27th October 2022

Dernières nouvelles

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

Latest News | Neueste Nachrichten | Ultime Notizie | Últimas Noticias | 最新消息

admin@fedee.com https://www.fedee.com

CONTENTS

1. EUROPE

BELGIUM: Sharp rise in penalties for non-compliance with new job posting law.

Employers are reminded that this Summer not only did the law change concerning the posting across borders of road transport drivers, but it also strengthened with regard to the need for all employees posted to Belgium to have a nominated ‘verbindingspersoon’/ ‘personne de liaison’ in place within the country. This liaison officer exists to answer questions about the posting. Failure to have made the appointment will be pounced on by the labour inspectorate who will also demand sight of an employment agreement giving specified details such as a description of the work that will be performed. The sanctions for non-compliance are either imprisonment of 6 months up to 3 years and/or a criminal fine of EUR 600 (US$600) to EUR 6,000 (US$6,000) or an administrative fine of EUR 300 to EUR 3,000. However, surcharges can increase these fines by a factor of 800%.

BELGIUM: Successive daily temporary agency contracts.

The recent evaluation of such contracts by the National Labour Council (NLC) found that the use of this resourcing method had declined over the last two years. Nevertheless, to discourage use - except as an emergency measure - the Council has proposed that employers pay a specific social security contribution for such workers - except those, for instance, who are pensioners, people working on a flexi-job basis and occasional workers in the hospitality industry. There would be no increased contribution for up to 39 days per agency in any six-month period, but after that use level, the social security contributions would grow progressively up to prohibitive levels. A safety valve would, however, exist for employers that could demonstrate a legitimate need to exceed the thresholds. The NLC's proposal is a recommendation and will require legislation to back it up. This could well not happen - at least in the next twelve months.

BELGIUM: New labour deal.

The government has pushed through its compendium of changes, many of which are not truly new for employers. For instance, employees will be able to request greater working time flexibility that could result in a 4-day week. But the truly innovative element is that they will be given the option to vary weekly working hours for a period of up to six months. The right to disconnect is already in place, but this can now be built into the computer systems that employees use and must be subject to company work regulations which should be introduced before 1st January 2023. Companies with at least 10 employees must offer the minimum of one training day per year, whilst those with 20+ employees will have more training entitlements and their company must draw up and agree with employees an annual training plan, effective by the end of March each year. Finally, employees who are dismissed with at least 30 weeks notice may now use the last third of the notice period for upskilling.

BULGARIA: New rules for stand-by and on-call duties.

Bulgaria has now retroactively implemented the EU Directives on transparent and predictable working conditions and work-life balance. Apart from extending the data that must be provided to new employees, enhancing paternity leave and introducing carer leave this measure has also given the opportunity to amend regulations about on-duty (stand-by) and on-call work. This is principally by requiring employers to draw up monthly schedules in advance, outlining what working time obligations will exist for those being on stand-by at home or on-call in the workplace. Once on-call duties have been triggered, the employer concerned must generate a written work order within a period of three days. In respect to paternity leave, the principal change is a requirement for employers to record all paternity leave taken in a special book.

CZECH REPUBLIC: Law on remote work introduced.

An amendment to the Labour Code requires that all employment activity outside the company workplace must be subject to a written agreement. Employers are obliged to reimburse remote workers for essential expenses such as heating, lighting and water at a rate of CZK 2.80 (US$0.11) per hour worked. They must also ensure that basic health and safety provisions are in place. Employees will have the right to request remote working and their employer may only refuse them if they have good reason to do so - which they must put in writing. Moreover, priority to work remotely will exist for those with children under 15 or caring for another dependant.

EUROPEAN COURT OF JUSTICE (ECJ): Companies may prohibit the wearing of a headscarf on the basis of internal regulations.

On 13th October 2022, the Court handed down its latest ruling on the banning of headscarves in the workplace. The case concerned a Belgian who had been recruited for a six-week Internship without any pre-requisites concerning what could be worn at work. It was only when the employee started work that the company required the headscarf to be removed on the grounds that a workplace rule banned the wearing of items that displayed religious or philosophical beliefs. The court accepted that the rule was fair if applied generally, but only if there was also a legitimate aim for the policy. The aim accepted was that the company wished to "display, in relations with both public and private-sector customers, a policy of political, philosophical or religious neutrality". **FedEE Comment**: Of course, it is no great mystery why some employers ban the wearing of a headscarf and the ECJ continues to legitimize such dubious "sensibilities". What the courts fail to register is that although bans on religious clothing and symbols does not amount to discrimination against a particular religion, it clearly does amount to discrimination against those who are religious vs those who are either not religious or choose not to display their beliefs. There has also been no ECJ case concerning the display of tattoos that have significance in respect to religion or belief, the wearing of St Christopher jewelry, badges indicating a political affiliation or the placement of, for instance, a framed icon on an employee's desk. Companies should therefore closely question their true motives before they introduce new policies concerning what an employee may not wear or display.

EUROPEAN UNION: There has been heavy lobbying and proposed rewording in respect to the Draft Directive on Platform Workers.

The current Czech presidency of the EU has suggested a number of changes to the text that was worked out during the first half of the year. The number of criteria to determine if platform workers have employment status have been extended from five to seven, and the number of these criteria that have to be met before an individual platform worker is classified as an employee has been raised from two to three. Moreover, platforms will bear the burden of proof if they want to rebut a presumption of status so determined. Because of this and other questions, it could still be many months before a final text will be ready for approval.

FINLAND: Proposed amendments on the Pay Security Act would enter into force on 1st January 2023.

