight driving limit, away from their cab. The accommodation for taking rest must be paid for by the employer and have adequate sanitary facilities. It may, however, be adjacent to a parking lot. Taking a rest in a cab will only normally be allowed whilst the vehicle is on a rail shuttle or sea ferry. Other working time rules include:

- a guaranteed 11 hours rest every day, but reduced to 9 hours rest 3 times between any 2 weekly rest periods.
- a normal unbroken rest period of no less than 45 hours every week, which may be reduced to 24 hours every other week.
- a break, after 4 hours 30 minutes' driving, of at least 45 minutes.
- a guaranteed weekly rest after 6 consecutive days.

Moreover, if a driver takes reduced weekly rest for 2 weeks in a row, they must not only be given full compensatory rest in the third week, but the employer must make arrangements for them to return to their normal base to do it (as evidenced by tachographs and rosters) by the fourth week. Each week, up to 2 hours' additional driving may take place in order to reach a client or get back to base, but only after a 30-minute

extra break and with the 2 hours added to the weekly rest. These rules apply to UK HGV drivers until the end of this year, but remain uncertain after that date. Currently, British domestic driving rules apply to drivers of vehicles below 3.5 tonnes only operating in the UK and will not be affected by Brexit.

FRANCE: One of the principal French institutions for employers to avoid at all costs, is the Data Protection Authority, CNIL. They see one of their primary roles as being a thorn in the side of companies and this is no better illustrated than a recent decision to fine the online shoe company [Spartoo](#) €250,000 for infringements of the GDPR. CNIL acted with determination from the outset to find sufficient evidence to penalise the company. They inspected offices and observed how company orders were taken by employees, then they looked at data retention periods for online clients and, when this did not produce enough to pin on the company, they also took the unprecedented step of asking other data protection authorities around Europe to look for damning evidence that would ensure a guilty verdict. In fact, the catalogue of often petty infringements they came up with indicates that any company could fall foul of the CNIL if they were given a chance to examine their files and practices [Deliberation n°SAN-2020-003].

FEDEE NOTE: One way to frustrate such "fishing trips" is to hold data in a jurisdiction outside the EEA/Switzerland - where it is lawful to send data, but from which joint exercises by data supervisory authorities will be less readily undertaken without questions about corporate victimisation.

FRANCE: Daily reports exist from all over the country of violence against those seeking

to enforce the wearing of face masks, especially on public transport and retail outlets. Employers in all sectors should therefore carefully train staff involved in testing those entering company property or vehicles and enforcing the use – and correct use – of face masks in the workplace. There should also be a clear disciplinary framework for misuse and threats against safety personnel. Staff in outward facing positions should not be required to enforce face masks when they operate alone, but record any incident and call the police before anger is allowed to flare.

GERMANY: The first comparative [wage information claim](#) under the Transparency in Remuneration Act (EntgTranspG) has been considered by the Federal Labour Court (BAG). This concerned a freelance journalist who wished to obtain data in order to evaluate her own remuneration (fees) against the remuneration of male journalists utilised by the same organisation. Initially, the Berlin Regional Labour Court rejected her claim because it was held that EntgTranspG only applies to employees and not freelancers. However, BAG disagreed because Section 5 of the law must be interpreted broadly as it is based on EU law and because the freelancer only worked for one client. Therefore, the employer concerned was obliged to comply with her information request [Federal Labor Court, judgement of 25 June 2020 – 8 AZR 145/19].

GERMANY: The doubling of the state subsidy for zero emission vehicles in July, together with existing factory subsidies, means that €9,000 (\$10,700) support now exists to those purchasing electronic vehicles. For fleet managers, leases are now to the level of little more than a mobile phone contract for the smallest models. The

German government is also pressing ahead with what will probably be Europe's first legal framework for driverless cars. This can be expected by the end of 2021.

