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HR WORLD TODAY

This week, we have the tale of the two car parks. Court cases concerning an absence of employee car parking in the Irish Republic and a challenge to the use of Amazon's car parks for strike meetings in Germany. In both cases, the party bringing the matter to court came away disappointed.

There is little sign these days of the #MeToo movement, but their legacy lives on. This is because of a truly global effort to tackle harassment, mobbing, and bullying in all their forms. In this issue, we see a challenge against an over-assertive Supervisor failing before an Italian court, but new legal provisions in Egypt, China and Vietnam.

The pandemic has brought to the fore numerous legislative gaps in the regulation of home working. These are all being tackled in different ways - with Spain ambitiously introducing its distance working law - now approved by the Senate. A similar initiative has taken place in Panama, with other more modest changes in both Peru and the USA.

There is less activity this issue on the family-friendly front, but the change in UAE we do report is of great significance as it represents a major softening towards this issue in the Arab world.

The way some governments are trying to prepare for an end to the current crisis and the downturn which follows is to attract

investment and skills that are on the move. Many, such as Indian States and Cyprus, clearly see investors in larger economies as being tempted to move operations in exchange for either relaxed labour laws or improved ease of establishment. However, the shrewdest nations are the small ones - such as Croatia and Barbados - that take the lead of Bermuda and Estonia to seek an influx of mainly IT skills in exchange for flexible visas, improved lifestyle and, in the case of Barbados, a tax-free year in exchange for a one-off visa premium.

It is tempting to view the future with foreboding because of its prospects of a deepening downturn, even after the crisis has ended. But it is not the threat of unemployment alone that looms, but ironically also its opposite - labour shortages. The World depends very heavily on its immigrant labour, not all of which is low skilled. If we experience shortages in coming months, it will not be primarily due to underinvestment, but because the harvest was lost due to an absence of seasonal workers and backpackers and because rising demand in many sectors and localities was met by all kinds of barriers to the free movement of labour, preventing those available to work traveling to take up vacancies where they exist.

AFRICA AND MIDDLE EAST

ALGERIA: We still await news on how impending reforms will directly impact on the world of work. A referendum will be held on November 1st 2020 to approve a new constitution. This sets a limit on presidential terms to two and gives greater powers to the country's parliament. Political reforms were the principal focus for repeated mass demonstrations since the fall of the former dictatorial leader Abdelaziz Boteflika last April. Public protests were banned in March 2020 due to the pandemic. However, President Abdelmadjid Tebboune, elected last December, has repeatedly promised that a programme of political and economic changes will be introduced.

BAHRAIN: Residents from neighbouring Gulf countries (including holders of electronic visas), and those normally eligible for visas on arrival, may now once more enter Bahrain. It should be noted that a PCR test for the coronavirus is compulsory on arrival and is entirely at the visitor's expense.

BURUNDI: This is a country that will not have been on many people's radar for the last 15 years because it is the second poorest country in the World and was ruled over, until his death this year, by highly dictatorial President Pierre Nkurunziza. Now, a more liberal president has come into power who has re-established the office of Prime Minister. The country has far to go to re-establish international engagement and lift its economy away from agriculture - that accounts for 90% of GDP (after excluding a huge amount of foreign aid). However, there are the rudiments of employment law with, for instance, maternity subject to 84 days leave at 100% salary. Rated as the most unhappy country in the World in 2018 the

majority of graduate's from the country's one University have long looked abroad for their careers - a tendency that is not going to end anytime soon.

CYPRUS: A request for €479M (US\$567M) to finance government employment support projects remains pending from the Council of the European Union. Meanwhile, special measures to support employment and enterprises across the country have been extended until 31st October 2020. Full details can be found from [here](#).

CYPRUS: Under the newly established "Fast Track Business Activation Mechanism", all necessary official procedures for the registration and incorporation of a company will be completed within 7 working days, or 30 working days if extra permits are requested (with the exception of building and planning permits). To benefit from the new mechanism, companies must create a physical presence in Cyprus, including personnel and independent offices, and have already had a minimum turnover of €500.000 (US\$590,875) per year over the last 3 years.

EGYPT: Incidents arising from the pandemic and the harsh treatment given to many COVID-19 victims has led to a Bill being passed through the House of Representatives amending the penal code to include "bullying". The Bill defines bullying as a "show of force or control by the offender, or the abuse of a vulnerable victim," or as "an offence committed on the basis of gender, race, religion, physical attributes, health or mental status, or social class." The penalty for this new offence is up to six months imprisonment, plus a fine. However, if the offence is committed by a group, or a relative of the victim, then the maximum

imprisonment is 12 months and the upper limit for the fine is trebled.

ISRAEL: Citizens, residents and foreign nationals arriving in Israel by air must fill out the online inbound passenger statement [form](#) 24 hours before their time of departure to Israel. Foreign nationals must also present an entry clearance, certified by the Consulate of Israel in their country of origin. Moreover, if a visitor stayed in a [Red Location](#) during a 14-day period before their flight to Israel, they will also have to fill out an online [isolation form](#) after submission of the inbound passenger statement.

ISRAEL: Employers should anticipate delays in public-sector decisions and the processing of documentation during the upcoming Rosh Hashanah (September 18th-20th), Yom Kippur and Sukkot (September 27th-October 10th) holidays.

QATAR: A former law requiring migrant employees to obtain permission from their employer to change employment has been rescinded. This brings to an end the "kafala" No Objection Certificate System. Now, either party must simply give one month's notice during the first two years of employment, or two months' notice if the employee has been employed by the same company for over two years. The government has also announced the launch of a minimum wage - set initially at 1,000 riyals (US\$275) a month. However, the wage will only come into force six months after it is published in the official gazette.

SOUTH AFRICA: The Unemployment Insurance Fund (UIF) has agreed to continue receiving applications until 15th September 2020 for the March 2020 to July 2020 period. Claims under the COVID-19 Temporary

Employee Relief Scheme (TERS) for August 2020 until 15th September 2020 shall close on 30th October 2020.

