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From The Federation of International Employers (FedEE)



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HR WORLD TODAY

In this issue, we paint a picture of ongoing "normality" around the World. Mainstream legislation continues to be passed, courts continue to make rulings and employers carry on dealing with perennial HR problems - just as they always did. But look a little closer and things are, in reality, far from normal - or perhaps we have travelled so far in the last eight months that we have now lost sight of what normality really is?

Multinationals have always sought out low labour costs although, even before the pandemic, these were becoming increasingly hard to find. But, such a quest has tended to involve indirect costs and unintended consequences. Now, **Mexico's** changing drug laws and pressure on local cartels to sell locally are presenting a huge dilemma for foreign employers. **Cambodia** too is being pressured to cut down on its most exploitative factories. Almost everywhere, payroll pressures are having their toll on companies, with legal and IR constraints bearing in from all sides on non-payment of wages (**Czech Republic** and **Hong Kong**), the seeking of pay cuts (**Irish Republic** and **Spain**), or the pressuring of workers to give in their resignation (**Egypt**) - forcing some companies to make false job subsidy claims (**Singapore**) or requiring all employees to sell company products (**China**). However, in this issue, FedEE has once again highlighted perfectly lawful ways that statutory restrictions can be interpreted in a more flexible way. This is the case in **Poland** in respect to changing terms

and conditions of employment and the **Czech Republic** when seeking to extend fixed-term contracts beyond three years.

We have yet to see the full extent of company mergers and takeovers engendered by the pandemic, as many organisations are increasing market share simply by letting rivals go to the wall. But companies are looking for every opportunity to find ways to gain some edge on competitors, whether it be by reducing overtime premia (**Portugal**), or opting out of sectoral collective agreements (**France**). Cost pressures are also forcing unemployment funds (**Finland**) and unions (**USA**) to merge.

If we examine the driving forces for the unexpectedly acceleration in labour reforms taking place in **India**, **Indonesia** and **Egypt**, we can also see that their adoption has been significantly spurred on by the pandemic - or the reactions of other legislative bodies (Indian States) to undermine existing archaic structures.

Hard times are also encouraging workers to challenge employers about what ultimately amount to petty issues - like the wording of an HR policy, the need to point out an arbitration clause in a contract (both **USA**) or a company move to a new facility nearby (**China**). Courts are not, however, generally buying into these trivial challenges, and are even supporting dismissals on what appear rather flimsy grounds (**South Africa**). But Spanish courts

remind us that not only can things turn out badly for individual companies, but can establish dangerous precedents for the future.

Finally, we must not end without pointing out the most frequent thread in this issue - pensions and retirement. This embraces reductions in state contributions (**Estonia**), scheme withdrawals (**Malaysia**), a special sectoral scheme (**Egypt**), joining a scheme over age 55 (**Germany**), a simplified DC scheme (**Japan**) and coming deadline for a country-wide pension savings system (**Poland**). Temporary respite for carers looking after the elderly, ill or disabled may also now be gained through extended paid leave under a **French** facility launched this month.

AFRICA AND MIDDLE EAST

EGYPT: A new draft labour law on employee dismissal and resignation is currently before the House of Representatives. If passed, all dismissals must be made with cause and be subject to a judicial ruling. To be effective, a resignation must be signed by the employee, or their legal representative, and approved by a "competent administrative authority" (i.e., the Ministry of Manpower or a labour office). Their employer then has 10 days to accept the resignation, during which period the employee must still work. If no decision is made then, by default, the resignation is accepted after the 10-day period. Within 7 days of the resignation being accepted, the employee (or legal representative) may withdraw the resignation in writing, upon gaining external administrative authority. All documents must be written in the Arabic language and produced in four copies. Nothing in the new law indicates what happens if an employer refuses to accept a resignation. Presumably, the employee would stop work and force the issue.

EGYPT: It has been decided by the insurance sector to extend medical cover to those retiring from jobs in the sector, including those working for insurance brokers. A mechanism is also being established to allow submission of applications for schemes to cover major medical expenditures, or where the annual limit for claims has been used up.

ISRAEL: The Equal Pay Law for Male and Female Workers (Amendment 6) (5780-2020) has now been passed by the Knesset (Parliament). The places on the statute book the requirement for larger enterprises – with 519 workers or more – to undertake annual gender pay gap reporting.

KENYA: The Labour Court has blocked a redundancy programme announced by retailer Tuskys, following an application by the trade union KUCFAW. The claim is that the redundancy programme went against a Collective Bargaining Agreement (CBA) signed in 2017, which required the company to give notice of its intention to declare a redundancy. It is further claimed that the CBA included a commitment to the "last in, first out" principle that would protect staff with long service. A further hearing will be convened during the next few weeks.

OMAN: The dual tax return system has been abolished recently through Royal Decree [118/2020](#). Taxpayers are now required to file only one tax return within 4 months from the end of the tax year.

SAUDI ARABIA: With effect from the beginning of 2021, all private sector companies operating in the Saudi job market employing five or more engineering professionals must comply with at least a 20% "Saudization" quota. The minimum monthly salary for a Saudi engineer has been set at SR 7,000 (US\$1,867).

SOUTH AFRICA: A supermarket employee who received gifts from a customer contrary to company policy without reporting the fact to their Supervisor only compounded their misconduct when they sought to return the gifts via the refund book. This case illustrates how different judicial bodies can vary radically about the importance of long service when an employee commits a misdemeanour. Thus, a company decision to dismiss was found to be substantively and procedurally fair at arbitration, only to be overturned by a labour court on service grounds and the dismissal finally upheld again on appeal [*Labour Appeal Court Case JA26/2019 Delivered 7/9/2020*].