The Government proposes to reform the pay security legislation in order to address the serious exploitation of workers, streamline the pay security process and combat the grey economy. If the employer is insolvent, the employee may apply for pay security to cover the claims arising from the employment relationship. These include pay, holiday compensation and daily allowances.

FINLAND: The Integration Act reform.

A comprehensive reform of the Integration Act is scheduled to enter into force at the beginning of 2025, simultaneously with the reform of employment services. The reform seeks to facilitate the path of immigrants towards employment and to improve the access of immigrant women, and others outside the labour force, to appropriate public services.

FINLAND: Modification to Employment Contracts Act proposed to clarify employment status.

Employers are being discouraged from presenting work carried out as though through self-employment rather than as a more fully protected employee. An amendment to the Act has just been presented to Parliament that requires employers to go through a procedure where it is not entirely clear what status the worker has. This will require an assessment about terms of employment, conditions under which the work is performed, the objectives of the parties concerning the nature of the legal relationship and other factors affecting de facto status of parties in a legal relationship. The new approach would become effective from 1st July 2023.

FINLAND: The working holiday proposal concluded with Japan has been submitted to Parliament.

Currently, Finland has working holiday agreements with Australia (2002) and New Zealand (2004). The reciprocal agreement between Finland and Japan will give Finnish and Japanese nationals aged 18 to 30 the right to stay in the partner country in order to work to a limited extent and thereby fund their travels. The agreement does not give formal immigration rights even though it may later lead to settlement between partner countries. The agreement is likely to enter into force in 2023.

FINLAND: The government has submitted a proposal to safeguard the position of employees during a cross-border restructuring of companies.

The provisions are designed to ensure not only the continuity of an employees' existing rights, but also to administrative representation when their employer plans or implements a cross-border merger, division or transfer of their registered office. What's more, this measure requires that employees are informed in a timely manner and that they are consulted on the planned corporate restructuring. The government's proposals are set to enter into force on 31st January 2023.

FRANCE: Break in deadlock as TotalEnergies reaches agreement with unions CFE-CGC and CFDT.

Recent strikes by refinery workers should be coming to an end as one of the main employers involved in the disputes agreed to pay an across-the-board increase of 7% from 1st November 2022 - one month ahead of the end of the previous pay agreement. The company has also given a one-month salary bonus to appease worker feelings.

FRANCE: Electricite de France SA is now waiting to hear if a deal with unions will be ratified in an employee vote.

The agreement concerns employees of nuclear power stations across the country. Only 29 of the country's 56 reactors are currently operating due to technical problems and all the rest were in danger of closure if strike action went ahead. It has, however, now been agreed that the lowest paid employees will receive an immediate rise of 5% and managers 2.5%, plus bonuses. Even if this resolves the dispute for the time being, there are sure to be outages this Winter unless the company can solve its problems and bring all reactors on line. In previous years, the country has been a net electricity exporter and this is more important than ever because of cuts being made to gas coming from Russia.

GERMANY: Income-related expense tax deduction when only one unmarried domestic partner uses the home space.

The Düsseldorf Finance Court has decided that the full claimable costs for a self-employed home worker can be all used by just one party using a rented property for work purposes. The case concerned two home-based unmarried workers who each occupied an equal sized space in their jointly rented property, but only one claimed for the tax deduction. The tax authority insisted that only 50% could be claimed by one party. However, the court disagreed [3 K 2483/20 E].

GERMANY: Decline in IAB Barometer for September 2022.

The IAB barometer measures trends in the labour market and is a composite of two predictive measures. During September 2022, it fell by 0.8 points to 100.4. This indicates that although prospects for the future of employment are weak, they are not yet negative (i.e.: below 100). The OECD longer leading indicator for Germany in September 2022 was even lower than the IAB barometer at 98.1 with consumer confidence down even further at 95.9. This evidences a likely recession and consequent job losses in Germany by May 2023.

GERMANY: Should staff councils be involved in the setting of fixed-term limits?

The Federal Labour Court (BAG) has recently been called upon to determine whether the duration of a fixed-term agreement is invalid if the staff council was not involved in setting its term. Once the contract in question had run its course, it was replaced by a second part-time contract. Contrary to lower court, the BAG supported the requirement to follow the Lower Saxony Personnel Representation Act (NPersVG), which gives a right to "codetermination", particularly in respect to chain contracts. Therefore, the extension of the contract without consultation meant that it became permanent [AZR 232/21].

GERMANY: Pay agreement in the chemical and pharmaceuticals industry.

The employer association BAVC has reached a deal with the IG BCE union for two 3.5% pay increases - one at the start of 2023 and the other later in the year. The agreement runs until June 2024. Up to EUR 3,000 of the payments will be tax-free and companies in hardship will be able to delay increases for up to 3 months. Originally, the deal was meant to trigger this Spring, but instead, there was an interim, non-consolidated payment to cover the period until the end of 2022.

IRISH REPUBLIC: Back-up scheme to protect redundancy payments for companies hard hit by the pandemic.

The scheme was set up under the Redundancy Payments (Amendment) Act 2022 and applies to workers laid off due to Covid restrictions between 13th March 2020 and 31st January 2022. The maximum payout is EUR 2,268, tax-free. Payment is only made if it can be established that the employer lacks the means to pay laid-off workers their statutory entitlements. It should be especially noted that The Department of Enterprise, Trade and Employment treats all payments effectively as loans that will be repayable once a company returns to profitability. So far, the number of payments has been well below the level expected - with just 2,262 applications amounting to a total payout of around EUR 1M.

IRISH REPUBLIC: New law on whistleblowing to start in 2023.