SOUTH AFRICA: The company Comair is a leading aviation company listed on the Johannesburg stock exchange and operating as a British Airways Franchisee. Due to the pandemic, the company has had to suspend all services and, since June 1st 2020, it has suspended all salary payments - with employees relying entirely on the Temporary Employee Relief Scheme (TERS). Now, the Labour Court is being asked to review the latest move by the Business Rescue Practitioners concerned - which has been to suspend medical insurance cover from 1st September 2020. The Court hearing will take place ahead of the creditors meeting on 18th September 2020, which will consider a tabled proposal for employees under the rescue plan to waive all salary rights until 1st December 2020.

TOGO: Before departure to Togo, all travelers are required to complete an online traveler [declaration form](#) and use the same platform to pay for a mandatory COVID-19 PCR test. This test will be carried out upon arrival at Lomé Airport. Furthermore, on arrival in the country, travelers must install a contact tracing mobile application [TOGO SAFE](#), and keep it activated for the entire duration of their stay, or for at least 30 days. If they fail to do so they will be placed under quarantine in a state-provided containment facility for at least 14 days and the costs for quarantine will be at the traveler's expense.

UAE: Male private sector employees who become fathers will soon be entitled to enjoy up to five working days paid paternity leave - which will be able to be taken at any time within the six months after a birth. This right

will come into force one month after it is published in the Official Gazette (which has not happened yet at the time of writing). This measure has been signed at the same time as a decree giving equal pay rights for women if they do the same, or similar, work to men. There is a question over the extent to which either measure will be enforced when they do become law. In fact, there remains legal uncertainty whether the new paternity leave right will apply also to women, as it has sometimes been translated from Arabic as "parental leave".

UAE: A five-year visa, which allows resident expatriates and foreigners who are older than 55 to retire in **Dubai**, is now available for [application](#). Retirees need to meet one of three financial requirements for eligibility - they earn a monthly gross income of 20,000 dirhams (US\$5,500); have savings of 1 million dirhams; or own a property in Dubai worth 2 million dirhams. This visa may be renewed automatically online, provided that the retiree continues to meet the eligibility criteria. Additionally, applicants must also retain valid UAE health insurance.

THE AMERICAS

BARBADOS: The 12-month "Barbados Welcome Stamp" - a special visa for remote workers who want to work and live in this Caribbean country - is now open for application. The cost for an individual visa is US\$2,000, or US\$3,000 for a family bundle. Holders will be exempt from paying income tax in the country for the stamp's entire duration. More information can be viewed from [here](#).

CANADA: Since 1st September 2020, all Interns in federally-regulated sectors must receive at least the applicable minimum

wage, paid vacation and public holidays. The one exception is any student undertaking work experience. The "[Standards for Work-Integrated Learning Activities Regulations](#)" brings to the all federal employees what has been effectively the case in Ontario - and, to a certain extent, in BC and Alberta - for many years under their Employment Standards Acts. By way of clarification, being a federal employee is not to necessarily be in the public sector - as it includes all employment in banking, air transport, the media and trucking companies.

CANADA: A recent case in Ontario concerning sexual harassment and assault by an employee's Supervisor was found by the Human Rights Tribunal to have seriously breached S5 of Ontario's Human Rights Code in respect to investigating a complaint. It has therefore brought to the fore the necessity that all employers should follow the 10-point approach established in a former case [Laskowska v. Marineland of Canada Ltd., \(2005\), 2005 HRTO 30](#).

These were as follows:

-  Was there an awareness of issues relating to discrimination and harassment in the workplace at the time of the incident?
-  Was there a suitable anti-discrimination/harassment policy?
-  Was there a proper complaint mechanism in place?
-  Was adequate training given to management and employees?
-  Once an internal complaint was made, did the employer treat it seriously?

- ✚ Did the employer deal with the matter promptly and sensitively?
- ✚ Did the employer reasonably investigate and act?
- ✚ Did the employer provide a reasonable resolution in the circumstances?
- ✚ If the complainant chose to return to work, could the employer provide her/him with a healthy, discrimination-free work environment?
- ✚ Did the investigator communicate their findings and actions to the complainant?

Employers not only in **Ontario**, but across Canada, must therefore examine their existing policies in line with the first four criteria and procedures for investing complaints in line with the following six criteria. If they do not, then not only could the HR personnel involved be found liable, but also the company as a whole.

PANAMA: The text of an Executive Teleworking Decree has recently been hammered out by a Tripartite Commission. This covers a wide range of different rights and obligations concerning maintaining a labour registry, requirements for working time, how employers will issue instructions, the handling of accidents in a remote location, work tools and reversibility (allowing the worker to resume office-based work). The only area where the Commission was unable to reach agreement was in respect to the way expenses and costs would be set, controlled and reimbursed. It will now be up to Parliament to resolve these matters and convert the text into law.

PANAMA: Under the newly published [Law No. 159](#), which regulates the special regime

for the establishment and operation of multinational companies for the provision of services related to manufacturing ("EMMA"), qualifying companies that operate in the country may not only enjoy certain tax benefits - but also labour, and immigration incentives.

PERU: The obligation to work remotely, if instructed to do so, was introduced through Emergency Decree No. 026-2020. However, what was meant as a temporary measure is now here to stay - at least until next year. The government has announced that the decree has been extended until the end of July 2021. Telework in Peru has been subject to its own legal framework since 2013, under the Law No. 30036 and its attendant Regulations. The biggest difference now is that the necessity to work from home is not by agreement between the parties, but through a unilateral decision by the employer. Other differences include greater flexibility in working hours under the Emergency Decree, together with a requirement for the employer only to provide health and safety guidelines to remote workers, rather than inspect premises, or issue checklists. The remote worker must also pay for the extra costs of working from home themselves, rather than have a right to claim them from their employer.

