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HR WORLD TODAY

Just when the World seemed to be recovering from the pandemic, a second wave is swamping many countries. But this time around there is a greater reluctance to greet it with a rapid lockdown, probably because populations are tired of restrictions and increasingly seeing COVID-19 as largely a disease of old age. However, is this exhaustion also affecting employers who have already begun to write off 2020 and needing next year to recover?

If the news is not still directly about the latest pandemic measures it is generally lurking in its shadows, as in the Labour Court challenge to Kenya Airways, or the US Congress's debate about the Safe to Work Bill. Meanwhile, the current experience of Bridgestone in northern France stands as a warning to employers that uncomfortable, if not unfair, questions will be raised about a company's broader strategy if they attempt to slim down operations in coming months.

As redundancy rears its head, employers will be questioning how they can develop cheaper and alternative termination stratagems. More severe discipline for employee uncertified absence may be one avenue in Germany now that the way has been opened up by a recent Federal Labour Court Ruling. But, as we see from Colombia, one barrier when believing the way is open to introduce a redundancy programme is the threat of discriminatory selection. Likewise,

changing the goal posts to minimise, or avoid, bonus payments in redundancy packages has recently backfired for one company in Western Australia.

Innovation and opportunism continue to be evident in many fields. Thus, in the midst of measures to contain discrimination and extend EO pay reporting comes Peru with its leave scheme for parents of children with cancer, and Argentina with its new quota scheme to increase job opportunities for transgender workers. Still novel too are the actions of small countries seeking to take advantage of their low COVID-19 records to launch visa nomad schemes. However, the latest examples can also offer those who wish to escape for a year glorious scenery, fine weather, low living costs and little or no tax to pay.

Pay trends are also a reminder that many countries are not abandoning low income workers by freezing, or suspending, minimum wage rates. Far from it - with significant rises in rates for workers in Vermont and proposed in Slovakia next year. Some big hitting companies, like Walmart, are also taking the opportunity to restructure operations, upgrade skills and introduce new team leader positions at highly attractive rates for their sectors. Furthermore, in spite of remaining uncertainties about the future of the TikTok App in the USA, ByteDance is moving ahead with an across-the-board one-off bonus.

The fact that fundamental laws are still being approved - such as Brazil's new data protection law - is a strong reminder that company policies need to be constantly reviewed and updated. The experience of 'Seoul Semiconductor' is also a wake-up call for companies to find ever better ways to protect essential technical and trade secrets. A major avenue for acquiring intelligence has long been the poaching of staff by competitors and a priority should be to evaluate current restrictive covenants and determine how lawful "garden leave" is in the jurisdictions where a company operates. There are also a host of perfectly legal steps that could be taken to successfully outflank and misinform a predatory competitor.

AFRICA AND MIDDLE EAST

BAHRAIN: The government has now followed the lead of UAE by normalising relations with Israel. Comments made by the Sultanate of Oman welcoming this move could also herald the future recognition by that important Gulf state too.

BOTSWANA: Pressure is building on the government to follow Namibia and Angola by passing a law against testing job applicants for HIV/AIDS and other acts of discrimination in the workplace. So far, the government has only confirmed that it is developing a "policy" on the issue.

EGYPT: The state of emergency, which was first declared in 1981, has been further extended and intensified until 27th October 2020. Business travelers should expect extensive security and health screening during individual trips, whilst employers should build into their schedules lengthy immigration processing delays when

applying for work permits for foreign employees.

EGYPT: The Alexandria Manpower Directorate has responded to skills shortages in certain fields by establishing free fast-track training courses at four of its centres for those with intermediate or degree level qualifications. The skills in question include mobile maintenance and repair, detailing and weaving, air conditioning, welding, turning and the maintenance of household appliance. In addition to covering travel and insurance costs for the training period, there will be automatic employment for those gaining final certification.

GEORGIA: Under the recently launched Digital Nomad Visa program, "Remotely From Georgia", technically skilled workers from 95 countries, including Canada, UK and USA, may apply to live and work in and from this Caucasian (former USSR) state, for at least 360 days without a conventional work visa. Applicants need to have a minimum monthly salary of US\$2,000, proof of health insurance for the entire duration of their stay and pay for their own COVID-19 quarantine on arrival. Thankfully too, the incidence of the virus is relatively low in the country. Georgia is one of the few countries in the World to operate a personal tax regime that excludes from tax worldwide income arising from sources outside the country. There are also no social security/social insurance taxes levied. This, from a financial perspective, makes it potentially the most attractive country so far to offer this form of visa. For the application form, please click [here](#).

JORDAN: The government has isolated the city of Sahab and is extending it to surrounding areas. A curfew has been imposed between 8pm and 6am each night.

All schools, markets, parks and mosques will also be closed and workplaces subject to strict health and safety measures under Sections 78 and 79 of the Labour Law (1996) and associated regulations. All workplaces must set up an isolation area and make arrangements for anyone showing symptoms of COVID-19 to be transferred there for tests to be undertaken by a laboratory accredited by the Health Ministry before they are transferred securely to their home, or a hospital for a period of isolation. The physical space where the individual was employed must be closed to other employees and sterilised. However, work may continue in other areas and even in sterilised areas on subsequent shifts. If workers are identified as direct contacts of anyone diagnosed with the coronavirus, they must go into 14-days home isolation and only allowed back into work after two diagnostic tests approved by the Health Ministry.

