



# DERNIÈRES NOUVELLES

13<sup>th</sup> October 2022

Round up of recent international HR and employment law developments courtesy of the Federation of International Employers ([FedEE](#)).

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 [admin@fedee.com](mailto:admin@fedee.com)

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# 1. EUROPE

**ANDORRA:** The government has approved regulations for the Personal Data Protection Law and established a Data Protection Agency (ADPA).

The regulations allow the regulator to better adapt Andorra's law to global regulations, specifically the EU General Data Protection Regulation. Furthermore, the regulations establish the APDA as a public body with its own independent legal personality and with full capacity to act.

**BELGIUM:** Return to Work Bill to assist employees following their long-term sick leave.

Once the law is introduced on 1<sup>st</sup> January 2023, returners will undertake a pre-return visit to determine if they can readily resume their duties and, if so, whether adjustments will be necessary. Employees will be invited to complete a questionnaire to inform management about any special requirements and advice will be provided by prevention consultants or occupational physicians. Should the employee refuse to complete the questionnaire, they will receive a penalty on their unemployment compensation. Moreover, if an employer cannot meet all the reintegration requirements, they must give a "substantial justification".

**DENMARK:** Employers may feel positive about flexible working, but it comes back to bite them when they seek to terminate.

In many countries, the existence of flexible working adds potential complexity and cost to employee dismissal. In Denmark, a "flexi-jobber" is typically also disabled and this can make it very hard to prove that the dismissal was not connected with an individual's disability. The standard penalty for disability discrimination is nine months pay, however, up until now it was not clear whether the pay used for the calculation had to include the Municipal subsidy an employer would have received if they had continued to employ the individual. But this has hopefully been recently

clarified by the Western High Court which ruled that only the employer's share of the 9 months salary was payable as compensation.

### **DENMARK: What happens when an employee found to have committed sexual harassment plays the victim?**

In a case settled by arbitration earlier this year, a male employee had been found to have harassed a female employee and was banned from communicating or approaching her. He found this intolerable and went sick, claiming stress. The man's Doctor had asked if he could be assigned to a different manager, but this was not practically possible, so the employee was dismissed. When challenged before an arbitrator, the dismissal was found to be lawful [Professional Arbitration case of 11/04 2022 in case 2021.876].

### **ESTONIA: For many months the EU inflation hotspot, why is Estonia experiencing runaway prices?**

Over the year to September 2022, consumer prices rose by 24.2% - around two and a half times faster than the EU average. Other EU hotspots have been the other Baltic states of Latvia and Lithuania. According to Estonia's national bank, this problem arises largely because the population spends a higher proportion of their income on energy and food than the rest of the EU. Many electricity contracts are also on a flexi-basis - thus allowing price increases to be immediately heaped onto consumers. In reality, however, the inflation level is due to a cluster of economic factors - such as poor investment, falling productivity, low economic growth and economic anxieties about being on the front line for future Russian aggression. In fact, the country has a large Russian speaking minority in Tallinn and the major northeastern cities of Kohtla-Järve, Jõhvi and Sillamäe, with 70% of Narva speaking Russian as a primary language. Given that one of the principal excuses for Putin to effectively invade Donbas in Ukraine in 2014 was its Russian speaking population, it is now uncertainty which is causing retailers to panic and inflate margins. All Baltic States have weak competition laws and none of the States are confident enough to impose price controls. However, the current inflation levels are now eating into often hard won savings fast and creating huge falls in real spending power - as wage rises trail prices by averaging just 10.1% (year to August 2022).

### **EUROPEAN UNION: New Guidelines open way for individual self-employed workers to unite in order to bargain collectively.**

Because contractors are not employees, it has always been legally uncertain whether they could be treated as establishments and therefore banned from clubbing together, in contravention of EU competition laws. However, it has now been decided that the Commission will no longer apply competition law to solo self-employed workers, as long as they do not themselves employ others and meet at least one of three criteria. These are: that they earn at least 50% of their income from a single customer; and/or work alongside employees taking detailed direction from a company; and/or they operate through digital labour platforms.

### **EUROPEAN UNION: Energy continues to be big driver of price rises.**

The harmonised index of consumer prices in the euro area was 10% over the year to September 2022, up from 9.1% over the year to August 2022. The biggest rise was in energy (+40.8%), followed by food, drink and tobacco (+11.8%). The highest inflation rates were in Estonia (+24.2%), Lithuania (22.5%), Latvia (22.4%) and the Netherlands (+17.1%). France (+6.2%) had the lowest rate, but largely due to government price subsidies.

### **EUROPEAN UNION: 77% of EU companies sourcing staff abroad do it within the EU.**

Thus, when EU jobs are moved to another country, they are more likely to stay within the EU. There is evidence that both cultural and geographical proximity remain important motivational factors for engaging in international sourcing, although legal and administrative barriers were reported to be the main barriers to increased free movement of human resources. The most popular non-EU countries for job mobility are India (17%), the United Kingdom (14%), and USA/Canada (11%).

### **EUROPEAN UNION: 1.37 million people were employed in the sports sector across the EU in 2021.**

According to Eurostat, the EU countries with the highest share of people working in the field of sport were Sweden (1.4% of total employment), Finland (1.3%), Spain and France (both 1.1%). By contrast, the EU countries with the

lowest shares of people working in this field were in Romania (0.2% of total employment), Malta (0.3%) and Bulgaria, Slovakia and Poland (all 0.4%). Not surprisingly, nearly a third of all those working in sport are aged 15-29.