The Protected Disclosures (Amendment) Act 2022 updates the Protected Disclosures Act 2014 and transposes the EU Whistleblowing Directive into Irish law. It will take effect from 1st January 2023. From that date, private sector employers with 250 or more employees will be required to establish formal channels for workers to report concerns about wrongdoing in the workplace, as is currently the case in the public sector. The law will be extended further to private sector employers with 50 or more employees from 17th December 2023 onwards.

ITALY: How to deal with contractual agreements where the meaning is not clear?

The Supreme Court has ruled that where a passage in an agreement is difficult to interpret, the parties must determine its intention by taking as the starting points the literal meaning within the context of the entire document. It should also take into account the conduct of the parties once the agreement was initially concluded [Case 28550].

ITALY: Invalidation of a dismissal where there was an alleged retaliatory motive.

For an employee to successfully claim their dismissal is invalid because it was due to retaliation by their employer, it must first be proven that retaliatory intent was the "exclusive and determining reason" for the termination. If there were "just cause or reason" for the termination, the dismissal would stand [Supreme Court Case number 26395].

ITALY: The need for a signature on a settlement agreement.

The Court of Avellino has found that, provided the terms of an agreement are evident by the conduct of the parties (including emails and WhatsApp messages), the failure of the employee to sign the agreement does not invalidate it. This includes a commitment by the employee that no further claims can be made [Hearing dated 08/09/2022].

PORTUGAL/CAPE VERDE: Memorandum of understanding on labour mobility.

The document is designed to improve the opportunities for those from the island country in the eastern Atlantic to find work in Portugal. The archipelago was one of the first to be colonized by Portugal in the fifteenth century and was given its independence in 1975. The official language remains Portuguese and it is today one of the most developed and democratic countries in Africa.

SLOVAK REPUBLIC: The Labour Code is finally being amended to implement the EU Directives on transparent and predictable working conditions and work-life balance.

The changes being made interpret the new framework to allow an employer to inform new employees about certain aspects of the terms and conditions outside the confines of the contract itself. Moreover, it further stretches the EU framework to allow employers to notify employees about the method of determining the place of work, established weekly working hours, and the payment of wages within 7 days of the commencement of the employment relationship. They are also being given 4 weeks to notify employees about and the number of vacation days and rules on the termination of employment.

SWITZERLAND: HR Principals should ensure that their company is meeting annual human rights reporting requirements by the end of this year.

The requirements set out in the Swiss Code of Obligations apply to most large public companies and major subsidiaries operating in Switzerland. They relate to environmental matters, CO_2 goals, social issues, employee-related issues, respect for human rights, and combating corruption. There are also two focus areas: 1). supply chains if they place in free circulation, or involve processing, in Switzerland minerals containing tin, tantalum, tungsten or gold or metals from conflict-affected and high-risk areas and 2). other products that may involve child labour. Companies must develop a risk-management plan and take measures to minimize the risks identified and undertake due diligence in relation to minerals and metals. These actions must be audited by an independent specialist.

SWITZERLAND: Inflation-proofed salaries for Zurich airport ground handlers.

The type of deal that no employer should contemplate in current spiraling and uncertain circumstances is wage indexation. However, that is just the formula agreed by Swissport International. This gives an initial increase above the current level of inflation, a 500 franc (US$505) one-time bonus and then future increases for the next four years in line with price inflation.

UNITED KINGDOM: Virgin Media O2 improves its family-friendly leave package.

The telecommunications company has launched a series of changes to reward and retain its UK staff. This includes 26 weeks of fully paid maternity and adoption leave, 10 days paid leave for miscarriage, 14 weeks of paid paternity leave, 12 weeks of paid neonatal leave and 5 days a year paid carers leave (which may be taken in half days). O2 is also providing £1,400 (US$1,578) temporary cost of living support to those earning under £35,000 pa (US$39,460). This will consist of an immediate payment of £400 and then six monthly payments of £100 from January until July 2023.

UNITED KINGDOM: Deloitte employees may access a proportion of their company pension before they retire.

The accounting and consulting giant Deloitte has decided to let its 22,000 UK employees receive their regular company pension contribution on top of their salary each month for a defined period rather than have it paid into the scheme. They have also extended paid parental leave to 26 weeks, rather than 16 weeks, on full pay and a further 10 weeks on half pay. In addition, if an employee has a miscarriage, they will be entitled to two week paid leave and if there is a loss in the family they may take 2 days to two weeks leave (depending on the need for international travel).

UNITED KINGDOM: First signs that jobs market is starting to shrink.

Although many HR professionals continue to struggle with staff shortages, the reality is that the latest available employment rate (for June to August) was down 0.3% on the previous quarter and still 1% lower than the pre-pandemic level. Moreover, the economic inactivity rate increased quarter to quarter by 0.6% to 21.7% in June to August 2022. One of the principal reasons for inactivity is that the number of people on long-term sick leave is now at a record high. But the writing is also on the wall for staff redundancies. On 2nd October 2022, the number of HR1 forms submitted by employers - indicating potential redundancies - rose to the highest level since the early Spring of 2021. This is likely just to be the start of a wave of staff cuts as the economy responds to recent pressures and GDP starts to contract.

UNITED KINGDOM: Upstream without a paddle.