GERMANY: The German Maternity Protection Act makes it generally unlawful to dismiss a pregnant employee, those who have recently given birth, or those who have had a miscarriage. However, there are exceptional circumstances (S17 [2] and Article 10 of 92/85/EEC) where dismissal is allowed, provided it is given prior clearance by a state authority. Such circumstances are where a business is liquidated, there is a serious threat due to economic circumstances or for gross misconduct (breach of duty). The problem is that there is no set procedure in Germany to make such an application, or way that any consent is to be given. Moreover, an employer may not take steps to prepare for replacing an individual, or adjust operations for a structural change, whilst someone is in post. For this reason, it is essential that the clearance given by the state authority is in writing and that neither the individual concerned, nor the company's works council are informed until it has finally been decided, following official permission, that this exceptional and sensitive step is to be taken.

GREECE: All travellers into Greece must complete the online Passenger Locator Form (PLF) prior to arrival. Failure to do so could result in being refused permission to board their flight.

IRISH REPUBLIC: The High Court has set aside the sectoral employment order (SEO) for the electrical contracting industry because provisions of the Industrial Relations (Amendment) Act 2015 were judged to be unconstitutional. Their view was

based on the contention that the law gave too much power to the Minister for Business, Enterprise and Innovation, and ill-defined powers and limitations to the Labour Court. This has direct implications for all other SEOs in such sectors as construction and building services. The SEOs are fundamental to these sectors as they set pay, sick pay rates, and pension contributions. However, the knock-on effect will be limited until the end of this year because the government has now appealed to the Supreme Court.

IRISH REPUBLIC: Anyone traveling to the Irish Republic, with limited exceptions (i.e. air and ship crew and HGV road transport drivers), must fill out the on-line Passenger Locator [Form](#) prior to arrival in the country. Failure to do so will render the individual subject to penalties. For further information, please click [here](#).

ITALY: The Court of Cassation has [reaffirmed](#) the ruling of the Constitutional Court in 1993 that "for the purposes of recruitment, an identical minimum height requirement for men and women violates the principle of substantial equality pursuant to [art. 3](#) and 37 of the [Constitution](#)". Therefore, local recruitment rules setting height limits for particular posts are not valid because they constitute indirect discrimination between men and women.

ITALY: Under Article 33 of Law 104/1992, an employee may take emergency leave if it is to assist a disabled family member. However, how does an employer know that the request is genuine? In a recent [case](#) appealed to the Court of Cassation (12032/2020), the evidence of a private investigator was used by an employer to demonstrate abuse of this right. However,

the court was not convinced. In fact, the ruling in a similar case was cited such that "only if the causal link between absence from work and assistance to the disabled is completely lacking, is there an improper use or abuse of the right or a serious violation of the duties of correctness and good faith both towards the employer and the insurance company that generates the employee's liability". Therefore, employers will find it extremely difficult to prove misuse of this right to justify disciplinary actions, let alone dismissal in Italy.

ITALY: Under Italian law, **probationary periods** are set at 6 months, but only 3 months for those with non-managerial positions. In addition, all such limits must be clearly established in writing. Over and above the Civil Code limits are stipulations set through collective agreement. There is practically no scope to waive these limits, although courts may grant an exception where the complexity of the tasks to be performed does not allow a valid test of competence in the interest of all parties. One "catch 22" applied in [granting such an exception](#), however, is that it must effectively be established that the extension has to be objectively in the interests of the employee. If it is not, the agreement will be null and void.

ITALY: Although it is unlawful to dismiss an employee by way of **retaliation** for an otherwise legitimate act, such as asking for a pay rise ([art. 18, L. n. 300 of 1970](#), as amended by Law no. 92 of 2012), it is very difficult to prove that this was the prevailing motive of the employer and the burden of proof lies with the employee to establish this motivation. Recently, the [Court of Cassation](#) was asked to return to this difficult issue. To help the Court resolve the proof requirement, it was held that the employee could simply

demonstrate "the non-existence of the different reason given to justify the dismissal or of any reasonable reason". This "presumptive proof" was accepted by the Court in this case and the employer's appeal rejected.