### **EUROPEAN UNION: Two Directives due for implementation in August 2022 not yet universally incorporated into national laws.**

The Directive on Transparent and Predictable Working Conditions [EU2019/1152] still awaits implementation in Austria, Cyprus, Greece, Hungary, Luxembourg and Malta - although it is close to implementation in eight other Member States. The other Directive on Work-Life Balance [EU2019/1158] is awaiting implementation in Cyprus, Hungary, Portugal, Slovenia and Spain. However, in many EU States, it was not necessary to change the law because it was already compliance in respect to offering, for instance, at least ten working days paternity leave. As with all Directives that are not incorporated by their due dates, the contents of the Directive assume "Direct Vertical Effect". Although private sector enterprises are not obliged to comply with the changes until local laws require them to do so, public sector bodies and emanations of the State must comply. However, in multinationals it is wise practice to introduce the requirements by their due date in order to maintain consistency and because of the greater international mobility of their workforce.

### **FRANCE: Fuel shortages hit road network.**

Vehicle fleet managers, road transport managers and mobile sales and service executives should note that strikes at oil refineries have led to an end to the supply of fuel to a growing number of petrol stations. Shortages are particularly evident along the Belgian border area and around Paris, but are significant enough to raise prices and produce long queues throughout the country - with diesel being hard to find in many areas. The government is tapping into strategic fuel supplies and allowing tanker deliveries on Sundays to ease the pressure, but negotiations are unlikely to get underway with the CGT union until well into November. There is even the possibility that refinery workers will be ordered by the government to return to work. What is curious about the strikes is that they are not primarily because of rising inflation, but envy-based - with workers believing that they should be benefitting from the vast

profits they believe oil companies have been making because oil price rises following sanctions against Russia and OPEC production cutbacks.

### **GERMANY: Works and Arbitration Board Meetings may once again be held remotely on a digital basis.**

Section 129 of BetrVG, recently passed by the two parliamentary chambers, has made it lawful once gain to hold meetings "by means of audiovisual equipment" as long as they are in real time. No recordings can be made and third parties must not be notified about the content of the sessions. Although the law relating to digital meetings formally ceased in March, many continued - such as works council sessions. However, this measure broadens the scope of such gatherings - and parallel regulations have also opened up E-meetings for special negotiating bodies and European works council. The closing date for these measures is 7<sup>th</sup> April 2023.

### **GERMANY: An employee has no independent right to challenge the extension of their temporary employment, even though they are not a member of the union that signed up to the extension.**

German legislators have not made individual employees a party to a facility under the German Temporary Employment Act (AÜG). It is therefore possible for a union to agree directly with a company, or group of companies, that the normal 18-month cap on leasing an employee may be removed for a specified period. This quirk of the Act has led lower courts and the Federal Labour Court to dismiss as without legal standing an employee's claim that the extension facility was unconstitutional and did not, in any case, apply because they were not a member of the union that was a signatory to the collective agreement [Federal Labour Court: Az: 4 AZR 83/21].

### **GERMANY: Employee was not entitled to increased wage because of prevailing rates in her sector.**

German law differs from laws in other jurisdictions in a number of ways. One of them is the inclusion of morality as a basis for defending legal rights. In the field of employment, pay is considered fair if it does not involve the exploiting of a weak situation on the part of an employee (Civil Code S138(2)). Furthermore, Article 612 (2) of the Code states that "if the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed". Over the years, courts have been dragged

further into accepting principles of morality, and particularly the concept of "wage usury". They have also adopted rules such that if 50% of employees in an economic area are covered by a collective agreement then the wages paid under it shall be regarded as "usual". Moreover, once a "usual wage" has been established, then employees not covered by the agreement may not fall below its tariff rates by more than a third. In a recent case before the LAG of Mecklenburg-Western Pomerania, an individual employee in the brewing industry claimed that their reward package was outside the moral limits of her sector. However, the court found that her remuneration was not more than 33% lower than prevailing brewery rates. It was also held that only about 23% of the affected workers, and only one of the four big breweries in the area, were covered by the collective agreement [26.7.2022 Az: [5 Sa 284/21](#)].

### **GERMANY: Galeria Karstadt Kaufhof department stores unilaterally terminate collective agreement.**

Galeria is the last remaining major department stores group in the country. The restructuring agreement with the trades union Ver.di concluded after the merger of Karstadt and Kaufhof in 2019 has proven difficult to operate because of a huge fall in demand, with consumers buying cheaper and in less volume. It received one tranche of €220M (US\$213.5M) followed by a €460M loan from the government last year, but continues to mount up losses. The company has now frozen wages and hopes to still maintain a relationship with the union. However, the CEO has hinted in a recent podcast that the very existence of the stores are in the balance.

### **GERMANY: Where mental health should be top of the HR agenda.**

Whichever way the issue is viewed, Germany has a long-term mental health problem amongst its population. According to the latest EU figures, Germany ranks in the top four EU countries suffering from chronic depression - with the problem being most severe in the 55-64 age group. It is therefore not surprising that Germany ranks 4th too in the number of psychiatrists per head of population. What many employers do not appear to know is that under the Safety and Health At Work Act, since 2013 it has been obligatory for employers in Germany to conduct periodic workplace stress risk assessments. Those with operations in the country should contact their occupational physician for further details.



### **ITALY: Companies may not side-step their obligation to consult with trade unions about the closure of operational units.**

A court in Trieste has set aside a company's decision to move ahead with collective dismissals, even though their actions were in line with Law 234/2021 (updated by Decree-Law Aiuti-ter). In particular, they may not hide behind the necessity to protect company secrets or marketing abuse regulations. Instead, there must always be an obligation to consult worker representatives at the earliest opportunity as soon as any closures are planned [Case hearing on 22/09/2022].

### **ITALY: Relaxation of procedure for pregnant workers.**

If an employee wishes to work beyond the 7th month of pregnancy, it is no longer necessary for their employer to submit certificates to the INPS stating that the employee is fit to carry on working up to near their expected birth date. It is sufficient for the employer to have sight of clearance to do so from a gynecologist or company doctor [INPS Circular number 106].