KENYA: The Labour Court has been undertaking conciliation in a dispute between Kenya Airways and the Kawa union over a range of measures in response to the current pandemic. An agreement was reached between the parties back in April that continued until 30th June 2020. This included pay cuts that the airline had promised to compensate for after the resumption of normal operations. But since 1st July 2020, the situation has changed and the company has ordered that all staff go on unpaid leave, other than a small core of managers and professionals. The court was loath to penalise the airline, although it has taken a dim view of its unilateral actions. Kenya Airways now has 30 days to resume negotiations with the union, or face an imposed settlement by the court.

OMAN: A special Youth and Human Resources Committee set up to advise the government has identified what it calls "loopholes in the current labour law" which allow "arbitrary dismissal of workers in the private sector". It is proposing that the labour law be amended to provide better job security and establish "an attractive environment for work". However, the proposals have triggered a sharp reaction by the Chambers of Commerce who have pointed out such perspectives are naive and inappropriate in the context of difficult trading conditions.

THE AMERICAS

ANGUILLA: This British overseas territory is the second Caribbean island to launch a one-year nomad-style visa - they simply entitle "[escape](#)". The cost for individuals who plan to stay between three months and a year is US\$2,000, and for families of up to four US\$3,000. All those taking up the scheme are required to hold insurance which covers COVID-19 medical costs and full hospitalization, doctors' visits, prescriptions and air ambulance. They must also comply with COVID-19 health precautions on arrival.

ARGENTINA: President Alberto Fernandez has just signed a new decree establishing a 1% transgender quota for all jobs in the public sector. Although Argentina was a pioneer in the region for laws covering gay marriage (2010) and gender identity (2012), many transgender people are denied jobs and frequently suffer 'hate crimes'. Although private sector employers are not covered by the quota, many foreign multinationals recognise this group in their diversity policies.

ARGENTINA: The validity of certain [entry permits](#) has been further extended until 18th October 2020.

BRAZIL: On 18th September 2020, Brazil's President signed the new data protection law (Lei Geral de Proteção de Dados Pessoais, "LGPD") applicable retroactively to 16th August 2020. Also now in operation is the new data protection authority (Autoridade Nacional de Proteção de Dados).

CANADA: The number of frontline health and safety inspectors is set soon to rise in **Ontario** by 98. This will put more inspectors on the ground than ever before. Even before this latest 24% increase, the existing inspectorate conducted over a 6-month period 19,411 inspections and issued 16,520 corrective orders. They have also established a new [website](#) providing approved local sources for a wide variety of PPE aids and equipment.

CHILE: After promising for many months the introduction of a new wage subsidy plan (EWSS), the Finance Minister has announced that it will finally be launched by the end of this month. The scheme will last until 31st March 2021 and to qualify, an employer will need to demonstrate that they have suffered at least a 30% decline in either turnover or customer orders during the period from 1st July 2020 until 31st December 2020 - as compared to the same period in 2019 (the equivalent percentage under the current TWSS is 25%). The EWSS will also cover new hires and seasonal workers, will apply to employees according to 4 earnings bands and employees will be subject to PAYE and USC in the normal way - thus not accumulating year-end liabilities.

COLOMBIA: A recent case before the High Court of Justice - and subsequently the Labor Chamber of the Supreme Court of Justice - underlines the risks an employer takes if they seek to make an individual redundant should they be recognised as disabled. It is not necessary for such a worker to have achieved third party recognition of their condition, or receive a disability allowance. The burden of proof lies entirely with the employer to demonstrate that the loss of position was due to the "extinction of a business need" and no other suitable position existed for the employee in the company.

PANAMA: In order to obtain clearance for a return to work, employers must go online at [here](#) or [here](#) and confirm the resolutions made by company committees of health and hygiene by completing the fields required. This will allow the Ministry of Health (MINSAs), to endorse the company measures taken.

PERU: Law 30012 has been modified so that any worker whose child aged under 18 is diagnosed with cancer is granted up to 12-months leave. Payment of this leave is the responsibility of the employer for the first 21 days and thereafter the EsSalud social welfare system. A new law (31041) has also recently been published ensuring that all those under the age of 18 receive free medical care if they are diagnosed with cancer. This law also grants to the family of young persons with cancer an additional payment from the IAFAS insurance funds equal to two minimum wage payments.

USA: The Department of Labor has issued some Q&As to help parents and employers deal with absence under the FFCRA as schools reopen. These make clear that

parents may not make a claim under FFCRA if the school is open, but they choose an elearning option for their child (unless the child is subject to quarantine or advised by a health professional to self-isolate). However, if the school is closed to a child on a certain date, even if open to others, a claim may go ahead.

USA: The US Department of Labor (DOL) is constantly seeking to clarify the application of the fluctuating workweek under the FSLA. Their latest opinion relates to two principal issues. DOL confirms that this calculation method may apply to any non-exempt worker, even if their normal hours never dip below 40 per week. They also confirm that although sick leave does not affect an employee's "regular rate", an employer may exceptionally and temporarily amend that rate where a disciplinary deduction is made due to uncertified absences or infringements of work rules.

USA: Although some distance away in Congress, employers should anticipate the passage of the Safe to Work Bill. This would serve, at a federal level, to limit the scope for companies to suffer litigation due to health claims and injuries arising from COVID-19 exposure. Under the initial draft, a plaintiff would need to prove that an employer did not take adequate measures in line with government guidelines, was grossly negligent and that the plaintiff suffered significant physical, mental and emotional injuries. The threshold for proof would be higher than most H&S claims and the statute of limitation would be only one year from first suffering the injury. The plaintiff must also list all places visited within the 14 days prior to the onset of COVID 19 symptoms. To take a class action it would, furthermore, be necessary for co-litigants to "opt-in" as such

an action will not automatically include all those in a similar situation [Safe to Work Bill, S. 4317, 116th Cong (2019-2020)].