TURKEY: The Constitutional Court has refused an Appeal to render invalid a new law allowing for the formation of multiple Bar Associations. The government is keen to reduce the power of the legal profession and recently approved a new Istanbul Bar as a breakaway from the Turkish Bar Association. Employers seeking legal services in Turkey may wish to assess the implications of this political move, as it may affect the standing of individual lawyers before the courts.

UAE: The decree law no 6 entered into force on 25th September 2020. The exact wording in Arabic should be carefully noted. It gives women "the same wage as a man if they do the same work, or another [job] of equal value, which is issued by a decision of the Council of Ministers – based on a proposal from the Minister of Human Resources and Emiratisation, the procedures, controls and standards necessary for evaluating work of equal value". The other provision, which has been generally reported as being a general "parental leave", actually states that it is for a period of 5 working days to care for "his" child. It is thus clearly paternity leave.

THE AMERICAS

ANTIGUA AND BARBUDA: This is the latest [country](#) to introduce a Nomad visa residence scheme (NDR). The difference in this scheme is that it applies to employees as well as the self-employed and lasts for 2 rather than just 1 year, as in other schemes. No doubt there will be many who will [apply](#) under the scheme. This Caribbean island is part of the British Commonwealth and English is the official language. The only downside is the annual hurricane season from June to November. The visa fee for a single applicant is US\$1,500, or US\$3,000 for family of three or more. Successful applicants will be exempt from paying income tax in the country for the visa period's entire duration. Modern one-bedroom apartments start at US\$700 a month.

ARGENTINA: The government is seeking to reduce state assistance to companies, whilst relaxing its ban on permanent layoffs. However, it will remain difficult to terminate any staff, other than those hired since the start of the health emergency, until at least the end of the year.

BRAZIL: Although there have been salary reductions during the pandemic, this should not affect 13th month payments, unless the Ministry of Labour issues special directions. In their absence, the labour law requires 13th month payments to be based on the base salary stated in an employee's employment contract.

BRAZIL: Labour court cases in **Rio Grande do Sul** that have been processed electronically between 16th March and 30th August have continued to allow claims from workers. These have generated a total of R\$1.08Bn (US\$191M) in severance, compensation and unpaid wages.

CANADA: Employers in **British Columbia** intending to hire foreign nationals through the Temporary Foreign Worker Program have until 15th December 2020 to [register](#) with the provincial government. There is no fee for registration.

CANADA: Under the "Back to Work in **Manitoba**" wage subsidy [programme](#), eligible employers will receive a reimbursement of up to \$5,000 (US\$3,792) per employee hired between 16th July and 31st December 2020. The deadline for submission of [applications](#) is on, or before, 1st December 2020. Moreover, employers must provide proof of payment of wages by 1st February 2021.

CANADA: Eligible individuals seeking to permanently work and live in **Alberta** may now apply under the Alberta Immigrant Nominee Program ([AINP](#)) via a new online [portal](#).

CANADA: According to a temporary measure introduced by the Canada Revenue Agency (CRA), taxpayers may now use electronic signatures when they submit forms [T183](#) or [T183CORP](#).

CANADA: Over 147,000 workers in **Ontario** who deliver publicly funded personal support services will now receive a \$2 (US\$1.5) to \$3 (US\$2.3) temporary hourly wage supplement from the Ontario government. This enhancement will be reviewed on a regular basis and could extend through 31st March 2021. Meanwhile, the general minimum [hourly wage](#) in Ontario has just increased from \$14.00 (US\$10.5) to \$14.25 (US\$10.7).

MEXICO: The growing pandemic death toll amongst young people linked to obesity and diabetes is forcing individual States to focus on the diet of young people. State legislatures in **Oaxaca** and **Tabasco** States have already

approved a ban on selling junk food and sugary drinks to minors, and others could well follow. Employers could do much to encourage healthier eating and most drink brands have sugar-free options they could provide in workplace vending machines.

MEXICO: Already effectively legal for medical use, the wider legalisation of cannabis is clearly on the horizon, despite being delayed by the Supreme Court until 15th December. But even before laws are relaxed, the use of cannabis has long been problematic for employers, especially the widespread dealing of drugs in workplaces - and more so for heroin and fentanyl (a synthetic opioid). Seeking to prevent sale and use of narcotics of any strength can bring employers directly into confrontation with violent cartels, yet undue tolerance can lead to more absenteeism, increased workplace accidents, and reduced productivity. This two-edged dilemma must make multinationals question a continued presence in the country.

USA: Employers can so easily fall foul of the law because they fail to use the statutory wording in their employment policies. Fortunately, for the **Californian** company O'Reilly Auto Enterprises, a class action claim led by one of its employees concerning rest breaks backfired on the employee concerned. The claim rested on the legal requirement to provide a "10-minute rest break for every 4 hours worked, or major fraction thereof". The company policy omitted the words "or major fraction thereof", which the employee claimed led to the possibility that some employees would be deprived of applicable breaks. But the Court of Appeals for the Ninth Circuit found that there was no evidence that anyone suffered injury from the wording, especially as the employer had produced sworn declarations from 310 employees stating that they had received

proper rest breaks. With no case of injury to putative class members, there could be no class action and the claim failed [*Davidson v. O'Reilly Auto Enterprises, LLC*, 968 F.3d 955 (9th Cir. 2020)].

