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Latest News | Neueste Nachrichten | Ultime Notizie | Últimas Noticias | 最新消息
From The Federation of International Employers (FedEE)



NOVEMBER 19th 2020

HR WORLD TODAY

Although there are numerous sources of information available to multinational employers about coronavirus-related measures, it would be very easy to miss the fact that numerous HR, legal and associated economic measures unconnected with the pandemic continue to be introduced, as well as important court rulings emerging every day. For that reason, FedEE newswires seek to keep a primary focus on longer-term issues. We do not ignore the pandemic, but at some point we will happily emerge from these difficult times and need to be geared up for a World full of changed laws and regulatory requirements.

In the Africa and Middle-East region, there is a clear trend detectable in **Egypt** and **Kuwait** away from the public to the private sector. Greater flexibility is being allowed for foreign workers in **Saudi Arabia** and ICT workers in **South Africa**, whilst both **UAE** and **Mauritius** continue to try to attract highly skilled workers. This region also remains one of great instability - both, for instance, militarily in **Ethiopia** and economically in **Zimbabwe**.

In the **USA** and **Canada**, the courts have been busy looking at such issues as the validity of contractual clauses, using arbitration as a way to stall litigation and seeking to keep up with a host of pandemic-related claims. **Californian** voters have been pronouncing on the status of platform workers and the legislature lowering thresholds for unpaid leave and qualifying "no

rehire" contractual clauses. Meanwhile, the **NLRB** has been busy redefining rules relating to picketing and tip pooling.

Possibly reflecting the pick-up in activity across much of Asia, the focus in several countries has been on hiring staff. Confidence is growing in the **Chinese** service sector and **Singapore** is making concerted efforts to attract "highly accomplished entrepreneurs and technical experts". But **Singapore** too, like the Indian State of **Haryana**, is adopting a concerted policy of giving priority to local job candidates. However, currently dominating all news in the region is the launching of the 15-country Regional Comprehensive Economic Partnership (**RCEP**) to establish the largest international trading block in the World.

Europe finds itself very much still in the grip of the pandemic, with the EU emergency aid programme blocked due to an internal political dispute - with **Poland** and **Hungary** both posed against the rest of EU Member states. The second largest ever fine under the GDPR in **Germany** underlines how easy it is to adopt a misguided day to day approach to HRM, whereas other cases in **France** and **Switzerland** illustrate how employees can misread the importance of commercial confidentiality when they change jobs, or post data onto social media. Meanwhile, a case in **Germany** allowing instant dismissal for private use of the

Internet will give confidence to employers dealing with this persistent problem.

Finally, there are three uncomfortable takeaways from our latest European news reports. The list begins with an example from the **Irish Republic** concerning the dangers of giving a negative reference. There is a disturbing proposal - inter alia - from the SPD **German** coalition party that wishes to discriminate through the tax system against companies not party to a collective agreement and a string of further developments in **Spain** indicating it is establishing a hostile environment for employers. Amazon has already run into devious union tactics against it in **France**, now the **Spanish** UGT union is gearing up to a wider onslaught by undertaking target practice at the company.

AFRICA AND MIDDLE EAST

EGYPT: For some time, the government has sought to reduce the importance of state industries in the economy. New solvency rules have already led to the demise of two such companies, whilst the previous rule of 50% worker representation on state company boards has now been dropped in favour of nominal representation. In September, a parliamentary bill on standardising all wages in state-owned enterprises was launched in parliament. This was also designed to reduce benefits such as healthcare and subsidised housing. These changes have led to widescale disputes and protests, with many arrested workers now awaiting sentences for public order offences.

ETHIOPIA: Employers with staff in Africa's second most populous nation should consider their urgent withdrawal, as the country now appears to be on the brink of a civil war. The conflict is centring on the northern state of

Tigray, with hundreds of civilians already killed and thousands of its population fleeing across the border to **Sudan**.

ISRAEL: The largest trade union in Israel, Histadrut, is planning to introduce a nationwide strike in support of wages for workers forced to go into quarantine because of the pandemic. Back in September, the union reached agreement with the Ministry of Finance regarding pay for days in quarantine, but no action was taken by the Ministry. Now, the notice period for industrial action is almost over and the union may commence its strike by early next week.

KUWAIT: A new economic reform programme aims to reduce the number of public sector workers and increase those in the private sector. This would be achieved by allowing more foreign workers to take up public jobs and by introducing incentives and obligations for private companies to reserve jobs for Kuwaitis.

MAURITIUS: An interesting variant of the "Nomad visa" concept is being adopted by Mauritius. Investors and professionals from countries listed in the Eighth Schedule of the Passport Regulations, who wish to come with their family and work remotely from Mauritius, may now apply for a Premium Travel [Visa](#). This visa is valid for a period of 1 year and is renewable. To qualify, applicants must provide evidence of their long-stay plans and have adequate travel and health insurance for the initial period of stay. They also must not enter the Mauritius Labour Market upon arrival and their main source of income should be from outside Mauritius. The Premium Visa is issued free of charge and there is no processing fee applicable.

OMAN: The days of low tax regimes in Middle Eastern states is probably over. Oman is likely to be the first to introduce a higher rate of income tax on high earners, sometime in 2022. No specific figures are yet available, or income brackets, but the 2020-24 budget seeks to remove the growing budget deficit, which would mean a western-style progressive rate system.

SAUDI ARABIA: The newly launched Labour Reform Initiative (LRI) is upgrading and liberalising a number of laws concerning foreign workers. With effect from 14th March 2021, expatriate workers will be able to transfer between employers – upon the expiry of their binding work contract – without first obtaining their current employer's consent. Other reforms include eliminating the requirement for foreign employees to obtain permission from their employer prior to travel outside of Saudi Arabia (including their final exit from the country); launching "Wedy" for the settlement of labour disputes and digitising employment contracts.