USA: 1st October 2020 is the effective day for **Oregon's** Workplace Fairness Act. This requires all employers in the State to have in place a comprehensive policy against discrimination and harassment, covering the protected categories of race, colour, religion, sex, sexual orientation, national origin, marital status, age, any expunged juvenile record, performance of duty in a uniformed service, or physical or mental disability. Not only will employees have five years to take action in support of a claim, but an employer must notify them of this right. It also places a ban on employers to coerce an employee to sign a non-disclosure or non-disparagement undertaking - although there will be the unlikely eventuality that an employee voluntarily requests to enter into such an undertaking as part of a settlement, separation, or severance agreement - provided they are given seven days to change their mind.

USA: Although the Federal Families First Coronavirus Response Act does not apply to employers with 500 or more employees, [California's Bill AB 1867](#) now requires large employers to provide 80 hours of COVID-19 supplementary paid sick leave. It also, inter alia, requires employees in food handling facilities to wash their hands every 30 minutes.

USA: **California's** Consumer Privacy Act (CCPA) was enacted with an HR exemption that was due to end on 1st January 2021, although it still required employers to follow notice-on-collection obligations to employees. Now, Bill 1281 is likely to extend the HR exemption for another year - unless a

ballot initiative gains a majority in November - when the exemption would last until January 2023. But having an HR exemption is not as broad and secure as it may seem. This is because the uses that personal data were to be put may change and also new data collected due to COVID-19 measures, homeworking requirements and the introduction of new security measures. These will still require new notifications to be made to employees under the existing Act.

USA: California's Senate Bill [973](#) requires that employers with 100+ employees issue an annual report to the State's Fair Housing and Employment Department (DFEH) breaking down pay by gender, ethnicity and race under ten specified job categories. The first report deadline is 31st March 2021 and the obligation relates both to the employer as a whole and separately to each establishment they operate. The fact that pay disparities may exist for numerous reasons other than discrimination has not persuaded Senators from supporting the Bill. It has also not occurred to legislators that an employer with numerous establishments - such a retailer - will be effectively revealing the individual pay levels of identifiable individuals. This fact is even more startling when it is noted that the DFEH will have the right to share the data with the Division of Labor Standards Enforcement (DLSE) and that the data will be kept for 10 years.

USA: Federal Judge Gregory Woods in the Southern District of New York has effectively [struck down](#) a Department of Labor order establishing a narrow definition for the designation of "joint employment" ie: making one employer liable for the shortcomings of another under the FLSA. All that substantively now remains is the defence by a business where a worker has

several separate employment relationships with associated companies - so called "horizontal employment". As this ruling removes the possibility of exempting parts of a "vertical employment" relationship, it has implications not only for staffing agencies, but also franchising networks.

USA: With effect from October 2020, around 165,000 hourly paid workers will receive a pay raise at Walmart, the nation's largest private-sector employer. The company is introducing a "team-based operation model" with the new Team Leader minimum hourly wage set at \$18, rising to \$30 in Supercenters. Substantial raises are also being given to those working in delis and bakery with the minimum wage increasing from \$11 an hour to \$15 or higher.

USA: With effect from 1st January 2021, the **Alaska** minimum hourly wage will be increased slightly from \$10.19 to \$10.34. On the same date, **Vermont's** minimum hourly wage will be increased from \$10.96 to \$11.75, and it will further be increased to \$12.55 in 2022.

ASIA PACIFIC

AUSTRALIA: Many employers have, over the years, failed to pay the superannuation guarantee (SG) that was due each quarter. To correct this error, employers were given an amnesty by the Australian Taxation Office for the period 1st July 1992 to 31st March 2018. This did not seem very much to pay, as it was only \$20 (US\$14.65) per worker each quarter, although over the entire period for an entire payroll, it may have seemed prohibitive. On 7th September 2020, however, the amnesty ended and now employers could not only lose tax deductibility - but also be subject to penalties and general interest

charges, whilst company Directors are now personally liable for the unpaid superannuation guarantee charges (SGC).

AUSTRALIA: When faced with the mounting cost of redundancy packages, employers should take care when seeking to use timing stratagems and other side-stepping devices in an attempt to avoid bonus payments. The Industrial Relations Commission in Western Australia was recently called upon to adjudicate on the payment of an annual bonus payment for a redundant operations manager. The company concerned had issued an initial letter to the individual concerned that confirmed payment of a \$15,000 (US\$10,683) bonus. However, 7 days later they issued a second letter changing the effective date and referring to a "discretionary bonus". The company argued that payment of the bonus also involved "key performance indicators for the business" as well as the individual. However, although it would have been wise to include such a proviso, the contract only referred to the individual's performance - and the company lost the case.

FEDEE COMMENT: Employers should always ensure that bonus payments are conditional on corporate, as well as individual, performance.

AUSTRALIA: Australian citizens and permanent residents are prohibited from leaving the country due to COVID-19 restrictions. [Exemptions](#) will only be made for individuals subject to special circumstances - such as those who need to receive urgent medical care, or for the conduct of economically critical industries and making essential business transactions (including export and import industries).

AUSTRALIA/HONG KONG (CHINA):

Temporary skilled visa holders from Hong Kong now have the opportunity to apply for a 5-year extended visa, with the prospect of permanent residency at the end of that 5 year period in Australia.