USA: The fact that an employer in **California** did not draw their employee's attention to an arbitration clause in a handbook they signed, did not stop the employee being bound by the clause when it is triggered. This was the conclusion of the California Court of Appeal, although the court did disallow the employer from recovering case attorney fees from their employee [*Conyer v. Hula Media Services, LLC*, No. B296738, 2020 WL 5035827 (Cal. Ct. App. Aug. 26, 2020)].

USA: Although paid sick leave schemes have existed in **New York City** and **Westchester County** for some time, it was not until 30th September 2020 that **New York State** brought in its own law. This introduces an annual requirement for small companies (under five employees) to offer up to 40 hours' unpaid sick leave, those employing 5–99 to offer up to 40 hours' paid sick leave, and those with 100+ employees up to 56 hours' paid sick leave. In each case, the leave will be earned at a rate of 1 hour for every 30 worked. By way of transition, employers are not obliged to allow employees to use accrued sick leave until 1st January 2021.

USA: If a company is a federal contractor, it must now take note of the new [Executive Order](#) on "Combatting Race and Sex Stereotyping", which largely relates to diversity training carried out by companies. This allows the OFCCP to apply within 30 days of the Order coming into force for information to be placed on the Federal Register seeking information regarding contractors' training of their employees. It remains highly uncertain from the wording of

the Order what specific types of action constitute "stereotyping". However, it clearly outlaws any programme that does not apply a strict underlying principle of meritocracy or seeks to rebalance existing societal bias against certain groups defined by race, sex, or sexual orientation. It is therefore a veiled attempt to silence affirmative action programmes and many independent diversity training packages.

USA: The latest trades union to merge is the 25,000-strong Glass, Molders, Pottery, Plastics and Allied Workers International Union (GMPIU). It has decided to amalgamate with the already 850,000-strong United Steelworkers (USW). The GMPIU was one of the oldest independent unions, having been formed in 1842. A merger was forced upon it by rapidly dwindling membership numbers.

USA: A number of organisations are producing regularly updated compendiums of links to health emergency safety advice/requirements and return to work guidelines/orders. See the latest lists from the [State of California](#), the [CDC](#), [Husch Blackwell](#), [The New York Times](#), and [Littler](#).

ASIA AND PACIFIC

AUSTRALIA: The [JobKeeper Payment](#) has been extended by 6 months until 28th March 2021. Additionally, the temporary Coronavirus Supplement for those on income support has also been extended until 31st December 2020.

AUSTRALIA: The health crisis has put the jobs of young workers particularly at risk and reduced the number of apprenticeships. To overcome this, the latest federal budget is funding a [scheme](#) that will provide 50% of the salaries for up to 100,000 new apprentices.

CAMBODIA: With effect from 1st January 2021, the monthly gross minimum wage for the country's garment and footwear industry will be increased by US\$2 to US\$192.

CHINA: A recently reported court case deals with the situation where an employer changed an employee's workplace and thus extended their commuting time. Does such a move constitute a major contractual change under Art 40 of the Labour Contract Law? According to the Court, it all depends on the distance of the relocation and if the employer has taken appropriate measures to reduce the adverse effects of the relocation on the workers. An individual working for Nanjing Bofeng Power Tools Co., Ltd had refused to move to a new factory with improved employee facilities that was just 4.5 km from the old factory along a major bus route. The company offered an improved commuting allowance, but the employee continued to check into their old workplace. He subsequently refused to accept the ruling of an arbitration meeting, or attend meetings when requested to do so. Company policy alone justified his dismissal after 3 consecutive days' absence. Finally, the case was heard by The People's Court of **Jiangning** Economic and Technological Development Zone which ruled to dismiss the Plaintiff's claims. This case illustrates the lengths courts will go to hear claims when an employer could lawfully dismiss on the grounds that are already well established.

CHINA: Reports in the publication "Southern Industry News" have recently examined what they identify as an increasing problem of companies introducing "compulsory apportionment", i.e., requiring all employees to sell their goods and services and also purchase company products (or persuade friends and relatives to purchase them). Such practices are clearly linked to falling sales due to the pandemic. The journal has found

numerous instances of targets for non-sales staff and financial penalties for non-achievement of such ancillary goals, even though such practices unilaterally change the content of the employment contract. Not only can failure to meet targets lead to lost bonuses, but a requirement to work unpaid overtime to compensate for performance failures. Many illustrations for the article relate to the **Shenzhen** branch of Suning Tesco, but others refer more widely to real estate, insurance, and advertising businesses. In one reported case, employees were even required to buy their own company mobile phone and in others to issue company network cards at the employee's own expense. These practices are unlawful, but equally an employee knows that their employer will dispense with their services if they refuse.

HONG KONG (CHINA): Notwithstanding the impact of COVID-19, employers are reminded to pay their employees on time in accordance with the Employment Ordinance (EO). Recently, a company was prosecuted by the Labour Department (LD) for late payment of wages for its five employees. The company was fined \$92,000 (US\$11,871) after pleading guilty at **Kowloon** City Magistrates' Courts. In another case, a director of a construction company was given a 200 hours' community service order at **Kwun Tong** Magistrates' Court for failure to pay wages. The employer was also ordered to pay the employees concerned the total outstanding sum of about \$939,000 (US\$121,162).