SOUTH AFRICA: Foreign nationals who are currently resident in South Africa with legally issued Intra-Company Transfer (ICT) visas that expired during the lockdown, including the current period - and those that will expire by 30th June 2021 - may now apply for an extension of their visas for another 2 years. Conditions for this waiver include "the ICT visa shall not lead towards permanent residence" and "the ICT holder will remain in the employment of the designated employer for whom the initial and current ICT visa was issued".

SOUTH AFRICA: It has long been an area of legal contention whether an employer may oblige employees to accept changed duties, terms or conditions, or be found to have unfairly dismissed the employees concerned if

the employees refuses any changes and resigns - citing section 187 (1) (c) of the South African Labour Relations Act, 1995 (LRA). This section states that the de facto dismissal will be automatically unfair where there is "a refusal by employees to accept a demand in respect of any matter of mutual interest between them and the employer". However, a recent Constitutional Court ruling has now clarified this issue by accepting that a dismissal will be lawful if an employer is able to demonstrate that they have a genuine "operational need" to retrench or restructure, and are willing to offer alternative employment that employees nevertheless refuse [National Union of Metal Workers of South Africa and Others v Aveng Trident Steel (a division of Aveng Africa [Pty] Ltd) and Another].

UAE: With effect from 1st December 2020, the 10-year "golden" visa will be available to all PhD holders, physicians, and engineers in the fields of computer engineering, electronics, computer programming, electricity, and biotechnology. Those with specialised degrees in artificial intelligence, big data, and epidemiology will also be eligible. More information on how to apply can be found [here](#).

ZIMBABWE: This country continues to have the highest price inflation rate in the World, with the cost of food alone rising by 472% over the year to October 2020. Overall, inflation is estimated to be at a rate of 319% this year, but has been expanding largely out of control since 2018. Compared to this, recent pay increases seem to be remarkably modest. For instance, under an agreement between the Associated Mine Workers Union (AMWUZ) and the Chamber of Mines, mining sector workers have been awarded an across-the-board 22% wage increase. The salary adjustment is applicable for Q4 2020 and will see the lowest paid mine worker receiving ZWL\$18,000 (US\$50) per month. Even in

spite of this change, real spending power will continue to drop dramatically.

THE AMERICAS

CANADA: Private businesses and non-profits in **Ontario** with 20 or more employees are required to complete and file an AODA accessibility compliance report by 30th June 2021. [Guidelines](#) for completing the report have been published. Moreover, from 1st January 2021, these organisations must also have ensured that their corporate websites meet recognised accessibility standards (such as the WCAG 2.0 Level AA standard). Once again, the Ontario government has published website [guidelines](#) to assist employers. The daily maximum penalty for any infringement of AODA is \$100,000 (US\$76,400).

CANADA: Ontario's Superior Court has laid down an important principle under the Employment Standards Act (ESA). In the court's view, even if a condition in an employment contract concerning severance and notice applies to the current position held by an employee, if it is drafted so as not to automatically modify if conditions change, the clause is invalid. In the case being considered, the employee's "construction" role removed a level of protection, but having been an apprentice, the "construction" element could readily disappear. Likewise, although the employer was small, if it grew in size then the protection available under ESA would trigger. Thus, the potential validity of a clause in an employment contract is a relevant factor when applying ESA [[Rutledge v. Canaan Construction Inc., 2020 ONSC 4246](#)].

CANADA: Under the Express Entry online system, status credits arising from numerous factors are used to assess applications for skilled workers who want to become permanent residents of Canada. French-

speaking and bilingual candidates will now receive an additional 10 and 20 points, respectively, under the system towards their immigration application status.

CANADA: With effect from 1st April 2021, the minimum wage on Prince Edward [Island](#) – one of the Maritime Provinces of Canada – will increase by 15 cents to \$13 (US\$9.9) per hour.

CAYMAN ISLANDS: It has been 8 years since a law was first drafted to protect employees from sexual harassment. The situation was improved somewhat in 2018 by the enactment of a "stalking law". However, this only covers one aspect of the harassment problem. Other laws that have been introduced in subsequent years do touch on some of the most extreme examples of such conduct, but no protection, for instance, exists against victimisation for someone if they report any case of harassment. Likewise, there is no obligation for private sector employers to have in place an anti-harassment policy.

COLOMBIA: The Ministry of Labor has advised that the health emergency does not automatically give a licence to employers to dismiss workers, even when serving probationary periods. However, contradicting this, in the public sector, the Administrative Department of Public Service (DAFP) is contending that no trial periods exist until the health emergency is over – only "induction periods" – and that it is therefore permissible to dismiss someone provisionally appointed in favour of an employee who has passed a "merit contest".

COSTA RICA: The National Salary Council has approved a 0.30% minimum wage increase for all private sector employees, effective from 1st January 2021. A review of the minimum wage per se shall be undertaken no later than April 2021.

COSTA RICA: The coverage of the Social Security Fund (Caja Costarricense de Seguro Social, CCSS) has been extended to furloughed employees until the end of this year.

GUYANA: In the last Newswire, we reported breaches of labour law in the security sector. Now, the Ministry of Labour is warning of more widescale breaches elsewhere in the economy. Most complaints relate to pay entitlements, late payments, denying annual leave and ignoring the obligation to pay overtime after reaching 40 hours per week. The sectors where infringements appear to be most common are retailing and call centres.