SINT MAARTEN: This country makes up half of a Caribbean island, but has the status of being an integral part of the Kingdom of the Netherlands and the [14th richest territory](#) (by GDP/HEAD) in the World - largely due to tourism and gambling. Its labour laws are rudimentary and set entirely through its 15-person "Council". There is no jurisprudence that gives any interpretation to the prevailing "no work, no pay" principle and no guidance on whether the pandemic constitutes force

majeure. For that reason, the Department of Labour Affairs is interpreting the law during the health crisis in a very rigid way - with an obligation on employers to pay 100% of salary until a labour agreement ends. One other quirk of the law on the island is that Dutch nationality is only passed down the female line, so if a resident is born on the island, but does not have a Dutch mother then they can only claim less secure "resident status" throughout their life.

USA: Employers in **California**, with 5 employees or more, should now be making plans for the introduction of extended anti-harassment training from January 1st 2021. The new requirement will be to provide at least one hour of training for non-supervisory employees and two hours training for Supervisory employees - and to repeat this every two years. The training must include references to gender identity, gender expression, and sexual orientation. If a new nonsupervisory worker joins the company they must be given such training within six months. Likewise, anyone being promoted to a supervisory job must receive training at that level also within six months. The training content is not pre-set, but it must include practical examples of harassment, how to handle abusive conduct and make reference to the federal and state statutory provisions in this field.

USA: Earlier this year, freelancers in **California** were hit by a pernicious new AB5 law which greatly limited all forms of independent contract, by subjecting them to an "ABC test" to determine if they were disguised forms of employment. Now, [Bill 2257](#) has been passed by the State legislature to allow certain professionals to claim exemption from AB5 - such as all freelance musicians, freelance writers who

submit more than 35 pieces of work per year to a Client, and translators. The Bill is now ready to become law as soon as it is signed by Governor Newsom.

USA: The National Labour Relations Board has declared as lawful the inclusion in a company handbook of the following statement concerning inappropriate conduct. "*calling, participating in or encouraging others to call or participate in an illegal slowdown, strike (including a sympathy strike) or walkout.*" This is because, in the Board's view, an "objectively reasonable employee" would not construe it to rule out "job actions" protected by the National Labour Relations Act [*Nicholson Terminal, 369 NLRB No.147*].

USA: The Department of Labor has issued an [Advisory Bulletin](#) setting out how remote workers should be handled under the FLSA. This states that all hours worked by non-exempt employees must be paid for, as long as the employer benefits from their efforts and knows (or has reason to know) about their performance. It is up to the employer to control work that they wish undertaken. There is no facility for such an employee to waive their rights to be paid for time worked. In order to ensure that these obligations are met, employers must set up "reasonable reporting mechanisms" and abide by them. This should include the integration of data on a work record from all those who have reason, or authority, to ask the remote non-exempt worker to perform tasks.

USA: IRS [Notice 2020-65](#) was issued at the end of August 2020. This gives employers the option of joining a social security tax holiday until December 31st 2020. This, however, only applies to employees earning less than \$4,000 per biweekly period, or salaries less than \$104,000 a year. To

recover the unpaid tax, employers would then add the delayed sums to payments made between January and April next year. In order to document this arrangement the IRS has issued a modified version of [form 941](#). The new facility leaves uncertain how suspension of social security will affect medicare tax - which is normally collected together with social security - or how CARES Act FICA deferred payments will slot into place alongside this concession.

FEDEE COMMENT: We advise that all such schemes should be avoided if possible because their cash flow advantages are very short-lived and because many employees will have used up their extra net pay by Christmas and will therefore find it hard to cope once the extra payments start to bite next year.

ASIA PACIFIC

AUSTRALIA: Encouraging employees back from home working may turn out to be a difficult task, especially for those employees who would choose to cycle or jog to work. This is partly because many employers that provided shower and locker facilities closed them down during the pandemic. As employees are often reluctant to commute by public transport, Sydney city council - and councils for several other cities across New South Wales - have invested in extensive pop up cycleways in recent months, much to the opposition of other road users, such as HGV drivers. It is now up to employers to examine ways they can respond and by ensuring they have "COVID-safe" end of trip facilities.

AUSTRALIA: The national government is establishing new powers to invalidate any agreements individual State governments

conclude with foreign governments. The driving force for this measure is the increasing hostility of the Morrison government towards China (in spite of it being Australia's largest trading partner) and its perceived strengthening of influence through its "belt and road" initiative. The move, in particular, follows **Victoria's** agreement with China last year to join its infrastructure development plan. However, the law will not affect ties being sought and maintained by commercial enterprises with China, or ICTs and personnel exchange programmes .

AUSTRALIA: Recently, the federal government has issued a new Priority Migration Skilled Occupation List ([PMSOL](#)). The 17 occupations on the list includes CEOs, mechanical engineers, software engineers and maintenance planners. Priority processing will be given to those occupations on the PMSOL. However, the current list is temporary and may subject to change as Australia recovers from the pandemic.

AUSTRALIA: The Western Australian government has launched a recruitment campaign to fill jobs across the state that were traditionally occupied by backpackers. These are thousands of jobs in agriculture, tourism and hospitality and the government will soon be launching a special scheme offering accommodation and travel bursaries to young people willing to work in remoter areas.

CHINA: Employers are gradually taking stock of China's new [Civil Code](#), especially Article 1010 that concerns "harassment". This is an important article because it defines sexual harassment for the first time under national law. The definition, is,

however, very wide as it includes "words, text, images, physical conduct, or other means". It also highlights the fact that harassment may be facilitated through the abuse of power and influence (*guanxi*). Employers are made clearly responsible for preventing harassment and ensuring available avenues to report incidents, whilst the victim of such conduct now has a right to bring a civil action against the perpetrator.

CHINA: Unemployed female employees receiving state insurance benefits in Hunan province now qualify for a one-off maternity payment (3,548 yuan/US\$518) from the Maternity Insurance Fund after they give birth.