INDIA: The Rajya Sabha (national parliament) has finally approved three labour reforms that stand to revolutionise the formal employment sector across the country. The new Code on Occupational Safety, Health and Working Conditions, the Industrial Relations Code, and the Social Security Code jointly replace 29 former archaic labour laws. However, they still

require implementing regulations and this could take over a year to draft and finally issue. The Rajya Sabha has already passed a new Code on Wages back in 2019. For a detailed review of the changes please read the briefing produced by our corresponding Indian law firm [Kochhar & Co](#) (Please login first in order to view).

INDONESIA: There are some places in the World that tend to escape our notice - even though they are numerically and economically of vast significance. Indonesia, for instance, is the largest and most diverse economy in south-east Asia with over 700 living languages and 300 ethnic groups. Immediately prior to the pandemic, 10% of its population lived below the poverty line - half the level it suffered in 1999. Moreover, according to a recent World Bank report, the country's Covid-19 social assistance programme was able to prevent a further 5.5 - 5.8 million falling into poverty. However, the bank has further calculated that Indonesia's inadequate health and educational infrastructure makes its population only 54% as productive as they could potentially become. In a recent twist, Parliament has revised over 70 laws through the "Omnibus Job Creation Bill" - in an effort to speed up economic development. But this is being opposed by strikes, as large sections of the population protest against its extending the current three-year limit to temporary labour contracts, encouraging outsourcing and reducing severance benefits. The measure could also backfire - with consumer spending being hit as workers save more in order to guard against future job losses.

JAPAN: The number of enquiries made to the **Okinawa** Labour Bureau last year rose by 22.5% compared to 2018. Of the legal enquiries, more than half related to childcare leave and, of these, the most common area of concern was harassment in connection with

the taking of such leave. Likewise, of the guidance sought in respect to the Equal Employment Opportunity Law, harassment related to pregnancy and childbirth was the most common problem area identified in the consultations.

JAPAN: The Ministry of Health, Labour and Welfare is eager to ensure that employees take at least the minimum 5 days' annual leave under last year's "Work Style Reform Law". They have therefore designated October as "annual paid leave promotion period". For employees joining a company in April, it will be the first time that they can take advantage of their annual leave – just before Winter sets in.

JAPAN: Although the Defined Contribution Pension Plan has been growing in popularity amongst Japanese companies, it was often found by smaller companies to be too complicated to establish. That is why, in 2018, a simplified version of the plan (iDeCo Plus) was introduced for companies with up to 100 employees. From 1st October 2020, the scope of the simplified plan has been extended to also include companies with up to 300 employees.

MALAYSIA: Effective until 31st December 2020, pre-retirement withdrawals of up to RM1,500 (US\$361) from Sub-Account B of the Private Retirement Scheme (PRS) will be exempted from the usual 8% tax penalty.

NEW CALEDONIA: The 250,000 inhabitants of this South Pacific archipelago have narrowly voted against becoming independent from France. This territory is strategically important, not only because of its geographical position, but due to the fact that it accounts for 25% of the World's deposits of nickel, which is commonly used in coinage. Independence would also have led to the

substantial relaxation of local laws that are currently aligned to the French system.

SINGAPORE: Although the Job Support Scheme (JSS) for existing local employees has been extended up to the end of this year – and beyond to March 2021 in hard hit sectors – there have been numerous irregularities found in a large number of employer applications. Around 2,200 companies are currently under investigation by the Inland Revenue Authority of Singapore (Iras), with around 450 already denied support. Those making fraudulent claims will be charged under Section 420 of the Penal Code and responsible company managers could face up to 10 years' imprisonment, as well as a heavy fine.

SINGAPORE: Under the Jobs Growth Incentive (JGI) programme, for each new local recruit under 40 years old hired during the period from September 2020 to February 2021 (inclusive), eligible companies will receive government wage support of up to S\$15,000 (US\$11,019). The subsidy will be doubled for each local hired who is aged 40 and above. The first JGI payout will be handed out from March 2021 onwards.

SINGAPORE: The Enhanced Training Support Package (ETSP), which provides enhanced course fee subsidies of up to 90% for firms in sectors that are most directly and severely affected by the COVID-19 pandemic, has been extended for another six months - until 30th June 2021.

TAIWAN: The National Immigration Agency (NIA) has announced a third 30-day extension of stay for foreign visitors who entered Taiwan before 22nd March 2020. For further details, please visit the official [website](#).

THAILAND: Companies seeking to secure low-cost labour, particularly in the garment sector, have been attracted to the hundreds of factories in the western region of **Mae Sot**. Here factories can take advantage of often illegal labour encouraged across the border from Myanmar, by paying well below the daily minimum wage of 310 Thai baht (US\$10.15). It has only been recently that the Department of Labour Protection and Welfare has started to undertake regular inspections in this region, following investigations by the Thomson Reuters Foundation and prosecutions funded by the Human Rights and Development Foundation (HRDF). Many companies, such as Disney and Starbucks, have also been taking action after the discovery that many illicit goods with their brand label have emerged from the region.

EUROPE

CZECH REPUBLIC: According to the State Office of Labour Inspection (SUIP), instances of non-compliance with the Labour Code have risen during the health crisis. These are especially evident in five areas: observing the minimum wage, payment of remuneration on time, being ordered to take outstanding leave without due notice, failure to issue a DPP/DPC leaving certificate, and maintaining working time records. There are also frequent unconfirmed complaints concerning an obligation to take wage cuts under threat of dismissal if an employee refuses to do so.