### **ITALY: Improved access to collective agreement texts.**

As it is now a legal obligation under the Transparency Decree (104/2022) to provide employees with details of any collective agreement that affects them, the CNEL is therefore providing, under the direction of the Ministry of Labour, a comprehensive online listing of past and current agreements. This searchable database is available [here](#), but in Italian only.

### **ITALY: A disabled person has no special dispensation for taking additional sick leave.**

According to Judge Giuppi, at the Court of Lodi (19/09.22), disability does not classify as a sickness in itself. Therefore, if a disabled person exceeds their maximum sick leave entitlement, they may be dismissed.

### **NETHERLANDS: The Budget Plan for 2023 contains various measures relevant to Dutch employment and wage tax laws.**

It is expected that from 1<sup>st</sup> January 2023, the minimum wage will go up by 10.15% to €1,932 gross per month. Previously, it was announced that the statutory minimum wage was to increase by 7.5% in 3 annual steps. The Dutch government has also proposed to increase the tax-free travel allowance (reiskostenvergoeding) for employees who drive to their jobs, from €0.19 to €0.21 per kilometre. Then, from 1<sup>st</sup> January 2024, it will increase to €0.22 per kilometre. Furthermore, the tax exemption for the home-working allowance will go up in 2023. Currently, the allowance is €2 per day.

### **PORTUGAL: Government reaches private sector wage deal for next four years.**

The agreement was reached with several business associations and the second largest union - UGT. It provides for a general increase 20% over the next four years, starting with 5.1% in 2023. This will be more than the 3.6% average increase the government is willing to award next year to Portugal's more than 733,000 civil servants. In return for constraint within the limits set for the private sector, and a commitment to narrow pay differentials, the government will give companies a tax benefit worth half of the pay increases given - at least for next year. There will also be a 7.8% increase in the minimum wage next January from €705 to €760 (US\$738) a month - with a commitment to raise the rate to €900 (US\$874) within 4 years.

### **RUSSIAN FEDERATION: In authorizing what is called a partial mobilization, the government has also introduced an employment guarantee.**

Those employees who have been mobilized for military service shall not have their employment contracts cancelled and an employer must continue to treat them as being fully entitled to be paid. This applies equally to those on fixed-term contracts and serving probationary periods. Employees will also be entitled to immediate compensation for unused leave above 28 days.

### **SCOTLAND: Dealing with mental health at work.**

The Scottish Government has launched a free online supporting a mentally healthy workplace platform. The government has also set up a See Me in Work portal - a free digital tool aiming to achieve positive change in the workplace across Scotland. It provides a four-stage programme to guide employers through self-assessment activities, staff surveys and assistance with producing action plans for creating a culture of support and wellbeing in their workplaces.

### **SPAIN: Subcontractors' collective dismissal null and void.**

The High Court of Justice of the Basque Country (TSJPV) has ruled that two companies must treat the jobs of subcontracted employees in an equivalent way to their own staff. This was the case, even though the contract with the contractor had come to an end. All 76 workers concerned were members of the ELA union and subject to a collective agreement. The end users of the workers were a party to the agreement and not the supplier of the subcontracted workers. The court thus ordered that the employees should be reinstated, reimbursed with back pay plus €1,000 (US\$970) each in compensation. Moreover, their union, which had brought the case, was also awarded €40,000 in compensation. The case is now going, on appeal, to the Supreme Court [Sentence number 406/2022].

### **SPAIN: European Committee to consider whether Spanish severance pay is inadequate.**

One of the principal reasons why foreign employers have often been reluctant to establish operations in Spain is because there are substantial penalties for dismissing employees. Those employers already operating in the country have also struggled to avoid making employees permanent for the same reason. Thus, it is all the more surprising that the European Committee of Social Rights of the Council of Europe (CEDS) has admitted for review an application by the UGT Union concerning perceived problems with the Spanish dismissal system. According to the UGT, Spain has contravened Article 24 of the European Social Charter and Convention 158 of the International Labour Organization (ILO), especially in respect to those with short-term service. There is now a period until 30<sup>th</sup> November 2022 when government and business organisations may comment on the application. Thereafter it will be considered by the 15-member committee. Its decisions in individual cases (which only have advisory status) may not

be released until 4 months after the decision has been made - and then only to a narrowly defined audience that includes representatives of state parties and the Committee of Ministers.

### **SWEDEN: The new law on employment protection came officially into force on 30<sup>th</sup> June 2022, but the rules only applied from 1<sup>st</sup> October 2022.**

Inter alia, this is principally beneficial to employers in only one way - that it allows them to make three exceptions to last-in/first out when giving notice. However, on the downside, if an employer is considering a redundancy situation, they must offer some staff the alternative of reduced hours, in which case the most recent recruit should be given priority to work the reduced hours. Other changes include a new facility for those on fixed-term contracts who have worked in a job for any period of 12 months in a five year period to be entitled to have their position converted into a permanent one. If someone is a temporary agency worker, their right to a permanent contract with the end user triggers after 24 months work in any total period of 36 months.

### **UNITED KINGDOM: Recessionary risk grows.**

The prospects that the country will have sunk into recession by Q4 2022 or Q1 2023 have become even more likely by the latest GDP monthly estimate for August 2022 from the Office for National statistics. The ONS has found the economy shrank that month by 0.3%. So far, only the Bank of England has matched FedEE's long-term prediction of a coming recession. Although the recent calamitous mini-budget came earlier this month and will thus fall in Q4, there are enough indications that September could have been another month when the economy shrank or failed to grow. Ironically, it could be the Bank of England that throws the UK economy (and many pension funds) into a downward spin, as tomorrow is the last day it is prepared to prop up bond prices by ending its £65 bn bond purchase intervention. The next few weeks will be uncharted territory.

### **UNITED KINGDOM: The Living Wage Foundation has amended its minimum rate to £10.90 (US\$12.07) an hour.**

This rate is above the statutory minimum wage and is paid on a voluntary basis by 11,000 employers. The new London rate is £11.95 (US\$13.24) an hour. Employers are asked by the Foundation to implement the rate as soon as possible, but no later than 14<sup>th</sup> May 2023.