USA: When parties to litigation do so in the context of an available arbitration clause, especially on appeal, it is usually the plaintiff who seeks to obtain a waiver against the defendant, who is using the nature of arbitration to stall. But in a recent case before the US 5th Circuit, it was the plaintiff that was being indecisive and eventually opted for a court hearing for at least one half of his claim. It was only after 16 months that the plaintiff came back wishing to go for arbitration. However, the court had drawn a line and arbitration rights were suspended [[Sabatelli v. Baylor Scott & White Health, Case No. 19-50047](#)].

USA: In the event that employers and employees part company, there is sometimes a "no rehire" clause in the agreement. **California** generally prohibits such clauses, except when sexual harassment or criminal activity is involved. However, [AB 2143](#) also allows for an exception where the aggrieved party has not filed their claim in good faith.

USA: The **California** Family Rights Act (CFRA) currently applies to employers with 50 or more employees (in a 75-mile radius). It

gives the right to take up to 12 weeks' unpaid leave to bond with a new child in the family, provided the employee has 1,250 hours of service in the previous 12-month period. From 1st January 2021, this right will extend to all employers with five or more employees.

USA (CALIFORNIA): Voters have approved a proposition allowing those undertaking App-based rideshare and delivery services to be classified as independent contractors. It thus overrides Assembly Bill 5 (AB 5) in respect to drivers, which was passed last year. Though narrow in its focus, this decision will have a huge impact on the use of gig workers across the State. Such work arrangements are controversial because they are not covered by regular protective measures such as minimum wage, overtime premia, unemployment insurance, and workers' compensation.

USA: The Department of Labor (DOL) has recently returned to that "old nut": when is a job to be treated as employment and when is it a "contractor" role? DOL's new approach has the advantage of being simpler and less dependent on multiple factors. In fact, they define just two core factors: [1] the nature and degree of the worker's control and [2] the worker's opportunity for profit and loss. The first of these depends on whether a worker determines their own schedule, chooses the tasks they will perform at any given time and works with minimum supervision. The second factor looks at the way they control and deploy resources within the context of their own "profit and loss". DOL also names three "guidepost features": skill requirements, how permanent working relationships are and if the nature of work performed is clearly part of one ongoing system.

USA: The recent ballot in **New Jersey** has overwhelmingly supported the lawful possession and use of marijuana. However,

the State legislature is still a long way off from passing appropriate legislation. Employers are nevertheless reminded that last year the State expanded its medical marijuana programme and established protections for employees and job applicants who were prescribed this dangerous drug. The NJ Supreme Court also [ruled](#) that employers were obliged to accommodate the use of medical cannabis during an employee's free time away from the workplace.

USA: Earlier this year, we warned about the possibility of a growing number of court actions for labour violations during the pandemic. Now, the total of such filings since mid-March has grown to over 1,100, inclusive of 115 class actions. In fact, the number of such cases grew steadily each month from 54 in April to 226 cases in October. Leading the way are cases of retaliation by employers, refusal to pay for forced leave and workplace safety disputes. However, the leading sector is healthcare itself.

USA: The National Labor Relations Board (NLRB) has been re-examining the age-old question about what constitutes picketing. A principal point of issue is whether "stationary" protests against neutral employers using the services of, or dealing with, an "offending employer" are automatically lawful. The NLRB has generally been tolerant of items such as banners and inflatable figures (usually of rats) as these are not considered as "coercive". But now the Board is giving interested parties until 27th November to submit their views about whether such protests constitute proscribed picketing under Section 8(b)(4) of the NLRA.

USA: Recent advice issued by the NLRB concerns "tip pooling". They have declared that where employees discuss an employer's pooling system, they may not be dismissed - or otherwise disciplined - because the act of

debating the system constitutes "concerted activity" under Section 7 of the NLRA. However, this contrasts with employees refusing to undertake tasks because of the small tip that will result, as the size of the tip is beyond the employer's control.

USA: The minimum wage rate in **Florida** will increase from the current \$8.56 to \$10 next September, and then rise again by \$1 each year until reaching \$15 on 30th September 2026. In addition, on 1st January 2021, **Washington State's** minimum wage will be increased from \$13.50 to \$13.69. Workers who are 14 or 15 years old may be paid 85% of the adult minimum wage, or \$11.64 per hour.

ASIA PACIFIC

ASIA: Ten ASEAN countries (Cambodia, Indonesia, Laos, Burma, the Philippines, Thailand, Brunei, Singapore, Malaysia, and Vietnam) have just joined together with five other countries (China, Japan, South Korea, New Zealand and Australia) to form the largest trading bloc in the World. The **Regional Comprehensive Economic Partnership (RCEP)** takes over where the previous 11-member Trans-Pacific Partnership failed. It has done this largely by keeping to Asia-Pacific and by avoiding the cumbersome regulatory competition and social protection rules that make organisations like the European Union such a difficult place to operate for multinationals.

AUSTRALIA: The second Fair Work Commission deadline for a 1.75% increase in [minimum wages and awards](#) has just passed. On 1st November, rates increased for building and construction, clerks, legal services (award), professional employees, manufacturing, and road transport/distribution (award). Current JobKeeper recipients will

also receive an increase if their scheme is in a relevant sector.

CAMBODIA: Entry requirements for business travellers introduced late this Summer remain valid. These differ according to whether the traveller is "sponsored" by their employer, invited to Cambodia, or without such credentials. The easiest entry will be for sponsored travellers. If just invited, then the traveller must have health insurance for at least 20 days (including COVID-19 cover) and a deposit of US\$2,000 must be made in advance to cover necessary hotel and medical testing fees. If there is no sponsorship or invitation, the traveller must expect to go through extended medical checks, have no use of the priority entry lane and have to pay for their own transport to a designated hotel if quarantine is ordered.