CZECH REPUBLIC: Although employers (other than employment agencies) may not generally conclude fixed-term contracts with a total duration of more than 3 years (during which there may be two renewals), there is one important exception in the Labour Code that is often overlooked. Under S39 (3), it states that the rule does not limit the procedure under "special legal regulations,

where it is assumed that the employment relationship can only last for a certain period of time". This is, for instance, the case when employing a non-EEA worker with a fixed permit to work in the Czech Republic for a specified period, or where someone is "appointed" to a post that has a fixed duration for office. There is also an exception under S39 (4) where there are serious operational reasons, or reasons based on the special nature of work that make the hiring on a permanent basis to be unreasonable, but where a 3-year limit may not be appropriate. In both sets of cases, the use of exceptions must be justified and either agreed with a trade union operating in the workplace, or be subject to a specific workplace rule.

ESTONIA: The government has temporarily suspended the state's 4% pension contribution to the second pillar of the Estonian pension system until 31st August 2021. On top of this, employees may apply to suspend their own 2% contribution from 1st December 2020 to 31st August 2021 - on a voluntary basis.

EUROPEAN UNION: The "right to disconnect" remains a controversial issue. Last year, the incidence of repeated contacts by employers during employee leisure time over the last 2 months in EU countries was higher for men (20%) than women (14%). The most common sectors for such contact were real estate, arts entertainment and recreation, and professional scientific and technical activities.

EUROPEAN UNION: Employers frequently regard employee monitoring as a labour relations matter and overlook that it is closely controlled under the General Data Protection Regulation (GDPR). Articles 13 and 14 of the GDPR specify that at, or before, the time of data collection individuals have the right to be informed (in an easily accessible form) about

what data - in which they are identifiable - is being collected, its purpose, the legal basis for collection and how long it is planned to retain the data. In practice, this covers a wide variety of data events from emails, internet records, security photos and videos, attendance and time records, tracking of work vehicles, HR profiling etc. In such cases, employers usually revert to their "legitimate interests" as a path out of any possible challenge. But here the legal scope for exclusion is very limited and will require, at the very least, a demonstration that an employer has taken active steps to avoid any invasion of privacy rights - like using sampling rather than continuous monitoring, identifying areas of employee or visitor activity specifically excluded from monitoring, coding data records and operating a default data retention period. Wherever possible, security, transparency, proportionality and prior consent must be the governing principles.

FINLAND: Three huge unemployment funds are set to merge by the beginning of 2021. These are the funds for the public and welfare sector, industrial workers, and construction workers. The new funds, which are run by the Central Organisation of Finnish Trade Unions SAK, will end up with 326,000 members and become the second largest in the country. The number of such funds are falling quite quickly, with 24 currently in existence after this merger compared to 48 in the year 2000.

FRANCE: Employees who care for elderly, ill, or disabled dependants may now (Wf 1.10.2020) request to take up to 3 months' leave – renewable for up to a year. During this period, they will receive an allowance from the Caisse d'allocations familiales (CAF), or the Mutualité sociale Agricole.

FRANCE: A trades union for the plastics sector "Plastalliance" has earned the enmity of other unions in the sector by concluding 51

company collective performance agreements (CPA). These agreements have been lawfully possible for the last 3 years and allow employers to vary overall sectoral requirements in respect to such fields as working hours, remuneration, occupational and geographic mobility. The other advantage is that they automatically bind individual employment contracts, such that an employee could even be dismissed on the basis of the modified terms.

FRANCE: The French President has announced that paid parental leave will double to 28 days from 1st July next year and fathers be required to take a week off work on the birth of their child. Companies denying leave will be subject to a fine of €7,500 (US\$8700).

GERMANY: A Labour Court in **Berlin** has found that an employer may not legally force its general works council to hold meetings on a virtual basis. In the case in point, it was perfectly legal at the location of the venue to hold face-to-face meetings. It was further necessary to hold secret ballots in a way not possible online [*State Labor Court Berlin-Brandenburg, decision of 24th August 2020, 12 TaBVGa 1015/20*].

GERMANY: May a company pension scheme that restricts those joining it to be aged 55 and under always exclude older workers from joining it? The Federal Labour Court recently considered the situation of a Norwegian process engineer who had initially joined a company when under age 55, but had been confirmed in a permanent position after several years, by which time they were over the normal limit. The court took the view that the relevant factor was their age at the beginning of their service. Being temporary meant that pension membership was then not open to them, but it should have been when being offered a permanent position, whatever

their age at that point [*BAG, judgement of 22nd September 2020, Az: 3 AZR 433/19*].

GERMANY: The reform of parental benefit has been on the cards for some time. Now, the cabinet has approved a new draft measure that increases the parental allowance when premature births take place, lowers the income limits for high earners, and gives a slightly more flexible approach to working part-time when receiving a parental allowance. Just noting some points in greater detail: if a baby is born 6 weeks or more before it was due, the parents will receive an extra "baby month" added to their allowance. In addition, the cut-off point for high income couples will fall from €500,000 (US\$589,000) annual gross joint earnings to €300,000 (US\$353,000) – although the single parent upper limit will remain the same – at €250,000 (US\$294,000).

GERMANY: A report on labour market and pay equality since reunification carried out by the Institute for Economic and Social Sciences (WSI) in the Hans Böckler Foundation has revealed some interesting facts. The researchers found that in the latest available year (2018), the difference in the employment rate for men and women was 8% in the former west German states, but 4% in the former east German states. Moreover, the pay differential was 21% in the West, but just 7% in the East.