BRUNEI: Citizens and permanent residents must obtain approval from the Prime Minister's Office in order to leave the country. Guidelines for making an application to exit the country can be found from [here](#). To submit travel applications on line, please click [here](#).

CHINA: Full-time employees at ByteDance (a Chinese multinational internet technology company and owner of TikTok) who have worked for 26 or more days during July and August 2020 will receive a special bonus amounting to half of their August 2020 base salary. ByteDance has a 60,000-plus workforce around the globe.

HONG KONG (CHINA): A Double Taxation Agreement (DTA) with Macao is now in force for periods beginning on or after 1st April 2021. Hong Kong has also just signed a [DTA](#) with Serbia.

HONG KONG (CHINA): When a foreign employee is hired to work in Hong Kong, considerable attention needs to be given to the prevailing law under which their contract is written. This is because it is fairly common practice for employees to retain their contracts written under another jurisdiction which often place them at a considerable advantage compared to those holding a local Hong Kong contract. Two reasons why an employee might be motivated to move across to a local contract is because of Hong Kong's Payment in Lieu of Notice ("PILON") laws that allow them to depart to work for a

competitor with the minimum of delay. This is often coupled with restrictive covenants that become even more complex and difficult to enforce if they go through a series of interlocking employments with the same employer before their move to a rival firm.

FEDEE COMMENT: Before finalising any employment contract in Hong Kong, it is essential to undertake a "worst case" review with a seasoned local employment lawyer to minimise problems going forwards.

INDIA: Over the quarter from April to June 2020, India's economy contracted officially by 23.9%. About 19M people have lost their jobs in the formal economy since the pandemic hit, but the impact on India's huge informal economy is much worse - possibly amounting to six times that figure.

MYANMAR: It is ironic that Myanmar is the latest country to sign the ILO Minimum Age Convention 138, which commits its signatories to ban child labour. Although the minimum working age in Myanmar is 14 years, the latest available official data indicates that 9.3% of its child population is forced to work (from as low as age 5), including more than 600,000 working in hazardous work environments.

NEW ZEALAND: Employers need to start working on their drug misuse policies ahead of the coming referendum on New Zealand's Cannabis Legislation and Control [Bill](#). The popular vote on 17th October 2020 will only be advisory, but the draft legislation is already drawn up and has widespread parliamentary support. Although it will only allow Cannabis to be consumed on private and specially licenced premises, it is understood that the workplace will be classified as private. It will therefore be up to

employers to decide if they wish to treat the drug like alcohol, tobacco or apply different levels of restriction. This will be especially important if consumption needs to be limited on health and safety grounds during rest breaks and immediately before arrival at work.

FEDEE COMMENT: The longer-term effects of this drug should not be underestimated. In addition to reducing IQ, it has been found to lead to mental illness, breathing problems, increased heart rate, complications during pregnancy and a range of gastro-intestinal disorders. Deaths have also arisen because of excessive vaping.

NEW ZEALAND: Normally, an employee on parental leave may only return to work on a paid basis for short "keeping in touch" periods that collectively should not exceed 64 hours. In fact, they may not return at all within the first 28 days since the birth. However, under COVID-19 emergency measures, some essential workers may return for a period of up to 12 weeks without losing the rest of their entitlement. But any early return to work may only take place after giving 21 days notice.

PHILIPPINES: Effective until 31st December 2020, foreigners with visas approved by the Bureau of Immigration (BI) are allowed to leave the country before they have been issued with their alien certificate of registration identity card (ACR I-Card).

SOUTH KOREA: The stealing of technical and trade secrets through hiring the employees of a competitor has recently come to a head in the case of 'Seoul Semiconductor' that has successfully prosecuted the Taiwanese company Everlight Electronics. The prime target had

apparently been Seoul's patented WICOP technology for the automotive sector that enabled LED chips to be incorporated into pcbs without any other associated wiring or attachments. The case illustrates how much HR issues concerning the poaching of key staff can be at the forefront of strategic business concerns.

SRI LANKA: The Cabinet has approved an increase in the minimum age for employment to 16 years in order to bring it in line with the minimum school leaving age.

TAIWAN: An amendment to Article 84-1 of the Labour Standards Act makes those involved in the construction, operation and maintenance of wind farms now exempt from several aspects of general labour law. This allows the workers to operate outside working time restrictions, including the selection of days off and the avoiding of normal national holidays. These changes are partly in recognition of the difficult weather conditions under which such companies must often work.

EUROPE

ALBANIA: Effective until 30th November 2020, foreign citizens from Saudi Arabia, Bahrain, Belarus, India, Qatar, Oman, Russia and Thailand may enter Albania without a visa for a short term stay. Additionally, Albanians who overstayed their visas in a foreign country due to COVID-19, may apply for reimbursements from the [General Directorate of Taxation](#) in Albania for penalties incurred whilst they were abroad.

AUSTRIA: New measures have now been introduced that make it possible to organise events, such as small conferences and

seminars, with up to 50 seats indoors when the seats are not assigned or marked. This extends to 1,500 people when seats are marked and assigned. However, mouth and nose protection will be necessary where a minimum social distance of one metre cannot be guaranteed.

BELGIUM: At long last, it will be possible (lockdown permitting) from 1st October 2020 for managers and specialists with at least a University degree and trainees with a Master's degree to apply for an EU Intracompany Transferee Permit to allow them to live and work in Belgium for between 90 days and three years. To qualify, an applicant must have been working for a company abroad for at least three months (in the Flanders and Walloon Regions) or six months (in the Brussels Region). Moreover, they must make their applications from abroad and their employer must pay them generally in line with equivalent local employees during their stay.