CHINA: Confidence in the service sector, as reflected in the PMI index, rose to 56.8 in October from 54.8 in September. The main driver has been domestic demand, with companies progressively hiring more employees each month for 3 consecutive months.

CHINA: Employers in **Shanghai** are now entitled to a RMB300 (US\$46) training subsidy for every new employee they recruit from four types of personnel, namely "individuals with employment difficulties, unemployed family members, college graduates within two years of graduation and other registered unemployed persons". The maximum subsidy period may not exceed 6 months and the maximum subsidy per employee is RMB1,800 (US\$273.4).

CHINA: With effect from 1st October 2021, a long-term nursing insurance premium will be levied in **Shenzhen**, a major coastal city in the south of **Guangdong** Province popular with

foreign companies. The contribution standard will be 0.1% of the average monthly salary, with employer and employee equally sharing the cost.

CHINA (MACAU): A new Income Subsidy Plan for Employees with Disabilities (39/2020) has just been introduced. Under the plan, local workers holding a Disability Assessment Registration Card who work 128 hours or more per month and receive a monthly income under the statutory minimum wage (MOP6,656/US\$833) will be eligible to have their income topped up to the statutory rate by the government. For disabled workers who work less than 128 hours per month, the compensation amount will be calculated in accordance with a MOP32 (US\$4) per hour minimum requirement.

INDIA: The State that surrounds **New Delhi** on three sides is called **Haryana**. The State Assembly has recently passed an "Employment of Local Candidates Bill" that is in direct opposition to the Federal Indian Constitution. This is because it reserves 75% of all private sector jobs paid below Rs50,000 (US\$700) per month – over the next 10 years – for local residents of the State. This new law breaks with assurances made earlier this year that it would only apply to unskilled labour and that employers would still be free to hire outside the State. Such legal flexibility has turned out not to be the case. Moreover, the new law also requires 10% of all jobs to be reserved for employees in the district where the company operates and for employers to set up skills training courses for local resident workers.

INDIA: The **Himachal Pradesh** Department of Labour and Employment has issued a new law entitled the "Ease of Compliance to Maintain Registers under various Labour Law Rules". As its name implies, this makes

numerous, new detailed stipulations about the keeping of records under laws such as the Contract Labour (Regulation and Abolition) Act 1970, the Minimum Wages Act 1948, and Payment of Wages Act 1936. Payroll departments should take a close interest in these changes to ensure that their systems are in compliance.

INDIA: The **Gujarat** High Court has ordered that rules 1 and 2 of the Gujarat Bar Council be modified to allow those with an LLB to be enrolled at the Bar. This will mean that qualified professionals and employees working for local companies, operating in any field, may be admitted as an Advocate and take the All India Bar test to become a fully qualified lawyer. Thus, companies may directly sponsor employees to establish in practice and serve their legal needs.

MALAYSIA: The government has given its approval to the practice of withdrawing funds from the primary account of the Employees Provident Fund (EPF) in order for individuals to cope with the financial costs of the pandemic. The Finance Minister has confirmed that such withdrawals may start in January next year. Earlier this year, the rate of worker contribution to the EPF was reduced from 11% to 7%, and limited withdrawals allowed from the fund's second account. From 1st January, however, this reduction is raised to 9% for a period of 12 months.

MALAYSIA: In addition to the FKW requirements reported in the last Newswire, companies that are intending to renew, or apply for new employment permits for their foreign workers, are now required to place an advertisement for the job vacancy at the JobsMalaysia [portal](#) for a minimum of thirty days. After the posting expires, an Acknowledgement Letter called "Surat Perakuan" will be issued from JobsMalaysia to

the company if no local candidate has been successfully hired for the role advertised.

NEW ZEALAND: Although it was passed by parliament in August, the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 has only just come into force. It is being phased in over a 15-month period through to February 2022. One of the key initial changes will be the prohibiting of indoor vaping at workplaces, in restaurants and on licensed premises.

PAKISTAN: Back in January this year, we reported that the Senate was considering a Bill allowing 1-month paternity leave to fathers on the birth of their first three children. Now, the National Assembly's Standing Committee on Law and Justice has just approved the Bill. This new right will be applicable only in the Federal capital, Islamabad.

PHILIPPINES: Labour disputes may now be processed online under the Single Entry Approach (SEnA) Program. Through [e-SEnA](#), parties no longer have to visit the Single Entry Assistance Desk to file a request for assistance and to attend SEnA meetings.

SINGAPORE: The Ministry of Manpower (MOM) has been seeking to persuade employers to give priority to citizens of Singapore when filling employment vacancies. To achieve this, they have modified the Fair Consideration Framework by doubling the S Pass requirement local advertising period from 14 to 28 days. Qualifying salaries for the Employment Pass (EP) and S Pass categories have also been raised to reduce the facility to employ foreigners.

SINGAPORE: As an extension of the Tech@SG Programme, which was launched in 2019, Tech.Pass - a new type of visa - will be available, with effect from 1st January 2021,

to 500 highly accomplished entrepreneurs and technical experts around the World, with a validity period of up to two years. Pass holders will have the freedom to participate in activities such as starting and operating a business, or be an investor, employee, consultant or director in a Singapore-based company. To view the eligibility criteria, please click [here](#).