GERMANY: A new collective agreement between the ING bank and the Verdi trade union has established a new €500 (US\$589) annual training budget for each employee over the next 3 years. Employees may either spend their budget "as they go" each year, or save it up for more substantial courses. A training platform called Learn-ING has also been established to offer deals to employees obtained from educational institutions.

IRISH REPUBLIC: Under the latest temporary visa extension, foreign nationals with an expiry date on visa immigration stamps that fall between 20th September 2020 and 20th January 2021 will be able to remain in Ireland until at least 20th January 2021.

IRISH REPUBLIC: One advantage of responding to a 75% reduction in workload is being in the public sector, where normal commercial constraints sometimes do not apply. Ireland's postal service "An Post" is closing its mail centre in the country's second city next year. On offer to employees is a voluntary package worth 6 weeks' pay per year of service (rather than the statutory 2 weeks) up to a maximum compensation level equal to 2 years' salary. On top of this, redundant workers will receive a lump sum of €10,000 (US\$11,744) or €7,000 (US\$8,241) if part-time. If an employee chooses to stay, they will be redeployed locally and receive a further education/training grant of up to €3,000 (US\$3,531) per person. Meanwhile, in spite of the pandemic, the overall number of public service workers in the Irish Republic grew over the 6 months to June 2020 by 4,000, to reach 343,700.

IRISH REPUBLIC: Although negotiations continue over the restructuring of ground handling and cabin crew at Aer Lingus, the company has decided to reduce the cut in pay and hours from 30% to 50%. Meanwhile, a dispute has arisen with numerous individual ground staff on the reluctance of the company to sign social welfare claim forms so that direct claims can be made for support from the state during the temporary lay-off period.

ITALY: The Council of Ministers has come to an agreement concerning a ban on dismissals this Autumn. Companies using wage subsidies (Cig) may not dismiss workers until after the programmes come to an end on 15th

November 2020. For most others, the ban will extend until the end of 2020.

ITALY: Circular 38 issued by the Ministry of Labour has sought to identify "fragile workers" who will only be permitted to undertake suitable tasks. Age alone does not determine fragility, as it must be accompanied by pre-existing pathologies. Potential "fragile workers" must be given a medical examination and the doctor given an explanation of their job duties and working conditions. The company must also identify other jobs that the employee could undertake (without pay reduction). If no such position can be identified, they must be sent on sick leave and a certificate obtained from the attending physician certifying the state of health risk. The certificate must then be forwarded electronically to INPS, as is the case for normal sickness cases. Regular medical examinations should follow to determine if the "fragile worker" may return to work.

LUXEMBOURG: The Chamber of Deputies has been considering measures to encourage the resumption of apprenticeship training, after programmes were suspended during the lockdown. Bill 7661 has therefore now been passed, introducing a one-off bonus for apprenticeships launched or resumed - with sums ranging from €1,500 (US\$1,766) to €5,000 (US\$5,887) per apprentice. In some cases, claims may be made retrospectively to July 2020 and all new applications must be made before 15th July 2021.

LUXEMBOURG: Parliament has extended a Grand Ducal Regulation first introduced in March 2020 allowing corporate meetings of all kinds to be held without physical attendance. This facility will last until 31st December 2020. It also covers shareholder meetings when such a provision is not included in a company's articles of association. Employers

must, however, still ensure that eMeetings with employee bodies are only held after prior agreement with the representatives concerned.

NETHERLANDS: The wage subsidy scheme ([NOW 3.0](#)) has been further extended by 9 months until 1st July 2021. NOW 3.0 consists of three periods, and each has a duration of 3 months.

POLAND: If an employer wishes to change the pay, terms, and conditions of employees, they may do so either through mutual agreement or, more controversially, by giving notice under [Article 42 of the Labour Code](#). Over the years, this latter approach has been subject to numerous court challenges, but the basic process remains unchanged. To alter a contractual obligation, the employer must give due notice to employees, setting out clearly what is to change, if it is temporary or permanent, and the Labour Code requirements for refusal. If the employee wishes to refuse the change, they must notify the employer, in writing, before half the notice period is complete. If they do not object in that way, it will be assumed that the change has been accepted. Moreover, by refusing the change, the employee shall have to be treated as dismissed and receive such indemnities that are applicable. Case law has placed a few limitations on this process, such that this approach may not be used to change a permanent contract to a fixed-term one, or generally used for employees within 4 years of their normal retirement age.

POLAND: The Social Insurance Institution ZUS has just introduced an easier way to apply for an A1 certificate via their Electronic Services Platform ([PUE](#)). This should help to speed up formalities when posting an employee to another EEA/Swiss state.

POLAND: 800,000 employers overpaid their ZUS social security contributions during April and May 2020 when they were exempt from paying them. Because of an administrative mix-up, full exemption was actually denied to those who originally claimed it, but continued to pay it because their application was slow to process. Now, however, the issue has been resolved and employers may either reclaim the contributions, or leave it in their ZUS accounts to be used towards future obligations.

POLAND: Discussions have begun at the Social Dialogue Council concerning the draft amendment to the Labour Code relating to remote work. The amendment replaces existing references to "telework" by the term "remote work". Although the new provisions make it generally necessary to gain individual consent for a switch to such working, it will be possible to enter into a collective agreement to introduce it during a period of "force majeure". It will also be possible to transfer some accountability for workplace health and safety to the employee. Moreover, the costs of remote working will be purely a matter of agreement between the employee and their employer.