When monitoring the UK economy, it becomes clear why Noah is currently Britain's favourite first name for new born boys. The September figure for consumer prices, just published, indicates that inflation has now re-crossed the double digit barrier to reach an official annual rise of 10.1%. This is in spite of pump prices for fuel falling during the latest month. However, the true inflation rate in the UK has always been the retail price index, which was sadly ditched by the government many years ago because it almost always ran out higher that the CPI. The RPI is an arithmetic mean of price changes and therefore a truer picture of how prices are actually moving. Because of its greater integrity as a measure, government statisticians have never finally stopped calculating it and finding the small print where it is revealed each month requires some determination. The latest RPI figure is, in fact, far higher than the CPI - at 12.6% in September. This is not something to share during negotiations because it is not universally known by employees or their representatives and knowledge of it would just up the ante. Meanwhile inflation is likely to stay in double figures for some time and compound problems created by faltering growth. The difficulty for Noahs growing up today is that there is no watertight boat on hand to save them.

UNITED KINGDOM: COVID resurgence flies under the radar as exposure to other viruses resumes.

COVID-19 has now officially killed 6.5M people Worldwide, although the true number is likely to be nearer to 15M. Cases are nowhere near their peak anywhere around the globe, although in some countries they are back on their way up. This is particularly evident in the USA, Germany, France and the UK. One problem is that although data for the number of cases in the UK are still published weekly, weekly statistics on deaths are slow to appear. However, figures relating to 8th October 2022 show a doubling of cases over the period of a month, rising hospitalizations and a death rate of 1.01%. This means that the vaccination programme has failed to stop the spread of the virus and only halved the mortality rate for those contracting COVID-19. One important consequence of protective measures during the pandemic was to reduce the incidence of mortality due to flu. In fact, the number of annual deaths from flu in the UK fell from a long-term average of 43,000 per year to just 16, 237 in 2020. Thus, relaxation of social distancing, face masks and personal hygiene is likely to be causing more fatalities due to other viral infections than to COVID itself.

2. APAC

AUSTRALIA: Restrictions to be applied to the working hours of foreign students from 30th June 2023.

This move reapplies the hours cap that was temporarily lifted on 1st January 2022. It is not yet clear what the new limit will be, but under the old regime, the cap was 40 hours per fortnight. The government is, however, extending the post degree completion work rights for certain degree subjects - from two to four years (or five years in some cases). Selected doctorate degrees gained from Australian Universities will also have their post-study work permit periods extended - from four to six years.

AUSTRALIA: Companies have been watching the tussle over a Quantas senior manager who jumped airline.

Many companies seek to prevent staff being stolen by competitors by including non-compete clauses in employment contracts, but seldom has the triggering of the clause been so publicly on display as when the executive in charge of the Qantas loyalty programme moved across to become CEO of Virgin's loyalty programme. Going to litigation did, in fact, achieve the ten-month delay Quantas was seeking through its non-compete. In the end, both airlines walked away from the court battle agreeing to bear their own costs. This therefore illustrates that a company seeking to enforce its non-compete can simply use the delays in the court process to achieve its goals without going through to a ruling.

INDIA: Delays continue with labour reforms.

Since the four labour codes were launched by the national government over two years ago, there have been several promised deadlines for them to become effective in all States across the country. The difficulty is that under the constitution, responsibility for labour law is shared and the central government can do very little if individual States drag their feet. Two reforms that have been particularly controversial are a relaxation of fixed-term contract rules and a shift in the threshold for gaining official permission for terminations from 100+ to 300+ employees. Nearly all States have drafted implementing texts for the Codes, with the Codes on wages and Social Security likely to be most ready to implement in the near future. Union opposition appears to be based on "sour grapes" at not being fully involved in drafting the Codes, but with a particular dislike for the Occupational Safety, Health and Working Conditions Code.

JAPAN: Facility to make collective agreement more widely applicable than to its signatories.

Although less commonly used than in France, and several other EU States, the facility exists in Japan to declare collectively agreed wages more widely applicable. However, in Japan, this is not primarily sectoral, but in a locality - albeit then to workers "of the same kind". Section 18 of the Labour Union Act states that "when a majority of the workers of the same kind in a particular locality come under application of a particular collective agreement, the Minister of Health, Labour and Welfare or the prefectural governor may, at the request of either one or both of the parties to the collective agreement and, pursuant to a resolution of the Labour Relations Commission, decide that the collective agreement (including an agreement amended pursuant to the provisions of paragraph (2) should apply to the remaining workers of the same kind employed in the same locality and to their employers."

JAPAN: Lost international students - will they return?

During the first year of the pandemic, the number of foreign higher education students that were studying in Japan fell by 13.3%. The employment rate for foreign gradates also fell from 47.6% to 39.9%. To counter this trend, the government has established a programme to recruit new students - particularly from ASEAN countries and Africa - with a focus on engineering, medicine, social sciences (particularly law) and agriculture. To improve the prospects for foreign students to remain after graduation, the government is seeking to expand training in the Japanese language and the availability of Internships in Japanese companies. Towards that end, a new Bill is being drafted that will establish a new qualification and accreditation system for Japanese language education. The difficulties, however, should not be underestimated, as the government's control of higher education is limited by the fact that 80% of Universities are privately run. Moreover, China remains highly effective at attracting talented students, particularly in IT and engineering subjects.

NEW ZEALAND: The new median wage of NZD $29.66 (US$17.28) an hour will be formally adopted into the immigration system on 27th February 2023.

All wage thresholds indexed to the median wage will also be updated. This includes the Accredited Employer Visa (AEWV), occupations covered by sectoral agreements, and residence visa categories. Many tourism and hospitality sector roles have also been given a temporary exemption from the median wage threshold under the AEWV, with a lower wage threshold of $25 (US$14.57) an hour until April 2023.

PAKISTAN: New disability law will increase protection for at least 3.3 million people.