HONG KONG (CHINA): If an employee is found to have committed gross misconduct may their employer withhold their bonus payment and attempt to offset their own unliquidated damage claim against the bonus earned? This was the situation in the recently resolved case of *Xu Yi Jun v GF Capital (Hong Kong) Limited (CACV 502 & 577 / 2019)*. This involved the MD of a corporate finance company who was contractually entitled to a HK\$7,800,000 (US\$ 1 million) guaranteed annual bonus in their first year. However, the wording of the bonus clause included the words "*If your employment with the Company is terminated voluntarily by you without cause or you have been found guilty of any gross misconduct, in either case before the Due Date, any outstanding payments of the ... Guaranteed Bonus will be forfeited.*" The former MD had been found partially culpable in respect to a decision to make a large loan that had proven to be a grave mistake and she subsequently resigned. She claimed that "the due date" in the bonus clause related to when the mistake had been found, whilst the

company claimed that "the due date" related to when the mistake had been made. However, the Appeals Court sided with the former MD. Likewise, the company's counterclaim for a "breach in duties of fidelity to act faithfully and in the best interests of the company" also fell on deaf ears. This was because [S32 of the Employment Ordinance](#) bans employers from making deductions from remuneration earned and especially "*from any other sum due to the employee*". Unfair as it may seem, it was therefore not lawful for the former employer to help mitigate its losses in this way.

INDIA: There is some discussion within the government of the Indian States of **Madhya Pradesh** and **Assam** about restricting government jobs to those born in those states. This would be a huge challenge to [Article 16 of the national constitution](#) that guarantees equal treatment in respect to government jobs (although this remains somewhat undermined by the retention of the caste system). Nevertheless, as things stand, only the national parliament may make exceptions for individual states. Generally too, the courts have always ruled against any geographical bias in the allocation of state privileges. In the private sector, there have been moves by state governments, such as **Karnataka**, to persuade employers to hire locals, but these have been short-term initiatives and largely resisted. Yet, nothing can be ruled out - given the recent fragmentation of states and local suspension of labour laws. India is changing rapidly and the pandemic may have been the trigger for what could end up in the final breakdown of the federal arrangement put in place back in 1947.

INDIA: The **Assam** Assembly has just passed two related Factories Amendment

Acts and an Amendment of the Industrial Disputes Act. These exclude all provisions of the Acts in respect to new industrial units (outside the tea sector) for 1,000 days. There is also a new definition of "factory" such that any unit will only be called a factory if the number of people employed there is less than 20 (if it functions with the aid of power), and less than 40 (if it does not use a power source). In addition, a change to the Contract Labour Act means that it will no longer apply to units of under 50 employees.

INDIA: Textile employers in the **Guarat** city of Surat in west India are appealing to the central government to provide additional public transport to bring back workers from **Odisha** on the eastern side of the country. There is an acute labour shortage in the city as around half of the textile labour force returned home to Odisha when layoffs took place this Spring.

JAPAN: From October 1st 2020, at the earliest, minimum wage rates will rise very slightly in many Prefectures across the country. Although the Central Minimum Wage Council recommended that rates be frozen this year, 40 of Japan's 47 prefectures have decided to raise rates slightly by 1 to 3 Yen per hour, whilst the rest have left rates unchanged. This leaves Tokyo with the highest rate - still at 1,013 yen (US\$9.57) an hour.

JAPAN: The special measure for job adjustment subsidies has been extended by three months until the end of this year. The upper subsidy limit has also been raised to ¥15,000 (US\$142) per day, per employee.

NEW ZEALAND: A health and safety [case](#) before the Employment Court of New

Zealand, assessed last month for interim reinstatement, illustrates very well the opposing views where a Site Supervisor ignored safety-critical procedures for heavy processing equipment and was consequently dismissed. One aspect of New Zealand Law that is not shared generally by other jurisdictions is "balance of convenience" and this importantly allowed the employer concerned to argue not only the normally stated point about loss of "trust and confidence", but also that other employees would resign if the Supervisor was reinstated. This latter point was not accepted by the court, but may be useful to bear in mind in other cases [*Smith v Fletcher Concrete: EMPC 144/2020*].

SINGAPORE: The Employment Pass (EP) minimum salary threshold has now been increased from S\$3,900 (US\$2,854) to S\$4,500 (US\$3,293) for new applications. However, from 1st December 2020, the minimum salary threshold for new EP applicants in the financial services sector will be further raised to S\$5,000 (US\$3,658). Moreover, from 1st October 2020, the S Pass minimum salary threshold will be raised from S\$2,400 (US\$1,756) to S\$2,500 (US\$1,829) for new applications. For renewal applicants, these new salary criteria for both EP and S Pass will not come into effect until 1st May 2021.

SINGAPORE: Employers must now bear the costs of the work pass holders' COVID-19 test (up to \$200, including GST) and stay at a dedicated quarantine facility (\$2,000, including GST), when a request to allow foreign employee, and/or their dependants, to enter Singapore has been approved.

SINGAPORE: With effect from 1st October 2020, the minimum Fair Consideration

Framework (FCF) job advertising duration for both EP and S Pass applications on [MyCareersFuture.sg](https://www.mycareersfuture.sg) (MCF) will be doubled from 14 days to 28 days.

THAILAND: Currently, only students and older workers are allowed to be paid on a purely hourly basis. This means that employers still have to pay a part-time worker a daily minimum rate, even if they work for only half a day. The Thai Ministry of Labour would like to resolve this issue by allowing all employers to switch to hourly pay. However, the unions and National Wage Committee are strongly against this move. They also believe that it would seriously affect annual leave and a wide range of employee benefits.

VIETNAM: In an earlier issue of our Newswire, we reported a number of features of Vietnam's Labour Code which come into force on January 1st 2021. Further details have, however, since emerged. These include the fact that only employers with 10+ employees will need to register their internal rules with the provincial people's committees. There is no current statute of limitations for undertaking disciplinary actions. However, this will all change and a general 6-months limit will apply, unless the issue applies to employer's finance, property, disclosure of technology or trade secrets - when it will be 12 months. Perhaps most important of all will be the establishment of a new basis for dismissing an employee - which is when they are found to commit any act of sexual harassment in the workplace.