CZECH REPUBLIC: The [Antivirus Regimes](#) A (temporary closure of operations ordered by the government, or quarantine of employees) and B (obstacles to work on the side of the employer due to COVID-19) have been both extended until 31st October 2020.

DENMARK: In order to be able to protect their interests in the face of the pandemic, many restaurants and cafes in Denmark are asking customers to supply contact details. This is mirrored too by employers who are seeking to collect data concerning third parties visiting company premises. In both cases, the GDPR kicks in - making it necessary for those providing data to understand the purposes for which the data will be kept, how it will be stored and who will have access to it. If this data is collected, it is

necessary to ensure visitors realise that in the event of an infection on the premises, they may be contacted by the authorities.

EUROPE: Although most reports concerning employment law cases at a European level arise from the European Court of Justice (ECJ) in Luxembourg, it is important not to forget the European Court of Human Rights (ECHR) in Strasbourg. This was established under the Council of Europe - which has a wider geographical spread than the European Union. Employers will be most familiar with ECHR cases concerning Article 8 of the European Convention - relating to privacy. But the court also covers such relevant issues as discrimination, freedom of movement, and freedom of association (union rights). The most common successful cases before the court relate to the right to a fair trial (highest incidence: Italy and Turkey), and freedom from torture (highest incidence: Russia and Turkey). Perhaps the most surprising statistic is the fact that at the top of the league table for successful cases relating to discrimination is the United Kingdom.

EUROPEAN COURT OF JUSTICE: One of the EU's first measures in the field of self-employment was the 1986 Directive on Commercial Agents (86/653/EEC). The key feature of this measure was the right it gave such agents to make huge potential claims for compensation if the Client dispensed with their services. Partly because of this fact, courts around Europe have varied greatly in their willingness to classify anyone as a Commercial Agent. In France, for instance, it was common to accord such contracts as instead "Common Interest Mandate Contracts", unless they were deeply involved in business negotiations and discussions about prices (which in France was legally

problematic in itself). However, this uncertainty is now largely at an end, following a [ruling](#) by the European Court of Justice (ECJ) in June 2020. The Court has removed from the essential role of the Agent a requirement to deal with pricing matters and has also established a wide definition for the concept of "negotiation". The court concluded that "the main tasks of a commercial agent are to introduce new customers and to develop business with existing customers. However, the commercial agent may carry out these tasks by providing information and advice as well as pitches to promote the conclusion of the deal for the sale of goods on behalf of the 'Principal', without the commercial agent having the authority to modify the prices of those goods". It will therefore be much easier now for anyone who operates professionally in the sales and marketing, or sales promotion, field to claim the status of Commercial Agent.

EUROPEAN UNION: This is a first reminder to employers with 50+ employees that by 17th December 2021 they will have to have set up a fully operational whistleblowing scheme under Directive 2019/1937 to protect persons reporting breaches under European Union Law. Contrary to some reports about this requirement, compliance will be achieved if it meets this relatively narrow remit. Thus, it will affect just "breaches falling within the scope of the Union acts". Although the relevant categories are for this are large, the EU scope is often limited. This, for instance, is the case in respect to "transport safety", although in respect to GDPR it is very comprehensive - as it covers "protection of privacy and personal data, and security of network and information systems". For some reason the scope of the Directive does not include EU Employment Directives - largely

because "Directives" must be interpreted by Member States - as distinct from EU Regulations that must be applied directly by Member States.

FINLAND: Effective until 31st December 2020, the [Finnish Immigration Service](#) may grant residence permit extensions for up to six months, even if the applicant's income is lower than the normally prescribed sum.

FRANCE: Foreign companies operating in France please take note. The French have a name for it - "déjà vu", but it is also sadly the repetition of a "maladie nationale". Back in January 2014, Goodyear was one of the first of many subsequent companies to give up production in France. At that point, the company finally ended its fruitless five-year consultations with the union CGT concerning a plant closure in the northern city of Amiens and decided to pull the plug. The result was the taking of two senior executives hostage, whilst the police stood idly by. Now, Bridgestone is in a similar position with regard to its tyre plant and plans to make redundant around 900 employees in nearby Pas de Calais. To a large extent, the workforce made this decision inevitable when they rejected a proposed "competitiveness pact" last year that would have resulted in further investment of €6.5M over three years. Ignoring this fact, the challenge to the closure is being led by several national government Ministers and the President of the Hauts-de-France Regional Council who have issued a joint press release calling the move a "brutality" and accusing the company of divesting the plant "for many years in favour of its other European sites, automatically resulting in a deficit of competitiveness". The Haut-de-France Regional government is also encouraging opposition amongst employees,

with talk about "premeditated murder" and the need to "force" the company to think again. So, we may yet have worse things to come.

GERMANY: Two surveys undertaken by the University of Cologne indicate that 80% of respondents considered that their managers lacked training in the supervision of employees in a home office. This even presented a problem amongst IT workers who frequently expressed the view that managers were unable to give equal attention to those working at home compared with those with whom they had physical contact.

FEDEE COMMENT: This is clearly a challenge for HR who may not be aware of the disparity that exists between the two employment groups.

GERMANY: An employee who is injured on a skiing trip organised by their employer to entertain customers has been found not to be entitled to claim from employers liability insurance for an injury that took place on the trip. This was because a leisure activity is not insured, even if it took place in the context of in an event that serves business interests [LSG Darmstadt PM No. 14 v. 7.9.2020].