### **UNITED KINGDOM: Simplification of IR35 rules.**

With effect from April 2023, it will no longer be necessary for end-user companies to provide "status determination statements" to HMRC concerning workers operating via personal service companies, or other intermediaries. Responsibility for the determination of employment status will therefore fall back on the intermediaries - as it did pre-2017.

## 2. APAC

### **AUSTRALIA: 2022 foreign labour skills priority list just released.**

This year's list reveals shortages in 286 occupations, compared to 153 in 2021. The number of jobs advertised reached 309,900 in August 2022, which is a 42% increase from August 2021. Employees that are in high demand are primarily health care professionals and teachers, however, a list of the top 20 occupations (based on both current shortages and projected future employment growth) also shows that there are substantial shortages in information technology and construction sectors.

### **AUSTRALIA: Minimum wage increase for some modern awards with effect from 1<sup>st</sup> October 2022.**

Minimum wages increased in most modern awards from the first pay period on or after 1<sup>st</sup> July 2022, whilst the increases to award minimum wages in 10 awards in the aviation, tourism and hospitality sectors started from the first pay period on or after 1<sup>st</sup> October 2022. Adult minimum award wages have increased by 4.6%, which is subject to a minimum increase for award classifications of \$40 (US\$25.11) per week - based on a 38-hour week for a full-time employee. The new National Minimum Wage is \$812.60 (US\$510) per week or \$21.38 (US\$13.42) per hour.

### **CHINA: The Shanghai municipal government has released a package of 22 new measures to boost the economy.**

The government will hand out subsidies to certain businesses that have resumed normal operations, expand the scope of re-loaning scheme for tourism recovery, and one-time bailout for A-star scenic spots and major hotels. In addition, the city will subsidize the local aviation industry experiencing additional hygiene costs. Car fleet managers may also take advantage on the extension, until the end of 2023, of the exemption of purchase taxes on new energy vehicles.

**INDIA: Employers become increasingly concerned about moonlighting by home-based employees.**

It was perhaps inevitable that once employees were released from having to attend a formal office to fulfil their work obligations that a string of new ways would be found to take advantage of the new freedoms. Under the name of job flexibility, this has resulted in reduced actual working time for the principal employer and the proliferation of moonlighting (second jobs). In their defence, employers are entitled under several laws to impose limits on moonlighting. It is, for instance, unlawful for an employee to work in any factory for their principal employer and again, on the same day, for a second employer. Industrial Employment (Standing Orders) Rules and the new IR Code also prevent moonlighting where it will adversely affect the interest of their [principal] employer. Some local Shops and Establishments Acts also prohibit "dual employment" and the courts have generally upheld claims by employers concerning confidentiality and intellectual property - including non-compete clauses. Nevertheless, the problem remains that even where a perfectly lawful restriction exists, it will be generally very difficult to prove that an employee is abusing their trust when they are working at any distant location.

**INDIA: The Supreme Court has set aside a direction by the Kerala High Court concerning an appointment made on compassionate grounds.**

The practice in the public sector has traditionally been to offer employment to a member of an employee's family if the employee dies in service and the family is left without a principal source of income. However, according to Supreme Court, this represents a concession and is not an established right. Moreover, in the case in question, the appellant was the daughter of an employee who had died whilst on duty in 1995. There were no valid grounds to offer employment after such a passage of time, especially as other family members were currently employed.

**JAPAN: Japan Airlines (JAL) has decided to introduce a digital education programme for all its 36,000 employees, starting next year.**

Delays in the implementation of structural changes due to the pandemic has led the company to call in Daiwa House Industry to help undertake the implementation of digital transformation (DX) - as they are pioneers in this approach.

This has allowed Daiwa to apply new technologies in its own operations to radically change processes, customer experience and value.

**JAPAN: Over the next 18 months, Hitachi will reduce its office footprint in Tokyo and Kanagawa Prefectures by 20%.**

This change will involve closure of 8 offices and has largely been made possible by the response necessary over the last two years to deal with the pandemic. As a consequence, 50% of the company's Japanese workforce will remain telecommuting and the company will open up remaining offices to shared office spaces to cater for hybrid working.

**JAPAN: Nippon Telegraph and Telephone Corporation (NTT) are breaking free from the traditional seniority system.**

The Company's 65,000 Japanese employees will, in future, be able to move through the career scale irrespective of age and years of service. Those in their 20s will also be able to enter managerial positions. This is being driven by intense competition in the telecoms and IT sectors, and the need to both secure and retain the best potential talent in the market.

**JAPAN: The Nagasaki Labour Bureau has reported violations of paid leave obligations.**

During 2021, 15.5% of companies within the area monitored by the bureau failed to clearly set the timing of the principal period of annual leave in advance. In 11.9% of cases, companies also failed to maintain annual leave management books.

**NEW ZEALAND: Employment Court finds employer was not entitled to require lockdown leave, due to process errors.**

The case is the first to examine the Holidays Act with regard to an employer directing employees to take holiday leave during a period of lockdown. The Employment Court ruled that the employer did give sufficient notice of the requirement to take leave, but had failed to consult with its employees about doing so. Only when consultation has



taken place (and agreement secured, or refused) may an employer then give notice requiring leave to be taken. Meanwhile, the Court rejected the argument that the leave taken could not be considered annual holidays, and found too that there was no obligation on employers to ascertain how their employees would be using their annual holidays [(2022) NZEmpC 141 EMPC 285/2021].

### **PAPUA NEW GUINEA: The country has recently launched its first National Employment Policy.**

The ten-year Policy provides a platform for HR to operate in all sectors of the economy, with the principal goals to reduce poverty through improving working conditions and employment security, enabling social inclusion, reducing discrimination in the workplace and offering sustainable and paid employment opportunities.