The national parliament has just passed the "ICT Rights of Persons with Disabilities Bill" and it now awaits signature by the President. There is currently a 2% disability employment quota in operation and the Supreme Court has increasingly underlined the importance of employers accommodating the needs of people with disabilities. This new law aims to improve access to educational and employment opportunities, ensure equality before the law, ease access to public services and give better protection from violent, abusive, intolerant and discriminatory behaviour.

SOUTH KOREA: New pay deal for Kia workers.

The 30,000 Korean workforce has agreed a package consisting of an increase of 98,000 won (US$68.18) in basic monthly pay, three months of performance-based pay, 4 million won (US$2,783) in cash, 250,000 won in a gift certificate per person and 49 Kia stocks. The only outstanding issue is the size of the discount plan to be offered to long-service employees who purchase one of the company's electric vehicles. The company has eight plants in Korea — two in Gwangmyeong, three in Hwaseong, and three in Gwangju.

SOUTH KOREA: Advisory Group publishes its opinions about labour reforms.

In July 2022, the State President Yoon Suk-Yeol formed a group of 12 experts to review the future of the labour market. In its preliminary report, the Group has expressed its opposition to capping the workweek at 52 hours, although they recognised that a cap on weekly hours was generally supported by employers and employees alike. The answer would therefore perhaps be building in some flexibility, such as allowing the 52 hours to be an average over a longer period. The other concern raised was about the wage system. In their view, payments should be more performance-based rather than dependent on years of service. A final report from the Group can be expected early next year.

SRI LANKA: Manufacturing faces sudden set back.

The PMI was already below 50 when, in September 2022, it slumped heavily back to 42.6. The decline mainly affected new orders and production - particularly in food and beverages, and textiles and clothing. This was due to reduced demand as foreign customers began to fear a coming recession. However, there was no immediate impact on delivery times or employment - as companies hoped, perhaps, for the changes to be only a temporary phenomenon. If the current demand level is sustained for a second month, then lost jobs will follow.

3. THE AMERICAS

ARGENTINA: Register of companies using telework.

Employers are reminded that Law 27,555 obliges companies that have any employees engaged in telework (either on a full or part-time basis) to register with the Department of Labour. The data that must be provided must include the software used to regulate telework and a list of individual teleworkers (that must also be sent to any relevant trades union). This list must contain any employee working on a remote basis, and be reviewed and updated on a monthly basis.

CANADA: Quebec's new language law is gradually coming into force - with its dreaded eventual francization.

Quebec first introduced a language law (Bill 101) in 1977. However, it has long been felt by many politicians that the law did not go far enough. As a consequence, we now have Bill 96 that gained Royal Asset on 1st June 2022, but will not be fully effective until 1st June 2025. For employers, this means a complete revolution in the way the business may be run - to the extent that businesses with a primary language policy other than French should be making plans now to leave the Province over the next three years or face severe penalties. Already it is a requirement that all employment-related documents are in French and job adverts include the full text in French. In fact, the law states that it is actually unlawful to require that any employee be proficient in any other language than French. By June 2023, all contracts and collective agreements must be drawn up in French and only after a request by the signing parties translated to another language. Then in June 2025 will come the Francization programme. All employers with 25+ employees must be signed up to the Office québécois de la langue française (OQLF) that will have new draconian powers. All internal and external communications in companies must be in French and after 3 months the OQLF will visit to inspect if this rule is being followed. Then a new certificate of compliance must be obtained every 3 years. Companies with 100+ employees must also form a francization committee that will meet at least every 6 months. The irony in this law, of course, is that québécois differs in numerous respects from modern French, especially in pronunciation. It will be interesting to learn, therefore, if true French (as spoken in France) will actually be tolerated.

CANADA: Pay to vary according to price changes in public sector deal.

A three-year collective agreement covering public service workers employed by British Columbia has included a form of inflation-linking to give maximum increases that vary each year. This year, there will be a 25 cents per hour increase plus 3.24%, next year, the increase will be up to 6.75% depending on price movements and in 2024, the maximum increase of 3%. There will also be a 0.25% "flexibility allocation" in operation during the first two years. In addition, there is a rise in paid leave for indigenous employees to allow them to participate in cultural and language festivities.

MEXICO: Fall out from reversal of Roe v Wade.

One of the poorly considered consequences of the Supreme Court decision allowing State abortion bans is that it simply forced many women into taking desperate measures, including crossing the Mexican border for treatment. This has already become the favoured option in Texas where abortions are unlawful after six weeks of pregnancy and Arizona where a nineteenth century law bans all abortions. Last September, Mexico's Supreme Court ruled that it is unconstitutional to consider abortion a crime and since then a number of female collective (acompanantas) have grown up to assist women. But employers which support staff make this journey should consider the dangers of unaccompanied women in lawless border areas such as Tijuana and along the south of the Texas border. Where abortion involves the taking of oral mifepristone (Mifeprex) and oral misoprostol (Cytotec) then other options should be considered.

MEXICO: US Companies operating in Mexico now face a deadline next May.

From May 2023, the old-style protection agreements that were concluded with employer-friendly unions (and without involvement of the company's workforce) will become null and void. It is therefore important that companies operating under such labour relations regimes prepare to respond to the labour law reforms. This will probably mean that they must ballot their workforces and have to deal with one of the independent unions that have grown up since the United States-Mexico-Canada Agreement (USMCA) became a major factor in driving industrial democracy.

USA: New Californian Law prevents employers from disciplining employees for off-duty marijuana use.

AB 2188 becomes effective from 1st January 2024. It will only allow employers to take adverse action if they could prove that the drug impaired the employee's functioning in the workplace. However, although random drug tests will remain unlawful, except for certain safety-sensitive roles, it will be open to employers to test for impairment through drug screening that measures the current concentration of THC or CBD in the blood.