GERMANY: Informal discussions are taking place between the automotive manufacturer Opel and the trade Union IG Metall on a permanent arrangement for a four-day week after the health crisis is over. Since the Groupe PSA takeover, the German workforce has been reduced dramatically with whole layers in the reporting structure removed altogether. Now plans to merge with Fiat Chrysler are putting pressures on

both unions and management to protect skills in the business as much as possible.

GERMANY: According to a Federal Labour Court ruling [[BAG 7.5.2020 – 2 AZR 619/19](#)], employers are justified in terminating a worker's employment contract if the employee does not report a continuing inability to work in a timely manner. In this case, the employee's follow-up sick note did not reach the Supervisor concerned until the 4th day (2 weekend days and 2 working days) after the existing sick note had expired. Although both the Labour Court and the State Higher Labour Court supported the case for employee protection from dismissal, the Federal Labour Court rejected this view, taking the position that late notification of a continued inability to work is just as serious for the employer as when an employee first notifies an employer of an incapacity to work. Thus, employees must provide immediate notification (meaning there is no culpable delay) or face the possibility of dismissal. [Kindly contributed to the FedEE Newswire by Diane Wardle-Ludwig, [DWL-HR-Consulting](#), Frankfurt Am Main, Germany].

GERMANY: Is Twitter a permissible platform for Works Councils (WCs) to communicate with employees? In a 2017 case, the lower court in Göttingen, Lower Saxony, originally thought not (No. 3 BV 5/17 of 6.11.17) when it ruled to ban tweets if they were about company operational matters not previously cited in the public domain by the employer. But when submitted to the Higher Labour Court in Lower Saxony, the WC argued Twitter to be a contemporary information sharing vehicle for employees. The higher court agreed, on the basis of the WC having a fundamental right to freedom of expression (Ref. 5 TaBV 107/17 6.12.2018). Thus all eyes were on the Federal Labour Court (BAG) where the case was referred for a hearing this July. However, the employer

withdrew their appeal - so no ruling was made. Hence uncertainty lingers. [Kindly contributed to the FedEE Newswire by Diane Wardle-Ludwig, [DWL-HR-Consulting](#), Frankfurt Am Main, Germany].

GERMANY: Berlin's Neutrality Act has unwittingly become a battleground between groups that are doing everything but take a nonsecular viewpoint to support, or oppose, the islamic headscarf issue. Sensibly cutting through this conspiracy has been the State's Federal Labour Court (BAG) that recently examined the teacher headscarf ban and concluded that it would only be valid "if the school peace was specifically disrupted" by the wearing of such a garment. As soon as this matter had been resolved, the Court of Appeal came up with its own view concerning the wearing of headscarves by legal professionals. The Court in this case approved the wearing of a headscarf, but only by a lawyer in training, provided that they did not, at the same time, wear a robe and were accompanied by their Supervisor who did wear conventional legal attire.

ITALY: A decree (the "New DPCM") has extended until 7th October 2020 the restrictions on social distancing and the wearing of face masks in open squares and many other outdoor areas between 6 pm and 6 am. However, the social distance measure in Italy is only one metre.

POLAND: According to the latest preliminary data, during Q1 2020, 14,140 persons were reported as having injuries due to accidents at work, which was 10.5% fewer than in the same quarter last year. The highest injury rates were recorded in mining and quarrying (3.02), and water supply, sewerage, waste management and remediation activities (2.47).

ROMANIA: During Q2 2020, the average monthly pension received from all sources was 1,436 lei (US\$347). This was 0.9% higher compared to the previous quarter. The average state monthly social insurance pension stood at 1,380 lei (US\$334).

RUSSIAN FEDERATION: The Ministry of Internal Affairs has [confirmed](#) that several types of migration documents, i.e. visa (all types), migration cards and residence permits that expired between 15th March and 15th September 2020, will be automatically extended for a further 185 days.

SLOVAKIA: The normal two-year maximum for the fixed-term employment contracts (including renewals) has been modified. An amendment to the Labour Code (Act No. 311/2001 Coll) now allows for the extension by one year of any fixed-term contract due to expire during an "Emergency Period", or within two months of its recall. This is provided that where employees representatives exist, consultation about the extension has taken place with them before the renewal is finally agreed.

SLOVAKIA: The government has proposed to increase the monthly minimum wage next year from €580 (US\$681) to €623 (US\$732). This gives rise to a new hourly rate of €3.58 (US\$4.21). In addition, wage surcharges for work intensity have changed from a fixed percentage to a flat rate, whilst all percentage increases for night work, work on Saturday and Sunday and work performed outside an employment relationship on a public holiday would all become fixed-rate additions - rather than percentages of an applicable minimum rate.

SPAIN: There has been much discussion in recent years about the delayed retirement of

employees in Spain. Little progress should be expected on this issue for at least another year because of widespread union opposition. In fact, the Minister of Labour, Yolanda Díaz, is putting a brave face on this issue, officially reasoning that an extension of the working life of older employees would reduce opportunities for young people to enter the labour market.

SPAIN: The national government has in its sights four reforms that it wishes to make by the start of next year. None of these are good news for employers. They are:

- The re-establishment of primacy for sectoral collective agreements over company agreements.
- The removal of the law that completely terminates the validity of a collective agreement that has not been re-negotiated within 12 months of its formal term coming to an end.
- Stricter controls on outsourcing, especially the prevention of workers receiving remuneration lower than the applicable agreement in Spain.
- An end to all rights by an employer to unilaterally modify terms and conditions for a worker in the absence of a full formal contract.