### **SOUTH KOREA: Provisional salary deal in the banking and finance sector.**

It has taken six months to negotiate, but finally a national agreement has been concluded for 2022 covering all operational employees in the sector. This provides for a 3% raise, but with scope for companies to agree higher increases through company agreements. The two sides also reached consensus on a formula for branch closures and decided to form a joint task force to look at reducing hours to 36 per week, examine the pattern of wages by age and considering changes in the retirement age.

### **SOUTH KOREA: The Supreme Court recently ruled against the peak wage system.**

The system was first adopted to reduce labour costs whilst allowing retiring employees to work for a few more years. Companies that practice the system gradually reduce the salaries of senior employees facing retirement. The Supreme Court's ruling is the first of its kind, although it is not applied to all organizations that practice the peak wage system. According to the court, to determine whether the peak wage system is valid or not, a comprehensive consideration should be made of all factors - including the purpose of adopting the system, any disadvantages to workers and whether the resources saved by the system are used to meet the system's original purpose.

### **SOUTH KOREA: Trade unions are continuing to press for revision of Articles 2 and 3 of the Trades Union Act.**

Dubbed, for historical reasons, the "yellow envelope law" this section of the Act allows employers to claim damages against unions for illegal strikes. Several have done so, including the HiteJinro distillers in a conflict that lasted half a year and led to a 2.8bn won (US\$2M) damages claim by the company (it eventually agreed to withdraw). But it was the 47M Won claim by Daewoo Shipbuilding & Marine Engineering (DSME) that led to the recent strong opposition against the Act. This was because the strikers were subcontractors and therefore the company could claim that they had been damaged even though they were not a direct party to the dispute. Even so, although employers wish to preserve the law as it stands, unions are gaining popular support for the proposed reform. However, if Articles 2 and 3 were heavily amended, then it would give "carte blanche" to the country's militant unions to strike without fear of repercussions and they would undoubtedly exploit this new found freedom to damage the economy.

## 3. THE AMERICAS

### **ARGENTINA: Dispute in the tyre manufacturing sector comes to an end after government intervention.**

The Cámara del Neumático employers' organisation and the Sindicato Único de Trabajadores del Neumático (SUBNA) union have reached an agreement to revise the fifth segment of the 2021/2022 wage review. This will raise wage levels at factories operated by Bridgestone, Pirelli and Fate by a further 16%, making the total wage increase over this entire period stand at 66%. There will also be a further one-off bonus of 100,000 pesos (US\$670). Currently, price inflation is running at an annual rate of 78.5% (year to August 2022). Next year there is agreed to be a 63% pay rise in five instalments, but this will raise a further dispute as price inflation is set to rise at least 100% in 2023.

### **CANADA: The deadline has just passed for larger employers in Ontario to have a written policy in place concerning electronic monitoring.**

As we have previously reported, 11<sup>th</sup> October 2022 was the day by which a policy should have been in place. This applies to employers covered by the Employment Standards Act, except those appointed by the Crown. The policy must contain a description of how, and in what form, monitoring may take place and the purpose(s) of monitoring. The policy (and all future amendments) must also be dated. Once adopted, a copy of the policy must be sent to each employee within 30 days. This may be in printed form, by email or via a link to the policy online.

### **CHILE: The Chilean government has prioritized the introduction of its 40-hour Bill.**

This measure proposes staggering the implementation of the reduction, without differentiating between company size, in order to reduce the maximum working week to 40 hours within a five-year period. It will be reduced to 44 hours during the first year, 42 hours during the third year and 40 hours during the fifth year. According to data from the Organization for Economic Co-operation and Development (OECD) for 2021, Chileans work an average of 1,916 hours per year, 11.7% above the average of other developed countries. Currently, 70% of OECD countries have set a limit of 40 hours per week or less.

**CHILE: The government has started the process of ratifying ILO convention 176 on the health and safety rights of mineworkers.**

Ratification will require the state to implement a national mining safety and health policy, which must consider advances in technology within the sector. Once ratified, mining companies will be obliged to consult with workers on the introduction of safety equipment and other decisions regarding health and safety.

**COLOMBIA: The High Court in Bogota has found that a three-year fixed-term contract did not automatically extend for a further two years.**

Although the contract was set for three years, it did contain a clause that allowed extension by another two years "if the parties do not express their desire to terminate it before 30 days prior to the expiration of the term". A lower court found in favour of the employee, who had claimed illegal and "unfair termination" for dismissal on completion of three years service. However, The High Court found that the contract had just been for three years. In fact, under the Labour Code, an initial five-year term would not have been permissible under a fixed-term arrangement and the contract would have had to be indefinite. The employer was therefore found not to have unfairly dismissed the fixed-term employee.

**COLOMBIA: Exclusion of non-salary elements from payment of social security.**

It is a curious characteristic of social security law that certain payments may be classified as "extralegal" and not count as income for the calculation of social security contributions. These are defined under Article 128 of the Colombian Labour Code as items that are due to "the simple generosity of the employer". These include payments for entertainment and transportation, benefits-in-kind, vacation pay, meals, lodging and Christmas bonuses. However, since 2010 (Law 1393), the amount of such payments that can be excluded from social security may not amount to more than 40% of salary - as defined by Article 127 of the Labour Code.

### **HONDURAS: Repeal of hourly employment.**

Decree No. 38-2022 has repealed decree No. 354-2013 that allowed employers to hire individuals on a purely hourly basis. The only legal methods for hiring workers now in Honduras are for: a) indefinite term contracts; b) fixed term contracts; or c) contracts for a specific project or service.

### **LATIN AMERICA: The United Nations has claimed that the pandemic has set back gender equality and female labour force participation by ten years.**

The United Nations Development Program (UNDP) recently published a report which analysed working patterns during the last two years across Latin America. This reveals - when combined with prevailing cultural norms - that school closures and the reduction in childcare meant that the caring gap had to be met by women. This, in turn, led employers to search only for men to fill vacant positions. This was the case even when women applied for jobs who did not have childcare responsibilities or problems with childcare.