EUROPE

BELGIUM: Legal aid income thresholds were changed on September 1st 2020. So-called "isolated people" now obtain free aid if

their monthly income is below €1,226 (US\$1,469) and partly free if between that threshold and €1,517 (US\$1,817). Some categories of persons, however, benefit from free legal aid whatever their level of income. However, single or cohabiting persons with dependent children have an upper earnings limit of €1,557 - or between that level and €1,807 (US\$2,165) for partially free support. The catch is that where those cohabiting have separate income and wealth legal aid will be reduced.

CROATIA: The National Parliament is currently debating a draft Bill on Identification cards. This would introduce, by August 2021, a new biometric card in line with European Union standards and include a digital format that can be stored on mobile phones as well as computers. At the same time, Parliament is likely soon to pass a new law on foreigners. This will remove all immigration quotas. From January 1st 2021, if an employer wishes to recruit a non-EEA/Swiss worker, they would need to give details of the job to the Employment Service. The Service will then carry out its own labour market test and determine if the job could be filled from the resident workforce. If there is a local shortage the employer will be given clearance to apply for a work permit to hire a foreigner. However, certain fields known to be in constant short supply - such as carpenters, masons and waiters - will be exempt from the market test requirement - as too will be seasonal workers hired for periods of up to 90 days. Furthermore, the Foreigners Law includes a facility to issue a new "D" visa for temporary residence which can be used to cover periods of employment or research and also a "Nomad visa". The latter visa follows the lead of Estonia, and is designed to attract independent IT

professionals who wish to have an EU base for their trans-border lifestyle.

ESTONIA: The Estonian Employers' Confederation have agreed with the country's Trade Union Confederation to freeze the monthly gross minimum wage at € 584 (US\$690) next year. The formula used by the parties for setting the wage actually pointed to a cut next year. However, the unions were tempted to accept a freeze rather than have to sell a reduction to their members. Both sides still need to formally put the deal to a vote in their organisations later this month.

ESTONIA: As the metal industry is the highest source of industrial accidents in Estonia, the labour inspectorate decided recently to conduct an intensive inspection of 75 business premises across the sector. This found a total of 375 health and safety violations. Half the companies had little or no marking of hazardous areas and although compliance was good in respect to the allocation of PPE, employees were generally lax in using it. Likewise, most companies had conducted risk assessments, but few had modified these in the light of changed circumstances - such as the delivery of new equipment.

FINLAND: The Finnish Immigration Service has now extended the deadline until 31st December 2020 for existing applicants for Finnish residency, registration of the right of residence or citizenship, to complete an in-person identification at a Finnish embassy, consulate or service centre.

FRANCE: If an employer wishes to make an individual employee redundant, they must follow the strict procedures set for all forms of dismissal. But what about the parties

cannot physically meet for the necessary prior dismissal interviews? Is it lawful to conduct them via videoconferencing? This very much depends on the individual employee concerned, as the Court of Cassation has not made a ruling on this matter. However, a refusal should not be the way an employee seeks to avoid dismissal, nor should an employer use their refusal to by-pass the interview procedure. Much will hang also on the form of the interview, as it must still be conducted in the presence of a person chosen by the employee concerned - a work colleague, union representative or someone taken from local town hall/Préfectoral lists. Moreover, if the employee or companion does not speak English, then the interview must be conducted in French.

FRANCE: Someone sharing a home with a person vulnerable to COVID-19 may no longer benefit from the "exceptional partial activity scheme" (except in the departments of Guyana and Mayotte). However, the vulnerable person themselves may qualify for support if their doctor considers them at risk of developing a serious form of infection in respect to the SARS-CoV-2 virus that renders them unable to work. Employers should therefore seek confirmation of this through a signed medical prescription [*Decree n ° 2020-1098 of August 29, 2020*].

GERMANY: If an employee has been absent from work due to illness or injury for a long period, they are entitled to a period of reintegration when they return to work. During this period, they may claim commuting costs from their health insurer - based on the least expensive form of public transport. This right was recently reinforced by a case heard by the [Dresden Social Court](#) [*S 18 KR 967/19*].

GERMANY: The government has recently extended the current Kurzarbeit ("short time work") scheme until the end of 2021. Under the scheme, eligible cash-strapped companies may introduce short-time working to avoid job losses, and the government will pay the wages for the missing time.

GERMANY: What happens when a branch or country manager is unable to directly communicate with their German works council in the German language? Does this infringe codetermination rights in any way? The Nürnberg Regional Labour Court was recently called upon to consider this very question and its conclusion was "no". This was, provided that all communications between the manager and work council were translated/interpreted [*NLAG TaBV 33/19*].

GERMANY: Companies have, for many months, been concerned about quarantine rules relating to those returning from business trips to "at risk" areas. From October 1st 2020, this uncertainty should be removed through an amendment to the Infection Protection Act. This will permit the quarantine to be ended on the fifth day after the return. At the same time, tests conducted on those returning from "non-risk" areas will no longer be free of charge and employers will not be liable for paying a salary during quarantine if an employee took a private trip to an area - knowing at the time it was "high risk".

GERMANY: The Labour Court in Berlin-Brandenburg has ignored, on appeal, a landmark European Court of Justice (ECJ) [Ruling](#) in respect to the detailed recording of working time in favour of a ban under Art. 9 Para. 1 of the GDPR on the processing of Biometric Data. The case involved a health facility that switched from manual entry of

attendance to the use of employee finger prints. Clearly, finger tip identification removed the possibility that employees could log in falsely for each other. But the court dismissed this purpose, even though under the GDPR an exception to the biometric prohibition could be made where "processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller". In other words - to ensure that the integrity of the working time system was being maintained. This is a bad decision based on an often confusing law (the GDPR) and will have serious implications for employers. It leaves them no option but to maintain a system of random checks on manual clocking-in activities - with discipline or dismissal as a consequence of misuse [*(Az: 10 Sa 2130/19)*].