The Yolanda Díaz, Minister of Labour, is bringing forward legislation to address these concerns and is expected to present a Bill to the Cortes Generales (Parliament) by the end of October.

SPAIN: The reduction of the working day over the course of the pandemic has had the curious effect of increasing the cost per hour

worked in Spain by 8.3% between April and July 2020. In fact, the biggest increases were in artistic, recreational and entertainment activities (30.2%), real estate companies (21%) and the extractive industries (17.8%). Overall social security contributions and severance payments also rose 14.4% during this period.

SPAIN: Although the coronavirus force majeure support scheme (ERTE) was due to end on 30th September 2020, it has now been generally agreed by the government and both sides of industry to extend it until 31st January 2021. It is also likely that it will continue to represent 70% of basic pay. There is a general consensus that the scheme will continue in some form for as long as will be necessary. The January date will allow the parties to renegotiate ERTE after Christmas and it could actually continue in certain sectors until April.

UKRAINE: The gross national minimum wage rose on 1st September 2020 to UAH 5,000 (US\$177) a month. This means the employer will have to meet a total labour cost of UAH 6,100 (US\$216) - inclusive of social security charges - and the employee receive UAH 4025 (US\$143) net.

UKRAINE/GRENADA: Citizens of Ukraine and Grenada who possess valid passports may now enter and stay, without visas, in the territory of the other party for a period not exceeding 90 days within any 180 day period.

UNITED KINGDOM: The Home Office is ending the Tier 4 visa entry route and replacing it with a new "Student visa". This change will occur on 5th October 2020 in respect to non-EEA/Swiss nationals. Applicants will be required to meet the minimum points criteria in order to be

awarded a visa as a "Student" or qualify under a "Student Child status". The route will apply to all EEA students from 1st January 2021 when free movement ends.

UNITED KINGDOM: Many organisations use the services of external bodies and individuals to perform activities such as secure contracts in new markets, undertake transactions on their behalf, or simply to act as a locally responsible point of contact to accept legal documents intended for them. The duties which a Client owes to an agent in the UK have gradually been clarified by case law, but it was only this Summer that the High Court [Bates -v- Post Office Ltd (No.3) (2019) EWHC 606 (QB)] established the principle of "good faith" that should apply to what it referred to as all "relational contracts". Such contracts are those of a long-term nature, "performed with integrity", based on "mutual trust and confidence" and involving a "high level of communication and co-operation". In such relationships, a breach of good faith would be "if it would be regarded as "commercially unacceptable" by reasonable and honest people". Thus, most forms of "summary treatment", "sharp practice", unjustified accusations or unacknowledged systems defects (as in the Post Office case) could render a contractual claim for damages in respect to such matters as financial loss, personal injury, duress, unconscionable dealing, harassment and unjust enrichment.

FEDEE COMMENT: Greater attention should be given to long-standing relationships involving external representation to ensure that a company does not find itself facing a claim that a "relational contract" has been breached. This is perhaps an area where HR professionals need to become more involved.

UNITED KINGDOM: The government has recently confirmed that the minimum private pension age will increase from 55 to 57 in 2028. This means that millions of people in their mid forties and younger will have to wait an extra 2 years to access their funds.

GLOBAL

HEALTH DECLARATION FORM: Travelers must remember to fill out a health declaration form prior to departure for a growing number of destinations. Here are some of the most common for business travel: [China](#) (Mainland), [Hong Kong SAR](#) (China), [Italy](#), [Maldives](#), [The Netherlands](#), [Singapore](#), and [Vietnam](#).

OECD OUTLOOK: We continue to be highly sceptical about economic forecasts produced by the OECD - as they appear to contain highly politically massaged figures. Their latest report is even blatantly titled to give an upbeat impression - "Building Confidence". We have just experienced (outside the two great World Wars) the biggest economic collapse in recorded history and yet, according to the OECD, global GDP will have fallen by just 4.5% this year. We do not think this squares with any experience of the downturn felt on the ground, or even published by statistical offices in individual countries (which are, in themselves, generally massaged). The only credible GDP figure provided in the OECD's Economic Outlook document is the fact that China will probably have still achieved a small level of growth (+1.5%) this year.

MANDATORY VACCINATION: Not only are we nearing the point when employers must have in place effective policies for vaccination against COVID-19 - when it becomes available - but, more immediately,

whether they should introduce obligatory vaccination against influenza now that the annual round of vaccinations is about to begin. Jurisdictions differ significantly about how far such a requirement can be compulsory and whether it is covered by insurance, or the state health system. It can be assumed that a COVID-19 vaccination will be free of charge, but maybe only for vulnerable groups. Thus, should an employer feel obliged to pay? Across Europe, compulsory vaccination programmes are largely confined to childhood. For instance, vaccination for Haemophilus influenza type B is compulsory in Bulgaria, Croatia, the Czech Republic, France, Hungary Italy, Latvia, Poland and Slovakia. But in the USA, there are opt-outs from all kinds of vaccinations on religious and ADA grounds and in Germany, a ban on compulsion for adults (except measles in certain sectors). Thus, there is no possibility for a "one size fits all" approach to this issue and therefore many employers could find themselves having to fudge the issue - unless they begin the drafting (and any necessary consultation) about vaccination policies soon.