MOLDOVA: The public health emergency has been extended until 15th September 2020. Moreover, the deadline for applications to receive state subsidies has been further extended until 30th September 2020.

MONTENEGRO: Unlike many less well developed countries in Europe, Montenegro already had in place a facility for employees to operate outside the conventional workplace long before the current health crisis. Art 42 of the Labour Act, in fact, allows for both teleworking from anywhere in the World and homeworking from the employee's residence. Such workers remain, however, normal employees in all respects, apart from their actual work location, and must be subject to an employment contract containing a facility to work remotely. Moreover, employers are obliged to notify the labour inspectorate in advance about each person working regularly from their home.

NORTH MACEDONIA: Although thousands of companies have been paid government subsidies to assist with paying at least minimum wages during the health crisis, it has been found by the government that as many as half of the companies concerned have pocketed the sums received and failed to pass the subsidies on to employees. For this reason, the government has published a "shame list" of known infringers and is undertaking an investigation to determine which it will be necessary to prosecute.

NORWAY: The system for temporary lay-offs (TLO) in Norway differs markedly from other countries. Normally, employers may introduce TLOs for up to 26 weeks in any 18-month period, with an obligation to pay the worker for the first 15 days (the "employer period"). However, during the health crisis, the "employer period" has been reduced to 2 days. This will change again from 1st September, when this period will be extended to 10 days. Then, from 1st November 2020 until the end of June 2021, employers will be able to introduce TLOs for 52 weeks, provided that if an employee has been on TLO for over 30 weeks any time after 1st January 2021, they will be compensated under a mini-employer period of 5 days. During TLO, most workers will qualify for state unemployment benefit. If they are foreign workers and cannot, they may still qualify for such benefits if the worker can produce a PD U1 form from the EEA country where they have worked for the past 3 years.

POLAND: The Office for Personal Data Protection has issued a reminder to employers that workplace video monitoring is regulated under the Labour Code. Monitoring must only be for legitimate purposes, such as property protection and employee safety, and there is a ban on its installation in certain areas such as changing rooms and toilets. Appropriate signage must be erected at least 1 day before monitoring begins and this may include pictograms, although pictograms alone are not sufficient. Moreover, monitoring should only be visual and not contain audio. Finally, because monitoring is covered by the GDPR, employees have a right to obtain information about its purpose and uses in a similar way to other data, although not recordings if they include images of others.

POLAND: Because the Social Dialogue Council failed to reach agreement on changes to the private sector minimum wage for next year, the government itself will unilaterally determine it before 15th September 2020. On the table is an already announced intention by the government to raise the gross monthly wage from PLN2,600 (US\$702) to PLN2,800 (US\$756) and the hourly wage from PLN17 (US\$4.5) to PLN18.30 (US\$4.9); however, many employers wished for the rate to be frozen, whilst some union representatives have called for it to be increased to PLN 3,100 (US\$830) per month.

POLAND: Currently, those receiving sickness insurance benefits whose hours were reduced because of the health crisis, or due to pregnancy-related conditions, receive benefits according to their part-time rather than normal hours. To rectify this, Marlena Malag, Minister for Family Policy, is introducing a regulation into the Sejm (Parliament) that should pass into law quite quickly and also have retrospective effect.

POLAND: There is widespread confusion about provisions set out under emergency measures to deal with COVID-19 concerning the continued scope for employers to ask employees to work on a remote basis. As things stand, the law officially permitting this expires on 4th September 2020. Although the intention was always to incorporate such a facility into the Labour Code, this is far from being achieved, and other measures appear to be delayed due to Sejm members being on Summer leave.

PORTUGAL: The validity of all visas, citizen cards, driving licences, criminal records, and other certificates that have expired since 24th February 2020 will be automatically

extended until 30th October 2020. From then on, all expired documents issued after 24th February 2020 will remain valid, provided the bearer presents proof that they have made a renewal appointment.