GERMANY: The distribution company Amazon has had yet another tussle with the courts, trying to fight the German Federal Labour Court (BAG) and Federal Constitutional Court on their own ground. It might have made sense, if the setting had been the USA, to question the right of employees to occupy company-owned car parks when they were on strike and to take exception to the presence of union officers at strike meetings on company property. But this was Germany and the irrelevant fact that Amazon does not recognise sectoral collective agreements cuts no ice under German law [*Decision of the BVerfG of July 9th 2020 (Ref.: 1 BvR 719/19 and 1 BvR 720/19)*].

FEDEE COMMENT: We are not sure which law firm advised and represented Amazon for both cases, but it looks like a textbook example of using a US firm to tackle EU problems - as certainly a German law firm would have advised the company how

impossible any court challenge over such an issue would be in Germany.

IRISH REPUBLIC: The Atypical Working Scheme allows non-EEA nationals to work in a position not covered by other short-term immigration schemes. For instance, this may be where there is a skills shortage, to undertake urgent research or take up an internship. Paper AWS applications will be accepted until 18th September 2020. After this date, [online AWS applications](#) are mandatory. More information on AWS can be found from [here](#).

IRISH REPUBLIC: There are sometimes good reasons for a union to go to court, but a dispute about worker car parking is not one of them. A huge extension of Intel's Leixlip site in County Kildare will eventually add 1,600 new full-time permanent jobs to the 4,500 already working there. However, the 6,000 construction workers involved in expanding the complex have, from the outset, made complaints about car parking - in spite of receiving travel to work allowances. The contractors concerned have also responded by offering offsite parking and the bussing-in of workers. This was considered a reasonable solution for the Labour Court which threw out the claim.

IRISH REPUBLIC: The Labour Court has published its draft proposals for the JLC covering the security guarding sector. This increases basic hourly rates by a total of 10.7% from €11.65 to €12.90 over a three-year period. In addition, a new unsocial hours minimum supplement will become payable from June 1st 2022 of €8.40 (US\$9.9) per shift. To qualify, a guard must work at least 3 hours between 9pm and 7am. Moreover, the minimum call out for part-shifts shall automatically carry minimum

remuneration for four hours work. The Non-contributory Personal Attack Benefit shall also be retained, giving up to 26 weeks benefit after 42 months service.

IRISH REPUBLIC: Visas and permits expiring between 20th August and 20th September 2020 will be automatically renewed for a period of one month. This includes people in Ireland on short stay visas and those whose permissions had already been automatically extended by previous notices.

IRISH REPUBLIC: Revenue-approved profit sharing schemes are subject each year to annual reporting through the ESSI form. However, this year, the form has been placed online by the Revenue Service and employers are now being given extra time to complete it. The new deadline is October 31st 2020.

ITALY: The "Superticket" charged by regional authorities for specialist medical visits and laboratory tests has now been abolished. Companies that have been reimbursing this cost via expense claims should ensure that such claims now cease.

ITALY: A 15,000 quota has been established for those coming to Italy from non-EEA/Swiss states during the period from 2020 to 2022 for the purpose of attending training courses (run by certified training institutions) or serving apprenticeships.

ITALY: Although the offence of "mobbing" (bullying) was first tackled and defined by the Italian courts over 20 years ago, it has never been regarded as an offence that could be readily proven. Courts have generally looked for repeated actions of sufficient strength and purpose to be so psychologically

disturbing and threatening to the victim that a claim for damages could be justified. In the [latest appeal](#) before the Labour Section of the Court of Cassation it was found that although there was clearly a level of conflict between the Appellant and her Superiors there was no "relevant behaviour ... *put in place against them by their hierarchical superiors, intentionally and unjustifiably hostile, having the objective characteristics of prevarication and vexatiousness, characterized by multiple spurious emulative behaviors*". The court thus maintained the principle of previous rulings, that the burden of proof was upon an individual clearly to demonstrate the existence of "mobbing".

LATVIA: Back in March 2020, the state of emergency suspended the obligation for employees to have a mandatory medical examination before they commenced work with a new employer. The Cabinet has now rescinded that Order. It is therefore now necessary for all outstanding health examinations to be undertaken at the earliest opportunity - including periodic health checks for existing employees that have fallen due since March.

LITHUANIA: In order to avoid the possibility of both a "dismissal without legal basis" and reinstatement - and/or damages that follow - some employers instead pressure their employees to give in their resignation. Excessive pressure is itself unlawful, but legal practice encourages such actions because only 23% of "psychological pressure/violence" cases are found before the Labour Disputes Commission (DGK) in favour of the employee.

MALTA: The COVID-19 [wage subsidy](#) scheme has been extended until the end of October 2020.

MOLDOVA: The Labour Code has just been revised to facilitate flexible working. This includes a provision to introduce core working time set by the employer and variable working set by the employee (allowing them often to choose their own arrival and departure times). In addition, the current practice of operating a reduced working day on the eve of a public holiday is not always possible where there are production lines and continuous working. The law has therefore designated this extended working time as overtime. However, the use of time off in lieu of overtime hours is also being allowed for the first time - as long as the time off takes place within 30 days of the overtime. Night work is also being more strictly regulated, with a medical examination required before an employee may be transferred to permanent night shift working. Finally, employees who adopt a child now have a right to take up to 90 days unpaid leave.

NETHERLANDS: By 27th September 2020, most new Dutch corporate entities will be required to register their "Ultimate Beneficial Owners" (UBO) with the trade register held by the Chamber of Commerce. Those entities already established on that date will, however, have a further 18 months to register. A UBO is the natural person who is directly, or indirectly, economically entitled to more than 25% of the company, or the person who exercises "effective control". A few important exemptions exist to this requirement - such as listed companies and their wholly owned subsidiaries, and foreign legal entities with either a principal or secondary establishment in the Netherlands. Much of the data - such as date of birth, nationality and state of birth will be open to public view. But where this places the individual in danger of kidnapping,

harassment or violence the entity may apply for the public data to be blocked.

PORTUGAL: The government declared last year the aim of raising the minimum wage in 2021 to €670 (US\$798) a month, and €750 (US\$893) by 2023. However, the State President Marcelo Rebelo de Sousa has recently refused to comment when it was suggested that the current pandemic may have led to a conclusion that the rate should remain unchanged next year at €635 (US\$756) - the lowest in western Europe.