UNPAID LEAVE: FedEE's helpline has been very busy recently and one of the most frequent questions relates to offering special unpaid leave weeks to take some pressure away from payrolls, especially when furlough schemes come to an end. Whilst this is possible, on a voluntary basis, in some countries it is problematic in a great many others - from a legal, sectoral collective agreement and social security perspective. Although not overcoming the collective agreement barrier, one alternative to unpaid leave would be to seek agreement for employees to drop salaries temporarily to the statutory minimum wage rate. In most companies, such a move for just two weeks

would present a greater cost saving than providing one week of unpaid leave. It would mean that employers could still offer staff productive things to do - such as training, client communications, machine cleaning/maintenance or basic office/systems house-keeping duties during the low paid period. It would also keep the payroll operating - with no mysterious gaps in social security deductions.

TAKING DISASTER SERIOUSLY: It seems odd to say that people can be bored with disaster, but that is unfortunately what appears to be happening. It is an easy state to fall into, as all the majority of people can see are news reports - there is no bombing, or disfigured people being carried away in wheelbarrows - as during the medieval "black death". One other problem is that official statistics are seriously under reporting the deaths taking place - particularly in Africa, Russia and parts of Asia. The global total is officially around 1M, but we calculate it is actually now in the region of 2.5M. To put this in perspective, this is more than each of the Vietnam war (1M), Korean war (1.5M), the American civil war (0.7M), the Atlantic slave trade (2M) and the deadliest ever earthquake (0.8M). It was the same situation in the 1919 flu epidemic, when over 50M died and one third of the World's population

was infected with the deadly H1N1 A virus. In such cases, the power of governments to control populations collapses and the consequence is the nearest point in a vicious circle we can get close to in the downward path towards extinction (barring a nuclear war). Employers are being constrained by privacy and employment laws from requiring employees to be properly tested on a regular basis - so that the brake the workplace should represent on proliferation is being needlessly impaired. In fact, the biggest uphill battle to convince the working population to take the disaster seriously is the common belief that COVID-19 only really seriously affects old people. This is, to a certain extent, true - but most data on age vulnerability is still being taken from a tiny number of countries where figures could be suspect. Independent research has also found that those in the non-white community are 300% more vulnerable to death, when infected, than the white population and those with conditions like diabetes or high blood pressure are 600-700% more vulnerable, whatever their age. Children are by no means free from infection - accounting for 10% of all cases, with up to 8% of those infected being hospitalised. Where younger people win out is the ability to fight the infection - although many remain seriously weakened by it [The FedEE Statistics Research Unit].

DATES FOR YOUR DIARY		DATES FOR YOUR DIARY	
1st October 2020	Oregon's Workplace Fairness Act Provisions take Effect.	1st January 2022	Connecticut Family and Medical Leave Act (CTFMLA) will apply to all private sector employers with at least one employee.
31st October 2020	Deadline of the present regimes A and B of the Antivirus programme in the Czech Republic .	January 2023	Oregon Paid Family Leave Law becomes effective.
1st December 2020	Privacy Act 2020 to become law in New Zealand .	On or after January 1 st 2024	Illinois Corporate Franchise Tax is fully repealed.
17th December 2021	The deadline to transpose the Whistleblower Directive in the EU Member states.	2028	Minimum age for the UK personal pension to rise to 57.

TRAVEL WARNINGS

ARGENTINA: The coronavirus lockdown has been extended until at least the 11th October 2020.

ECUADOR: Sangay volcano's activity has increased significantly recently, with tremors, explosions and ash emissions. Expect possible flight disruptions at the international airport of Guayaquil due to ash from the volcano.

HUNGARY/SLOVAKIA/UKRAINE: The Hungarian low-cost airline Wizz Air will resume flights from Lviv and Kyiv to Bratislava (capital of Slovakia) from 2nd October 2020.

INDIA: Farmers' organizations are set to hold a nationwide shutdown strike on September 25th 2020 (Friday) to protest against the new agriculture reform Bills. Stay vigilant and avoid large crowds.

JAPAN: There are likely soon to be severe winds and flooding along the Pacific coast - with associated business and transport disruptions - due to Tropical Storm Dolphin.

NEPAL: Buddha Air is expected to resume the Kathmandu-Rajbiraj daily flight on 25th September 2020.

PANAMA: International flights will resume on 12th October 2020.

RWANDA: RwandAir will resume flights to and from London and Brussels to Kigali (capital city of Rwanda) from 3rd October 2020.

SAUDI ARABIA/UNITED ARAB EMIRATES: Etihad Airways is set to resume flights to Jeddah, Riyadh and Dammam on 1st October 2020.

TONGA: The government has temporarily closed its borders for entry to all foreign nationals. Additionally, the 'state of emergency' has been extended until 12th March 2021.

UNITED KINGDOM: People will not be allowed to enter or leave four areas in South Wales, namely Blaenau Gwent, Bridgend, Merthyr and Newport, without a reasonable excuse, due to a spike in coronavirus cases. In addition, passengers using the overnight Scotland to London train service should anticipate 4 days of disruption in October 2020. This is because the Caledonian Sleeper staff have planned to take industrial action between 5.30pm on 4th October and 5.30pm on 6th October 2020, and from 5.30pm on 11th October and 5.30pm on 13th October 2020, over the safety and wellbeing of workers.

USA: The Atlanta-based airline Delta is planning to resume flights between Minneapolis-St. Paul (MSP) and Amsterdam (AMS) on 25th October 2020.

UZBEKISTAN: The country's borders for inbound and outbound travel by air, rail, and motor vehicles will be reopened from 1st October 2020.

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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