SOUTH KOREA: An increasing number of Thai workers are learning Korean in order to secure a job in South Korea. A requirement to pass a language proficiency test is an integral part of the Korean Employment Permit Scheme (EPS), as is health and physical fitness. Even a worker on the minimum Korean wage would earn 6-7 times the agricultural wage in Thailand. Currently, there are around 11,000 Thai applicants to take the EPS tests in **Bangkok**, with many having studied 4 hours a day to improve their language fluency. However, although there is a huge annual quota for foreign labour in agriculture in South Korea, opportunities are limited in other sectors and all the passing of the EPS does is allow a worker to appear on an approved list from which a potential employer may look to find a foreign worker, when quotas allow.

TAIWAN: The Ministry of Transport and Communications has commenced a period of public consultation concerning Article 7 of Appendix 3 of the regulations for the minimum standards of seafarer's wages, onshore charges and overtime charges. This proposes a minimum monthly wage of NTS24,000 (US\$842) from 1st January 2021.

TAIWAN: The government has issued a useful tabular guide on the classification and treatment of disability in the workplace. This outlines the disability type, state, level, examination standard, and which body is

responsible for issuing the final diagnosis. It may be downloaded [here](#).

TAIWAN: When hiring foreign students, it is important for employers to carefully verify the identity of the holder of the work permit letter (issued by the Ministry of Labour), their student status eligibility, and also pay attention to the validity period of their work permit. A violation may result in a fine of up to NT\$750,000 (US\$26,296).

VIETNAM: A new decree (122/2020) simplifies the steps necessary to establish a business entity in Vietnam. Instead of eight steps requiring 16 days to complete, there are now just four steps and a company can be fully operational within 6 days. This includes registering with the employment and social security authorities. Everything is largely set down on a single form and sent electronically to the new Enterprise Registration Authority, which communicates with all necessary agencies on the new employer's behalf.

EUROPE

ALBANIA: The National Labour Council has just approved an increase in the minimum wage by 15.4% from ALL26,000 (US\$248) to ALL30,000 (US\$286). The change will take effect from January 2021.

BULGARIA: Relaxation of border controls means that those from certain countries no longer have to go into automatic quarantine on arrival. However, many of these states are small, so the impact of this measure largely applies just to business travellers from **Norway** and **Switzerland**.

CROATIA: The government is continuing its programme of tax reforms. The changes reduce individual income tax rates to 30%, 20% and 10% from 36%, 24% and 12%,

respectively. Parliament has also agreed to expand employee share option limits and treat them as special salary payments. Small businesses will also benefit from a reduction in corporation tax from 12% to 10% for corporate taxpayers earning up to 7.5 million Croatian kunas (US\$1.2 million). All changes will be effective from 1st January 2021.

EUROPEAN UNION: Although the EU exceeds its powers in seeking to address the issue of minimum wages in Europe (Art 153v[5] EU Treaty), this has not prevented it from issuing a draft Directive on an "adequate minimum wage". FedEE has not been the only body to claim that wages fall within the national sphere of competence, and even if the measure ever reached the EU statute book, it would no doubt be subject to challenges by several Member States before the European Court of Justice.

EUROPEAN UNION: Refusal by **Poland** and **Hungary** to sign off on the new EU post-pandemic budget means that the rescue package is effectively blocked. Neither country will budge until the European Council and Commission stop trying to force them to withdraw their internal measures to interfere with judicial independence and be intolerant of groups such as asylum seekers and those in the LGBTQ+ community. Such measures are euphemistically all bundled up into the heading "respect for the rule of law". Neither side looks like it is going to relent anytime soon.

FRANCE: What happens when an employer discovers that one of their employees has breached commercial confidentiality through a social media posting? How does an employee's rights to privacy under Article 8 of the European Convention on Human Rights relate to a [company's right](#) to protect its trade secrets under statutory and contractual law?

Recently, the Court of Cassation in France had to [consider](#) the fundamental privacy rights of an employee who had posted details of their firm's latest clothing collection on Facebook. It was seen by a colleague who passed it on to the employer. The posting was in direct contravention of a confidentiality clause in the employee's contract and could be readily viewed by their employer's competitors. They were therefore summarily dismissed. Even though the company used a third party to access the details for them, the court initially considered they had breached the employee's privacy rights. However, such a violation could, in the court's view, be justified because it was "essential for the exercise of the right to evidence and is proportionate to the aim pursued – namely, the defence of the employer's legitimate interest in the confidentiality of its business". Therefore, the court allowed the technical breach and the gross misconduct dismissal stood.

GERMANY: The Federal government has before it a draft ordinance concerning the health and safety of self-employed workers on construction sites. The ordinance extends protection to all workers, including those autonomous workers without employees. In future, these will be required to have necessary insurances in place in case of injury and take instructions from site supervisors.

GERMANY: The Baden-Württemberg State Labour Court (LAG) has ruled the results of the Works Council elections at Daimler HQ back in 2018 as invalid. This is because the election involved not only HQ personnel, but employees from distant locations that were not part of the same "employment unit" [17 TaBV 3/19]. However, the Court has allowed an appeal to the Federal Labour Court.

GERMANY: A recent meeting of the Bundestag (Federal Parliament) Committee on Social Affairs considered why the growth of works councils in companies had slowed very markedly in recent years. Giving evidence were numerous employers' organisations that claimed the decline in growth was due to employees having "little interest" in such bodies. Some witnesses pointed out that employers often used consultants to dissuade employees from claiming representation, whilst a number of more neutral experts believed that greater legal protection should exist for any employee calling for the establishment of a works council.

GERMANY: The parliamentary group of the SPD party - currently governing Germany in coalition - has adopted a position paper setting out proposals for reform of the Works Constitution Act and co-determination rights. Measures envisaged by the paper are: a reduction in the company size thresholds for 50/50 participation on company Supervisory Boards; the requirement of such boards to be composed 50% of women; protection from dismissal or victimisation for anyone proposing the establishment of a works council; tax reductions for companies subject to collective agreements and the introduction of educational programmes on employee rights in secondary and vocational schools.