USA: DoL notice of proposed rulemaking outlines resumed approach to the classification of employees and contractors.

The Department of Labor (DoL) wishes to reel in the current trend towards classifying an increasing number of workers as contractors. This deprives them of many rights reserved for employees, especially in respect to pay. It is therefore falling back onto established case law definitions that gave rise to the "multifactor totality-of-the-circumstances analysis" which has been allowed to slip in recent years. This includes the "economic reality factors" that include the investment, control and opportunity for profit or loss of a particular worker activity, plus the "integral factor", which considers whether the work is integral to the employer's business. This approach will be most effective by ending misclassification under the FLSA, which denies basic worker protections such as minimum wage and overtime pay.

USA: The hearing has begun before the Supreme court about whether pay limits exist on the overtime rule under the Fair Labor Standards Act (FLSA).

In this case, a company, Helix Energy Solutions Group, is contesting the claim of a worker earning over $200,000 a year to be paid for overtime at a premium rate. The particular issue in contention is whether overtime is due because his company paid a day rate and not a guaranteed weekly salary. Arguments made by counsel representing the company insist that the intention of allowing employees to be exempt from overtime was because they were not in danger of being exploited and lowly paid. However, the counsel for the employee concerned has insisted that such an exemption only existed if pay was not geared to working time - which it was with those paid on a daily rate. It is still too early to predict which way the Court will go, but a ruling in favour of no earnings limit for overtime will affect a number of groups working on a daily fee basis who are potentially misclassified as exempt or non-exempt.

USA: Major pay increases for Republic Airways staff.

This regional airline has suffered severe pilot shortages in the past for its fleet of 218 medium-sized aircraft. It is also unusual in having its pilots represented by the Teamsters union. The latest pay increase was in 2018 and negotiations over the latest deal have been ongoing since January 2022. What this has produced are pay hikes for first officers of 70-94%, with Captains receiving rises of 54%. There are also substantial improvements to pensions, with contributions rising from 9% to 12% of earnings, and more flexible rostering system for reserve pilots.

USA: The Federal Aviation Administration has formulated a new rule for flight attendants - establishing a minimum rest break between shifts.

From now on, flight attendants will be entitled to a 10-hour break when they are scheduled to work for 14 hours or less. This is in line with the existing rule applicable to pilots. Unlike the previous rule, the ten-hour minima may not be reduced in any circumstances.

USA: The right of employers to force employees to take disputes to arbitration (under the Federal Arbitration Act) has just been reinforced by the Supreme Court.

In the US, over 50% of employees have signed agreements requiring them to take disputes to arbitration - where class actions are not heard. However, employees continue to pressure courts to accept class actions through courts. In the latest foray into this disputed territory, several lower courts had let a group of Domino Pizza workers pursue their class action over the reclaiming of expenses because the workers operated over state lines. However, the Supreme Court would not accept the precedence of a South West Airlines case where the FAA had specifically exempted arbitration agreements with employees if they worked over state lines. This exemption is not, however, applicable to employers outside the airline industry.

USA: Financial institutions continue to increase spending on fraud prevention.

A recent survey Commissioned by Lexus Nexus has found that in financial organisations with a turnover exceeding US$10BN, the annual spend on crime prevention this year is set to be US$31.7M. This is up 14% over 2021, which in turn is up 36% over 2020. 56% of this spend goes on people costs and 37% on technology - with fraud prevention teams increasingly relying on "hands on" due diligence rather than AI for fraud detection. The top driving forces for increasing budgets in this area were cited as geopolitical risks (82% of respondents), criminal threats (65%), increasing data privacy requirements (56%), customer demand for faster payments (51%) and increasing anti-money-laundering regulations and regulatory expectations (46%).

USA: What have remote employees done with their reduced commuting time?

Around 15% of employees remain working at home and another 30% are employed on a hybrid basis following the pandemic. This has reduced aggregate commuting time by 60 million hours. But what has happened to all this regained time? The answer has been recently revealed by the latest American Time-Use Survey. An analysis of the figures by David Dram and ors for the Federal Reserve Bank of New York has found that over the latest available period (May - December 2021), employed workers not affected by COVID-19 reduced their overall working time when employed at home. Although some did take some of their former commuting time to work, this was usually offset by reduced working later in the day. Moreover, much of the time gained by not commuting was taken up by more leisure time and extended sleeping.

USA: Companies wishing to avoid unionization should address employee engagement issues rather than seek to single out pro-union employees for disciplinary action.

There is now a whole catalogue of court and testamentary evidence that makes Starbucks assertions of not being anti-union lack credibility. In the present climate, being in the sights of the National Labor Relations Board (NLRB) is only to run huge reputational risks, however unjustified many of the allegations are and carefully orchestrated by union activists. Recently, even the pro-employer SHRM online website has started to string together news from court actions involving Starbucks around the country. This, however, provides a case study in how not to come into the public eye and underlines how important it is to focus on regular feedback from employees so that grievances can be addressed and good practice followed.

4. AFRICA & THE MIDDLE EAST

EGYPT: Lowering of age when citizens must obtain a national ID.

The House of Representatives' Legislative and Constitutional Affairs committee has decided that the age when an ID card is held must be lowered from 16 to 15. This is to bring the obtaining of full legal rights in line with some existing provisions - such as the right to sue over issues of guardianship and the taking up of employment (Child Law No. 12/1996). The age of 15 also represents the maximum age for which the State is obliged to pay for an individual's education (Art 19 of the Constitution).

KUWAIT: Growth in employment still due to foreign workers.