POLAND: The final deadline for companies establishing PPK programmes is 27th October 2020, which leaves little time to meet all the obligations on time if a company has not yet commenced preparations. A PPK is an additional long-term pension savings system for employees, and was established by the Act on Employee Capital Plans. Only two types of exemption exist: companies with nine employees or less (who each submit a declaration of non-participation) or companies already running a PPE programme in which employees contribute a minimum of 3.5% of their salary. Companies running late may find the [guidance](#) available on the official dedicated website of some assistance.

Unfortunately, it is only available in Polish and difficult to translate. The fine for non-compliance will be up to 1 Million PLN (US\$262,681).

PORTUGAL: Continente supermarket stores in **Lisbon, Porto, and Coimbra** are planning to reintroduce a former "hour bank system" because of recent rises in labour costs. This gives store managers discretion about requiring employees to work extra hours when demand is high. In return, employees may accumulate up to 6 hours at their normal hourly rate for time off during quiet periods over a 6-month period. In the absence of the scheme, overtime would otherwise be subject to a double-time premium. This move is being opposed by the CESP Union, which has called for employees to demonstrate outside the stores.

SPAIN: The Supreme Court has finally ruled on the employment status of digital "platform workers". According to the 4th Chamber of the Court, the food delivery company Glovo is not just an intermediary between restaurants and customers, but is an organisation providing delivery and courier services. Its workers are therefore entitled to be treated as employees. Such companies must therefore utilise personnel services on the basis of employment contracts and treat workers within the bounds of employment law. Furthermore, the court refused to refer the question of status to the European Court of Justice.

SPAIN: Although Royal Decree law 8/2020 was due to end on 22nd September, it has been extended until "when necessary" due to the health emergency. This law embraces a wide raft of measures, largely geared to assist working parents with children under 12 or other dependants. Parents will continue to be able to reduce hours (with due notice), take time off, and request more flexible working

arrangements. This includes unpaid leave for up to 2 years, with the right to return to their old job and be credited continued service during the absence. Moreover, social security provisions will continue for parents who have to take leave to deal with children prevented from attending school.

SPAIN: **Barcelona's** 26th Court has found that an Argentinian employee hired to work in Spain by an office leasing company, and dismissed for reasons of "restructuring" after 7 months service, should not receive their statutory compensation (under Art 56 of the Workers' Statute) of €4,219 (US\$4,968) for unfair dismissal, but €60,000 (US\$70,646) instead. This was because, in the court's view, the statutory penalty was not sufficiently "dissuasive". The decision is now being appealed to the Superior Court of **Catalonia**.

SPAIN: The Social Chamber of the National High Court has decided that the unilateral salary changes carried out **Liberbank** before the health emergency, and proposed progressively to be introduced over the period until the end of 2022, are null and void. The reductions of between 5% and 8.75% were to be applied to the entire workforce earning more than the collectively agreed salary levels. It had also announced benefit cuts and a 30% reduction in its pension and savings fund contributions. The Court reasoned that the bank had not supplied all the data requested by the unions that it had been consulting last year – ahead of its decision to go it alone. However, the bank considered that it had produced enough documentation to justify the reason for its move. It is now likely the bank will appeal the court's decision.

UNITED KINGDOM: When the current furlough-based job retention scheme comes to an end on 31st October 2020, it will be replaced by a short-time working scheme

(JSS). This will require employees to work for at least one third of their time, with the government providing shared support for the remaining two thirds of time unworked. However, this will still leave employers having to meet at least 55% of total normal gross earnings and the government's contribution will be capped at £697.92 (US\$901) per month. An employer will be able to rotate employees on and off the scheme, provided that each period of short-time working lasts at least 7 days. Although SMEs will have open access to the scheme, larger companies will need to be able to demonstrate substantial losses in turnover due to the pandemic. Those employees benefiting from JSS may not be made redundant or given notice of redundancy. The scheme is planned to last until 30th April 2021. Please see the [JSS factsheet](#) for further details.

UNITED KINGDOM: Before moving onto the JSS, employers should determine if having employees available to them for one third of their time can still be realistically employed. For this time, the payroll cost will rise by 66% (55/33) and there are a number of alternative options to them without having the obligation to forego possible redundancy. One of these is an old-style [temporary lay-off scheme](#). This can be applied for up to 4 weeks before the employee has a right to claim redundancy.

UNITED KINGDOM: The Migration Advisory Committee (MAC) has just published a [review](#) of the occupation shortage list for 2020. It has recommended a number of occupations be added to the list when EU free movement ends on 31st December 2020. These include senior care workers, nursing assistants, butchers, bricklayers, and welders. Separate additional shortage lists for Scotland, Northern Ireland, and Wales have also been recommended by MAC.

UNITED KINGDOM: Eligible health and care workers may now claim an immigration health surcharge (IHS) reimbursement [online](#). The reimbursement will be paid in 6-month instalments, rather than being in a single payment.

GLOBAL

TRACKING CORONAVIRUS: A number of organisations are producing regularly updated global maps that allow us to maintain a broad picture of the way COVID-19 is moving through populations. The best and easiest to read of these is produced by the [Financial Times](#). Other useful trackers are being produced to by the [BBC](#), [Axios](#), and [National Geographic](#).