GERMANY: Excessive private use of the Internet during working time may justify instant dismissal, according to the Regional Labour Court of North Rhine Westphalia (Cologne, 7.2.2020, 4 Sa 329/19). The company concerned did not permit private use of the Internet and the employee had consented to their laptop being checked regularly by the employer. Despite this, the employee regularly visited URLs and sent private emails during working hours over a 4-month period. The Court ruled that the employee's insubordinate

behaviour ("working time fraud") constituted a suitable reason to terminate employment. However, for immediate termination to be possible, the Court stated that the employer had to separately evaluate the appropriateness of dismissal per se and doing so during a notice period. Only if these two stages were evaluated may the employer consider summary dismissal. Although very much an individual case, this provides a potential legal basis and due process for terminations without notice in respect of working time fraud [Kindly contributed to the FedEE Newswire by Diane Wardle-Ludwig, [DWL-HR-Consulting](#), Frankfurt Am Main, Germany].

GERMANY: The Baden-Württemberg State Labour Court (LAG) has ruled that any criticism by an employer of a works council member for their competence as a works council representative may not be noted on their personnel file. If this occurs, the council may issue an injunction against the employer under Section 23 (1) of the BetrVG [Az 8 TaBV 3/19].

GERMANY: The Regional Court in **Cologne** has refused to allow an automotive supplier to make several permanent employees redundant in the face of reduced orders. This was because there were six temporary workers also employed by the company who had, for a period of almost 2 years, been employed for substantial periods. According to the Court, such temporary positions must be considered as "vacant" and open for the employment of workers losing their permanent jobs [02.09.2020. Az file number 5 Sa 14/20 and 5 Sa 295/20].

GERMANY: The recent [€35M fine](#) on fashion retailer H&M - the second largest fine under the GDPR - imposed by the Hamburg Commissioner for Data Protection and Freedom of Information is a timely reminder that GDPR rules apply to everyday HR

management practices and not just the processing of personal data and major data breaches. In this case, sensitive personal data concerning the private lives of employees was found to have been routinely used to make employment decisions, thus encroaching on the civil rights of employees [Kindly contributed to the FedEE Newswire by Diane Wardle-Ludwig, [DWL-HR-Consulting](#), Frankfurt Am Main, Germany].

HUNGARY: Currently, working fathers of newborn children are allowed 5 days' paternity leave. However, the Hungarian Trade Union Confederation (MASZSZ) has written to the State Secretary for Employment Policy calling for this to be increased to 30 days. The MASZSZ has also been gathering support through a petition to put to the government, although this petition has seemingly disappeared after gaining only 5,000 signatures.

IRISH REPUBLIC: A recent case before the Adjudication Officer raised the question whether a negative written reference could be used as the basis for a claim of constructive dismissal under Section 1 of the Unfair Dismissal Act 1977. Clearly, any employee receiving a job offer subject to a satisfactory reference has already decided to leave their employment, therefore there can be no logical claim for the reference to have broken "trust and confidence" necessary for an ongoing relationship. What is more, an employee will have chosen to ask a particular individual in their current company for a reference (there were two company directors to choose from in this case). Thus, by asking one who was known to be less positive about them, they could have reasonably expected the reference not to be wholly positive. However, the Adjudication Officer appeared to respond far more to the stress engendered by the poor reference than the essential logic of the situation. Although this case resulted in a modest compensation for the employee

concerned (€9,000/US\$10,666), it has opened up the possibility that any employer giving a reference could be held liable for constructive dismissal, even if the employee had already virtually resigned. Moreover, this would especially be the case if their employment reference upset them and caused them stress. We therefore advise that, where legally possible, references should remain minimal, even where a prospective employer poses questions concerning the employee [Office Administrator vs Manufacturer ADJ-00026208].

IRISH REPUBLIC: Employers who are interested in submitting comments on the "Critical Skills Occupations [List](#)" and the "Ineligible List of Occupations for Employment Permits" may do so via [email](#) before the closing date: 11th December 2020.

CHANNEL ISLANDS (JERSEY): The government of Jersey has announced immigration policies in response to Brexit on its government [website](#). One of these is that EU nationals who plan to work, study, or settle in Jersey will have to apply for an appropriate visa from 1st January 2021.

RUSSIAN FEDERATION: In a recent forum with Chinese counterparts, the Chair of the Russian Supreme Court stated that the Russian court system granted 98% of claims made by employees concerning disputed work-related payments. Demands for pension rights have been successful in 88% of cases and in disputes about social security, employees were successful in 72% of cases.

RUSSIAN FEDERATION: A new Data Protection Bill [No. 99233] is before the State Duma (national assembly) that seeks to simplify the management of personal data by obtaining written consent to several uses of data at the same time. However, the Bill also deals with data anonymisation. Currently,

private individuals and entities are not allowed to anonymise data, hence much data is destroyed before reuse. The Bill proposes that a highly dubious central agency be licensed to conduct anonymisation for those in the private sector, thus giving the state access to a lot of information currently denied to them. In a further move, the penalties for disclosure of sensitive information are being covered by another Bill (1023005-7), with a ten-fold increase in fines for individuals and "officials". However, the maximum penalty will still be only 50,000 RUB (approx. US\$646).