RUSSIAN FEDERATION/JAPAN: All annual visa-free visits between Japanese Prefectures and the Southern Kuril Islands in Russia have been suspended this year due to the coronavirus pandemic.

SLOVAKIA: Amended double taxation agreements have just been established between Slovakia and both the Czech Republic and South Korea. They apply to withholding taxes from January 2021 and all other taxes from March 1st 2021.

SPAIN: In recent years, we have reported a number of instances in Spain and France where the courts have determined that a fatality that is clearly not directly work-related was in fact considered a work accident. But what if a heart attack occurs during a workplace rest break and simply disables a worker? Here again, the Workers Statute and Social Security law both appear to classify the disabling event as work-related. A recent case in **Andalusia**, in fact, led the National Institute of Social Security (INSS) to award a cork grinder the seemingly generous compensatory allowance of €2,033 (US\$2,399) a month. But the employee, considered that their allowance should have been more and pursued their case through

the courts. However, this rapidly turned into a disagreement between the INSS and the welfare fund set up under the relevant collective agreement, with one court even declaring that the disability did not take place in working time at all. It finally took the Supreme Court to step in and accord responsibility for compensation at the feet of the welfare fund.

SPAIN: The Remote Working Law has finally been passed by the National Senate, but has since been caught up in lengthy negotiations between the government and both sides of industry about implementing regulations. So far, a number of important elements have been agreed. To qualify as remote work, the individual will need to be engaged on tasks away from the employer's premises, on average, for at least 20% of their working time in each three-month period. Remote work must be subject to an individual agreement and if one party does not agree it cannot go ahead. The remote working must also be reversible - so that the employee may return to conventional office-based work if they wish - and without penalty. The text has also been modified to leave the appropriate costs for such items as utilities to be covered by collective agreement. It is also no longer a clear right for a remote worker to have a flexible schedule if their work does not logically allow it. Uncertainty remains about when this measure will finally be implemented, but the government wishes it to be operating by next month.

SPAIN: If anyone flies to Spain, it is currently mandatory, 48 hours in advance, to complete and sign a health control [form](#), and obtain an associated QR Code. This code will need to be shown to border security personnel upon arrival.

SWEDEN: When an employer sets a one-month notice period at the commencement of employment, does that apply to the contract as a whole, including a probationary period? The [Employment Protection Act](#) in Sweden requires an employer to only give at least two weeks notice during a probationary period, although the period could be agreed to be longer. However, what if there is no reference in the contract to any different period during probation? The Labour Court has made clear that for the single stated notice period to also apply to probation it must clearly say so - otherwise the statutory notice will apply [*Swedish Labour Court 38/2020 28th June 2020*].

SWITZERLAND: International arbitration has been possible ever since the passing of the Swiss Private International Law Act in 2008. But, much case law has followed since then, and so have the uses of arbitration as a binding form of ADR. One of the most important changes is that an international arbitration involving a Swiss party must involve a foreign party that was located outside the country at the time an arbitration agreement was concluded. At the moment, the "foreign status" is determined where the party is located when a particular dispute arises. The law has also opened up the use of Swiss state courts by foreign-based arbitrators for determining interim relief or the taking of evidence. Furthermore, there are new provisions for the revision and setting aside of arbitration awards (within set time periods) and for revision/setting aside applications to now be made in English.

SWITZERLAND: There is sometimes some confusion about the payment of unemployment benefits for redundant staff. If the former employee is resident in Switzerland, then unemployment is

claimable there, but if they are a cross-border worker living in a neighbouring country they must obtain state unemployment benefits from their country of residence. However, there is one exception - that is, if the cross-border worker is partially employed due to force majeure, or bad weather. In that case, the Swiss authorities will be responsible for meeting the benefit obligations.

UNITED KINGDOM: For many years, some employers operated loan schemes in which employees (and some contractors via umbrella companies) were paid "disguised remuneration" in the form of loans from an employer sponsored "benefit trust fund". These loans were not designed to ever be paid back and successfully avoided tax and social security obligations. They affected thousands of employees at every earnings level. This was all brought to an abrupt stop by the [2016 Finance Act](#). Thus, loan charge legislation was drawn up and applied to all such disguised remuneration going back to 1999 - that was outstanding on 5th April 2019. At that point, those involved were encouraged to enter into an individual settlement with the HMRC revenue service. If they did not, then the loan charge could be applied that rated the income involved as chargeable for tax in a single year - thus pushing the tax up into the highest tax bands. Now, the deadline for final payment is September 30th 2020 - so if the repayment has not been made by that date, an agreement must have been made with HMRC to settle within a defined period or, as will sometimes be the case, the employee declare bankruptcy.

FEDEE NOTE: Although companies may not themselves have ever been involved in such schemes, many of their employees will have

done so through previous employers. It was found in 2018 by the UK's Money and Mental Health Policy Institute that over 100,000 people in the UK each year attempt suicide due to debt. It is therefore important that HR departments are attuned to such concerns and ready to deal with the consequences of the HMRC's action, at a time when money worries are already rising amongst staff due to layoffs and reduced bonuses and overtime.

UNITED KINGDOM: The Permanent Secretary in charge of revenue services, Jim Harra, has advised the Parliamentary Public Accounts Committee that an estimated 5-10% of claims by employers for job furlough payments were being investigated as potentially fraudulent. However, it was stated that "we are not going to set out to find employers who have made legitimate mistakes in compiling their claims" and the HMRC is going to concentrate instead on those who intentionally sought to defraud the scheme. Over 8,000 calls have been received in recent months from employees on the HMRC fraud hotline, many claiming that employers are requiring employees to work whilst continuing to claim the furlough subsidies.