Data has just been released for June 2022 which shows that during the latest quarter employment grew by 30,973, of which foreign workers accounted for 27,239. Male workers continue to outnumber female workers by 3:1 and the largest sector outside government employment was hospitality and food services. Although the official unemployment level is fairly low, at 3.5%, youth unemployment has grown significantly in recent years to reach just above 25%.

KUWAIT: Women are set to be allowed to work in several technical fields, including oil.

Article 26 of the employment regulations has been amended by adding the paragraph "excluded from the prohibition regarding the employment of female engineers are workers in the area of maintenance and works related to drilling and maintenance of wells of all kinds, works related to supervision, management, follow-up and operation that do not require strenuous physical effort".

KUWAIT: Ashai system reforms launched.

The revised 'Ashal' platform makes it easier for employers to monitor salaries, present reasons for not transferring salaries, undertaking salary deductions and follow up requests online. It also facilitates the authority's specialists to investigate without the need to consult the employers concerned. In case of non-compliance, the erring employer's file will be closed automatically, and they will not be allowed to hire new workers. The file will be opened automatically once the employer successfully addresses the violation.

MALAWI: Commitment to the elimination of child labour.

The Dutch government is funding a programme in Malawi to accelerate the ending of child labour. It is achieving this in cooperation with the Employers Consultative Association of Malawi (ECAM). The project has targeting five districts of Mulanje, Thyolo, Mzimba, Chitipa and Ntchisi. One method to raise awareness and reward good practice is through Employers Year Awards offered by ECAM. However, ultimately there is little that can be done to enforce the moral case for change, especially when supply chains include other African countries.

MALAWI: Uncertainty concerning applicability of paternity leave.

Paternity leave was introduced last year through Section 47A (1) of the Employment (Amendment) Act (2021). It differs from such provisions in many other African States as it does not require any qualifying service period for it to apply, or for the employee to be married to the new child's mother. However, where it is not clear is if it applies to new employees whose spouses are already pregnant. There is also the common problem affecting many workplaces across the country that employers may be willing to give leave, but not on a paid basis and employees will not find the lost earnings sufficiently large to justify the contesting of the loss.

MOROCCO: A new job search benefit is being proposed for those seeking work, or who lost their jobs over three months ago.

There is currently a measure of support through compensation payable by some employers on losing a job and from the social insurance fund through participation in "social protection workshops" for up to six months after termination. However, the support is limited, and many applications are turned down. A programme to offer mandatory sickness cover is being rolled out, but this will not apply to the unemployed until 2026. The proposal for a more generally applicable unemployment benefit system is attracting widespread support, but will probably fail on the grounds that the government lacks the funds to sustain it for the 1.4M who are currently jobless and the more that will follow during the future downturn.

QATAR: The updated version of the “Labour Re-employment Platform for the Private Sector” has been launched.

The aim of the platform is to help companies to obtain skilled and experienced labourers from the local market instead of recruiting directly from overseas. More than 5,000 CVs are now available on the platform for companies that are looking for new employees. Companies are also able to submit a request to the Ministry of Labour for filing vacancies and find their expected candidates.

QATAR: Guide to investment.

The Investment Promotion Agency Qatar (IPA Qatar) has launched a new multilingual ‘Guide to Investment’ in Arabic, English, Chinese (Mandarin), French, German, Italian, Japanese, and Spanish. It offers a detailed overview of Qatar’s territorial taxation system with two tax regimes, including the State regime administered by the General Tax Authority (GTA) and the Qatar Financial Centre (QFC) regime administered by the QFC Tax Department. It also provides entrepreneurs and multinational corporations with a comprehensive overview of the country’s integrated business environment.

SAUDI ARABIA: Licencing system to be launched for skilled workers.

From 1st June 2023, skilled workers will have to possess a professional verification certificate to work in the commercial sector across 81 occupational groups. The licence will be issued by the Ministry of Human Resources and will be renewable through the "Baladi" platform. The Ministry will check all educational qualifications and experience claimed and evaluate the skills needed to carry out particular work.

SAUDI ARABIA: The Saudi Ministry of Human Resources and Social Development has just updated regulations governing worker absences in private sector establishments.

According to the Ministry, after the employer submits a request to terminate the contractual relationship due to the worker's unauthorized work absences, the data of the expatriate worker ceases to be linked to their former facility, and their status is removed from the ministry's systems - with no consequences for the current employer. The worker has the right, within 60 days, to transfer to another employer or finally exit the country. What's more, for expatriate workers who have been reported as absent from work before the date of this update, employers would be allowed to transfer their services to their facilities if their status is "absent from work", and the late fees on the worker's record will be transferred to the new employer. If the transfer of the service of the expatriate worker is not completed within 15 days from the date of the Ministry's approval of the transfer, the status of the expatriate will remain the same – i.e.: absent from work.

SOUTH AFRICA: Unions reject latest Transnet offer to end strikes affecting freight and ports.

The State-owned company had offered the United National Transport Union (UNTU) and the South African Transport and Allied Workers Union (SATAWU) a 4.5% wage deal, plus 5.3% each year, over the next two years. However, the unions are holding out for an immediate rise of 7.6% to match the consumer price change over the year to August 2022.

SOUTH AFRICA: Three-year deal covering the auto sector.

The Automobile Manufacturers Association has signed an agreement with the National Union of Metalworkers of South Africa. This year, workers will receive 8.5% - backdated to 1st July 2022, then 7% in 2023 and again in 2024. This was heralded as totalling 22.5% in the resulting press release - although due to a slip up in calculations employers have actually agreed to pay out a total of 24.22%.

5. GLOBAL

GREAT RESIGNATION: Why employers should hold back and not let it become the great desperation.