SPAIN: We have long held that Spain offers the least attractive legal environment in the EU for utilising the services of employees and contractors. In a recent move, the Spanish Labour Inspectorate reinforced this fact by forcing Amazon in **Barcelona** and **Madrid** to reclassify 4,056 contractors to become permanent employees. In addition, the General Treasury of Social Security is charging the company €6.16M in back payments. This move comes within weeks of the Supreme Court [ruling](#) that a Glovo delivery driver was an employee and not self-employed. Now, the militant UGT union is stepping into the arena and commencing their own litigation against Amazon in **Valencia**, **Madrid**, **Barcelona**, **Bilbao**, and **Zaragoza**. As we reported in our last Newswire, non-unionised employers with 50+ employees throughout Spain will, from next Spring, have to invite such unions as UGT to negotiate about equality plans. Things will, no doubt, not stop there as they will no doubt use this role to recruit and then radicalise employees.

SWEDEN: A law will come into force on 1st January 2021 that will define a new concept of "economic employer". In future, if a foreign employee works in Sweden for more than 15 days in succession, or 45 days in total during a year, they will become subject to Swedish

income tax. The responsible party for collecting the tax will be the local beneficiary company of the worker's services, not the employer that actually pays the salary to the worker. Therefore, it will be irrelevant that a payroll provider, or local leasing company, is responsible for salary payments, or that the ultimate employer is a foreign entity. All that will determine responsibility for local tax will be the existence of a Swedish-based organisation for whom they are providing services. This still leaves the possibility that no connection can be so determined because, for instance, the worker is purely based temporarily in Sweden and works exclusively for overseas companies. In that case, the current "SINK" rule will apply. Under this rule, a non-resident employee temporarily staying in the country will not be subject to Swedish income tax, provided their remuneration is paid by a non-Swedish employer with no permanent establishment in Sweden and their stay does not exceed 183 days in any 12-month period.

SWITZERLAND: A regulation has been introduced at a Federal level concerning the obligation of employees to wear a face mask in all indoor areas. However, this does not apply where social distance between workspaces is sufficient, the employee may not wear a mask for health reasons, or where there are circumstances preventing the wearing of a mask for health and safety, or other operational, reasons. Employers are responsible for both issuing the masks and ensuring that they are worn properly (i.e., over the mouth and nose). They may also give a warning for non-compliance and dismiss workers after repeated warnings.

SWITZERLAND: On 1st November 2020, the Canton of **Geneva** introduced a minimum wage of CHF23 (US\$25.19) per hour (Law on Inspection and Labour Relations RS/GE J 1

05, articles 39I to 39N). It automatically applies to all workers, including in the domestic work sector, who execute their duties in the Canton of Geneva, regardless of the company's registered location. No existing contract amendment is required. Apprenticeships, employees under 18, and mandatory internships that form part of certified training are exempt from the new minimum wage. The new wage is even indexed, hence from January 2021 it will become CHF23.14 (US\$25.34). Non-compliance may result in fines of up to CHF30,000 (US\$32,848), with offending employers being recorded on the Work Inspection and Labour Relations (OCIRT) "blacklist" [Kindly contributed to the FedEE Newswire by Diane Wardle-Ludwig, [DWL-HR-Consulting](#), Frankfurt Am Main, Germany].

SWITZERLAND: A long-standing case concerning the validity of a post-contractual non-competition clause in respect to the employee of a coffee-roasting company still rumbles on. The local Cantonal Court originally ordered the employee to pay a contractual penalty set out in the clause. However, the Federal Supreme Court underlined that to be constrained by such a clause, an ex-employee would have had to been party to genuine commercially sensitive data. It was then passed back to the lower court for a final ruling. However, here it was found that the ex-employee did have insights into their former employer's clientele and could do considerable damage. Now, the matter has been referred back once more to the Federal Supreme Court.

SWITZERLAND: On 29th November 2020, the Swiss population will be asked to vote in a referendum on the "Responsible Business Initiative". This is a set of legal measures to make Swiss multinationals take greater responsibility for human rights violations in supply chains and in other commercial decisions that they make. However, there is

one twist in this story, as on the ballot paper will also be a weaker counter-proposal that doesn't include a corporate liability clause.

UNITED KINGDOM: The Supreme Court has established a test to determine the governing law for an international arbitration agreement (*Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb*). This governs commercial contracts, rather than arbitration clauses in employment contracts, but the same principles could apply. In essence, where a contract has a disputes clause allowing the dispute to go to arbitration, then the country legal jurisdiction governing the arbitration will be the same as that for the main contract, unless a specific alternative jurisdiction is clearly specified to cover arbitration.

UNITED KINGDOM: A new takeover law is being introduced to create an early warning system for prospective business or intellectual property transfers to overseas interests in 17 sensitive commercial sectors. A penalty of £10M (US\$13.3M) will exist for Directors failing to notify, plus a corporate fine of up to 5% of annual turnover. Once a notification has been made, existing powers will allow the government to determine if it wishes to intervene in the national interests.

UNITED KINGDOM: Welsh businesses are now able to claim up to £3,000 (US\$3,969) for each new under 25 year old apprentice they employ working at least 30 hours per week, and £1,500 for those working less than 30 hours per week. For workers aged 25 and over, businesses will be entitled to £2,000 (US\$2,645.5) for each new apprentice they hire on a 30 hour or more contract, and £1,000 (US\$1,323) for apprentices working less than 30 hours. It should be noted that payments will be restricted to ten apprentices per business.

UNITED KINGDOM: With effect from March 2021, over 20,000 lowest grade employees working for the supermarket chain Lidl will receive new hourly pay rates, ranging from £9.50 (US\$12.5) to £11.80 (US\$15.5), depending on their location and length of service.