UNITED KINGDOM: Passengers arriving from abroad must complete on-line a public health locator [form](#) 48 hours before arrival. The only exceptions are those arriving from the Irish Republic, the Channel Islands or Isle of Man who have been there 14 days or more before travel to the UK. Several types of travelers will not need to self-isolate for 14 days, even if they have come from outside an approved travel corridor - although they will still need to provide journey and contact details. These include regular travelers (traveling at least weekly), goods vehicle drivers (driving vehicles of community

licence holders), seamen and ships Masters, pilots and those transferring flights airside.

UNITED KINGDOM: A ban comes into force on September 14th 2020 against all social gatherings, indoors or outdoors, of six or more people. An exception is made for the workplace, but employers should not be party to any acts of hospitality if they exceed this limit. The fine is £100 (US\$129) per offence, but intrusion by the police and embarrassment of guests would be the true penalty.

GLOBAL

LABOUR SHORTAGES: From the Indian auto-sector to the Malaysian palm oil industry and Canadian apple farms, there are huge shortages of labour that are already slowing the global economic recovery. The shortage of labour in the agricultural sector is sure to lead to food shortages in some countries this Winter and the plight of many sectors illustrates very clearly how much the World depends on casual and immigrant labour. Arbetsförmedlinge, Sweden's state employment agency, has long predicted the need to attract immigrant labour because of Sweden's declining birth-rate, whilst in the USA, the Bureau of Labour Statistics has recently highlighted a decline in labour force participation due to "the aging of the baby boom generation". Just as the pandemic has left supply chains in a mess, it has deeply undermined labour flows. Probably the biggest sufferer will be the UK which, from January 1st 2021, will have - through strict immigration regulations - introduced a self-imposed shortage of key skills from the European continent. The UK government has made the fundamental mistake of confusing "high skills" with "key skills" and

will therefore be denying the economy the plumbers, electricians and mechanics that are the lifeblood of the economy. Those immigrants already in the UK are also not necessarily going to stay - as many are already departing for better opportunities elsewhere.

POLITICS AND EMPLOYEE RELATIONS:

There has always been a tendency for those in the HR function to try to see their discipline as essentially insular and disconnected from other areas of human knowledge, such as economics and politics. However, there still lies at the core of HRM a concern for employee relations and this is umbilically tethered to labour economics, political and cultural concerns and trends. This fact seems to have escaped many HR journals and any reference to politics in HR debate has frequently been dismissed as dangerous and inappropriate. This is contrary to much academic theory, such as Lewin's theory of change, and the evident importance of politically attuned specialists

at times of industrial unrest. So, what does politics, and particularly political leadership, tell us about the possible mood of the World reflected through the eyes of employees? The most immediate measure of this is, with the help of Google, to compare the population's interest in politics as a whole and compare it to interest in their political leader in particular. This shows that outside the USA (where the Presidential election is in full swing) the picture is one of glaring disappointment or indifference. In Germany, interest in politics is very high (91), but interest in Angela Merkel very low (8), in France, overall political interest is moderate (56), but interest in President Macron low (12), whilst in the UK, interest in politics is low (32) but interest in Prime Minister Boris Johnson virtually non-existent (2). This latter finding bodes very badly for Brexit. However, the huge level of evident disenchantment also points the way to a major deterioration in employee relations (and overall social order) as economic conditions worsen during the next few months.

DATES FOR YOUR DIARY		DATES FOR YOUR DIARY	
October 1 st 2020	Firms must advertise all Employment Pass (EP) or S Pass jobs on MyCareersFuture.sg portal for at least 28 days before hiring foreigners in Singapore .	October 31 st 2020	The deadline to file the 2019 ESS1 Form in the Irish Republic .
October 1 st 2020	Additional labor market testing requirements will be required for certain visa types in Australia .	December 1 st 2020	Privacy Act 2020 to become law in New Zealand .
October 2 nd 2020	USCIS will implement a new fee regulation for immigration benefit filings in the United States .	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 .
		May 1 st 2021	New salary criteria apply to EP and S Pass renewal applications in Singapore .
		2 nd August 2022	Parents will be entitled to two months paid parental leave in EU countries.

TRAVEL WARNINGS

ANGOLA: The use of a face mask is required in all public areas, except walking or exercising outside between the hours of 5:30a.m. and 8p.m. Additionally, the validity of all work, residence, and temporary visas has been extended through to 31st December 2020.

ARGENTINA: The existing lockdown measures have been extended nationwide until 20th September 2020. However, restrictions on social gatherings and restaurants in Buenos Aires City are now eased.

BURKINA FASO: Widespread flooding has killed at least 13, after days of heavy rains across the country. Anticipate further rains in the coming days and associated transport disruptions.

CZECH REPUBLIC: It is now compulsory to wear a face mask indoors in public places.

FINLAND: Finnair will reduce more than half of flights planned for October 2020 due to low demand amidst the COVID-19 pandemic.

FRANCE: A nationwide 'day of action' has been called by the militant CGT and FSU unions on Thursday, 17th September 2020. Expect some travel and business disruptions and associated unrest.

HAITI: Anticipate a heightened security presence across Port-au-Prince and further social unrest due to ongoing demonstrations. Avoid any large gatherings of people.

SPAIN: Jet2 has cancelled more flights to the Canary Islands - as this destination remains on the quarantine list.

TURKEY: Citizens are obliged to wear masks in all public areas.

UGANDA: International flights will resume at Entebbe International Airport on 1st October 2020.

USA: Businesses that are open to members of the public in the District of Columbia must post signage stating that persons may not enter unless they are wearing a mask. Employers shall provide masks to their employees. Additionally, the stay-at-home order in Honolulu, Hawaii will be kept in place through 24th September 2020 due to COVID-19.

USA/CANADA: The U.S.-Canada border will remain closed to nonessential travel until 21st September 2020.

FEDEE NEWS

HOME/DISTANT WORKING (H/DW): We are currently undertaking a global review of developing legal frameworks in this increasingly important field and have also drawn up a checklist for employers wishing to increase their use of H/DW. Please let us know if you would be interested to receive a copy of the latest checklist and also whether you might be interested in taking part in a free eMeeting about H/DW law and practice next month. Just drop us a note to admin@fedee.com.

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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