Until it was decided to put the question onto survey forms during the pandemic, there probably always was a large section of the population that would declare that they intended to quit their job over the next year unless some desired state was met. We know this because regular employee engagement surveys have, for many years, indicated that most employees were essentially unengaged from their job. During the pandemic years, many white-collar employees who were sent home became happy to be united with their family and yet able to continue earning a living. Many dreamed of moving into the countryside, stopping the commute and making their new found freedom a permanent situation. So, when surveys indicated that home or hybrid working will be a condition necessary for them to retain their job and a few employees leave for just that reason, it can make employers fear that they might be in the midst of a great resignation unless they relent and start to embrace remote working in some form. There are five consequences of this that employers should bear in mind before they panic: 1). If employees are home-based it is harder for them to act collectively and unions to organise them; 2). If home/hybrid working is their primary focus, it will take away pressures to enhance other employee benefits; 3). Unless employers are very generous about expenses, then employees facing rising electricity bills will find that working from home is becoming an expensive option as

Winter sets in; 4). Working remotely can lead to isolation and related work stress, as well as put those working outside the office at a disadvantage when candidates for promotion are being considered. Finally, 5). The future economic downturn and associated job losses will reduce the power of all but those with key skills and make employees more willing to become office based if that is what it takes to keep their jobs. Moreover, if labour shortages exist as demand suddenly crumbles, it will reduce the scale of redundancy required. Perhaps too the pandemic period has been a wake-up call - not only to embrace automation even more, but also to look at alternatives to the conventional employment relationship. In the future, there could well be major multinationals with only a handful of employees (holding all the intellectual property) and the rest all contracted out. Moreover, with regards to flexibility, if employees are outside the EU, then there will be no TUPE-style guarantees that will retain jobs if a contractor loses its client.

6. DATES FOR YOUR DIARY

1st January 2023:	Proposed amendments on the Pay Security Act are likely to enter into force in Finland.
1st January 2023:	California (USA) employers must ensure that compensation rates for computer professionals meet new salary thresholds.
1st January 2023:	Employees' Social Security (Minimum Average Monthly Wage) Regulations 2022 will come into operation in Malaysia.
1st January 2023:	Protected Disclosures (Amendment) Act 2022 will take effect in the Irish Republic.
31st January 2023:	The Government's proposal to safeguard position of employees in cross-border restructuring of companies is likely to enter into force in Finland.
27th February 2023:	A new median wage of NZD 29.66 per hour will take effect in New Zealand.
1st June 2023:	Licencing system will be launched for skilled workers in Saudi Arabia.
1st July 2023:	Modification to Employment Contracts Act is scheduled to enter into force in Finland.
1st September 2023:	Amendments to the Employment Equity Act 1998 (EEA) will come into operation in South Africa.
31st December 2022:	The right to use 2022 COVID-19 supplemental paid sick leave is due to end in California (USA).
1st January 2024:	New California (USA) bill will protect employees' off-duty marijuana use.
2025:	Comprehensive reform of Integration Act is scheduled to enter into force in Finland.
1st Jul 2032:	The normal retirement age in Egypt is set to increase from age 60 to 61.

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.

LABOUR MARKET TRENDS: The next issue of our quarterly report will be published next week. This will have as its principal focus wage determination in a period of high inflation. We were the first organisation to predict hyperinflation in the aftermath of the pandemic and remain unique in drawing on a powerful analysis of monetary policy to show that the current experience of double digit inflation does not have as its primary source rises in energy and food costs, but that price changes have been due - in large part - to economic mismanagement by governments and central banks. Our research has found a further 22% inflation in the system for the UK and the likely spread of double digit inflation to APAC countries that have so far escaped substantial inflationary increases.

MEMBERSHIP REFERRALS: During these challenging times, we are proud to receive numerous unsolicited feedback such as "you provide a great service that supports our business". We maintain quality of service delivery and deal with increasing demand by widening our membership base. Therefore, if you know of any organisations that might benefit from FedEE Corporate Membership, please let us know, or ask them to contact us (admin@fedee.com) mentioning your referral. If the organisation joins FedEE, your organisation will gain a 33% rebate on its next annual renewal fee. Please note that to become a FedEE Member, an organisation must have an HR Department, should have at least 150 employees in two or more countries and have traded solvently for at least three years.

SOURCE AND DISCLAIMER

The Federation of International Employers (FedEE) / La Federación de Empleadores Internacionales / La Fédération des Employeurs Internationaux is a leading non-sectoral organisation for multinational employers. The Federation was founded in 1988 with financial assistance from the European Commission, but today operates as an independent organisation with members in over 100 countries worldwide.

In providing the information contained in this communication neither FedEE, nor any third party authors are rendering any legal, accounting or other professional advice or opinions on specific facts or matters. Neither the Federation of International Employers nor FedEE Corporate Services Limited, nor their affiliates, accept any liability whatsoever for decisions made or action taken or not taken on the basis of this information.

This document contains links to external websites that are not provided or maintained by, or in any way affiliated with, FedEE. We do not guarantee the accuracy, relevance, timeliness or completeness of any information contained in these external websites.

This communication has been sent to you because you or a colleague has requested it – generally through Corporate Membership of the Federation. This communication is exclusively directed at a corporate audience on a business to business basis. If received ‘unsolicited’ by an individual or member of a partnership in error, please notify us and we shall remove your details from our records.

Please make sure admin@fedee.com is added to your safe senders list to avoid items being flagged as spam. If you do not wish to receive future copies of the newswire, please return it to admin@fedee.com with “REMOVE” in the subject line.

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.

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