SPAIN: Just before the pandemic hit, average pay levels in Spain reached a yearly rise that was more substantial than at any time in the last decade. Across the country as whole in 2019, annual gross pay reached €23,450 (US\$27,844). The average per year ranged from Extremadura (€19,195 / US\$22,792), to Madrid (€28,044 / US\$33,302). The national average consisted of 14 monthly payments of €1,675 per month – an additional 2 months' bonus being the convention in Spain.

UNITED KINGDOM: The Health Secretary, Matt Hancock, has announced that the government is not going to make the wearing of face masks compulsory in workplaces, in spite of a requirement to wear masks on public transport, in shops, post offices, libraries, community centres and many other indoor settings.

FEDEE NOTE: From the start of the pandemic, we have underlined the importance of such PPE, if only on the basis of the "precautionary principle" that they may well do some good and certainly will do no harm. Meanwhile, the UK continues regularly to suffer over 1,000 COVID-19 cases a day and multiple daily deaths.

UNITED KINGDOM: The government is proposing to amend the filtering mechanism for data automatically disclosed through both "standard" and "enhanced" criminal record certificates, issued mainly to prospective employers by the Disclosure and Barring Service (DBS). This will principally focus on

the removal of minor convictions and police cautions gained whilst someone was a child or young person, although it may also limit information where there have been multiple convictions. However, disclosure of unspent convictions, convictions receiving a custodial sentence, and convictions or adult cautions for offences classified as "serious" will continue to appear on the certificates. The change will be brought about through a "statutory instrument" that will be put to parliament this Autumn and probably come into force next year.

GLOBAL

TRADE SLUMP: According to the World Trade Organization (WTO), international trade has fallen 19% year-on-year and is now at a record low. However, the organisation's trade barometer began falling in 2018, well before the pandemic hit, largely because of the US–China trade war. Back in April, WTO forecast a "V" shaped bounce-back in 2021. However, now it has admitted that it is not so certain that such an effect will happen and that recovery may be much slower.

IMF REPORT: According to the International Monetary Fund (IMF), a lack of human capital is a critical factor seriously impeding the economic development of Latin America. In a study relating to the period just before the pandemic, the researchers found that low economic growth was partly due to poor investment, but that investment alone did not really explain the outcome. One way to illustrate this was to compare Poland and Mexico. Over the same period, Poland had less investment than Mexico, but Poland's economy blossomed, whilst Mexico's remained flat. The researchers found, however, that the leading factors in

productivity growth were human capital, effective national governance, and the business environment. Therefore, the IMF concluded, Latin America does not need more investment, but rather more effective education, improved government, less bureaucracy, and a better trading environment.

WHAT'S IN YOUR WAREHOUSE? The recent explosion in Beirut could probably have happened anywhere around the World, but probably not on such a large scale. Ammonium nitrate is a common fertiliser and may be found on farms and stacked in warehouses in sufficient quantities to cause substantial harm. For instance, in 2013, a

blast that killed 15 and injured 260 in Texas was due to a fire at an agricultural products retailer that ignited ammonium nitrate stock. The chemical has also been a favourite for use by terrorists and lone bombers throughout recent history. In spite of this, regulations are often missing that limit its use and accident investigation reports regularly kept under wraps with Trump-style "reconsideration rules" to prevent safety audits. This does not, however, prevent individual companies from taking an independent view on chemical safety and valuing their reputations and staff welfare by applying their own higher standards.