IGNORING UNDESIRABLE INFORMATION: There are many instances in the daily life of an HR professional where ignoring a problem seems a better option than confronting it. This was the case so often in the past with sexual harassment and bullying, until the law in many countries ended the prevailing climate of complacency. Another issue that the law is so far only weakly seeking to tackle is human exploitation in supply chains. Because this is usually a phenomenon happening outside the organisation, it is even easier than bullying to ignore. However, if it is not the responsibility of HR to confront, it will certainly not be an issue for purchasing departments that often see the benefit in low prices if "no questions are asked". Modern slavery legislation in some countries, such as **Australia**, is written to focus primarily on particular issues, such as "child labour". However, the **UK's** Modern Slavery Act contains a broad definition of slavery and servitude. This, however, generates a huge problem in itself if the law is observed to the letter. What about the thousands of workers in the prison service who are conducting tasks similar to those in

the outside world, like CNC milling, MIG welding, laundering clothes, or repairing shoes? Although this is frequently described as "voluntary", pay is well below the minimum wage threshold and S1(5) of the UK law, for instance, states that when assessing if labour is "forced", the existence of consent "does not

preclude a determination that the person is being held in slavery or servitude". This complex of uncertainties, fudges, and contradictions is sure to be one of the next frontiers for HR, particularly in multinational enterprises.

DATES FOR YOUR DIARY

27 th October 2020	The new deadline for concluding the contract for managing PPK in Poland .
1 st January 2021	The monthly gross minimum wage for the garment and footwear industry in Cambodia will be increased.
January 2021	20% Saudization to cover 117 engineering fields in Saudi Arabia .
30 th April 2021	The Job Support Scheme (JSS) in the UK due to end.

DATES FOR YOUR DIARY

1 st July 2021	Paid parental leave will double to 28 days in France .
1 st July 2021	The wage subsidy scheme in the Netherlands due to end.
1 st January 2022	Connecticut (USA) Family and Medical Leave Act (CTFMLA) will apply to all private sector employers with at least one employee.
2028	Minimum age for the UK personal pension to rise to 57.

TRAVEL WARNINGS

ARGENTINA/GERMANY: Lufthansa will resume flights between Frankfurt and Buenos Aires from late October 2020.

AUSTRIA/SERBIA: Air Serbia has suspended services from Kraljevo's Morava Airport to Vienna until 28th March 2021 due to the growing incidence of COVID-19.

BAHRAIN: Until further notice, it is mandatory to wear protective masks in public, industrial and commercial locations. Violators will be subject to an on-the-spot fine.

BELGIUM: Starting from 8th October 2020, all cafes, other drinking establishments and tea rooms in Brussels will be closed for a month to curb the spread of coronavirus.

BRITISH VIRGIN ISLANDS (BVI): Mosquito fogging operations will take place from 4:30 p.m. until 7:00 p.m. in Long Bush, Lower Estate on Thursday, 8th October 2020 and Sea Cows Bay on Friday, 9th October 2020. Persons with respiratory illnesses are advised to leave the areas being fogged as the process can trigger asthma and cause discomfort.

CANADA: Canadian borders are closed to anyone who is not a Canadian Citizen. The US has extended its land border restrictions with Canada until 21st October 2020. Moreover, all incoming flights to Canada may only land at Montreal, Toronto, Calgary, and Vancouver.

CROATIA/GERMANY: The German airline Lufthansa plans to further reduce its flights to Croatian airports by the end of October 2020.

GERMANY: Expect transport disruptions in Berlin on 9th October 2020. This is because transport unions have planned to take industrial action on that day. Additionally, under the newly announced night-time restrictions, which will come into effect on 10th October and run until 31st October 2020, restaurants, bars, local shops and other businesses must shut between 23:00 p.m. local time until 06:00 a.m. During the curfew-period, private gatherings are limited to five people if they live in separate households.

INDONESIA: Workers and students have been protesting throughout the country against the recently passed Job Creation Law. Those in Indonesia are advised to stay vigilant and avoid public gatherings.

ITALY: Swab tests for COVID-19 are compulsory for people traveling from the United Kingdom, the Netherlands, Belgium and the Czech Republic. It is also mandatory to wear face masks in public outdoor spaces across the country.

JAPAN/SOUTH KOREA: The South Korean low-cost carrier, T'way Air, will start flights to Japan in November 2020.

MALDIVES: The government has extended the ongoing State of Public Health Emergency until early November 2020.

NORTH AMERICA: The Canadian low-cost airline Sunwing will resume flights from 6th November 2020.

PAPUA NEW GUINEA/SOLOMON ISLANDS: The National Airline of Papua New Guinea, Air Niugini, has now resumed international flights to Honiara, the capital city of the Solomon Islands.

SCOTLAND (UK): The government is advising those who live or work in the central belt between Glasgow and Edinburgh not to travel outside that region between 10th and 25th October 2020 due to COVID-19.

SRI LANKA: All public gatherings are now prohibited until further notice.

THAILAND: A pro-democracy demonstration has been scheduled at the Democracy Monument in Bangkok on 14th October 2020. Individuals in Bangkok are advised to exercise great caution and expect associated disruptions.

TURKEY/UK: Jet2 has canceled some flights to Turkey until 31st October 2020.

UKRAINE/ARMENIA: Ukraine International Airlines (UIA) has canceled all flights to Yerevan (Armenia's capital) until 31st October 2020 due to the escalation of the Armenian-Azerbaijani conflict.

FEDEE NEWS

COLLABORATION: FedEE has been working with the **Economist** journal to examine the way that employers around the World are utilising redeployment of employees during the health crisis.

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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