### **MEXICO: A federal body charged with resolving labour disputes is now up and running.**

The Federal Centre for Conciliation and Labour Registry replaces the old conciliation and arbitration boards and also acts as national registry for trade unions and collective agreements. Centres exist in all 32 of the country's States and a new 45-day deadline now exists for the compulsory conciliation stage of all disputes.

### **URUGUAY: Temporary hiring incentive.**

Employers have until the end of October 2022 to take advantage of a scheme for hiring employees between 30 and 44 years old. This will give them a discount on social security contributions of 5,000 pesos (US\$121.60) per month. To access this incentive, companies must be registered in the Vía TrabajoPlatform, Contracts must be for a period of at least 6 months, and a workload of at least 20 hours per week.

#### **USA: California Governor has just signed the pay transparency Bill: SB 1162.**

The new law will take effect on 1<sup>st</sup> January 2023. In addition to requiring employers with 15 or more employees to include the salary, or hourly wage, range of positions on job listings, SB 1162 also requires employers with 100 or more employees to provide additional detail in the annual pay data reports already mandated under California law. Compliance will be subject to inspection by the State Labor Commissioner, who could impose fines of up to \$10,000 per violation.

#### **USA: California extends statutory notice rules.**

Order AB 2693 has been extended until January 1st 2024. This requires that employers notify employers in their workplace, within one business day of the threat being identified, if there has been possible exposure to COVID-19. This may now be achieved by writing to each employee or posting a notice in a prominent place.

#### **USA: A challenge is on its way in California to medical screening of job applicants by specialist screening agents.**

The limits to California's Fair Employment and Housing Act (FEHA) have never been clarified by the courts in respect to parties other than an employing company itself. Employers were certainly restricted from asking invasive questions because it could lead to workplace disability bias. Now, the Attorney General has submitted an "amicus brief" in respect to a Supreme Court case class action *Raines v. U.S. HealthWorks Medical Group*. The ruling which follows could well put the shutters on pre-employment medical screening for good [California Supreme Court No. S273630].

#### **USA: California employers must inform employees expressly that workplace seating is available by placing seats in their immediate area.**

In *Monica Meda v. Autozone, Inc. (2022)* before the California Court of Appeals (Second District), the retailer, in its defence, argued it complied with the workplace seating requirement because it had two raised chairs (which were tall enough to use at the counter workstations) in the manager's office of the store in question, which was open and

accessible to all employees, including the plaintiff. The plaintiff argued that the employer never informed employees they could use the chairs at their workstations. According to Wage Order 7-2001, paragraph 14(A): “All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” The term “provide” in the Wage Order was observed to mean “present or ready for immediate use”. As a result, the Court ultimately decided that because the two raised chairs were not placed in the “immediate vicinity” of the employees’ workstations, it was reasonably inferable that seats were not made available and thus not “provided,” to the employees.

#### **USA: New York upstate rise in minimum wage proposed.**

Six years ago, Republicans (that Controlled the State Senate at the time) did a deal with the then Governor that as upstate living costs were lower than the environs of NY City the minimum wage could also be set at a lower level. Now, pressure is building to lower the upstate gap and the State Labour Department has asked for a \$1 an hour uplift in Counties north of Westchester by the end of this year. The new upstate rate would then be \$14.20 an hour.

#### **USA: The US Department of Labor (DoL) has successfully prosecuted a Philadelphia-based healthcare staffing company for misclassifying 1,756 employees as independent contractors.**

The award amounts to \$9.3M in back payments liquidated damages and a civil penalty. It relates to unpaid overtime premium payments dating back to 24<sup>th</sup> September 2017. This decision is one of the largest single successes of DoL's Wage and Hour Division. Last year, the total recovered in the healthcare sector across the USA was \$13.8M.

#### **USA: Washington DC employers no longer restricted by blanket ban on non-competes.**

It is now possible to conclude non-competes for higher paid employees (\$150k+ or \$250k+ for physicians) and for those staff with significant long-term incentives such as share options and performance bonuses. To be touched by the ban, an employee must also spend more than 50% of their time in DC. An employer may also restrict moonlighting activities, provided the employee is to receive remuneration for the second job and there is a real danger that its existence may compromise confidentiality or create a conflict of interest. Any provisions in company

policy which seek to create exceptions under the law must be informed to all employees within 30 days of the policy being adopted.

#### **USA: Amazon boosts wages for hourly workers across the US.**

Amazon has announced that it is spending nearly \$1 billion on increased wages for employees across its US operations - in addition to investing in new skills training and wage access programs. Average hourly pay for employees in customer fulfillment and transportation will increase from \$18 per hour to more than \$19 per hour, with hands-on operational employees earning between \$16 and \$26 per hour, depending on their skills, seniority and location in the US.

#### **USA: More companies are adding IVF and other fertility benefits, in part to attract and retain workers in a tight labor market.**

Software giant Intel covers up to \$40,000 of the cost of fertility support services and \$15,000 for expenses related to adoption. Amazon also covers infertility treatment benefits and access to infertility treatment specialists for its workers. Meanwhile, starting 1<sup>st</sup> November 2022, Walmart will offer women enrolled in its medical plan inclusive access to more than 30 fertility clinics and IVF labs across the US. They will also receive financial support for surrogacy or adoption, up to a \$20,000 lifetime cap.

#### **USA: Employers may no longer stop collecting and remitting trade union dues because a collective bargaining agreement has come to an end.**

The National Labor Relations Board has reversed prior case law retroactively because it has concluded that the refusal to remit union dues when an agreement ceases breaks the National Labor Relations Act. This means that employers currently refusing to remit dues to unions are now in an unlawful position, even though their refusal arose originally at a time when refusal was a lawful precedent.