DATES FOR YOUR DIARY		DATES FOR YOUR DIARY	
September 1 st 2020	Wage equity ordinance will be enforced in Philadelphia (USA).	October 2 nd 2020	U.S. Citizenship and Immigration Services (USCIS) - fee increases.
September 30 th 2020	Any "force majeure" Temporary Employment Regulation Schemes (ERTEs) that were already in place before RDL 24/2020 came into force will be extended in Spain .	December 1 st 2020	Privacy Act 2020 to become law in New Zealand .
October 1 st 2020	Maryland (USA) salary history ban and wage range notice requirement to take effect.	January 1 st 2021	EU free movement is set to end and a new points-based immigration system is to take effect in the UK .
		January 1 st 2021	Minneapolis , Minnesota (USA) Freelance Worker Protections Ordinance takes effect.
		2 nd August 2022	Parents will be entitled to two months paid parental leave in EU countries.

TRAVEL WARNINGS

AFGHANISTAN: Flash floods, caused by torrential rains, have killed over 100 people in northern Afghanistan's Parwan province. Anticipate transportation disruptions.

BANGLADESH: Biman Bangladesh Airlines has extended suspension of international flights until 15th September 2020.

BELGIUM/THAILAND: Thai Airways has postponed resumption of scheduled flights between Bangkok, Brussels until 31st October 2020.

GERMANY: The government has extended the travel warning for non-European countries until 14th September 2020.

ISRAEL: Entry ban for non-Israelis has been extended until 1st October 2020 – with few exceptions.

KENYA: The COVID-19 nationwide curfew has been extended for another 30 days.

NEPAL: Kathmandu Valley lockdown has been extended until 2nd September 2020.

NEW ZEALAND: With effect from Monday, 31st August 2020, it will be compulsory for people aged 12 and over to wear a face-covering on public transport and when travelling by air – with few exceptions. Non-compliance will lead to a \$300 (US\$199) on-the-spot infringement notice, or a fine of up to a \$1,000 (US\$664) imposed by the courts.

NORWAY: The government will impose a 10-day quarantine on all people arriving from Germany and Liechtenstein from 29th August 2020.

SOUTH KOREA: Expect flights cancellations at several airports across South Korea due to Typhoon Bavi.

SWITZERLAND: The wearing of face masks will be compulsory in shops, bars, restaurants and supermarkets in Zurich (from 27th August 2020), Fribourg (28th August 2020), Valais (31st August 2020).

THAILAND: The state of emergency has been further extended until the end of September 2020.

UKRAINE: The government has imposed a temporary ban on most foreigners from entering the country until 28th September 2020. It has also extended lockdown measures until the end of October 2020.

USA: Hurricane Laura has approached the coasts of Texas and Louisiana. Expect associated transport and business disruptions.

FedEE NEWS

CUTTING LEGAL COSTS: Under the present climate, many companies will be seeking to curtail the often substantial expenditure involved in using law firms. Whilst conventional firms are invaluable for problems heading for litigation, or where complexity necessitates face-to-face meetings with a legal professional, there are numerous tasks that could be handled effectively and more economically by services such as FII-Law. The FII-Law team is an independent spin-off from the Federation and can offer savings of over 80% on using a conventional law firm. Please contact them on enquiries@fedeeglobal.com for further details. If Members do need assistance directly from a leading law firm, FedEE will be happy to recommend highly competent firms - especially in locations such as Germany, Japan, India, Italy, the UK and across the USA.

EXCHANGE RATES: It has been our long-standing practice to convert the majority of monetary figures given in local currency to US dollars. This is to assist when making points of comparison. It should be noted that the exchange rates used are those at the time of writing and are subject to fluctuation, even over short periods. If a precise exchange rate is necessary, please undertake the [conversion](#) on the date it is required.

JOBS POSTING: We have issued for "Members Only" some important guidance on the [Directive](#) that must now have been incorporated into EU country laws. This is essential reading if your organisation operates in the European Union and you ever send employees to work in another EU country. [Here](#) is our principal guidance document and [here](#) our note on individual Member State compliance.

NEWSWIRE LINKS: If you wish to explore newswire links, **please first login to the members' area** of our website [here](#). Up to date salary tables are available in our Knowledgebase.

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