UNITED KINGDOM: Employees outside of London who work for an employer voluntarily

signed up to the Real Living Wage will now receive £9.50 (US\$12.5) per hour, whilst employees in London will receive £10.85 (US\$14.3) per hour. In total, the Real Living Wage is paid by around 7,000 employers and to over 250,000 people across the country. In contrast, the statutory National Living Wage is currently set at £8.72 (US\$11.5) per hour for anyone aged 25 or over.

DATES FOR YOUR DIARY		DATES FOR YOUR DIARY	
1 st December 2020	UAE will grant 10-year golden residency visa to key professionals.	1 st January 2021	Colorado (USA)'s new pay equity law takes effect.
11 th December 2020	Statutory maternity leave for eligible employees will increase from 10 weeks to 14 weeks in Hong Kong (China).	1 st January 2021	EPF concession rate rises to 9% from 7% in Malaysia.
11 th December 2020	Public Consultation on the review of the Occupations Lists for Employment Permits due to end in the Irish Republic.	1 st January 2021	A Swedish tax liability will arise for many foreign employees working in Sweden.
31 st December 2020	Luxembourg-Belgium cross-border workers' tax agreement due to end.	1 st January 2021	The new WHOA Dutch scheme will enter into force.
1 st January 2021	California (USA) requires employers with five or more employees to provide 12-weeks of leave.	January 2021	Tech.Pass will be open for applications in Singapore.
		14 th March 2021	A labour law that is expected to improve mobility and transparency for private sector employees in Saudi Arabia is expected to go into effect.
		1 st October 2021	A new LT nursing insurance premium will be levied in Shenzhen (China).

TRAVEL WARNINGS

AUSTRALIA: South Australia will now go into [lockdown](#) for six days until 12:01am on 25th November 2020 amidst a serious coronavirus outbreak. All inbound international flights to Adelaide have been temporarily cancelled.

AUSTRIA: Strict new lockdown measures will apply until at least December 6th 2020.

AZERBAIJAN: The National Air Carrier of Azerbaijan has now resumed flights on its Nakhchivan-Baku route.

CENTRAL AMERICA: Expect hazardous weather conditions caused by Hurricane Iota over the next few days.

CHINA: The Chinese government has temporarily suspended the entry of all visa and residence permit holders from India in view of the coronavirus pandemic.

CYPRUS: Limassol and Paphos districts are currently placed in a quarantine until November 30th 2020. The curfew hour is from 8pm to 5am. Any movement in or out of these two districts will be strictly limited to essential business services where those crossing the divides have had a recent test result proving non-exposure to COVID-19.

CYPRUS/GREECE/RUSSIA: Aeroflot will resume flights to Athens on 21st November 2020 and Cyprus' Larnaca on 22nd November 2020.

ETHIOPIA: A state of civil war exists across much of the country. Travel to the country is not recommended and existing staff may need to be evacuated.

GUATEMALA: The Pacaya Volcano has been showing increased activity recently. Activity is primarily focused on the southwest side of the volcano and includes avalanches, increased ash eruptions, and explosions.

ITALY: The central region of Abruzzo has gone into lockdown after being classed as one of Italy's red zones of high COVID-19 contagion risk.

JAMAICA: The nightly curfews will remain at 9 pm to 5 am each day until 1st December 2020.

JAPAN: AirAsia Japan has just filed for bankruptcy proceedings in the Tokyo District Court. However, flights between Japan and destinations such as Bangkok will continue to be operated by other AirAsia carriers.

NEW ZEALAND: Nurses, hospital reception and administration staff have called for a 24-hour nationwide strike on Monday, 23rd November 2020 over pay equity issues. Expect medical services disruptions at healthcare facilities and hospitals. Moreover, the wearing of face masks is now mandatory on Auckland public transport, and on all domestic flights – with few exceptions such as

school buses, or people with asthma. Non-compliance may result in a maximum term of imprisonment of six months, or a fine of up to \$4,000 (US\$2,768).

NIGERIA: The government has lifted a ban on flights to the West African country by Air France, KLM, Lufthansa and Qatar Airways.

NORWAY: Foreign nationals who cannot present certificate of a negative COVID-19 test can be refused entry, although there are few exceptions, such as foreign nations who are in transit.

QATAR: Until 31st December 2020, all arrivals – including nationals, residents and visa holders – must isolate for up to 14 days upon their arrival in the country.

THAILAND: Anti-government protests outside the country's parliament in Bangkok have recently turned violent. Avoid all street gatherings as a precaution and anticipate further associated demonstrations in areas of the capital during the near term.

UGANDA: Several people have been killed, and dozens wounded, after protests erupted in the capital Kampala following the arrest of an opposition presidential candidate. Expect further protests in Kampala and possibly across Uganda in the coming days.

UNITED ARAB EMIRATES/UZBEKISTAN: Uzbekistan Airways will increase flights frequency to Dubai from 1st December 2020.

UNITED KINGDOM (SCOTLAND): The Level 4 measures, similar to a full [lockdown](#), will apply from 6pm on 20th November 2020, until 11th December 2020, in Glasgow, Renfrewshire, East Renfrewshire, East Dunbartonshire, West Dunbartonshire, North Lanarkshire, South Lanarkshire, East Ayrshire, South Ayrshire, Stirling and West Lothian.

FEDEE NEWS

INDIA - GUIDANCE NOTE: Our corresponding law firm [Kochhar & Co](#) has forwarded to us summaries of a [major development](#) that could particularly affect offshore users of services based in India. A major reform of OSP service regulations has just been announced. This will liberalise the legal framework for a whole range of voice-based business services, including call centres. Moreover "The personnel can work from anywhere in India and not necessarily at the same city where the OSP centre is located."

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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