## 4. AFRICA & THE MIDDLE EAST

### **ARMENIA: Minimum monthly salary set to increase next year.**

The Armenian government has proposed raising the monthly minimum wage from 68,000 drams (US\$168) to 75,000 drams (\$185) starting 1<sup>st</sup> January 2023. The government's 2021-2026 plan stipulates that the minimum monthly salary shall reach at least 85,000 drams (US\$211) by 2026.

### **EGYPT: Cairo metro employs first female train drivers.**

As in most Arab countries, women, if allowed to work at all, are often restricted to non-public facing positions. Moreover, for many years, rail networks like the Cairo metro have been providing "women only" carriages because of sexual harassment suffered when genders mix in public. This makes the hiring of train drivers on the metro such a revolutionary move. Nevertheless, women are exempted from night shifts - although not from long working days and six-day working.

### **EGYPT: Changes to Egyptian social security for expatriates.**

Non-Egyptian employees are now no longer exempt from mandatory participation in the Egyptian Social Insurance and Pension schemes. However, foreign national employees whose country of citizenship has signed a social security treaty (also known as a "totalization agreement") with Egypt will not be required to contribute to the Egyptian social security scheme - so long as they provide a certificate proving they are contributing to their home country social security system. The countries that have an in-force totalization agreement with Egypt are Cyprus, France, Greece, Morocco, and the Netherlands [Decree no. 2437/2021].

### **KENYA: Increasing penalties for unfair dismissal.**

During the last three years, the Employment and Labour Relations Court has been awarding an increasing level of compensation to employees for the most strident infringements of basic dismissal law. These include failure to prove

allegations, the conduct of unfair disciplinary hearings (or no hearing at all), not allowing employees the chance to respond during hearings, providing inadequate notice, not giving reasons for termination and the failure to follow formal procedures. Cases include the award of 45.5KES (US\$376.000) for the CEO of a brewing company for unproven performance failings, plus also substantial sums to the Acting CEO of the Ethics and Anti-Corruption Commission for termination without any stated grounds and even substantial compensation for a lawyer whose firm dismissed her when she refused to take unpaid maternity leave.

### **QATAR: Rise in social security contributions.**

The New Social Insurance Law (Qatar Law No. 1 of 2022) is set to be implemented with effect from 3rd January 2023. The provisions of the Law will apply to all Insured persons working in both the private and public sectors. Monthly contribution rates will increase from 15% to 21% of an employee's basic remuneration, with a maximum cap of QAR 100,000 (US\$27,473). Employers will need to contribute 14%, whilst employees contribute 7%, with some exceptions. Employers that fail to comply with the new rules could face imprisonment for up to six months and fines of up to QAR 30,000 (US\$8,242).

### **QATAR: Shorter working time for those with "special needs".**

All private sector businesses are required to hire people with disabilities if they have 25 or more employees. People with "special needs" may now arrive for work half an hour after the official working hours begin and leave half an hour before the official working time ends. According to Qatari law, individuals are considered to have "special needs" if they have a "permanent total or partial disability in any of their senses, in their physical ability, or in their psychological/mental ability to such an extent that their opportunity to learn, to undergo rehabilitation, or to earn a living is limited".

### **SOUTH AFRICA: The National Union of Mineworkers (NUM) has signed a 3-year wage agreement with Ergo Mining, with effect from 1<sup>st</sup> July 2022.**

Ergo operates the largest Uranium mine in the north of the country. Under the deal, category four to five employees receive a 9.5% increase and category six to nine employees an 8% increase, whilst category 10 to 15 employees receive a 6.5% increase, in each of years one, two and three. The "living-out allowance" has increased by R150 (US\$8.33) to R3,150 (US\$175) a month from 1<sup>st</sup> July this year, and be further raised by R150 on 1<sup>st</sup> July 2023, and again on 1<sup>st</sup> July 2024. A home ownership allowance is also now being paid to qualifying employees.

### **UAE: Employees are entitled to paid leave of up to 10 days to undertake written examinations.**

To apply for this leave, they must be studying in one of the certified educational institutions in the country and have completed at least two years of service with the employer.

### **UAE: Amendment to decree-law regulating the employment relationship.**

Under the new amendments, employment contracts must cover a defined term - which can be renewed, subject to an agreement by both parties to the contractual relationship. The law does not set a cap on the period that a renewed contract may run.

### **UAE: Emiratis and foreigners who are residents who lose their jobs are now covered by a new unemployment insurance scheme.**

Once benefit is triggered, recipients will receive 60% of their former salary, up to a maximum of 20,000 dirhams (US\$5,446), for a period of up to three months from the date when their unemployment began. The insurance applies to both public and private sector employees across the UAE, with the exception of certain groups such as part-time employees and juveniles under the age of 18. To be eligible for the scheme, employees need to have been insured for at least 12 months, calculated from the date of affiliation to the insurance system. It should be noted that the cover does not extend to those who have been dismissed from their work for disciplinary reasons.

## 5. GLOBAL

### **COVID THREAT ALERT: Yet more variants of the virus are emerging and some are resistant to existing vaccines and antivirals.**

BA.2.75.2 is a subvariant of Omicron and is also resistant to all current vaccines and most antiviral drugs except bebtelovimab and tixagevimab–cilgavimab (administered individually, or as a cocktail). The other worrying fact is that although the mortality rate of more recent Omicron strains has fallen, that is not likely to remain the case and that a resumption of lockdowns will be necessary if current trends continue. So far, BA.2.75.2 accounts for under 1% of COVID cases globally, but it has already spread to 47 countries and 39 US States - with a marked concentration in India. It is likely to be associated with the current sharp rise in cases across the UK with numbers contracting the virus now twice as high as in August 2022. Moreover, the latest UK mortality figures are startling - climbing from just 4 in the week ending 16<sup>th</sup> September 2022 to 345 in the week ending 6<sup>th</sup> October 2022. Covid-related deaths in the UK have not been that high since February 2021. It will be a very difficult task convincing lockdown-weary employees to revert back to strict precautionary measures, especially if governments remain averse to courting unpopularity by refusing taking the lead. However, the consequences of not re-imposing restrictions could put staff seriously at risk.

### **LOOKING THROUGH THE HAZE OF INTERNATIONAL MOBILITY: The size of the globally mobile workforce differs, according to estimates, from 66M to 1.9BN, but how lawful are the transfers that take place?**

The mobile workforce clearly consists of a number of distinct types of worker - ranging from the unskilled migrant workers in the third world seeking paid openings in more affluent countries to expats sent on assignment by multinational employers. In between are a mix of self-employed service personnel and digital nomads, employees sent on secondments and executives on business trips. The law does not bend to adapt to meet every circumstance and those without official documentation make up a high proportion of those in overseas work, especially within countries with leaky borders - such as those in Latin America and some parts of Africa and Asia. But how compliant are multinational companies when it comes to international transfers? Compliance is generally strong when seeking

to recruit foreign nationals within a country, but often becomes shaky when sending employees to work temporarily in other countries. Few companies concern themselves with checking jobs posting requirements when sending staff on business trips, or for overseas training, especially within the European Union. Compliance in the EU improves with longer term assignments, but remains weak when sending staff outside the EU/EEA/Switzerland/UK. In many countries outside the EU ambit no recognition exists in respect to employment contracts in a home country - even though double-taxation and social security totalization agreements are in place to deal with such eventualities. It is therefore necessary simply to suspend a home contract, find an organisation in the host country to act as temporary employer and then apply for work and residence permits to cover the assignment period. Here compliance by employers is particularly low, relying instead on the inefficiency of government inspectorates not to detect a foreign visitor at work, or for the illegal expat not to be injured in a workplace - after which questions will be asked.

### **WORLD ECONOMIC OUTLOOK: The October IMF report has just been published and contains a special chapter on the dynamics of wage-price spirals.**

One conclusion of the report is that historical episodes similar to that present today did not lead to a wage-price spiral. In fact, according to IMF economists, inflation gradually declined and nominal wages recovered after several quarters. Thus "Risks of a sustained wage-price spiral appear limited since underlying inflation shocks come from outside the labor market and monetary policy is tightening aggressively". However, this conclusion is at variance with FedEE's own analyses. Although wages were slow to pick up in 2021 as inflation began to take off, much of the delay was due to long-term wage deals already in operation and the actions of employers to offer one-off bonus payments not consolidated into base pay. Now many unions are applying pressures ahead of agreement negotiation dates and employers are giving way to not only past inflationary changes, but anticipated falls in future buying power to effect double digit pay increases. To the extent that this practice becomes widespread it will be sure to set off a wage-price spiral. Moreover, the longer national banks hold off raising interest to double-digit levels necessary to truly cool inflation and public sector deficits are allowed to rise as governments seek to hold off public disquiet about inflation, the greater will be the inevitable sudden shift in remedial action necessary to protect currencies from collapse. As things stand, the dollar is far too highly valued - even though fundamentals point to its innate weakness. It will

therefore only take a "Lehman-like" bankruptcy (a la 2008) in a major market to trigger a chain reaction. Both Business and consumer confidence remain both historically very low and both the UN and many national banks are warning of recession. As John Vial, Chief Global Strategist for Nikkon Asset Management warned last week, "I don't think it's the end of the World, but it could get scary for the next quarter or so." Not the World's end perhaps, but getting there - especially as Asia is now following the rest of the World into crisis.

## 6. DATES FOR YOUR DIARY

28th October 2022: Revised closing date for tax review of remote working in the **United Kingdom**.

1st January 2023: **Belgium**'s Return to Work Bill will come into force.

1st January 2023: The minimum wage in the **Netherlands** is expected to go up to €1,932 gross per month.

1st January 2023: Pay transparency Bill SB 1162 will take effect in **California** (USA).

1st January 2023: The minimum wage will increase to \$15.74 per hour for employees 16 years of age and older in **Washington State** (USA).

1st January 2023: Employee and B2B exemptions under the **California** Consumer Privacy Act (CCPA) will expire.

1st January 2023: The **Massachusetts** Paid Family and Medical Leave (MAPFML) contribution rate for employers with 25 or more covered individuals will decrease.

3rd January 2023: The New Social Insurance Law is set to be implemented in **Qatar**.

6th April 2023: IR35 rules will be simplified in the **United Kingdom**.

14th May 2023: Deadline for the accredited employers to implement the new minimum living wage rate in the **United Kingdom**.

1st January 2024: COVID-19 exposure notice requirements are due to end in **California** (USA).

## 7. FEDEE NEWS

**FEDEE NEWS REPORTS:** All FedEE news is individually researched and evaluated by our global developments team. It is not syndicated from third parties, or taken directly from news agencies and we seek, wherever possible, to check news events from two independent sources. Our process of investigation and selection frequently comes up with misreporting by other sources, but we are sometimes not in a position to verify or fully evaluate reports carried by parties known to have specific biases - as with government agencies in countries with marginal or no democratic institutions and trade unions.

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**MSA UPDATE:** By popular request, we have just added a revised template for a Mutual Separation Agreement (MSA) into our Members' Area. This is geared to the EU market and will need additional modification for terminations in the rest of the World.







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Head Office: Adam House, 7-10 Adam St, The Strand, London WC2N 6AA, UK. Telephone: +0044 203 807 9205.

EU/Middle East Office: Pindou 8, Chloe Court, Office 301, Pafos, 8011, Cyprus. Telephone: +(00357) 2622 0427.

USA Telephone: +001 85757 68452; Email: [admin@fedee.com](mailto:admin@fedee.com).

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Co-Editors: Robin EJ Chater, Zhu Li (Julia).